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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 1724 (2010)[1]
Final version

Honouring of obligations and commitments by Montenegro

Parliamentary Assembly

1. Since joining the Council of Europe in 2007, Montenegro has made substantial progress in implementing its post-accession commitments and statutory obligations. To date, it has signed and ratified 67 Council of Europe conventions, thus completing a great number, although not all, of its formal commitments. It actively co-operates with the Council of Europe and regularly asks the advice of the European Commission for Democracy through Law (Venice Commission) in the course of preparation of legislation.

2. The Parliamentary Assembly refers to the reports of its ad hoc committees on the observation of the 2008 presidential election and 2009 parliamentary elections and welcomes the fact that these elections met almost all international standards. It notes, however, that further democratic developments are necessary, in particular with respect to strengthening public confidence in the electoral process, eliminating the blurring of state and party structures, as well as harmonising the electoral framework with Council of Europe standards.

3. The Assembly welcomes the progress Montenegro has achieved in the process of European integration. It notes that, on 15 December 2008, Montenegro formally submitted an application for membership of the European Union. It follows closely the process of preparation by the European Commission of the opinion on Montenegro's application and expects the European Commission to make full use of the reports of the Assembly and of the Council of Europe monitoring bodies in the preparation of this opinion. The Assembly furthermore congratulates Montenegro for its marked progress in fulfilling the visa liberalisation benchmarks set by the European Commission, which culminated in the introduction, as of 19 December 2009, of a visa-free regime for Montenegro.

4. The Assembly congratulates Montenegro for having established and for maintaining good neighbourly relations with the countries of the region. Montenegro is a reliable and constructive partner which plays a stabilising role in the region.

5. As far as the implementation of post-accession commitments is concerned, the Assembly welcomes the fact that Montenegro has complied with a number of undertakings which were due to be completed within the first two years of Council of Europe membership. In particular, in October 2007 Montenegro adopted a new constitution which received a generally positive assessment of the Venice Commission. Furthermore, a number of important laws were adopted in order to implement the constitutional provisions and harmonise domestic legislation with Council of Europe standards. However, there have been setbacks as well and not all of the deadlines originally foreseen for the adoption of the legislation relating to the implementation of the post-accession commitments have been respected. Moreover, some important commitments have not yet been honoured and the implementation of some of the laws adopted needs to be carefully monitored.

6. In the light of these considerations, the Assembly calls upon the Montenegrin authorities to maintain the current reform dynamic in order to offset the delays and complete the implementation of the remaining post-accession commitments.

---

1. *Assembly debate* on 28 April 2010 (15th Sitting) (see Doc. 12192, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: Mr Gardetto and Mr Holovaty). *Text adopted by the Assembly* on 28 April 2010 (15th Sitting).

7. As regards the signing and ratification of Council of Europe conventions, the Assembly:

7.1. notes that, to date, Montenegro has signed and ratified 67 Council of Europe conventions, thus almost fulfilling the formal post-accession commitments, while regretting that, at times, the deadlines originally foreseen have not been respected;

7.2. encourages the authorities promptly to complete the process of ratification of the following conventions from the list of post-accession commitments:

7.2.1. the Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession (CETS No. 200);

7.2.2. the European Convention on the Exercise of Children's Rights (ETS No. 160);

7.2.3. the Protocol amending the European Convention on the Suppression of Terrorism (ETS No. 190);

7.2.4. the European Convention on the International Validity of Criminal Judgments (ETS No. 70);

7.2.5. the European Convention on the Compensation of Victims of Violent Crimes (ETS No. 116);

7.2.6. the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106);

7.3. moreover, the Assembly calls on the Montenegrin authorities promptly to sign and ratify the following conventions from the list of post-accession commitments:

7.3.1. the European Convention on Nationality (ETS No. 166);

7.3.2. the European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes (ETS No. 82).

8. As regards the constitutional reform, the Assembly:

8.1. welcomes the adoption, on 19 October 2007, of the new constitution which received a generally positive assessment by the Venice Commission. It notes that the seven minimum principles prescribed by Assembly Opinion 261 (2007) appear to have been satisfactorily reflected in the constitution;

8.2. considers that the Assembly recommendations relating to constitutional reform, in particular, with respect to the direct applicability in domestic law of international conventions, the right to an effective remedy, the mandate, appointment procedure and guarantees of independence of the Ombudsperson, the transitional application of existing laws pending the adoption of new ones, the definition of the state of emergency and the legal effects thereof, as well as the definition of local self-government, have been reflected in the constitution;

8.3. notes at the same time that, in the opinion of the Venice Commission, the wording of some provisions of the constitution, especially, those dealing with human and minority rights, could be further improved and brought closer to the wording of the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5);

8.4. therefore calls upon the Montenegrin authorities to continue working with the Venice Commission with a view to ensuring that the provisions of the constitution are translated into ordinary legislation and applied in such a way as to give full effect to the standards of human rights protection guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms.

