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The progress of the Assembly's monitoring procedure (June 2011-May 2012)

Report[1]
Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)
Rapporteur: Mr Andres HERKEL, Estonia, Group of the European People's Party

Summary

In its annual progress report, submitted to the Parliamentary Assembly in accordance with its mandate, the Monitoring Committee gives account of its activities since June 2011.

The report assesses progress and raises concerns with respect to the recurrent issues in 10 countries under the monitoring procedure and four countries engaged in the post-monitoring dialogue.

Furthermore, the committee introduces an important modification in the way of reporting on the monitoring of statutory obligations of 33 countries that are not subject to the monitoring procedure or the post-monitoring dialogue.

The committee resolves to continue its reflection on ways to increase the impact and efficiency of the monitoring procedure.

1. Reference to committee: Resolution 1115 (1997).

A. Draft resolution[2]

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 10 countries currently under monitoring (Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, the Republic of Moldova, Montenegro, the Russian Federation, Serbia and Ukraine) and four countries engaged in a post-monitoring dialogue (Bulgaria, Monaco, "the former Yugoslav Republic of Macedonia" and Turkey) in their efforts to ensure full respect for democracy, the rule of law and the protection of human rights.

2. During the reporting period, the committee produced a full monitoring report on Serbia and assessments of the functioning of democratic institutions in Armenia, Bosnia and Herzegovina and Ukraine. Furthermore, preliminary draft reports on Montenegro, the Russian Federation and Turkey have been approved by the committee and transmitted to the national authorities of these countries for comments.

3. The rapporteurs carried out a total of 18 visits to all the countries under the monitoring procedure and post-monitoring dialogue, except for Turkey. Following the visits, six information notes on Albania, Armenia, Azerbaijan, Georgia, the Republic of Moldova and "the former Yugoslav Republic of Macedonia" were submitted to the committee; all of them, with one exception, were declassified. The rapporteurs systematically participated in election observation missions in the countries under their responsibility when elections were held.

4. In the framework of the preparation of reports on specific countries, the committee organised a number of hearings, with the participation of, *inter alia,* the Minister of Justice of Ukraine, a representative of the Danish Helsinki Committee and of Amnesty International with respect to the report on Ukraine, the High Representative for Bosnia and Herzegovina with respect to the report on that country, a representative of Amnesty International with respect to the report on Azerbaijan, and the leaders of the Russian political forces not represented in the parliament with respect to the report on the Russian Federation.

5. On the proposal of the respective rapporteurs, the committee requested legal opinions from the European Commission for Democracy through Law (Venice Commission) on a number of laws or draft laws in the countries under monitoring procedure, in particular in respect of the Republic of Moldova, Montenegro, the Russian Federation and Ukraine.

6. Furthermore, in accordance with the practice established in 2006, the committee has prepared a periodic report on the first group of 11 member States among those which are not subject to a monitoring procedure *stricto sensu* or involved in a post-monitoring dialogue, based on the findings of other Council of Europe monitoring mechanisms. The committee has also decided to introduce a new formula for future reporting on these countries.

7. Moreover, the committee pursued its work on the consequences of the war between Georgia and Russia. The Assembly takes note of the intention of the co-rapporteurs on the Russian Federation and on Georgia to visit Moscow, Tbilisi, Tskhinvali and Sukhumi during a joint mission led by the Chair of the committee, in the second half of 2012, and to subsequently submit an information report to the committee, in accordance with the procedure agreed on by the committee.

8. The committee pursued preparation of its written opinion on the motion for a resolution on "Serious setbacks in the fields of the rule of law and human rights in Hungary", to be submitted to the Bureau. The co-rapporteurs carried out two fact-finding visits to the country and the committee requested the legal opinion of the Venice Commission on a number of Hungarian legal acts.

9. In the light of the 15th anniversary of the establishment of the committee in 1997, the committee continued the discussion, launched last year, on possible ways and means of rendering the monitoring procedure more effective, and of ensuring improved compliance of all member States with their statutory obligations.

10. The Assembly takes note of the committee's intention to modify the formula for the presentation of periodic reports on the countries which are not under the monitoring procedure *stricto sensu*, and to abandon the three-year cycle of assessment in order to better reflect the findings of Council of Europe convention monitoring mechanisms, which operate on cycles of varying duration.

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2. . Draft resolution adopted unanimously by the committee on 31 May 2012.

11. The Assembly expresses its satisfaction at some positive developments in a number of countries under the monitoring procedure over the reporting period. It welcomes, in particular: in Albania, the end of the boycott of the parliament by the opposition Socialist Party; in Armenia, the release of persons imprisoned in relation to the events of March 2008 and the renewed impetus given to the investigation of the deaths which occurred during those events, as well as the start of a political dialogue between the opposition and the ruling coalition; in Bosnia and Herzegovina, the formation of a new State government following the agreement between the leaders of the key political parties; in the Republic of Moldova, the end of the institutional deadlock resulting from the parliament's inability to elect the President of the Republic.

12. Furthermore, the Assembly notes with satisfaction the progress in the fulfilment of commitments and obligations made in a number of countries under the monitoring procedure and, in particular: in Armenia, with regard to the improvement of the political environment in the conduct of parliamentary elections and to the introduction of measures in the framework of the reform of the judiciary and police; in Georgia, with regard to the drawing up of a new electoral code, the reform of penitentiary institutions and the improvement of relations between the associations of the Meskhetian Turks and the authorities; in the Republic of Moldova, with regard to the pursuit of the decentralisation process and initiatives launched by the authorities to combat corruption and to reform the police and the prosecution service as well as with regard to the resumption of formal negotiations concerning Transnistria; in Montenegro, with regard to the pursuit of substantial reforms in the area of the judiciary, the fight against corruption and organised crime, the rights of minorities and freedom of the media; in the Russian Federation with regard to the process of political liberalisation launched by the authorities, concerning the registration of political parties and the method of appointing governors, following the events surrounding the parliamentary and presidential elections; in Serbia, with regard to the reform of the electoral law and the justice system as well as decentralisation and increased protection of minorities; in Ukraine, the adoption of a new Code of Criminal Procedure, globally in line with European standards; in Bulgaria, with regard to codification of the electoral rules and efforts to fight corruption and organised crime; in Turkey, with regard to improvement of the electoral system.

13. At the same time, the Assembly expresses its concern about worrying developments in some of the countries under the monitoring procedure and under the post-monitoring dialogue, in particular: in Armenia, with regard to the fact that, until now, no responsibility has been established concerning 10 casualties that occurred during the 2008 events; in Azerbaijan, with regard to the restrictions imposed on freedom of expression, assembly and association, reports on the detention of prisoners of conscience and the human rights situation in general; in Georgia, with regard to the administration of criminal justice and the lack of credible investigations into alleged abuses by the police forces; in the Russian Federation, with regard to the shortcomings identified by the international observers during the parliamentary and presidential elections, and the violence and detention of peaceful demonstrators in the immediate aftermath of the December 2011 elections as well as to reports on the human rights situation in general; in Turkey, with regard to the journalists and some members of parliament still in pre-trial detention; in Ukraine, with regard to the criminal proceedings initiated against a number of former government members on controversial charges and numerous serious deficiencies in the procedures.

14. With respect to the countries which are not subject to the monitoring procedure *stricto sensu*, the Assembly expresses its concern that a number of these countries have not signed and/or ratified some major Council of Europe conventions, thus preventing convention mechanisms attached to them from monitoring their implementation.

15. Furthermore, with respect to these countries, the Assembly is concerned by the conclusions of the third round evaluation reports on the implementation of the Civil Law Convention on Corruption and the Criminal Law Convention on Corruption (ETS No. 173) and its Additional Protocol (ETS No. 191). It is particularly worrying that the degree of compliance with the recommendations of the Council of Europe's Group of States against Corruption (GRECO) is considered "globally unsatisfactory" in the case of Belgium, Denmark and Germany.

16. The Assembly therefore urges:

16.1. the Parliament of Albania to pursue work on reform of the electoral code and parliamentary working methods and to promote the enhancement of internal democracy within political parties;

16.2. the Parliament of Armenia to pursue reform of the police and the judiciary with a view to guaranteeing its independence; to pursue a constructive dialogue between the opposition and the ruling coalition; to carry out a public inquiry with a view to establishing responsibility for the 10 deaths that occurred during the 2008 events;

16.3. the Parliament of Azerbaijan to revise the electoral code, as amended in 2010, with a view to addressing the outstanding recommendations from the Venice Commission and the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR), in particular those relating to the composition of the election commissions, candidate eligibility, as well as the complaints and appeals process; the authorities of Azerbaijan to ensure respect for human rights and freedoms, and in particular freedom of expression, assembly and association;

16.4. the Parliament of Bosnia and Herzegovina to revise the constitution and electoral legislation with a view to eliminating ethnicity-based limitations on the right to stand for office, in order to comply with the standards of the European Convention of Human Rights (ETS No. 5), to implement the *Sejdić et Finci* judgment of the European Court of Human Rights, to introduce reforms in the judiciary, the fight against corruption and regarding governance;

16.5. the authorities of Georgia to introduce the necessary measures to improve the administration of criminal justice and carry out credible investigations – within the meaning of the case law of the European Court of Human Rights – into alleged abuses by the police forces.;

16.6. the Parliament of the Republic of Moldova to pursue the reform process, including the necessary revision of the constitution, and to ensure political pluralism in the media;

16.7. the Parliament of Montenegro to introduce legislative amendments with a view to ensuring the independence of the judiciary, in line with the Venice Commission recommendations;

16.8. the Parliament of the Russian Federation to follow the recommendations of the Venice Commission with regard to a number of federal laws; to establish a meaningful dialogue with the opposition political forces not represented in the parliament;

16.9. the Serbian authorities to make further progress in adopting and fully implementing the justice reform in order to guarantee its independence and efficiency;

16.10. the authorities of Ukraine to implement fully and without reservations the new Code of Criminal Procedure; to address concerns regarding the criminal proceedings initiated against a number of former government members, in line with Council of Europe recommendations;

16.11. the authorities of Bulgaria to pursue the reform of the judiciary with a view to guaranteeing its full independence;

16.12. the National Council of Monaco to adopt the legislation on the organisation and functioning of parliament, the reform of police custody, the organisation of the courts and the funding of electoral campaigns;

16.13. the authorities of “the former Yugoslav Republic of Macedonia” to ensure the full implementation of the Ohrid Framework Agreement as well as further improve the implementation of laws in the areas of freedom of the media, public administration and the judiciary;

16.14. the authorities of Turkey to address concerns regarding the functioning of the judicial system, freedom of expression, execution of the judgments of the European Court of Human Rights, and the problems associated with national minorities and the use of minority languages.

17. With respect to the countries which are not subject to the monitoring procedure, the Assembly calls on:

17.1. Denmark, France, Lithuania, Malta, Poland, Sweden, Switzerland and the United Kingdom to sign and ratify, and Austria, Belgium, the Czech Republic, Estonia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Norway, Portugal, the Slovak Republic and Slovenia to ratify Protocol No. 12 to the European Convention on Human Rights (ETS No. 177) concerning the fight against discrimination;

17.2. Andorra, Belgium, Estonia, Greece, Ireland, Latvia, Lithuania, Portugal and San Marino to sign and ratify, and France, Italy, Iceland and Malta to ratify the European Charter for Regional or Minority Languages (ETS No. 148);

17.3. Andorra and France to sign and ratify, and Belgium, Greece, Iceland and Luxembourg to ratify the Framework Convention for the Protection of National Minorities (ETS No. 157);

17.4. The Czech Republic and Liechtenstein to sign and ratify, and Estonia, Finland, Germany, Greece, Hungary, Lithuania and Switzerland to ratify the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197);

17.5. Switzerland to ratify Protocol No. 1 to the European Convention on Human Rights (ETS No. 9) adding the right to peaceful enjoyment of property, the right to education and the right to free elections by secret ballot to fundamental rights protected by the Convention;

17.6. Liechtenstein and Switzerland to sign and ratify, and Croatia, the Czech Republic, Denmark, Germany, Greece, Iceland, Latvia, Luxembourg, Poland, San Marino, Spain and United Kingdom to ratify the European Social Charter (revised) (ETS No. 163);

17.7. Andorra, Estonia, Germany, Iceland, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Poland, Romania, San Marino, Spain, Switzerland, and the United Kingdom to sign and ratify, and Austria, Denmark, Hungary, the Slovak Republic and Slovenia to ratify the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (ETS No. 158);

17.8. Liechtenstein, Portugal, San Marino and Switzerland to sign and ratify, and Andorra, Denmark, Germany, Iceland, Ireland, Italy, Luxembourg and the United Kingdom to ratify the Civil Law Convention on Corruption (ETS No. 174);

17.9. Austria, Germany, Italy, Liechtenstein and San Marino to ratify the Criminal Law Convention on Corruption;

17.10. Andorra, the Czech Republic, Denmark, Estonia, Germany, Ireland, Liechtenstein, Lithuania, Norway, Switzerland and the United Kingdom to sign and ratify, and Austria, Finland, France, Greece, Iceland, Italy, Luxembourg and Sweden to ratify the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198);

17.11. the Parliaments of Greece, Italy, Poland and Romania to promote progress in the implementation of judgments of the European Court of Human Rights, and to initiate legislative changes aimed at eliminating structural problems leading to repeated violations of the European Convention on Human Rights;

17.12. the parliaments of all member States not subject to the monitoring procedure to use periodic reports as the basis for a debate on their country's state of honouring of obligations as members of the Council of Europe and to promote compliance with recommendations made by specific Council of Europe monitoring bodies.

