Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 1747 (2010)[1]
Final version

State of democracy in Europe and the progress of the Assembly's monitoring procedure

Parliamentary Assembly

1. The Parliamentary Assembly acknowledges the work of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) in assisting 10 countries currently under monitoring procedure (Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, the Republic of Moldova, Montenegro, the Russian Federation, Serbia and Ukraine) and 4 countries engaged in the post-monitoring dialogue (Bulgaria, Monaco, the "former Yugoslav Republic of Macedonia" and Turkey) in the process of consolidating their democratic institutions with a view to ensuring full respect for human rights, democracy and the rule of law.

2. During the reporting period (June 2009-June 2010), the Monitoring Committee produced assessments of the functioning of democratic institutions in Albania, Armenia, Bosnia and Herzegovina, Monaco, the Republic of Moldova, Montenegro, Serbia and, in the framework of the post-monitoring dialogue, Bulgaria. Furthermore, the committee produced a report entitled "The war between Georgia and Russia: one year after". It was also tasked with reconsidering the previously ratified credentials of the Russian delegation on substantial grounds.

3. The Assembly is satisfied with the rapid and efficient way in which the committee has reacted to the developments of concern in the countries covered by its mandate, and in particular to the post-electoral crises in Albania (Resolution 1709 (2010)), Armenia (Resolution 1677 (2009)) and the Republic of Moldova (Resolutions 1666 (2009) and 1692 (2009)), the functioning of democratic institutions in Bosnia and Herzegovina (Resolution 1701 (2010)) and in the context of the urgent need for constitutional changes in Bosnia and Herzegovina (Resolution 1725 (2010)).

4. As a result of the committee's co-operation with the Monégasque authorities over the past five years, Monaco has clearly made progress in fulfilling the undertakings made upon its accession to the Council of Europe and demonstrated its determination and ability to honour its statutory obligations. Consequently, taking into account the committee's assessment of the progress made, the Assembly decided, in Resolution 1690 (2009) on the honouring of obligations and commitments by Monaco, to close the monitoring procedure in respect of this country and invited the committee to carry out a post-monitoring dialogue with the Monégasque authorities.

5. Moreover, the committee has been engaged in a more general reflection on a number of procedural questions with regard to its monitoring activity, and presented to the Assembly some proposals on the term of office of co-rapporteurs of the Monitoring Committee. These were adopted and integrated into the Assembly's Rules of Procedure, as well as the committee's terms of reference.

6. The Assembly notes that the committee's contribution to the 2010 debate on the state of democracy in Europe is focused on the efficiency of parliaments and the role of political parties in Council of Europe member states covered by the monitoring procedure or engaged in post-monitoring dialogue.

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1. *Assembly debate* on 23 June 2010 (24th Sitting) (see Doc. 12275, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), rapporteur: Mr Marty). *Text adopted by the Assembly* on 23 June 2010 (24th Sitting).

7. Representative democracy is a core principle of a democratic system. Free and fair elections based on political pluralism are essential for the proper functioning of the democratic process. In this context, although substantial progress has been made overall with regard to electoral reform, the Assembly is concerned that serious shortcomings have been noted in the electoral process in some Council of Europe member states.

8. In Albania, although the parliamentary elections of 2009 were considered globally free and fair, the politicisation of the electoral process and infringements found during the campaign, some irregularities during the vote, as well as a parliamentary boycott and hunger strikes by the opposition triggered the current serious political crisis. In Armenia, the lack of public confidence in the electoral process during the 2008 presidential election, aggravated by unequal campaign conditions and problems noted during the vote counting and tabulation, as well as with the handling of election-related complaints, gave rise to a political crisis which has dominated political life for the better part of the reporting period. In the Russian Federation, according to the Assembly's observers, while the outcome of the parliamentary elections of 2007 and the presidential election in 2008 overall reflected the political will expressed by the Russian voters, significant shortcomings resulted in an election process that undermined political pluralism and did not comply with Council of Europe standards for democratic elections. In Azerbaijan, the outcome of the presidential election of 2008 "was the reflection of the will of the country's electorate", but violations were noted during the vote counting and, in particular, the tabulation of the votes. Regrettably, five political parties did not take part in the election and there was no real competition between the platforms and political ideas. The presidential election which took place in Ukraine in 2010 was considered to be in line with Council of Europe standards, notwithstanding attempts by different political forces to manipulate the legal framework for the elections up to the day of voting.