9. As regards democratic institutions and the domestic legal system, the Assembly:

9.1. notes that, over the past two years, the Montenegrin authorities have adopted a large number of laws with the aim of building a new modern legal system complying with the new constitution and Council of Europe standards;

9.2. welcomes the fact that this legislative work was carried out in close co-operation with the Venice Commission, while regretting that not all of the experts' recommendations were taken onboard;

9.3. notes that the capacity of the parliament should be further strengthened in order to enable parliamentarians to play an active role in the legislative process, as well as to ensure parliamentary oversight over the implementation of adopted laws;

9.4. regrets that, contrary to a specific commitment, the Montenegrin authorities have failed so far to adopt a new law governing the elections of the members of parliament and that the last parliamentary elections of 29 March 2009 were held in accordance with the old Election Law, which does not comply with Council of Europe standards;

9.5. welcomes the adoption, in July 2008, of the Law on the Financing of Political Parties, while regretting that the financing of parties and election campaigns still lacks transparency;

9.6. welcomes the adoption, in February 2008, by the Joint Central-Local Government Commission of the Action Plan on Local Self-Government Reform and encourages the authorities to continue the implementation of a comprehensive decentralisation reform;

9.7. welcomes the introduction of a new system of funding of the public service broadcaster, with the aim of ensuring its sustainability, efficiency and independence;

9.8. therefore, the Assembly calls upon the Montenegrin authorities to:

9.8.1. promptly adopt a new law governing the elections of members of parliament, in close co-operation with the Venice Commission;

9.8.2. amend the Law on the Financing of Political Parties, in the light of the recommendations of election observers and increase transparency in the funding of political parties and election campaigns;

9.8.3. strengthen the capacity of the parliament, in particular, by making adequate resources and premises available to it, as well as by using the Assembly's expertise and funding opportunities offered, in particular within the framework of the European Union's Instrument for Pre-Accession;

9.8.4. strengthen mechanisms of parliamentary oversight over the activities of the government, in particular with respect to the implementation of laws adopted by parliament, and strengthen the financial independence of parliament;

9.8.5. continue the comprehensive local government reform, with a view to devolving sectoral responsibilities to municipalities, strengthening their financial basis, building their capacities and improving public ethics at local level.

10. As regards the rule of law, the Assembly:

10.1. welcomes the adoption of the laws on courts, the high judicial council and the prosecutor's office, which were drafted in co-operation with the Venice Commission;

10.2. welcomes the adoption and implementation by the Montenegrin authorities of the Judicial Reform Strategy and Action Plan, while regretting the fact that the funds allocated to the functioning of the judiciary still represent a rather small share of the state budget;

10.3. welcomes the adoption of the Law on the Protection of the Right to a Fair Trail within reasonable time, the implementation of which appears to have contributed to reducing the backlog of cases in domestic courts;

10.4. welcomes the adoption of the new Code of Criminal Procedure and Code of Civil Procedure, which provide for the possibility of re-examining or re-opening cases at domestic level, following a decision by the European Court of Human Rights (the Court);

10.5. regrets, however, that the domestic judges are not provided systematically with translations of the judgments of the Court and notes that a sustainable system of initial and in-service training in the Court's case law should be introduced;

10.6. welcomes the good co-operation of the Montenegrin authorities with the Group of States against Corruption (GRECO) and the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) and the progress they are making in fighting corruption, organised crime and money laundering, while noting that the public perception of the judiciary and prosecutor's office could still be improved, in particular, as regards corruption risks;

10.7. therefore, the Assembly calls upon the Montenegrin authorities to:

10.7.1. continue the reform of the judiciary and prosecutor's office with a view to guaranteeing their full independence and professionalism, thereby improving their public image;

10.7.2. further strengthen the financial situation of the courts;

10.7.3. further strengthen the existing mechanisms of initial and in-service training of judges in the case law of the Court, and provide them systematically with translations of the Court's case law;

10.7.4. continue reforms in the field of the fight against corruption and money laundering, in line with the recommendations of GRECO and MONEYVAL.