18. The Assembly stresses the importance it attaches to the full independence of rapporteurs on the monitoring of obligations and commitments in accomplishing their work.

19. The Assembly commends the remarkable work carried out by the Council of Europe monitoring mechanisms, and the *acquis* they have established over the years.

20. The Assembly resolves to pursue a more general reflection on ways to enhance the efficiency and the impact of the Assembly monitoring procedures with regard to all Council of Europe member States.

B. Explanatory memorandum, by Mr Herkel, rapporteur

1. Introduction

1. Resolution 1115 (1997), as modified by Resolutions 1431 (2005), 1515 (2006) and 1710 (2010), which constitute a basis for the Parliamentary Assembly's monitoring procedure, entrusts the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) with the task of "verifying the fulfilment of obligations assumed by the member States under the terms of the Council of Europe Statute (ETS No. 1), the European Convention on Human Rights (ETS No. 5, "the Convention") and all other Council of Europe conventions to which they are parties, as well as honouring of commitments entered into by the authorities of member States upon their accession to the Council of Europe".

2. Furthermore, Resolution 1115 (1997) requires the Monitoring Committee to report to the Assembly once a year on the general progress of the monitoring procedures. The present report fulfils this obligation and covers the period from June 2011 to May 2012. In accordance with established practice, as chair of the committee, elected to the post in January 2012, I have been entrusted with the task of reporting on the committee's activities.

3. My intention is, firstly, to give an account of the committee's activities since the last progress report, presented by my predecessor, Mr Dick Marty, during the Assembly's 2011 third part-session. Secondly, I should like to continue the process of more general consideration of the achievements and concerns of the parliamentary monitoring procedure over the last fifteen years with regard to all member States, launched by Mr Marty last year. Finally, I would like to elaborate on the challenges facing us in the future, and possible ways to address them, with a view to improving the efficiency and impact of the Assembly's monitoring procedure.

4. Readers will notice that I have drawn the conclusions from our discussion last year, in the light of the completion of the second cycle of reporting on countries that are not subject to a monitoring procedure or a post-monitoring dialogue. As a result, when initiating, in the present report, a third cycle of periodic reports on the first group of 11 member States, I have introduced important methodological changes which, in my opinion, contribute to the clarity and efficiency of the process. I am also submitting a number of proposals for further modifications in the procedure for reporting on this category of countries.

5. Following the established practice, in preparing this report, I have limited myself to references to the relevant texts adopted by the Assembly and reports or other public documents prepared by our committee's co-rapporteurs, who follow the situation in each specific country. I have also used the reports drawn up by the ad hoc committees of the Bureau of the Assembly on election observation in these countries, since this activity is closely linked to the work carried out by our committee. I also make reference to the conclusions of the European Commission for Democracy through Law (Venice Commission) and other Council of Europe monitoring mechanisms which have been used by committee co-rapporteurs in the preparation of their fact-finding visits. I have not engaged in any analysis or conclusions beyond those of the co-rapporteurs concerned or the Assembly observer delegations. With regard to periodic reports on countries not subject to a monitoring procedure, I have based my conclusions entirely on the findings of the relevant Council of Europe monitoring mechanisms.

6. In the draft resolution, I have tried not only to address the recurrent issues raised in countries under monitoring and in countries engaged in a post-monitoring dialogue, but also, on the basis of past experience, to identify possible ways to render the monitoring procedure more effective, and to ensure better compliance of all member States with their obligations and commitments.

7. In order to give a better overview of all members' compliance with their obligations, I have also appended a chart of ratifications and signatures of the main Council of Europe conventions with a monitoring mechanism.

2. Overview of the committee's activities

2.1. General remarks

8. The year of 2011 was marked by an important number of new appointments of rapporteurs: following the introduction of new rules with regard to the term of office of rapporteurs of the Monitoring Committee, seven new co-rapporteurs on monitoring, and four new rapporteurs on post-monitoring dialogue were

appointed. The process went smoothly and did not have a negative impact on the continuity of the monitoring procedure. Over the reference period, all newly appointed rapporteurs have carried out fact-finding visits to the countries under their responsibility.

9. Following the adoption of Resolution 1841 (2011), new rules were introduced with regard to the reopening or opening of the monitoring procedure, and the number of signatures necessary to initiate an application has been increased from "not less than 10 members of the Assembly representing at least five national delegations and two political groups" to "not less than 20 members of the Assembly representing at least six national delegations and two political groups". As a result, the procedure for reopening or opening the monitoring procedure is aligned with the procedure for initiating any motion in the Assembly.

10. Resolution 1799 (2011) on the code of conduct of rapporteurs of the Parliamentary Assembly sets out the rules which apply to rapporteurs of the Assembly. It stresses in particular the principle of neutrality, impartiality and objectivity, the obligation of discretion, the undertaking of availability, etc. It is needless to recall that strict observation of these principles is particularly important, given the specific nature of the work of the Monitoring Committee.

11. During the reporting period, 10 countries[3] remained under monitoring procedure and four[4] were engaged in post-monitoring dialogue. Since June 2011, the committee has approved and presented to the Assembly a full monitoring report on Serbia, as well as reports on the functioning of democratic institutions in Armenia, Bosnia and Herzegovina, and Ukraine. Furthermore, in accordance with the procedure, preliminary draft reports on Montenegro, the Russian Federation and Turkey have been considered by the committee and transmitted to the authorities of the respective countries for comments.

12. During the reporting period, the respective rapporteurs carried out visits to all the countries under the monitoring procedure and, except for Turkey, to all countries engaged in the post-monitoring dialogue. In total, 18 fact-finding visits were carried out. All of them were followed by oral reports and/or information notes on the rapporteurs' findings, submitted to the committee for discussion. Out of six notes considered by the committee, five were declassified.

13. Parliamentary and/or presidential elections were held in a number of the countries under monitoring or post-monitoring procedure during the reporting period, namely in Armenia, Bulgaria, the Russian Federation, Serbia and Turkey. In each case, the respective rapporteurs were members of Parliamentary Assembly election observation missions.

14. In the framework of the preparation of reports on specific countries, the committee held a number of hearings with the participation of, *inter alia*, the Minister of Justice of Ukraine, a representative of the Danish Helsinki Committee and of Amnesty International on the report on Ukraine, the High Representative for Bosnia and Herzegovina on the report on this country, a representative of Amnesty International on the report on Azerbaijan and the leaders of political forces not represented in the Parliament of the Russian Federation.

15. On the proposal of the rapporteurs, the committee requested a legal opinion of the Venice Commission on a number of laws or draft laws in the countries under the monitoring procedure, in particular in respect of Montenegro, the Republic of Moldova, Ukraine and the Russian Federation.

2.2. Overview of the country-specific monitoring over the reporting period

2.2.1. Albania

16. The newly appointed co-rapporteurs visited Albania on two occasions during the reporting period: in July 2011 and in April 2012. They presented to the committee an information note which was declassified in September 2011,[5] and an oral report in April 2012.

17. The developments surrounding the local elections held on 8 May 2011 added to the political stalemate prevailing in Albania since the June 2009 parliamentary elections and the ongoing polarisation between the ruling Democratic Party and the opposition Socialist Party. On a positive note, the final acceptance of the outcome of these elections by the electoral stakeholders, including, most importantly, the Albanian voters, has avoided further escalation of the problem.

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3. . Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, the Republic of Moldova, Montenegro, the Russian Federation, Serbia and Ukraine.
4. . Bulgaria, Monaco, "the former Yugoslav Republic of Macedonia" and Turkey.
5. . See AS/Mon (2011) 21 rev.

18. It is of crucial importance to maintain the legitimacy of the domestic institutions and respect for their decisions, in order to resolve the electoral dispute. Therefore, on all occasions, the co-rapporteurs stressed the need for all parties to accept and abide by the decisions of the courts and to refrain from statements that could be perceived as undermining the legitimacy of the domestic court system.

19. However, it has become clear that a reform of the election code is needed, in particular in order to clarify some principles and procedures. In addition, the current election code favours the major parties. As a result, smaller or new parties have a limited possibility to enter the political arena and this problem needs to be addressed. The co-rapporteurs urged the Albanian authorities to seek close co-operation with the Venice Commission on the reform of the electoral code.

20. Furthermore, the political stand-off during the last parliamentary and local elections has underscored, yet again, the need to improve the democratic decision-making processes within the parties themselves. The internal party democracy has been criticised by members within both the socialist and democratic parties. The co-rapporteurs stressed their intention to follow the issue of internal party democracy within the framework of the ongoing monitoring procedure.

21. The co-rapporteurs welcomed the end of the Socialist Party's boycott of the work of the parliament in September 2011, as well as the stated intention of all parties to co-operate constructively on the implementation of the reforms needed to obtain European Union candidate status. Two special ad hoc committees were established to discuss reform of parliamentary working methods as well as the electoral code, in line with Venice Commission recommendations.

2.2.2. Armenia

22. The co-rapporteurs on Armenia visited the country in January 2012 and presented an information note to the committee, which was declassified in March 2012.[6] The report on the functioning of democratic institutions was debated in the Assembly in October 2011.[7] The parliamentary elections were held in the country on 6 May 2012; the Assembly was represented by the ad hoc committee on the observation of elections.

23. The release of persons imprisoned in relation to the events of March 2008, and the renewed impetus to the investigation of the deaths which occurred during those events, as well as the start of a constructive political dialogue between the opposition and the ruling coalition, constituted positive developments during the reporting period.

24. The tragic events of March 2008 and their aftermath have set clear priorities for democratic progress in the country. These priorities included the conduct of genuinely free and fair parliamentary elections in compliance with democratic standards, the creation of a democratic political environment favouring the establishment of a pluralist system; a pluralist media environment, and the reform of the police and the judiciary, with a view to guaranteeing their independence.

25. In the run-up to the parliamentary elections, the political environment has improved dramatically and the opposition has become a well-organised viable political force. Also given the political differences in the ruling coalition, the election took place in a genuinely competitive environment.

26. With regard to the reform of the judiciary and the police, during their last visit the rapporteurs noted with satisfaction a number of measures undertaken by the authorities with a view to fulfilling the recommendations of the Assembly. In particular, the announcement by the authorities that an independent police complaints mechanism would be established, in line with Assembly recommendations, should be welcomed. However, as confirmed by the minister of justice, these reforms alone will not be enough to ensure the independence of the courts or make corruption disappear. For that to happen, a change of mentality is needed. It is hoped that the appointment of a new generation of young and better educated judges will bring about such a change of mentality.

2.2.3. Azerbaijan

27. During the reporting period, a number of serious concerns with regard to the violation of human rights and freedoms have been raised by the domestic and international civil society in Azerbaijan. The co-rapporteurs visited the country in February 2012, and they submitted a written information note to the

6. . See AS/Mon (2012) 04.
7. . See Doc. 12710 and Resolution 1837 (2011).

committee in April 2012.[8] The note was declassified. Another visit is foreseen in June 2012, and a report on the monitoring of the obligations and commitments is under preparation and foreseen for presentation to the Assembly in January 2013.

28. Outstanding concerns with regard to the state of democracy, as well as human rights and freedoms, include the restrictive political environment, alleged reports on torture and other forms of ill-treatment by law enforcement agents, flagrant violations of the freedom of expression, the freedom of assembly, the freedom of association and the freedom of religion, as well as illegal demolitions of houses and forced evictions in Baku.

29. Problems concerning the funding of political parties, limitations on freedoms, harassment of extra-parliamentary opposition party members and supporters and an overall restrictive political climate, are detrimental to the establishment of a genuinely pluralist democratic system and a political environment necessary for meaningful and competitive elections.

30. The existing electoral code, already criticised during the last parliamentary and presidential elections, has not been revised, despite the Parliamentary Assembly's recommendations and the rapporteurs have called on the authorities to do so, in co-operation with the Venice Commission, in time for the presidential elections scheduled for mid-2013.

31. Furthermore, they expressed the hope that the authorities would take into account the recommendations of the Venice Commission with regard to the planned amendments to the law on political parties and the amendments to the law on non-governmental organisations (NGOs).

32. It is a matter of great concern that 14 people imprisoned in relation to mass protest demonstrations, which took place in Baku in March and April 2011, and sentenced to up to three years for "disturbance of public order" are still detained, despite repeated calls for their release by domestic civil society and the international community.

2.2.4. Bosnia and Herzegovina

33. During the reporting period, the co-rapporteurs visited Bosnia and Herzegovina in September 2011, and the report on the functioning of democratic institutions in Bosnia and Herzegovina was presented to the Assembly in January 2012.[9] In April 2012, the committee held an exchange of views with the High Representative for Bosnia and Herzegovina.