9. Electoral reform is needed in a number of countries. The Albanian authorities have been invited by the Assembly to improve the legislative framework and enhance the capabilities of the electoral administration in a number of areas. In Armenia, electoral reform is essential to restore public confidence in the electoral process. In Azerbaijan, the forthcoming parliamentary elections in 2010 should be preceded by further amendments to the electoral code, which is still too complex with regard to the provisions on the registration of candidates, campaign financing and other regulations relating to the electoral campaign. In Bosnia and Herzegovina, there is an urgent need to remove ethnicity-based limitations on the right to stand for elections to the House of Peoples, as well as for the presidential elections, which are in contradiction with the European Convention on Human Rights (ETS No. 5). In Georgia, the current electoral code is criticised for being favourable to the ruling party. The Assembly welcomes the establishment of a cross-party working group to draft a new electoral code, which resulted in the legal framework for local elections being changed on a consensual basis. The Assembly urges all political forces in Georgia to pursue the dialogue and agree on the reform of the election code, including the electoral system, well before the next parliamentary elections in the country. The inconsistencies in the legal framework for elections in Ukraine, and the manipulation of the legal framework by all contestants, clearly underscore the need for a unified electoral code, as repeatedly recommended by the Assembly. Electoral legislation should be improved in the Republic of Moldova. In particular, the Assembly notes the adoption by the Moldovan Parliament, at second reading, of amendments to the electoral code, lowering the electoral threshold for political parties to 4% and authorising pre-electoral blocs. At the same time, it stresses the need to improve the accuracy of the lists of voters by establishing as quickly as possible a national register of electors, and the fact that the legislative provisions governing voting by Moldovan citizens residing abroad should be improved in order to prevent cases of multiple voting. The Montenegrin authorities have been called upon by the Assembly to promptly adopt a new law governing the election of members of parliament, in order to increase the voters' influence on the choice of a specific candidate within a party list. The Russian Federation has been urged to request an opinion from the European Commission for Democracy through Law (Venice Commission) on the legal framework for its elections and to amend the provisions having a negative impact on political pluralism. Further issues of concern are restrictions on party registration, the increase of the threshold to enter parliament from 5% to a considerably higher level of 7%, the prohibition of the formation of electoral blocs, as well as the introduction of an imperative mandate for deputies.

10. The efficiency of parliaments is to a great extent a result of their representativity and of their capacity to serve as a platform for dialogue between different political forces. Regrettably, in a number of countries, dialogue is jeopardised for different reasons: in some of them parliaments are monopolised by the limited number of political forces (Azerbaijan, Armenia, Russian Federation, Georgia), and/or the opposition is too weak and/or fragmented (Azerbaijan, Russian Federation, Georgia).

11. The Assembly is concerned about the abuse of strategies by opposition parties consisting in boycotting the work of parliament (Albania, Georgia, the Republic of Moldova) or their refusal to participate in elections (for example in Azerbaijan). Such actions do not foster the democratic process.

12. However, it should be emphasised that a strong and active opposition is beneficial to democracy. The respect for the rights of the opposition, as well as the establishment of a democratic environment in which the opposition can work and flourish, is a necessary feature of a stable democracy. Regrettably, such conditions are still not met in a number of countries where the Assembly has noted violations of basic freedoms, for example freedom of assembly, freedom of expression, or freedom of the press.

13. In some countries, partly as a result of flawed electoral processes, a situation has developed where the political opposition mainly exists and operates outside the parliamentary framework. In such cases, in the interest of the democratic process as a whole, the pursuit of political dialogue with the extra-parliamentary opposition should be a priority for the authorities and their inclusion in the political decision-making process should be ensured. This is the case in Armenia, Azerbaijan and Georgia. However, the only long-term solution is the establishment of an electoral framework that allows the participation of a wide array of political forces on equal terms and with no undue restrictions for any participant in the electoral process.