11. As regards human rights, the Assembly:

11.1. welcomes the constitutional guarantees of the independence of the Ombudsperson, as well as the efforts of the authorities aimed at strengthening the operational capacity of the Ombudsperson's office, noting, however, that further improvements to the Law on the Ombudsperson could be made, in the light of the opinion of the Venice Commission;

11.2. regrets that the constitutional provisions on affirmative action in favour of minorities have not yet been implemented in ordinary legislation, and that the 2006 Law on Minority Rights contains a citizenship-based definition of minority rights;

11.3. regrets that the Law on the Prohibition of Discrimination has not yet been adopted, while noting that consultations with the Venice Commission are ongoing;

11.4. regrets that some groups of Montenegrin society, especially the lesbian, gay, bi-sexual and transgender population (LGBT), are frequently subjected to discrimination and are targets of intimidation and physical violence;

11.5. notes that the Montenegrin media sector is diverse and vibrant, while regretting complaints from journalists about pressure which is being put on them, which hinders their right to freedom of expression;

11.6. welcomes the efforts of the Montenegrin authorities to reform the education system and provide children from the minority communities with the opportunity to study in their mother tongue and attend courses dealing with the culture and traditions of their communities, in the spirit of promoting tolerance and respect for others;

11.7. welcomes the adoption and implementation of the strategy for the improvement of the condition of Roma;

11.8. welcomes the efforts of the Montenegrin authorities to ensure equality between men and women in law, in the family, society and economy, while noting that the representation of women in politics should be improved;

11.9. welcomes the co-operation between the Montenegrin authorities and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the publication of the most recent CPT report, as well as the efforts of the authorities to improve conditions of detention;

11.10. welcomes the ratification by Montenegro of the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197) and the efforts of the authorities to combat trafficking in human beings;

11.11. takes note of the adoption of the Law on Citizenship and invites the Montenegrin authorities to continue negotiations with neighbouring countries with a view to concluding agreements on dual citizenship;

11.12. regrets that the new Asylum Law does not fully comply with the requirements of the United Nations Convention relating to the Status of Refugees;

11.13. closely follows the actions of the Montenegrin authorities aimed at re-registering displaced persons with a view to negotiating their sustainable return or ensuring local integration of those who decide to stay in Montenegro;

11.14. the Assembly therefore calls upon the Montenegrin authorities to:

11.14.1. take into account the opinion of the Venice Commission in finalising the Law on the Prohibition of Discrimination and adopt this law as a matter of urgency;

11.14.2. continue working on the effective implementation of the constitutional guarantees of minority rights by revising, where appropriate, the legislation governing these rights;

11.14.3. take all appropriate actions to investigate all allegations of torture or ill-treatment, in particular allegations made by persons detained by the police, and to sanction the perpetrators;

11.14.4. investigate all allegations of violence against human rights defenders, journalists and the LGBT population, provide appropriate protection to those concerned, including witness protection, before, during and after proceedings, prosecute and punish the perpetrators of these offences, and educate the population, in particular the police and youth, to accept differences;

11.14.5. implement the principles of Assembly Resolution 1577 (2007) "Towards the decriminalisation of defamation", in particular by setting reasonable and proportionate maxima for awards for damages and interest in defamation cases so that the viability of a defendant media outlet is not placed at risk;

11.14.6. fully co-operate with the CPT in the implementation of its recommendations and establish a national preventive mechanism for the prevention of torture in accordance with the United Nations Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment of Punishment (OPCAT);

11.14.7. pursue educational reform in order to teach tolerance and respect for others in schools;

11.14.8. pursue the implementation of the strategy for the improvement of the condition of Roma;

11.14.9. revise citizenship and asylum legislation, in the light of the requirements of the United Nations Convention relating to the Status of Refugees;

11.14.10. continue working on improving the situation of refugees and displaced persons by removing all discriminatory provisions in the fields of labour, education, access to property rights, legal redress and access to citizenship and health services; continue negotiations with Montenegro's neighbours with a view to ensuring the sustainable return of displaced persons or providing local integration to those who decide to stay in Montenegro;

11.14.11. continue combating trafficking in human beings.

12. The Assembly notes the good co-operation of the Montenegrin authorities with the International Criminal Tribunal for the former Yugoslavia and encourages the authorities to continue close collaboration with it, especially as regards the search for and arrest of indictees who are still at large.

13. Pending progress in the implementation of the above recommendations, the Assembly resolves to continue the monitoring procedure with respect to Montenegro.