34. The agreement in principle on a new State government between the leaders of key political parties, concluded at the end of December 2011, and its subsequent formation after some fifteen months of political stalemate, constituted the most important and positive development in the reporting period. As stressed by the former co-rapporteur on the country, the current President of the Assembly, in his statement issued on that occasion, the creation of the government was an essential precondition for putting the functioning of Bosnia and Herzegovina's institutions back on the right track

35. The lengthy political and institutional deadlock over the ethnic distribution of posts in the government has prevented the country from pursuing the fulfilment of its obligations and commitments to the Council of Europe and introducing much-needed reforms, in particular in key areas like the judiciary, the fight against corruption, governance, the rule of law and education. Today, constitutional reform remains the key reform for the transformation of Bosnia and Herzegovina into an effective and fully functional State.

36. Furthermore, priority must be given to the execution of the *Sejdic and Finci v. Bosnia and Herzegovina* judgment by the European Court of Human Rights, of 22 December 2009, and constitutional amendments must be adopted in good time for the next parliamentary elections, scheduled for 2014.

37. Moreover, Bosnia and Herzegovina should fully co-operate with the Council of Europe and actively participate in the Organisation's different bodies, including the Venice Commission, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the European Commission against Racism and Intolerance (ECRI), the bodies of the Framework Convention for the Protection of National Minorities (ETS No. 157) and others. It is regrettable that internal disputes had for a long time prevented the presidency from sending a list of candidates for the seat of judge at the European Court of Human Rights. Even the parliamentary delegation to the Assembly was only established partly in January 2012. To date, the head of the delegation has not been appointed.

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8. . See AS/Mon (2012) 05 rev.
9. . See Doc. 12816 and Resolution 1855 (2012).

2.2.5. Georgia

38. The co-rapporteurs on Georgia visited the country in October 2011 and the note which they submitted to the committee following the visit was declassified in January 2012.[10]

39. In view of the parliamentary elections scheduled for October 2012, revision of the electoral legislation, as recommended by the Assembly during the last debate on the honouring of obligations and commitments by Georgia,[11] was one of the most important issues during the reporting period. The rapporteurs noted with satisfaction that a completely new electoral code had been proposed to the parliament, which corresponded with the Assembly's recommendations, for this solution rather than further amending the already heavily amended existing electoral code. Furthermore, the submitted draft addressed recommendations made by the Venice Commission in previous opinions on the electoral legal framework in Georgia. At the same time, the rapporteurs emphasised that the legislative process should be inclusive and based on as wide a consensus as possible. They strongly regretted that, despite repeated recommendations of, *inter alia*, the Assembly and the Venice Commission, the new electoral code does not satisfactorily address the excessive differences in the size of the majoritarian election districts, which is at variance with European standards.

40. The administration of justice with regard to criminal and administrative cases, where a State might have a vested interest, has been another concern in Georgia. No problems were reported with regard to the administration of civil justice. The progress made in the reform of the judiciary by the current authorities is undeniable, but shortcomings nevertheless remain.

41. Furthermore, there has been concern about the lack of credible investigations – within the meaning of the case law of the European Court of Human Rights – into alleged abuses by the police forces. The co-rapporteurs have called on the authorities to consider setting up an independent mechanism to investigate complaints against the police, in line with the recommendations made by the Council of Europe Commissioner for Human Rights, for such mechanisms and their functioning.

42. On the positive side, the co-rapporteurs welcomed the efforts of the authorities to reform the prison system and to establish penitentiary institutions that fully comply with European norms and standards.

43. Another development, which should be welcomed, is the improvement of relations between the Meskhetian associations and Georgian authorities. Following the adoption of Resolution 1801 (2011), regular contacts have been established and a special council has been set up, composed of a majority of Meskhetian representatives, with the task of adjudicating repatriation requests from persons who cannot prove their family's deportation with documentary evidence.

2.2.6. Republic of Moldova

44. The co-rapporteurs visited the Republic of Moldova in December 2011, and the note on their visit was declassified by the committee in March 2012.[12]

45. The reporting period was marked by the end of the political deadlock resulting from the parliament's inability to elect the president of the republic, in which the country has been immersed for three years. This is a very positive development and it is now of utmost importance that the leaders of all political parties work within the legal framework and refrain from challenging the legitimacy of the democratic institutions as is currently being done by the Communist Party.

46. Political forces should focus on pursuing the reform process, including the necessary revision of the constitution. The co-rapporteurs stressed that the democratic process is on the right track and the authorities are committed, in the context of the Republic of Moldova's integration into Europe, to adopt the reforms that are still necessary to achieve European standards for the respect of democracy, the rule of law and human rights. An action plan on compliance by the Republic of Moldova with its commitments vis-à-vis the Council of Europe has been drawn up and it is shortly due to be approved by the Moldovan authorities.

47. The decentralisation process is continuing. Furthermore, the authorities have launched a number of initiatives to combat corruption and reform the police and the prosecution service. The interference of politics in the judiciary, according to civil society, remains a problem, but the reform of the judiciary, including the penitentiary system and the General Prosecutor's Office, is under way.

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10. . See AS/Mon (2011) 24 rev 3.
11. . See Doc. 12554 and Resolution 1801 (2011).
12. . See AS/Mon (2011) 03.

48. There have been positive trends in the field of civil and political rights, with an increased awareness of people about their rights. However, the co-rapporteurs deplored the decisions taken by some local authorities to "prohibit aggressive propaganda of non-traditional sexual orientations in demonstrations" and the postponement of the adoption of a comprehensive anti-discrimination law.

49. The reporting period was also marked by important developments in Transnistria. The official "5+2 talks" were resumed in November 2011 in Vilnius, after a five-year suspension and led to an agreement on the principles and procedures for the conduct of formal negotiations, on 18 April 2012. The newly elected *de facto* "president" in Transnistria seems to be more open to political dialogue.

2.2.7. Montenegro

50. The co-rapporteurs visited Montenegro in June 2011, and submitted a note on their visit to the committee, which declassified it.[13] A preliminary draft report on the honouring of obligations and commitments was considered by the committee in January 2012 and transmitted to the authorities of Montenegro for comments.

51. The co-rapporteurs are confident that the Montenegrin authorities are determined to fulfil their remaining commitments and obligations, to meet at the same time the requirements of the European Union in the field of human rights, the rule of law and democracy in order to start the EU accession negotiation process. During the reporting period and before, the country engaged in many substantial reforms. The authorities continue to demonstrate openness and readiness to co-operate with the Venice Commission, the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) and the Group of States against Corruption (GRECO), and to take into account their recommendations.

52. However, progress still needs to be accomplished in some areas, including, in particular, ensuring the independence of the judicial system in line with the recommendations of the Venice Commission, improving the legal framework relating to the fight against corruption and organised crime, the exercise of the rights of minorities, strengthening freedom of the media, and investigating and prosecuting cases of violence against journalists. In this respect, the co-rapporteurs welcomed the positive steps taken in 2012 by the Montenegrin authorities to step up the fight against discrimination in the country and at regional level.

53. Montenegro plays an important role in securing stability in the region. The co-rapporteurs encouraged its authorities to continue their constructive dialogue and co-operation with neighbouring countries and in particular with Serbia. They also encouraged Montenegro and the States of the region to conclude bilateral agreements (as regards dual citizenship) and to facilitate the integration or voluntary return of refugees and internally displaced persons (IDPs).

2.2.8. The Russian Federation

54. The reporting period with respect to the Russian Federation was marked by the parliamentary elections of 4 December 2011 and the events that followed, and by the presidential elections of 4 March 2012. The co-rapporteurs visited the country in July 2011 in the framework of the monitoring procedure, in December 2011 and January 2012 in the framework of respectively the electoral and post-electoral missions for the observation of the parliamentary elections and similarly in March and April 2012 with regard to the presidential election. In December 2011, the Monitoring Committee and the Political Affairs Committee asked for an urgent debate on "The situation in Russia between two elections" during the January 2012 part-session, but the Assembly decided instead to hold a current affairs debate. A preliminary draft report on the honouring of the obligations and commitments was considered by the committee in March 2012 and it was then transmitted to the authorities for comments.

55. Serious concerns were raised by the Council of Europe observers of the parliamentary elections in December 2011,[14] in particular with regard to the legal framework of the electoral process, the lack of impartiality and independence of electoral commissions at all levels, abuse of administrative resources, serious violations of procedure on voting day, lack of an efficient appeal and complaints system, the absence of a level playing field for all contestants and the restrictive political environment.

13. . See AS/Mon(2011) 18 rev.
14. . See Doc. 12833.

56. Only some of these shortcomings were addressed in time for the presidential election in March 2012.[15] The introduction of webcams and transparent ballot boxes in polling stations improved the legitimacy of the process on voting day. At the same time, however, a number of concerns remained unaddressed, in particular with respect to the registration of candidates, access to the media and the lack of an impartial referee.

57. The reaction of the Russian people to the concerns raised by the observers and the mass demonstrations clearly showed that there is a general need for, and expectation of, democratic progress, and that the Russian people want the political system in Russia to be more pluralist and inclusive. While regretting the earlier reaction of the authorities to the protest rallies, marked by the detention of peaceful protesters and violence by the police, the co-rapporteurs welcomed the change in the authorities' attitude after a few days and the subsequent responsiveness to the protesters' demands.

58. The co-rapporteurs also noted with satisfaction the intention of the authorities to introduce a number of reforms aimed at increasing political pluralism, in particular concerning the registration of political parties and the way governors are appointed.

59. Other concerns, including freedom of expression, freedom of assembly, fair access to the media and, more generally, appropriate conditions for a pluralist political environment, should be addressed without further delay. This may require the revision of some existing restrictive laws. In December 2011, the Monitoring Committee requested the legal expertise of the Venice Commission on five federation laws: on the FSB (Federal Security Service), on the assembly, on political parties, on extremism and on elections to the Duma. The co-rapporteurs also strongly recommended to the Russian authorities to systematically request the opinion of the Venice Commission whenever new important laws are considered for adoption, and they regretted that this had not been done when President Medvedev presented draft amendments to the existing law on political parties at the end of December 2011.

2.2.9. Serbia

60. Following their visit in September 2011, the co-rapporteurs on Serbia noted significant progress since the last debate in the Assembly, in 2009, in the country's fulfilment of its obligations and commitments. A report on the honouring of obligations and commitments by Serbia was approved by the Monitoring Committee in December 2011 and discussed by the Assembly in January 2012;[16] Resolution 1858 (2012) was adopted. The Assembly also observed the parliamentary elections and early presidential election on 6 May 2012.

61. The committee acknowledged positive developments in terms of Serbia's regional co-operation, collaboration with the International Criminal Tribunal for the former Yugoslavia and the putting into place of regulatory mechanisms, while continuing the dialogue with Pristina by peaceful and diplomatic means.

62. Commendable efforts were made by Serbia to reform the electoral law and the justice system, launch the decentralisation process, increase the protection of minority rights and set up and consolidate independent regulatory bodies.

63. Furthermore, Serbia has ratified a large number of Council of Europe conventions and pursued its integration with the European Union. In this respect, as a result of the progress achieved, Serbia was granted the status of candidate country to the European Union in March 2012.

64. According to international observers, including members of the Parliamentary Assembly, Serbia's parliamentary and early presidential elections took place in an open and competitive environment, but additional efforts are needed to improve the transparency of the election process and the functioning of the media.

65. With a view to closing the monitoring procedure, the committee considers, however, that the Serbian authorities should make further progress in adopting and fully implementing the justice reform in order to guarantee its independence and efficiency, including completion of the review process of the non re-elected judges and prosecutors; adopting and implementing effective anti-corruption policies; amending the criminal code in line with GRECO recommendations; improving the independence of the media, and fully implementing the rights of minorities, especially Roma.

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15. . See Doc. 12903 (observation of presidential election by the Assembly).
16. . See Doc. 12813.

2.2.10. Ukraine

66. During the reporting period, the co-rapporteurs on Ukraine visited the country four times, in September and November 2011, and in March and May 2012. The committee held hearings with a representative of the Danish Helsinki Committee on his monitoring report of the trials of four former government members, in October 2011, and with the Minister of Justice of Ukraine in December 2011, as well as with a representative of Amnesty International on March 2012. It presented to the Assembly a report on the functioning of democratic institutions in Ukraine in January 2012.[17] Resolution 1862 (2012) was adopted following the debate. The Standing Committee, meeting in March 2012, also held a current affairs debate on the deteriorating situation of imprisoned politicians in Ukraine, and issued a statement.

67. Concerns with regard to the criminal proceedings initiated against a number of former government members marked the reporting period. The committee considered that the charges amounted to the *post facto* criminalisation of political decision making, which, as a matter of principle, should be assessed by parliaments and, ultimately, by the electorate. Resolution 1862 (2012) called on the Ukrainian authorities to amend the articles of the Criminal Code that allow for the criminalisation of normal political decision making and asked that all charges based on these articles against former government members be dropped.

68. Furthermore, the Assembly considered that the numerous shortcomings noted in the procedures may have undermined the fairness of the trials within the meaning of Article 6 of the European Convention on Human Rights. In the view of the rapporteurs, these shortcomings are the result of systemic deficiencies in the justice system in Ukraine, some of them corresponding to the country's accession commitments which have not been fulfilled so far. The Assembly therefore urged the authorities to promptly address these issues in line with its recommendations.