14. In a number of countries, the role of parliament as a necessary counterweight to the executive power is not always well established. There may be a variety of reasons for this weakness, including shortcomings in the constitutional framework, as well as the lack of the necessary structures, staff and legal expertise.

15. The lack of expertise and capacity of the parliament is particularly prevalent in Montenegro, the Republic of Moldova and Bosnia and Herzegovina. In this context, the Assembly welcomes the introduction of a joint European Union/Council of Europe co-operation programme providing “democracy support” for the Republic of Moldova, including its parliamentary component aimed at strengthening the legislative capacities of the Moldovan Parliament.

16. In some countries, constitutional reform is still needed to ensure a well-functioning system of checks and balances. This is particularly the case in Azerbaijan, Georgia and Ukraine. The Assembly takes note of the changes to the constitution proposed by the State Constitutional Commission of Georgia with the stated purpose of, *inter alia,* strengthening the role of parliament and implementing an enhanced system of checks and balances.

17. The proper functioning of the parliamentary system depends to a large extent on the existence of an enabling democratic environment. However, in some countries shortcomings are still noted.

18. Media freedom and pluralism are hampered by excessive ownership concentration, or oligarchic control of media outlets (the Russian Federation, Armenia). Freedom of expression is not fully respected, with journalists arrested on questionable grounds (Azerbaijan) and numerous persecutions or even physical threats to journalists (the Russian Federation, Turkey, Armenia and Azerbaijan), and assassinations (Russian Federation) still occur. In general, the intertwinement of financial and political interest is of concern in a number of countries (Ukraine, Russian Federation).

19. In consequence, the Assembly urges:

19.1. with respect to elections and political pluralism:

19.1.1. the Parliament of Albania to improve the legislative framework for the electoral process and enhance the authority of the electoral administration as regards the electoral register, regulation of media coverage and funding of campaigns, the rules of transparency relating to media ownership, the electoral commissions and lists of candidates;

19.1.2. the Parliament of Armenia to implement without delay, and in good time before the next parliamentary elections, comprehensive electoral reform with a view to ensuring fair and equal conditions for all candidates and increasing public confidence in the electoral process, including the appeals and complaints procedures;

19.1.3. the Parliament of Azerbaijan to revise a number of provisions in the 2008 Electoral Code with regard to the registration of candidates, campaign funding and lists of persons entitled to conduct pre-election campaigns;

19.1.4. the Parliament of Bosnia and Herzegovina to bring the constitution and electoral legislation into line with the European Convention on Human Rights with a view to eliminating discrimination based on ethnicity;

19.1.5. the Parliament of Georgia to pursue electoral reform in time for the next parliamentary elections and to restore dialogue with the opposition so as to reach a consensus among the widest possible range of political forces on the country’s electoral system;

19.1.6. the acting President of the Republic of Moldova to promulgate the amendments to the electoral code adopted recently and the parliament to improve electoral legislation with regard to the accuracy of the lists of voters, by establishing a national electoral roll, and the voting of Moldovan citizens residing abroad;

19.1.7. the Parliament of Montenegro to harmonise the legislation governing parliamentary elections with the new constitution, in line with the country's accession commitments;

19.1.8. the Parliament of the Russian Federation to eliminate legal provisions which limit political pluralism, including restrictive provisions for party and candidate registration, and to lower the threshold to enter parliament;

19.1.9. the Russian Federation authorities to ask the opinion of the Venice Commission on its legal framework for elections and seek its co-operation in addressing any shortcomings, and to implement the recommendations contained in such an opinion;

19.1.10. the Parliament of Serbia to amend the existing constitutional framework with a view to abolishing a party-administered mandate and amend the electoral legislation accordingly, in order to increase the transparency for voters of the allocation process for seats from party lists;

19.1.11. the Parliament of Ukraine to make good on its long-standing promise to adopt, without further delay, a unified electoral code that is in line with European standards;

19.1.12. the Parliaments of the Russian Federation, Serbia and Ukraine to abrogate constitutional and legislative provisions providing for the recall of peoples' representatives by the political parties (the so-called "imperative mandate") and legislative provisions in Serbia and Montenegro that allow for the reordering of candidates on the party lists after the elections have taken place;