69. The deteriorating health of some of the detainees was another matter of concern. During their visit in April 2012, the co-rapporteurs visited the former interior minister, Yuriy Lutsenko, in prison and, in May 2012, the former prime minister, Yulia Tymoshenko, in Kharkiv hospital. Until then, their requests for such visits had been refused. The change in the authorities' position, with the assistance given by the prosecutor general, was a sign, in the view of the co-rapporteurs, that the authorities have accepted their calls for a constructive dialogue with a view to finding a satisfactory solution to this issue that is unnecessarily straining relations with our Assembly. This openness for dialogue was also confirmed in a meeting with President Yanukovitch during the visit in May 2012.

70. Against this background, in April 2012, the co-rapporteurs welcomed the adoption by the Verkhovna Rada of the new Code of Criminal Procedure for Ukraine. Given the extraordinarily large number of amendments that were tabled to the original draft, the co-rapporteurs especially welcomed the pledge of the President of Ukraine to sign this code into law only after having received assurances from the Council of Europe that it is fully in line with European standards and norms. It was signed on 14 May 2012.

71. A new Code of Criminal Procedure complying with European standards, if implemented fully and without reservations, will be an important step towards addressing some of the deficiencies in Ukraine's justice system that were highlighted in the last Assembly resolution on Ukraine.

2.3. Countries engaged in a post-monitoring dialogue

2.3.1. Bulgaria

72. A newly appointed rapporteur visited Bulgaria in December 2011. The most recent presidential election was held in October 2011, and was observed by the Assembly.[18]

73. The Assembly observers, in their conclusions, welcomed Bulgaria's continuous progress towards the implementation of its commitments with regard to the codification of electoral rules. They commended the dedication and efficiency of the Bulgarian electoral administrators and highlighted the overall orderly and peaceful conduct of the vote. At the same time, however, they identified several concerns regarding the electoral code as well as the electoral campaign, including access to the media.

17. . See Doc. 12814.
18. . See Doc. 12796.

74. For his part, the rapporteur, in the oral report on the visit which he presented to the committee, expressed his general impression that the Bulgarian Government had shown, and continues to show, a sustained political will and commitment to pursue full accomplishment of the obligations and commitments resulting from Bulgaria's membership of the Council of Europe, in full co-operation with the Venice Commission.

75. However, the rapporteur identified a number of outstanding concerns which require further action by the Bulgarian authorities, in particular with regard to the judiciary (implementation of amendments to the Judicial System Act, judicial appointments, accountability of the judiciary, judicial practice), the execution of the decisions of the European Court of Human Rights, the fight against corruption, the independence of the media and the rights of persons belonging to minorities.

2.3.2. Monaco

76. During the reporting period, the rapporteur on Monaco carried out a visit to the country in March 2012.

77. In her oral report to the committee, she welcomed the efforts made by the principality to combat money laundering and corruption. She also noted with satisfaction a renewed co-operation with the Council of Europe and called on the authorities to examine the possibility of ratifying the revised European Social Charter and Protocols Nos. 1 and 12 to the European Convention on Human Rights (ETS Nos. 9 and 177) – which are among the commitments entered into by Monaco when it joined the Council of Europe in 2004. She stressed that Monaco can rely on the expertise of the Council of Europe, which will be able to take account of the specific character of Monaco, the only member State whose citizens are a minority in their own country.

78. Furthermore, the rapporteur expressed the hope that the elected representatives will find the consensus needed to enable the National Council to adopt, during 2012, some keenly awaited legislation, such as the law on the organisation and functioning of parliament, the reform of police custody, the organisation of the courts, and the funding of election campaigns.

2.3.3. "The former Yugoslav Republic of Macedonia"

79. The newly appointed rapporteur on "the former Yugoslav Republic of Macedonia" carried out two visits to the country, in September 2011 and in May 2012. He presented an information note to the committee in November 2011.[19] Further to the boycott of the parliament by the opposition, early parliamentary elections were held in June 2011. They were observed by the Assembly.[20]

80. The Assembly observation mission concluded that these elections were competitive, transparent and well-administered throughout the country. However, certain aspects, such as the blurring of the line between the State and the governing party, required further attention. To this end, they made a number of recommendations, including the need to ensure the implementation of certain legal provisions relating to the funding of political parties' electoral campaigns and the media. There were no irregularities observed on election day.

81. The rapporteur's overall conclusion following his visit was that the country was committed to progress and on its way to fulfilling all the remaining commitments and obligations and adopting the necessary legal framework. He noted, however, that, despite some progress in this respect, the country remained highly divided across political and ethnic lines. Furthermore, the implementation of laws remained problematic.

82. The rapporteur stressed the need for the full implementation of the Ohrid Framework Agreement, as well as further improvement in the area of freedom of the media, public administration and the judiciary, the fight against corruption, the implementation of the rule of law, freedom of expression, the implementation of the European Charter of Local Self-Government, and the situation of IDPs and asylum seekers.

2.3.4. Turkey

83. During the reporting period, there was no visit to Turkey; the rapporteur plans to visit the country in June 2012. The preliminary draft report was submitted to the committee in June 2011; it was transmitted to the Turkish authorities, who sent their comments in November 2011.[21] The parliamentary elections which took place in June 2011 were observed by the Assembly.

19. . See AS/Mon (2011) 22.
20. . See Doc. 12643.
21. . See AS/Mon (2011) 23.

84. According to the observers' conclusions the elections to the Turkish Grand National Assembly demonstrated that the recent changes enacted by the Turkish Government had improved the electoral system, yet there were some worrying developments, especially regarding freedom of expression, including media freedom. In particular, some elements of the legal framework continue to constrain the activities of the media and political parties by limiting freedom of speech. Furthermore, the 10% threshold for political party representation in parliament remains one of the central issues that limit the representative nature of the legislature. In general, the electoral process was characterised by pluralism and a vibrant civil society. Voting and counting observed on election day showed a mostly calm and professionally managed process.

85. In her preliminary draft report, the rapporteur stressed that she had observed clearly positive trends and real progress with regard to the state of democracy in Turkey. The current constitutional revision should confirm this trend. However, significant problems still remained in connection with the length of pre-trial detention and of judicial proceedings, the functioning of the judicial system, freedom of expression, the execution of the judgments of the European Court of Human Rights and the full range of issues associated with national minorities and use of their languages.

2.4. Other issues concerning the fulfilment of obligations and commitments

86. As regards the work on the consequences of the war between Georgia and Russia, it is recalled that the committee decided to mandate the respective co-rapporteurs for Georgia and Russia to follow the file in the framework of the ongoing monitoring procedures for both countries, and to present, under the responsibility and co-ordination of the committee chair, on an annual basis, a joint information note to the committee, in which they would outline the relevant developments with regard to the conflict and their findings with regard to the implementation of Assembly demands, as expressed in its resolutions on this subject. In compliance with this decision, the committee authorised the respective co-rapporteurs and the chair to carry out a visit to Moscow, Tbilisi, Tskhinvali and Sukhumi. The dates for this visit have been fixed for September 2012. The information report will be submitted to the committee later in the year.

87. Following the tabling of a motion for a resolution on "Serious setbacks in the field of the rule of law and human rights in Hungary", the committee was seized by the Bureau of the Assembly in March 2011 to prepare a written opinion on the subject, in accordance with paragraphs 3 and 4 of the terms of reference of the Monitoring Committee. During the reporting period, the co-rapporteurs carried out two fact-finding visits to Hungary: in July 2011 and in February 2012. The committee also adopted a statement on 25 January 2012. It has requested the legal expertise of the Venice Commission on a number of laws. The co-rapporteurs intend to submit their report to the committee once the opinions of the Venice Commission are available, most probably in June 2012. The committee is expected to adopt its report, to be submitted to the Bureau, in September 2012.

2.5. Member States which are not under the monitoring procedure or involved in a post-monitoring dialogue

88. Resolution 1515 (2006) conferred on the Monitoring Committee the task of preparing periodic reports on all member States that are not the subject of a monitoring procedure or involved in a post-monitoring dialogue. This group is composed of 33 States.

89. The committee has divided this group into three sub-groups of 11 countries each, and established the practice of attaching periodic reports to its annual progress report to the Assembly, with each sub-group of countries reported upon every three years. Last year we came to the end of the second full cycle, which means that each country in this category has been reported on twice. In my opinion, we should now proceed to a more general assessment of the efficiency and utility of this exercise and examine possible ways to increase the impact of this report in the countries concerned.

90. Periodic reports include, firstly, a country grid indicating, for each country, the record of ratifications and/or signatures of the main Council of Europe instruments that provide for a specialised monitoring mechanism. This provides the committee with useful information on the progress made by each country in this respect. In resolutions adopted following debates on the progress report, the Assembly systematically calls on the authorities of the countries which have failed to sign and/or ratify some of the main Council of Europe instruments to do so without delay, and the grid shows whether the countries concerned have fulfilled these recommendations over the reporting period. I am convinced that this should be continued.

91. Secondly, until now, my predecessors have attached the findings of these Council of Europe mechanisms, when applicable, in a separate addendum. The work carried out by the following bodies and institutions have been taken into account: the European Court of Human Rights, the Committee of Ministers in

its supervisory function of the execution of the Court's judgments, the European Committee of Social Rights (ECSR), the Commissioner for Human Rights, the Congress of Local and Regional Authorities of the Council of Europe, the Group of States against Corruption (GRECO), MONEYVAL, the 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, ECRI and the Group of Experts on Action against Trafficking in Human Beings (GRETA).

92. As each of these mechanisms usually has its own evaluation cycles and sometimes complicated and various procedures, it is difficult to produce a consistent and clear document on the basis of the findings of all of them in respect of all the countries from the sub-group. The sheer volume of this document is another problem. It is not unusual for the addendum to the progress report to exceed 150 pages. My predecessors felt obliged to give account of all the findings even if they raised no particular concern.

93. While I can understand that such an approach is objective, it has become evident over recent years that the efficiency and impact of such a procedure are questionable. This was clearly recognised by Mr Marty in the last progress report. That is why I have decided to change the established practice and to propose a different way of presenting periodic reports.

94. In the present report, I have abandoned the lengthy descriptions of the state of the monitoring procedure of the different Council of Europe mechanisms and systematic reference to their findings, irrespective of whether any concerns had been identified or not. These findings may now be easily consulted at the newly designed website of the Council of Europe on a country-by-country basis. I encourage all those who are interested to familiarise themselves with this website, which gives an excellent overview of all the monitoring mechanisms of the Council of Europe.

95. On the other hand, I have opted for an analytical overview of the findings with special focus on specific identified concerns and problems and the state of fulfilment of previous recommendations of the monitoring mechanisms, where applicable. I include in the present report the evaluation of the first sub-group of 11 countries, thus opening the third cycle.

96. At the same time, in the next chapter, I will submit for the committee's consideration the idea of broadening this exercise by mandating the rapporteur on the progress of the monitoring procedure with the task of following the situation in the countries under the reporting cycle, with a view to giving a more in-depth account of any possible concerns. The objective would not be to report in detail as we do for the countries under full monitoring, but to draw the committee's attention to any problems or trends, at which it might wish to take a closer look. It is important to stress that the rapporteur would only give a general, preliminary overview and there would be no fact-finding visits – if a problem is spotted, the committee would have an opportunity to define further action. I will come back to this proposal in more detail later.

2.5.1. Andorra

97. With regard to Andorra, it should be noted that, in June 2011, GRECO published its third round evaluation report on Andorra, addressing 20 recommendations. The implementation of these recommendations will be assessed in 2013.

98. The report identifies some outstanding concerns including the need for further amendments to the Criminal Code in the field of combating corruption in order to comply with Council of Europe standards. GRECO pointed out some shortcomings, for example, with respect to the criminalisation of bribery in cases where non-material benefits are involved and the criminalisation of bribery in the private sector.

99. GRECO also stressed the need for considerable changes to the legislation on political financing. The election financing law of 15 December 2000 is not designed to ensure the overall transparency of political financing, or to avoid the risk of undue financial influence on public decision making. Andorra should introduce provisions in its legislation requiring, in particular, that political groupings publish their accounts on a regular basis. The supervision of political financing should be more effective and complemented with a more extended range of proportionate and dissuasive sanctions.

100. The Commissioner for Human Rights visited the country in February 2012. In the statement following the visit, while recognising the authorities' intention to respect their obligations to ensure human rights protection, he stressed that further efforts were needed, for example, to prevent domestic violence, protect against discrimination, and promote national independent monitoring of human rights standards.

101. To date, Andorra has not signed or ratified a number of important instruments, including the Civil Law Convention on Corruption (ETS No. 174): signed in 2001 but not ratified; the Additional Protocol to the Criminal Law Convention on Corruption (ETS No 191): which has been neither signed nor ratified; the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (revised) (CETS No. 198): which has been neither signed nor ratified; the Framework Convention for the Protection of National Minorities (ETS No. 157): which has been neither signed nor ratified; the European Charter for Regional or Minority Languages (ETS No. 148): which has been neither signed nor ratified; the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (ETS No. 158): which has been neither signed nor ratified.

2.5.2. Austria

102. With regard to Austria, GRECO published a report in January 2012, in which it stressed that Austria is one of the very few Council of Europe member States which is not a Party to the Criminal Law Convention on Corruption, (ETS No 173) and its additional protocol (ETS No. 191). Consequently, its criminal legislation on corruption does not adequately criminalise offences such as bribery of members of elected public assemblies or bribery of senior public officials. Moreover, Austrian top executives are not subject to this legislation either.

103. Furthermore, the legal framework on the financing of political parties does not regulate the question of private donations and there is no public supervision mechanism, even though political financing is seen as a particularly controversial area, reportedly affected by a variety of malpractices. Austria should provide for adequate transparency and supervision of the financing of political parties and election campaigns, including sanctions in case of non-compliance.

104. In September 2011, GRETA published its first evaluation report on Austria. While welcoming significant measures taken by the authorities to combat trafficking in human beings, the report includes a number of recommendations with regard to the protection of certain categories of victims of trafficking, in particular irregular migrants.

105. In June 2011, the third cycle opinion of the Advisory Committee of the Framework Convention for the Protection of National Minorities was published. The committee calls on Austria to amend national minority laws in consultation with national minorities, ensure linguistic rights and develop a new system for the composition of the minority advisory councils, to ensure they represent the interests and concerns of the communities concerned.

106. To date, Austria has not signed and/or ratified a number of legal instruments, in particular the above-mentioned Criminal Law Convention on Corruption: signed in 2000 but not ratified and its additional protocol: which has been neither signed nor ratified; the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (revised): signed in 2005 but not ratified; the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (ETS No. 158): signed in 1999 but not ratified.

2.5.3. Belgium

107. With regard to Belgium, in May 2011, GRECO published the third evaluation report, assessing the measures taken by the Belgian authorities to implement the 15 recommendations dealing with incriminations and the transparency of political funding. The report concluded that Belgium had implemented or satisfactorily dealt with only one recommendation and that this very low level of compliance is “globally unsatisfactory” within the meaning of the mechanism’s rules.

108. In June 2009, the Commissioner for Human Rights published a report which stressed that Belgium has a good system of human rights protection, but more efforts were needed in certain areas, in particular prison conditions, asylum procedures and the protection of the rights of migrants. A number of issues on the system of youth justice were also raised.

109. The last report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on Belgium was published in July 2010 and the response of the government was made public in February 2011. In the prison sector, the CPT raised the question of overcrowding affecting the Belgian prison system. The CPT again called upon the Belgian authorities, as it had already done in the previous report, to introduce, without further delay, a “guaranteed service” for prisoners. The CPT also pointed to the lack of action regarding the implementation of the recommendations made over many years concerning the fundamental safeguards to be offered to persons placed under judicial arrest and, in particular, as regards access to a lawyer while in custody.

110. To date, Belgium has signed the Framework Convention for the Protection of National Minorities in 2001 but has not yet ratified it; it has neither signed nor ratified the European Charter for Regional or Minority Languages.

2.5.4. Croatia

111. With regard to Croatia, in December 2011, GRECO published the third round evaluation report, assessing the measures taken by the authorities of Croatia to implement the 11 recommendations dealing with incriminations and the transparency of party funding. The report concluded that Croatia had implemented satisfactorily seven recommendations. In particular, it had adopted substantial amendments to the Criminal Code. However, some minor ambiguities remain in the new Criminal Code as regards some instances. It therefore urges the Croatian authorities to take determined action to remove them.

112. The Commissioner for Human Rights, in his report on the country in June 2010, stressed that Croatia had made important progress since its independence; however, solving serious human rights issues caused by the 1991-95 war still required further determination. The report set out recommendations concerning the human rights of displaced persons and asylum seekers, proceedings relating to post-war justice and the situation of Roma.

113. The third cycle opinion of the Advisory Committee of the Framework Convention for the Protection of National Minorities was published in December 2010. While welcoming considerable progress in establishing a clear legal basis for protection against discrimination on racial, ethnic, national or religious grounds, the committee expressed concern about persistent discrimination of Roma, the lack of respect of the right to proportional representation of persons belonging to national minorities in the public administration, the judiciary, local government and public enterprises, and stressed the need to review the procedures applicable to the implementation of this right. Ethnically motivated incidents – in particular against Serbs and Roma – continue to be a serious problem, as well as the continued impunity of the perpetrators. The functioning of the councils of national minorities is unsatisfactory in many self-government units. Their legal provisions and administrative practice should be revised to improve their representation, funding and co-operation with local authorities.

114. In June 2010, the Committee of Experts of the European Charter for Regional or Minority Languages published its fourth cycle evaluation report, followed by the Committee of Ministers recommendations in December 2010, which pointed to the need to ensure that speakers of the minority languages can use them in practice in relations with the relevant branches of the State administration, to improve accessibility of the system of minority languages education, and to continue efforts to promote awareness and tolerance vis-à-vis the regional and minority languages and the cultures they represent, both in the general curriculum at all stages of education and in the media.

115. Croatia has ratified all the major legal instruments of the Council of Europe, except for the European Social Charter (revised) (ETS No. 163), which it signed in 2009.

2.5.5. Cyprus

116. With regard to Cyprus, in April 2011, GRECO published the third evaluation report, in which it stressed a clear need to establish a uniform legal framework for the criminalisation of corruption offences. Despite the fact that the relevant legislation has been in force for several years now, it has never been applied by the prosecutorial authorities nor by the courts. Instead, these authorities have continued exclusively to apply old legislation concerning corruption offences, which does not comply with the requirements of the Criminal Law Convention, to which Cyprus is a party. The coexistence of old and new legislation which overlap makes the legal framework in respect of corruption offences inconsistent and unclear. GRECO called on the Cypriot authorities to establish a uniform legal framework and to ensure its implementation.

117. As for party financing, GRECO finds that the newly adopted legislation does not sufficiently address major areas for providing transparency of private funding of political parties. GRECO addressed eight recommendations to Cyprus; they will be reviewed in the second half of 2012.

118. In December 2011, MONEYVAL issued a third round report in which it assessed that, overall, the financial sector appears to be adequately monitored against money laundering and financing of terrorism. However, some concerns remained that real estate and dealers in precious metals and stones may not be fully implementing the anti-money laundering requirements.

119. In July 2010, the Commissioner for Human Rights visited the country and published a letter sent to the minister of the interior. While welcoming the measures taken by Cyprus to combat trafficking, he expressed concern about possible abuses of certain types of visas and work permits. In this context, he invited the authorities to seek co-operation with international bodies and other countries with experience in this domain.

120. With regard to the human rights of asylum seekers and refugees, the Commissioner remained concerned about the long periods of detention which some asylum seekers face following rejection of their application. He urged the authorities to ensure an individual examination of each case in order to assess the purpose and proportionality of all asylum seekers' detention.

121. In March 2010, the Advisory Committee of the Framework Convention for the Protection of National Minorities adopted its third cycle opinion; it was followed by a resolution,[22] adopted by the Committee of Ministers on the basis of the opinion, in September 2011. In its resolution, the Committee of Ministers recommended that the Cypriot authorities take a number of measures aimed at effective implementation of the principle of self-identification, take urgent action to combat and sanction effectively all forms of discrimination and intolerance, including misconduct by members of the police forces and take additional measures to provide a more adequate response to the educational needs of the Armenians, the Latins and the Maronites.

122. In September 2011, the Committee of Experts of the European Charter for Regional or Minority Languages adopted a third cycle report followed by the recommendation of the Committee of Ministers, adopted on the basis of the report, in March 2012. The Committee of Ministers recommended that the Cypriot authorities adopt, as a matter of priority, a structured policy for the protection and promotion of the Armenian and Cypriot Maronite Arabic languages, to strengthen the teaching in and of the Cypriot Maronite Arabic and to provide teacher training for Armenian and Cypriot Maronite Arabic.

123. The 4th report on Cyprus was published by ECRI in May 2011. While commending the fulfilment of recommendations included in the previous report, ECRI identified some issues of concern such as the disproportionately high concentration of Turkish Cypriots and Roma pupils in particular schools, the continued vulnerability of foreign domestic workers, the lack of integration policy and restrictive immigration policy. It recommended that the authorities take concrete measures to remedy this situation and announced its intention to assess progress in two years' time.

124. Cyprus has signed and ratified all the major conventions embodying a monitoring mechanism.

2.5.6. Czech Republic

125. With regard to the Czech Republic, the Congress of Local and Regional Authorities of the Council of Europe adopted, in March 2012, a report on the monitoring of the implementation of the European Charter on Local Self-Government.[23] In the recommendation[24] adopted on that occasion, the Congress noted with satisfaction that considerable progress had been accomplished since the previous monitoring report. However, a number of concerns still exist, including a too centralised system of financing, the problem of fragmentation and the high number of municipalities, the lack of appropriate legislation with regard to consultation mechanisms (which exist in practice), the need to further co-ordinate and simplify the system of administration controls. The Congress made a number of recommendations aimed at improving the situation.

126. In March 2011, the President of the Congress, alarmed about the declaration on the "socially inadaptable", signed by a group of 48 mayors in the Czech Republic, issued a press release in which he expressed concern about proposed measures targeting the Roma population. He strongly condemned the practice of qualifying a whole category of the population as "socially inadaptable", which clearly runs counter to integration efforts.

127. In April 2011, GRECO published its third round evaluation report on the Czech Republic, in which it concluded that while the new Criminal Code adopted by the Czech Parliament in 2010 was largely in line with the Criminal Law Convention on Corruption, a limited number of quite specific deficiencies needed to be addressed, in particular by clarifying that bribery of all categories of employees in the public sector is covered and by ensuring that bribery of foreign arbitrators and foreign jurors is adequately criminalised.

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22. . See Resolution CM/ResCMN(2011)16.
23. . See document CG(22)6.
24. . Recommendation 319 (2012).

128. Concerning the transparency of political funding, GRECO criticised the lack of substantial and proactive monitoring of the financing of political parties and election campaigns, and recommended as a matter of priority the establishment of an effective supervisory mechanism and adequate enforcement rules. Consequently, GRECO addressed 13 recommendations to the Czech authorities, and announced its intention to assess their implementation in 2013.

129. In June 2011, MONEYVAL published its fourth round evaluation report on the Czech Republic. It welcomed the progress which had been made since the third evaluation, with the adoption of the new AML/CFT Law implementing the third EU directive and many of the important preventative recommendations in the third round evaluation report. Nonetheless, the verification of beneficial owners of accounts still needed to be more embedded in practice. A comprehensive national risk assessment was also essential to identify vulnerable sectors within the Czech financial system in terms of money laundering and financing of terrorism. Furthermore, the criminalisation of money laundering still needed further amendment to bring it fully into line with the standards in international conventions. The Czech law also still did not provide for corporate criminal liability, though draft legislation, which was urgently needed, was under preparation. The evaluators welcomed the progress that had been achieved since the previous evaluation in building a more complete legal framework for the financing of political parties.

130. The Commissioner for Human Rights published his report on the country in March 2011. He was very much concerned by deeply rooted anti-Gypsyism and hate crimes as well as continued segregation in education and housing, which he considered to be the main obstacles to inclusion facing Roma in the Czech Republic. He stressed that the authorities should strengthen their efforts to eradicate these problems and implement inclusive policies. The Commissioner was also concerned by frequent racist and anti-Roma discourse among leading politicians and the media, which continued to provide a platform for anti-Gypsyism. He recommended the adoption of measures, including by promoting active self-regulation, to effectively address and eliminate racist and stigmatising speech against Roma in politics and the media. In addition, a vigorous implementation of the relevant criminal provisions must be ensured. Furthermore, in his report the Commissioner recommended a coherent system of social housing and strengthened efforts to desegregate Roma localities and improve their living conditions. Finally, he expressed concern at the fact that many Roma children continued to receive low quality education and to experience segregation in Czech schools.

131. In July 2010, the CPT published a report on the visit to the country, together with the response of the Czech Government. Both documents were made public at the request of the Czech authorities. One of the main objectives of the visit was to review action taken by the Czech authorities to bring an end to testicular pulpectomy (“surgical castration”) of detained sex offenders, in the light of the recommendations made in the previous report of the CPT. There has been no progress in this respect and the CPT once again called upon the Czech authorities to bring an immediate end to the application of surgical castration in the context of the treatment of sex offenders. In their response, the Czech authorities stated that the issue of surgical castration of sex offenders is the subject of ongoing discussions by various advisory bodies to the government. In addition to examining the medical, ethical and legal aspects of the testicular pulpectomy of sex offenders, the study will also include a comparison of the advantages and disadvantages of possible alternative methods for treating sex offenders, as well as information about the methods used to treat sex offenders in other countries.

132. In July 2011, the Advisory Committee adopted its third cycle opinion[25] on the implementation of the Framework Convention for the Protection of National Minorities. The Advisory Committee noted a number of positive developments, illustrating the continued efforts of the Czech authorities to protect persons belonging to national minorities, in particular the adoption, in 2009, of the Anti-Discrimination Act and various forms of assistance to cultural and educational activities of national minorities. At the same time, the Advisory Committee also noted some issues of concern with regard to the Roma population, including negative attitudes and prejudice against Roma, which continued to persist throughout Czech society, anti-Roma rhetoric, the lack of legal action against anti-Roma propaganda and verbal attacks, and serious difficulties faced by Roma children in the education system. The opinion makes a number of recommendations for immediate action, including increased efforts to combat all forms of intolerance, racism and xenophobia, taking further legislative measures and policies to combat racist manifestations, in particular against Roma, eliminating practices that lead to the continued segregation of Roma children at school and redoubling efforts to remedy all the shortcomings faced by Roma children in the field of education. It also urges the Czech authorities to ensure that local committees for national minorities are established in the municipalities where the conditions are met for setting them up.