19.2. with respect to dialogue between political parties in parliament:

19.2.1. the main opposition party in Albania (Socialist Party) to terminate its boycott of the work of parliament and enter into a constructive political dialogue with other political forces, recalling the Bureau statement of 26 April 2010 in this respect;

19.2.2. the Armenian authorities to pursue their efforts to establish a meaningful dialogue with all opposition political forces on the political reforms needed for the normalisation of political life in the country;

19.2.3. the Azerbaijani authorities to establish a meaningful political dialogue with the opposition;

19.2.4. the Georgian authorities to pursue their efforts to establish a meaningful dialogue on the direction and content of the constitutional and electoral reform packages that are being prepared;

19.2.5. the political forces in the Republic of Moldova to engage in a constructive and meaningful dialogue with a view to creating the necessary guarantees against a repetition of the current institutional crisis, including by amending the constitution, using the expertise and recommendations of the Venice Commission;

19.2.6. the political forces in Bosnia and Herzegovina to establish a serious institutionalised process for the preparation of a comprehensive package of constitutional amendments, in accordance with the country's post-accession commitments, while making full use of the expertise and recommendations of the Venice Commission;

19.3. with respect to parliamentary oversight of the activities of the executive and strengthening of the capacity of parliaments:

19.3.1. the parliaments of Armenia, Azerbaijan, Georgia, the Russian Federation and Ukraine to review their legislation with a view to strengthening their role of parliamentary oversight of the activities of the executive;

19.3.2. the parliaments of the Republic of Moldova, Montenegro and Serbia to strengthen their material and administrative organisational capacities.

20. The Assembly urges all states currently under a monitoring procedure or engaged in a post-monitoring dialogue to intensify their co-operation with the Monitoring Committee and to promptly implement 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 programmes.

21. The Assembly is fully aware that democracy is an ongoing process. Therefore, countries which are not under a monitoring procedure or engaged in a post-monitoring dialogue should also be reminded, as necessary, to respect their statutory obligations as member states of the Council of Europe. In accordance with the practice established in 2006 to monitor the record of these countries, the committee has appended to its annual progress report periodic reports on 11 member states (Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands).

22. The Assembly welcomes the fact that, since the adoption of its Resolution 1548 (2007) on the progress of the Assembly's monitoring procedure (June 2006-June 2007):

22.1. Hungary has signed and ratified the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198), and that Latvia, Malta and the Netherlands have ratified it;

22.2. Latvia, Luxembourg, Malta and the Netherlands have ratified the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197);

22.3. the Netherlands has ratified the Civil Law Convention on Corruption (ETS No. 174).

23. Noting that a number of the states under the periodic reporting are not subject to certain specific monitoring mechanisms of the Organisation because they have not ratified the relevant conventions, the Assembly urges once more:

23.1. Ireland, Liechtenstein and Lithuania to sign and ratify, and Greece, Iceland, Italy and Luxembourg to ratify the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism;

23.2. Liechtenstein to sign and ratify, and Greece, Hungary, Iceland, Ireland, Italy and Lithuania to ratify the Convention on Action against Trafficking in Human Beings;

23.3. Greece, Iceland and Luxembourg to ratify the Framework Convention for the Protection of National Minorities (ETS No. 157);

23.4. Liechtenstein to sign and ratify, and Greece, Iceland, Latvia and Luxembourg to ratify the revised European Social Charter (ETS No. 163);

23.5. Iceland, Latvia, Liechtenstein, Lithuania, Luxembourg and Malta to sign and ratify the Additional Protocol to the European Social Charter providing for a system of collective complaints (ETS No. 158);

23.6. Greece, Ireland, Latvia and Lithuania to sign and ratify, and Iceland, Italy and Malta to ratify the European Charter for Regional or Minority Languages (ETS No. 148);

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

23.8. Lithuania to sign and ratify, and Hungary, Iceland, Italy, Liechtenstein and Malta to ratify the Additional Protocol to the Criminal Law Convention on Corruption (ETS No. 191).

24. 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. It particularly welcomes the co-operation and synergies that the Monitoring Committee has developed with some of them in handling crisis situations, and it recommends that this practice be further developed, including systematic exchanges of information.