25. . See document ACFC/OP/III(2011)008.

133. The second cycle report on the implementation of the European Charter for Regional or Minority Languages was submitted in July 2011. The Committee of Ministers called on the Czech Republic to promote awareness and tolerance vis-à-vis regional or minority languages as an integral part of the cultural heritage of the Czech Republic, both in the general curriculum at all levels of education and in the media. The Czech Republic should also adopt a structured policy for the protection and promotion of Romani and German, and create favourable conditions for their use in public life. It needed to ensure that speaking Romani at school was not prohibited or discouraged. Furthermore, the Czech Republic should improve legislation concerning the composition and powers of committees for national minorities, so that these rules do not present barriers to the implementation of the charter; including the creation of regional or minority language schools and the use of Polish place names in topographical signs.

134. ECRI published its fourth report on the Czech Republic in September 2009. The report noted positive developments but also detailed continuing grounds for concern, mainly with regard to discrimination against the Roma. Even if some steps had been taken to adjust the education system so as better to meet the needs of socially disadvantaged children, there had also been a disturbing intensification in the activities of extreme right-wing groups. Little progress had been made towards improving the situation of the Roma, who faced segregation in schools and housing and discrimination in employment. The issue of forced sterilisations of Roma women had not yet been adequately addressed.

135. The Czech Republic has not signed and/or ratified a number of major legal Council of Europe instruments, including the Additional Protocol to the Criminal Law Convention on Corruption: which has been neither signed nor ratified; the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (revised): neither signed nor ratified; Protocol No. 12 (ETS No. 177) to the European Convention on Human Rights: signed in 2000 but not ratified; the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197): which has been neither signed nor ratified; the European Social Charter (revised): signed in 2000 but not ratified.

136. On a positive note, in April 2012, the Czech Republic ratified the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints.

2.5.7. Denmark

137. With regard to Denmark, in February 2010, GRECO published its third round evaluation report, which assesses the measures taken by the authorities of Denmark to implement the 14 recommendations regarding the criminalisation of corruption and transparency of party funding. Regarding the criminalisation of corruption, overall, Danish criminal legislation complies with the standards of the Council of Europe Criminal Law Convention on Corruption and its additional protocol. However, the offence of trading in influence was not criminalised as such and the bribery provisions were not always as explicit as required by the convention. GRECO considered that the penal sanctions for corruption offences were generally low. It recommended that the authorities consider criminalising trading in influence and increasing criminal sanctions for bribery offences. GRECO also recommended that Denmark improve its possibilities to prosecute corruption abroad and that it give high priority to the introduction of criminal legislation against corruption – in conformity with the convention – also in Greenland and the Faroe Islands.

138. Concerning transparency of party funding, GRECO appreciated that the existing legal framework concerning political financing had been amended in recent years to provide for more transparency, for example by publishing party accounts. However, the transparency rules could well be further enhanced through more precise reporting concerning donations over a certain value and by abolishing anonymous donations, which open up the possibility of circumventing the existing transparency rules. Moreover, there were no regulations which would restrict donations from abroad or, for example, from private companies. Finally, GRECO recommended developing the existing monitoring mechanism, in order to ensure more than a mere formalistic checking of party accounts.

139. GRECO concluded that Denmark had implemented satisfactorily or dealt with in a satisfactory manner three of the 14 recommendations contained in the third round evaluation report. In view of the above and despite the progress noted in respect of the criminalisation of corruption, the total non-compliance with the recommendations under the transparency of party funding made the overall response to the recommendations “globally unsatisfactory”. The question will be followed in accordance with the rules.

140. In December 2011, in its first evaluation report on Denmark, GRETA noted the positive steps taken by the Danish authorities to combat trafficking in human beings, but also called on them to develop greater preventive measures and raise awareness about trafficking for the purpose of labour exploitation – in

particular in the agricultural, construction and cleaning sectors. GRETA expressed concern about government focus on illegal immigration and identifying trafficking victims. It urged the Danish authorities to ensure that potential victims of trafficking were treated in the first place as persons who have been exposed to human rights violations, rather than as offenders.

141. The third cycle opinion of the Advisory Committee of the Framework Convention for the Protection of National Minorities in respect of Denmark was published in March 2011. The opinion asked Denmark to make more funds available for its anti-discrimination bodies. It stressed that victims of discrimination needed more information on how to act and called for the government to make anti-racist law more widely known. The Advisory Committee also asked Denmark to secure funding for its German-speaking minority, fearing that the German-language media may be under threat of closure without a funding boost. At the same time, the committee praised Denmark for its support of German speakers in South Jutland, but underlined that there was a lack of awareness and co-ordination of minority issues between local authorities.

142. The third Committee of Ministers' recommendation in the framework of the monitoring mechanism of the European Charter for Regional or Minority Languages was published in March 2011. The Committee of Ministers called on Denmark to increase the level of radio broadcasting in German and provide television broadcasts in German in South Jutland. It recommended that the Danish authorities take a more active and structured approach in promoting German as a minority language.

143. Denmark was specifically mentioned in two recent Assembly recommendations: Recommendation 1976 (2011) on the role of parliaments in the consolidation and development of social rights in Europe,[26] and Recommendation 1958 (2011) on the monitoring of commitments concerning social rights.[27] The Assembly called on the four countries, including Denmark, which had not yet ratified the Protocol to the European Social Charter (ETS No. 142, "Turin Protocol") to do so as soon as possible.

144. Denmark has so far not signed and/or ratified the following major Council of Europe legal instruments: European Social Charter (revised): signed on 3 May 1996 but not ratified; the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints: signed on 9 November 1995 but not ratified; the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (revised): which has been neither signed nor ratified; and Protocol No. 12 to the European Convention on Human Rights, which has been neither signed nor ratified.

2.5.8. Estonia

145. With regard to Estonia, the last monitoring report of the Congress of Local and Regional Authorities of the Council of Europe was presented in October 2010.[28]Recommendation 294 (2010) on local democracy in Estonia was adopted on that occasion. The report was aimed at assessing the action undertaken since the last monitoring visit in 2000. According to the findings, while local democracy in Estonia had improved overall, there were a few issues which should be the subject of reform, notably granting special status to the capital city of Tallinn, revising national legislation in order to allocate to local authorities financial resources commensurate with the increasing responsibilities assigned to them, allowing local governments to raise local taxes to increase revenues and, lastly, modifying the procedure of consultation of local and national associations in line with the European Charter of Local Self Government. The Congress welcomed the Estonian Supreme Court's decision of March 2010, which referred explicitly to the European Charter of Local Self-Government, and provided the criteria according to which the Estonian Parliament had to enable better regulations, defining clearly, on the one hand, government functions and local authorities tasks and, on the other hand, establishing a strong link between the mandatory tasks and competences of local authorities and their funding.

146. In March 2010, GRECO adopted the compliance report assessing the measures taken by the Estonian authorities to implement the 17 recommendations issued in the third round evaluation report on Estonia. GRECO concluded that Estonia had been able to demonstrate that substantial reforms, with the potential of achieving an acceptable level of compliance with the pending recommendations within the next eighteen months, were under way. With regard to incriminations, Estonia had dealt with some fundamental lacunae in its criminal legislation through the adoption of new legislation; the criminalisation of bribery of members of foreign and international public assemblies was an important achievement and, furthermore, draft legislation

26. . See Doc. 12632.
27. . See Doc. 12441 and Doc. 12502.
28. . See document CPL(19)5.

aimed at the criminalisation of bribery of domestic members of public assemblies, bribery in the private sector and bribery of arbitrators appeared to be well under way (pending before parliament). Estonia had also produced draft legal amendments where minor adjustments of the law were necessary for full compliance with the Criminal Law Convention, for example, including "third party beneficiaries" in the bribery offences. However, the authorities had not yet reported any concrete measures for the inclusion of active trading in influence into the Penal Code and, furthermore, they had not convinced GRECO that new legislation reported in respect of the extension of Estonian jurisdiction abroad complied fully with the requirements of the Criminal Law Convention. In conclusion, Estonia had entered into an in-depth reform process which had already led to some noticeable achievements; however, further determined efforts in respect of a number of recommendations were indispensable.

147. As far as transparency of party funding was concerned, Estonia had presented a substantial and holistic reform process, where almost all concerns raised by GRECO in its evaluation report had been carefully considered. The draft law on "Political Parties and Persons Running as a Candidate for Elections Financing Act", pending at the time before parliament would, if adopted, appear to meet a large majority of the concerns raised by GRECO. The authorities were encouraged to pursue their commendable efforts in this respect to establish a solid legal framework for political financing in Estonia.

148. In April 2011, the Advisory Committee of the Framework Convention for the Protection of National Minorities adopted its third cycle opinion, in which it stressed that Estonian tolerance levels had significantly improved and overall the climate between ethnic Estonians and non-Estonians had evolved in a positive way. However, it noted that unemployment amongst non-Estonians was still disproportionately high and that the number of stateless remained at around 10 000. Welcoming the new Estonian Integration Strategy for Promoting Integration and Cultural Diversity, the committee stressed that integration activities should not only focus on improving the Estonian language skills of minorities. Multicultural elements should be increased in the curricula and textbooks and transfer from Russian to Estonian as the main language made gradually, with respect for maintaining the quality of education. Minority representatives must be involved and have a say on issues that directly concerned them.

149. In March 2010, ECRI published its fourth report on Estonia. While it acknowledged that there had been improvements, in particular with regard to the introduction of a legal framework combating racism and discrimination, it also expressed concern about the large number of stateless persons, the limited contact between Russian speakers and Estonians, high unemployment among minority groups and discrimination against the Roma. ECRI made a number of recommendations, three of which required priority implementation and would be revisited by ECRI in two years' time, namely ensuring the quality of education offered to Russian-speaking children, for example by providing more training for Russian-speaking school teachers; reducing the number of persons without citizenship; and tackling the undue placement of Roma children in special schools and ensuring their reintegration into mainstream schools.

150. In its Resolution 1702 (2010) on action against trafficking in human beings: promoting the Council of Europe convention,[29] the Assembly urged six countries, including Estonia, to sign and ratify the Council of Europe Convention on Action against Trafficking in Human Beings. It should be noted that Estonia signed this convention in February 2010; however, it has not yet ratified it.

151. Furthermore, Estonia has not signed and/or ratified the following major Council of Europe legal instruments: the Additional Protocol to the Criminal Law Convention on Corruption: which has been neither signed nor ratified; the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (revised): which has been neither signed nor ratified; Protocol No. 12 to the European Convention on Human Rights: signed in 2000 but not ratified; the European Charter for Regional or Minority Languages: which has been neither signed nor ratified; the European Social Charter of 1961 (ETS No. 35): which has been neither signed nor ratified; and the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints: which has been neither signed nor ratified.

2.5.9. Finland

152. With regard to Finland, the Congress of Local and Regional Authorities of the Council of Europe adopted its last monitoring report on the implementation of the European Charter on Local Self-Government (ETS No. 122) in October 2011. The Congress noted with satisfaction that local democracy was a cornerstone

29. . See Doc. 12096, report of the Committee on Equal Opportunities for Women and Men, rapporteur: Ms Wurm; and Doc. 12134, opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Prescott.

of democratic life in Finland, with the legitimacy of the exercise of power firmly rooted in the principles of subsidiarity and local democracy, that the Charter of Local Self-Government was applied to the letter and that Finland had an exemplary culture of consultation and involvement of local authorities by central government. The Congress invited the Finnish authorities to continue “to take steps to limit local deficits” so as to avoid budgetary imbalances in certain municipalities. The Finnish authorities were also encouraged to evaluate the effect of the recent reorganisation of deconcentrated public services. The report also highlighted the “need to strengthen the role of the ombudsman” at local level by increasing funding. Furthermore, it was recommended that the Additional Protocol to the European Charter of Local Self-Government on the Right to Participate in Local Affairs (CETS No. 207), as well as the Additional Protocols to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS Nos. 159, 169 and 206), be signed and ratified by the Finnish authorities.

153. In December 2009, GRECO published its compliance report, assessing the measures taken by the authorities of Finland to implement the 17 recommendations issued in the third round evaluation report on this country. GRECO noted that Finland had been able to demonstrate that substantial reforms with the potential of achieving an acceptable level of compliance with the pending recommendations within the next eighteen months were under way. In particular, concerning incriminations, Finland had entered into a substantial reform process. A working party had been established under the Ministry of Justice and it had delivered its proposals, including draft legislation, to the government. The legislative process was at an advanced stage and it appeared that the Finnish authorities had the clear intention of complying with the large majority of the recommendations issued by GRECO in due course. GRECO was confident that the Finnish authorities were making serious efforts to comply with its pending recommendations.

154. As far as the transparency of political funding was concerned, new promising legislation was in place to further develop the transparency and monitoring of political financing regarding election candidates. Furthermore, in order to address the pending recommendations, a working party had prepared draft legislation in respect of the financing of political parties – approved by the government – which, if adopted by parliament, would increase considerably the transparency of party funding in Finland. GRECO was confident that the authorities were doing their utmost to fully implement these recommendations in due course. The adoption of the second compliance report terminated the third round compliance procedure in respect of Finland.

155. In April 2011, the Advisory Committee on the Framework Convention for the Protection of National Minorities published its third opinion on Finland, which highlighted several legislative as well as institutional reform initiatives by the Finnish authorities in order to foster protection against discrimination, including the establishment of an "Equality Committee" to review the effectiveness of Finland’s equality legislation and a proposal for a national policy on Roma. At the same time, the Advisory Committee expressed deep concern that the negotiations surrounding the Sami people’s land rights appeared to be blocked and underlined that the availability of minority language media was still insufficient. Furthermore, the implementation of the Language Act and the Sami Language Act was considered inadequate. Incidents of racism and xenophobia, particularly on the Internet, continued to be reported. Furthermore, the Advisory Committee noted that the representation and influence of persons belonging to national minorities in the decision-making processes affecting them must be increased. The Advisory Committee recommended in particular taking rapid measures to unblock the current stalemate and re-establish a constructive dialogue with the Sami Parliament to find a solution to the legal uncertainty over land rights in the Sami homeland and to prevent the further disappearance of Sami languages from public life, through adequate funding and the effective implementation of the Sami revitalisation programme.

156. In February 2012, the Committee of Ministers adopted Resolution CM/ResCMN(2012)3 on the implementation of the Framework Convention for the Protection of National Minorities by Finland, in which it urged the Finnish authorities to take rapid measures to unblock the current stalemate and re-establish a constructive dialogue with the Sami Parliament in order to find a solution to the legal uncertainty over land rights in the Sami homeland; to continue taking resolute measures, in consultation with the Sami Parliament, to prevent the further disappearance of the Sami languages from public life through adequate funding and the effective implementation of the Sami revitalisation programme, and invest in relevant educational measures in order to ensure that the Sami have improved access to public services in the Sami languages; and to take appropriate measures to ensure that the various consultation structures and mechanisms for persons belonging to national minorities were complemented and reorganised to provide clear communication channels and improve possibilities for representatives, including those of numerically smaller minorities, to have a real impact on the decision-making process.

157. In September 2011, the Committee of Experts of the European Charter for Regional or Minority Languages adopted a fourth cycle evaluation report, which was followed by the recommendation of the Committee of Ministers on the application of the European Charter for Regional or Minority Languages by

Finland,[30] adopted in March 2012, in which the Finnish authorities were urged to further strengthen education in Sami, notably through the development of a structured policy and a long-term financing scheme; to take urgent measures to protect and promote Inari and Skolt Sami, which are particularly endangered languages, in particular by means of the provision of language tests on a permanent basis; to take further measures to ensure the accessibility of social and health care in Swedish and Sami; to develop and implement innovative strategies for the training of Romani teachers, extend the production of teaching materials in Romani and increase the provision of teaching of Romani; and to take measures to increase awareness and tolerance vis-à-vis the regional or minority languages of Finland, both in the general curriculum at all stages of education and in the media.

158. The Assembly has also adopted a number of texts referring directly to Finland. In particular, in Resolution 1861 (2012) on promoting the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence,[31] the Assembly calls on the Council of Europe member States which have signed the convention, including Finland, to take prompt measures, if necessary relying on the advice and expertise provided by the Council of Europe, to adapt their national legislation to the convention and accelerate the ratification process. In Resolution 1823 (2011) on national parliaments: guarantors of human rights in Europe, with respect to the execution of judgments of the European Court of Human Rights, the Assembly points to positive examples in several member States, including Finland, which have set up parliamentary structures to monitor the implementation of the Court's judgments. In Recommendation 1958 (2011) on the monitoring of commitments concerning social rights,[32] the Assembly recommended to other member States the good practice of Finland in securing to national non-governmental organisations the right to submit collective complaints. In Resolution 1769 (2010) on strengthening measures to protect and revive highly endangered languages,[33] the Assembly commends Finland for officially recognising the status of the Karelian minority language. Finally, in Resolution 1702 (2010) on action against trafficking in human beings: promoting the Council of Europe convention,[34] the Assembly urges a number of member States, including Finland, to ratify the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197), which it signed in 2006.

159. Furthermore, Finland has not yet ratified the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (revised), which it signed on 16 December 2005.

2.5.10. France

160. With regard to France, the first monitoring report on the implementation of the European Charter on Local Self-Government, since its ratification by France in 2007, is being prepared by the Congress of Local and Regional Authorities. Two fact-finding visits took place in December 2010 and March 2011.

161. In April 2011, GRECO adopted the compliance report assessing the measures taken by the French authorities to implement the 17 recommendations in the third round evaluation report on France. GRECO concluded that France had implemented satisfactorily only three of the 17 recommendations. In the case of incriminations, France had made some progress in terms of greater consistency between the various provisions on corruption in the private sector and with the proper enforcement of penalties for bribery and trading in influence. GRECO recognised the efforts made to clarify the material elements of corruption offences, for example as part of the continuing training of officials and judges, but noted that more progress might be achieved as a result of current or announced draft legislation. However, GRECO strongly regretted that other recommendations, concerning in particular trading in influence, limitation periods and rules governing jurisdiction, had not been given sufficient attention.

162. Turning to the transparency of party funding, GRECO welcomed the fact that there appeared to be a political consensus in France on numerous points in the evaluation report, and a number of practical proposals, partly in the form of draft legislation, that would respond at least partially to the requirements of the recommendations concerned had been submitted. Nevertheless, GRECO strongly regretted that the authorities appeared not to share certain concerns in the evaluation report that had given rise to a number of

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30. . See document RecChL(2012)2.
31. . See Doc. 12810, report of the Committee on Equality and Non-Discrimination, rapporteur: Mr Mendes Bota.
32. . See Doc. 12441, report of the Social, Health and Family Affairs Committee, rapporteur: Mr Marquet; and Doc. 12502, opinion of the Committee on Equal Opportunities for Women and Men, rapporteur: Ms Keleş.
33. . See Doc. 12423, report of the Committee on Culture, Science and Education, rapporteur: Mr Kumcuoğlu.
34. . See Doc. 12096, report of the Committee on Equal Opportunities for Women and Men, rapporteur: Ms Wurm; and Doc. 12134, opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Prescott.

recommendations. These included such matters as taking account of the activities of third parties, the transparency of political parties' financial information in election campaigns, the role of party agents and the rules governing party members' and elected representatives' subscriptions. GRECO invited the authorities to review their position on these issues and to make every effort to satisfy the recommendations that had not yet been implemented. The progress on the fulfilment of the outstanding recommendations will be reviewed not later than October 2012.

163. The Commissioner for Human Rights, in May 2010, following a visit to Calais, called on the French authorities to ensure the effective respect of the rights of migrants, and in particular their right to dignity. The situation prevailing in Calais was difficult and the Commissioner noted the efforts made by the authorities. Nevertheless, the problems were not resolved and remained worrisome. The Commissioner was particularly concerned about the situation of unaccompanied foreign minors. At the same time, he welcomed the establishment in Calais of an office intended to receive asylum requests and underlined the commitment of the then Minister Besson to keep it open.

164. In September 2010, the Commissioner published a letter sent to the French Minister for Immigration, Integration, National Identity and Development Solidarity, stressing the need for reform not only as far as the reception of migrants and asylum was concerned, but also with particular regard to detention and returns. Even if efforts had been made to open up accommodation centres to all asylum seekers, in practice, asylum seekers continued to be housed in shameful and insecure conditions. The recourse to “accelerated” procedures in an ever-growing number of cases was worrying. Furthermore, detention was resorted to all too frequently. The Commissioner called on France to find alternatives to this deprivation of liberty, especially for families with children.

165. In December 2010, the Commissioner expressed his concern over the repeated cases of vandalism in Jewish and Muslim cemeteries in France. The Commissioner emphasised that States had an obligation to protect all religious buildings from any damage or destruction. If damage occurs, States must make every effort to investigate properly and to prosecute and punish those responsible. As cases of desecration and attacks on places of worship were escalating in France, and particularly in Alsace, the Commissioner recommended the adoption of effective measures. Better co-ordination of all the public actors concerned would enable prevention to be improved. It was also important to ensure the quality and reliability of data collected about racist or xenophobic offences, from their detection to judicial decisions.

166. In April 2012, the CPT published its visit report on France. The CPT noted a number of positive developments. Legal reforms had been adopted or initiated in several fields of considerable interest to the CPT (for example, police custody, prison matters and psychiatric care). However, some of the CPT’s long-standing concerns had only been partly met by the action taken by the French authorities. During the 2010 visit, the CPT's delegation heard some allegations of excessive use of force by police officers at the time of apprehension and of blows inflicted shortly after apprehension. In its report, the CPT recommended that a message of “zero tolerance of ill-treatment” be delivered regularly to officers of the national police service and that legal safeguards against ill-treatment be further reinforced. It also made a number of recommendations for improving conditions of detention in police and gendarmerie cells as well as in administrative holding centres for foreign nationals.

167. In March 2012, a delegation of GRETA carried out a country visit in France in the context of the first round of evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings (2010-13), which was ratified by France in 2008. A report on the implementation of the convention by France and suggestions for further action are under preparation.

168. In June 2010, ECRI published a report on France. While there had been improvements in certain areas, in particular with regard to the strengthening of the legal framework to combat discrimination, some issues still gave rise for concern, such as minorities’ perception of the police, prejudice against Muslims and the tone of the immigration debate. In its report, ECRI made a number of recommendations, among which the following three would be revisited in two years’ time: support and regular consultation of the High Authority against Discrimination and for Equality (HALDE) and taking into account its opinions and recommendations; combating racist expression on the Internet, in particular through a campaign informing the general public that it is possible to report content inciting racial hatred; ensuring the ongoing schooling of itinerant or semi-itinerant Traveller children, adapted to their lifestyle and in consultation with the Traveller community.

169. The Assembly has also adopted a number of texts referring directly to France. In particular, in Resolution 1861 (2012) on promoting the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence,[35] the Assembly called on the Council of Europe member States which have signed the convention, including France, to take prompt measures, if necessary relying on

the advice and expertise provided by the Council of Europe, to adapt their national legislation to the convention and accelerate the ratification process. In Recommendation 1985 (2011) on undocumented migrant children in an irregular situation: a real cause for concern,[36] the Assembly recommended that the Committee of Ministers invite its relevant intergovernmental committees to provide guidelines to member States on minimum health-care requirements which need to be made available to undocumented migrant children, taking into account the recent decision of the European Committee on Social Rights with respect to the Collective Complaint FIDH v. France. In Resolution 1713 (2010) on minority protection in Europe: best practices and deficiencies in implementation of common standards,[37] the Assembly called on the member States, including France, that have neither signed nor ratified the Framework Convention for the Protection of National Minorities to do so without delay, and strongly deplored that only 17 Council of Europe member States had ratified Protocol No. 12 to the European Convention on Human Rights. Significantly, France is one of two member States which has not signed either the Framework Convention or Protocol No. 12.

170. Apart from the legal instruments mentioned above, France has not signed and/or ratified the following major Council of Europe legal instruments: the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (revised): signed in 2011 but not ratified; and the European Charter for Regional or Minority Languages: signed in 1999 but not ratified.

2.5.11. Germany

171. With regard to Germany, the last monitoring report on the implementation of the European Charter on Local Self-Government was presented by the Congress of Local and Regional Authorities in March 2012.[38]Recommendation 320 (2012) on local democracy in Germany was adopted following the debate on the report. The Congress noted with satisfaction that Germany recognised, both in its federal and regional (*Länder*) constitutions, the right to self-government of municipalities, setting a high standard for the protection of local authorities, and that Germany had made considerable progress in accepting and complying with the recommendations adopted by the Congress after its monitoring of local government finances in 1999. At the same time, it expressed some concern that, although the financial situation of local authorities, already evaluated as “critical” in 1999, had seen some improvement due to a positive tax yield at local level, the situation of local authorities remained a matter for concern due to the rise in social welfare spending, structural deficits in the financing of local authorities and an increasing imbalance between them. As a result, the Congress urged the German authorities to introduce a number of measures concerning local finances.

172. In December 2009, GRECO published its third round evaluation report on Germany, focusing on two distinct themes: criminalisation of corruption and transparency of party funding. It was followed, in December 2011, by a compliance report, assessing the measures taken by the authorities to implement the 20 recommendations contained therein. The compliance report noted the very low level of compliance; only four recommendations were dealt with satisfactorily. In particular, it was regrettable that, during the last legislature, the federal parliament had not managed to adopt the draft act on revision of the anti-corruption provisions. This draft law was presented in 2007 and would have enabled Germany to ratify the Criminal Law Convention on Corruption and its additional protocol, as well as the United Nations Convention against Corruption. A particular source of concern was the fact that certain categories of persons were only subject to limited anti-corruption provisions. This could generate the impression within the wider public that parts of German society are not subject to the same rules as the rest of the population, when it came to the preservation of integrity in social, political and business relations. GRECO urged Germany to complement the existing legal anti-corruption provisions with a view to broadening the incrimination of active and passive bribery of parliamentarians, foreign public officials and persons employed at international level. It also called on the German authorities to broaden the incrimination of bribery in the private sector, criminalise trading in influence and harmonise and extend the rules on the jurisdiction of Germany for corruption offences.

173. As far as the transparency of political funding is concerned, GRECO regretted that many shortcomings, as presented in the evaluation report, had only received very limited attention. It was a matter of great concern that no measures had been initiated in order to address recommendations on issues of prime importance, such as introducing a system for the timely publication of election campaign accounts and enhancing the transparency of direct donations to parliamentarians and election candidates who are members of political

35. . See Doc. 12810, report of the Committee on Equality and Non-Discrimination, rapporteur: Mr Mendes Bota.
36. . See Doc. 12718, report of the Committee on Migration, Refugees and Population, rapporteur: Mr Agramunt; and Doc. 12751, opinion of the Social, Health and Family Affairs Committee, rapporteur: Ms Strik.
37. . See Doc. 12109, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Cilevičs; and Doc. 12141, opinion of the Committee on Culture, Science and Education, rapporteur: Mr Anghel.
38. . See document CG(22)7.

parties. Moreover, the resources of the monitoring mechanism needed to be further strengthened. GRECO urged the authorities to pursue the discussions initiated on the subject of transparency of political financing and to take appropriate action in line with the recommendations. The next progress report will be presented no later than June 2012.

174. In February 2012, the CPT published its visit report on Germany. The CPT had heard no allegations of recent ill-treatment during custody in police establishments. However, a few allegations were received from detained persons (including juveniles) that they had been subjected to excessive use of force by police officers at the time of apprehension. The conditions of detention in units for immigration detainees in prisons were of some concern. The CPT received several allegations of inter-prisoner violence (beatings, threats and extortion), mainly from juveniles. However, the CPT noted that efforts were being made to counter this phenomenon and invited the authorities to remain vigilant in this regard. The CPT also criticised the fact that prisoners, including juveniles, were occasionally subjected to means of physical restraint (*Fixierung*) for prolonged periods, and reiterated the safeguards that should surround any application of *Fixierung* in the context of prisons. The CPT report also noted that surgical castration is applied in a few German *Länder* in rare, isolated cases. The CPT made clear its fundamental objections to the use of surgical castration as a means of treatment of sexual offenders and recommended that it be discontinued. In their response, the German authorities stated that they are currently reviewing the matter.

175. In May 2010, the Advisory Committee of the Council of Europe Framework Convention for the Protection of National Minorities adopted it third cycle opinion on the implementation of the convention by Germany; it was followed by a Committee of Ministers resolution (CM/ResCMN(2011)10), adopted in June 2011. According to the opinion, the German authorities had continued to support the development of the languages and cultures of persons belonging to national minorities. A range of mechanisms enabled minorities to participate in the decision-making process on issues of relevance to them. The legal framework for the protection of minority cultures and languages was well developed. However, further action was needed to create an environment more likely to encourage the use of minority languages in daily life. The Advisory Committee called on the German authorities to adopt targeted measures to prevent the spread of prejudice and racist language through certain media, on the Internet and in sports stadiums. It also requested the adoption of specific legislation punishing racist motivation as an aggravating factor of any offence.

176. In December 2010, the fourth cycle report on the application of the European Charter for Regional or Minority Languages in Germany was published. It was followed by the Committee of Ministers recommendation (CM/RecChL(2011)2), adopted in May 2011. On the basis of this report, the Council of Europe called on Germany to adopt specific legislation to ensure that the charter was actually implemented in practice. Urgent measures were needed to promote and preserve North Frisian, Sater Frisian and Lower Sorbian, which were deemed to be particularly endangered languages, and in particular to ensure that primary and secondary education was systematically available in these languages. Measures were also needed to ensure that radio and television broadcasting was available in these languages, as well as in Danish, Low German and Romani. Germany was also encouraged to take measures to ensure that the provision of education in Danish and Upper Sorbian was not jeopardised by reductions in subsidies for Danish-language private schools or changes in the educational system concerning the Upper Sorbian language. More teaching hours should be devoted to Low German, and it should be taught as a regular school subject and as an integral part of the curriculum in the *Länder* concerned. In general, Germany was encouraged to ensure that an effective mechanism exists to monitor education in the regional or minority languages. Finally, the Committee of Ministers of the Council of Europe called on Germany to take resolute action to make it possible to use regional or minority languages in dealings with the administration and in courts.

177. The Assembly has also adopted a number of texts referring directly to Germany. In particular, in Resolution 1861 (2012) on promoting the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence,[39] the Assembly called on the Council of Europe member States which had signed the convention, including Germany, to take prompt measures, if necessary relying on the advice and expertise provided by the Council of Europe, to adapt their national legislation to the convention and accelerate the ratification process. In Recommendation 1976 (2011) on the role of parliaments in the consolidation and development of social rights in Europe,[40] and in Recommendation 1958 (2011) on the monitoring of commitments concerning social rights,[41] the Assembly called on the four countries, including Germany, which had not yet ratified the Additional Protocol to the European Social Charter (ETS No. 128) to do so as soon as possible. In Resolution 1823 (2011) on national parliaments: guarantors of human rights in

39. . See Doc. 12810, report of the Committee on Equality and Non-Discrimination, rapporteur: Mr Mendes Bota.
40. . See Doc. 12632.
41. . See Doc. 12441 and Doc. 12502.

Europe, with respect to the implementation of judgments of the European Court of Human Rights, the Assembly pointed to positive examples in several member States, including Germany, which have set up parliamentary structures to monitor the implementation of the Court's judgments.

178. In Resolution 1769 (2010) on strengthening measures to protect and revive highly endangered languages,[42] Germany is presented as an example to follow in its application of the European Charter for Regional or Minority Languages in respect of Low German; similarly, in Resolution 1703 (2010) on judicial corruption,[43] the Assembly invites all Council of Europe member States to undertake – as in Germany – an in-depth study of the level of corruption in their judicial systems and to take preventive and remedial measures at the first sign of danger. In its Resolution 1702 (2010) on action against trafficking in human beings: promoting the Council of Europe convention,[44] the Assembly urges six countries, including Germany, to sign and ratify the Council of Europe Convention on Action against Trafficking in Human Beings.

179. Germany has not signed and/or ratified a number of important Council of Europe instruments, including the Civil Law Convention on Corruption: signed in 1999 but not ratified; the Criminal Law Convention on Corruption: signed in 1999 but not ratified, the additional protocol signed in 2003 but not ratified; the Council of Europe Convention on Action against Trafficking in Human Beings: signed in 2005 but not ratified; the European Social Charter (revised): signed in 2007 but not ratified; the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints: which has been neither signed nor ratified; and Protocol No. 12 to the European Convention on Human Rights: signed in 2000 but not ratified.

3. Some thoughts in the light of the 15th anniversary of monitoring

180. During the reporting period, in January 2012, the Monitoring Committee celebrated the 15th anniversary of its establishment. Even if no official ceremony took place, I wish to use this opportunity to continue the process of reflection on our mission and action launched by my predecessor last year.

181. Before I share some views on the working methods, efficiency and impact of the monitoring procedure, I would like to raise the essential question of consistency in our work and the need to ensure that we apply the same standards to all member States. We have heard comments made by some Assembly members in public about double standards and unequal treatment of different countries, depending on whether they are "old" or "new" democracies, members or non-members of the European Union, "big" or "small" countries. I strongly believe that we should not try to avoid addressing these concerns; on the contrary, we should try to address them in an open and frank debate.

182. At its outset, the monitoring procedure was designed as a tool to assist the countries undergoing transition to accomplish their democratic transition. Given the length of the legislative processes, it was also aimed at allowing the countries committed to democratic principles to join the Organisation even before the democratic process had been accomplished. In Order 488 (1993), establishing the monitoring procedure, the Assembly instructed the Political Affairs Committee and the Committee on Legal Affairs and Human Rights "to monitor closely the honouring of commitments entered into by the authorities of new member States and to report to the Bureau at regular six-monthly intervals until all undertakings have been honoured".

183. However, soon afterwards, in 1995, Order 488 (1993) was replaced by Order 508 (1993) on the honouring of obligations and commitments by member States of the Council of Europe. At the same time, in Resolution 1031 (1994), the Assembly defined the scope of the obligations which were specified "under the Statute, the European Convention on Human Rights and all other conventions to which they [the members] are parties". Resolution 1115 (1997) on the establishment of the Monitoring Committee clearly confirmed the Assembly's responsibility for "verifying the fulfilment of obligations assumed by member States under the terms of the Statute of the Council of Europe, the European Convention on Human Rights and all other Council of Europe conventions to which they are parties, as well as the honouring of commitments entered into by the authorities of member States upon accession to the Council of Europe".

184. The procedure for a motion initiating a monitoring procedure is clearly spelled out in Resolution 1431 (2005), as modified by Resolution 1827 (2011): any Assembly committee or 20 members of the Assembly or the Bureau may be at the origin of such a motion. In 2005, the rules governing the opening or reopening of the monitoring procedure were amended with a view to strengthening the committee's role in taking the decision

42. . See Doc. 12423, report of the Committee on Culture, Science and Education, rapporteur: Mr Kumcuoğlu.
43. . See Doc. 12058, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Sasi.
44. . See Doc. 12096, report of the Committee on Equal Opportunities for Women and Men, rapporteur: Ms Wurm; and Doc. 12134, opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Prescott.

and allowing for an Assembly debate in case of diverging opinions between the Monitoring Committee and the Bureau. The new rules ensure that the Bureau cannot block the committee's wish[45] to open or reopen a procedure. In case of diverging opinions between our committee and the Bureau as to whether a monitoring procedure should be opened, a debate is to be held before the Assembly: as a result, the Assembly can now exercise its prerogatives to the full in what is a highly sensitive political area.

185. Thus, there is no doubt that the monitoring procedure is common to all member States, irrespective of their "seniority" as members of the Organisation. This has been clearly demonstrated by several attempts to open monitoring procedures – in respect of Latvia in 1997, Austria in 2000, Liechtenstein in 2003, the United Kingdom in 2006, Italy in 2006, and Hungary in 2011. So far, only the first attempt (in respect of Latvia) was successful; the last motion (in respect of Hungary) is still being examined.

186. Another important issue is the question of the criteria for the closing of the monitoring procedure or the post-monitoring dialogue, introduced in 2000. Until now, the monitoring procedures *stricto sensu* were closed with regard to the Czech Republic (1997), Lithuania (1997), the Slovak Republic (1999), Croatia (2000), Bulgaria (2000), "the former Yugoslav Republic of Macedonia" (2000), Latvia (2001), Turkey (2004) and Monaco (2009).[46] The post-monitoring dialogue was concluded with Estonia (2001), Romania (2002), Lithuania (2002), Croatia (2003), the Czech Republic (2004), the Slovak Republic (2006) and Latvia (2006).

187. The decision to close the monitoring procedure or post-monitoring dialogue is ultimately taken by the Assembly. In practice, the initiative comes from the committee, and more precisely from the co-rapporteurs, or rapporteur in the case of the post-monitoring dialogue. It has never happened so far that the (co-)rapporteurs' proposal to close the procedure has been rejected by the committee or by the Assembly. There is an evident logic behind it: the (co-)rapporteurs are best placed to assess the situation in the country concerned, they closely follow developments and maintain political dialogue with the authorities. At the same time, however, they are confronted with a heavy responsibility and are put under a lot of pressure. Therefore, I think that a recapitulation of the criteria for closing the procedure, which would apply to all member States under monitoring, would contribute to the transparency of the whole process and would ward off premature requests for closure.

188. It is not the first time this question has been raised. One of my predecessors launched the discussion on this issue in the progress report in 2006.[47] At that time, however, he limited himself to some general reflections, and no further follow-up was given to his proposals. What I suggest is that we discuss, in the Monitoring Committee, the list of criteria which, irrespective of commitments entered into upon accession, might constitute a reference allowing for the consideration of the closure of the monitoring and post-monitoring procedure within the committee before submitting its decision to the Assembly. We could envisage the preparation of such a list, a sort of a checklist, which would by no means be exhaustive, under my responsibility.

189. There is no question of "inventing" or adding new principles. It is a proposal to consolidate, to put together, on the basis of our experience, and recall the standards, which have already been adopted by the Assembly and are contained in the Statute of the Council of Europe, basic conventions and Assembly resolutions, and translate them into concrete criteria. Such a reference paper would help to ensure that all countries are treated in the same way and that there are no double standards. I hope that the committee will give consideration to this proposal and charge me with the task of preparing the list for further discussion.

190. As mentioned above, 10 States are at present subject to the monitoring procedure: Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, the Republic of Moldova, Montenegro, the Russian Federation, Serbia and Ukraine. Four States are subject to post-monitoring dialogue: Bulgaria, Monaco, "the former Yugoslav Republic of Macedonia" and Turkey. In many of them we have been able to observe the positive impact of the monitoring procedure on democratic progress. In the last progress report, my predecessor gave a detailed account of our "success stories" over the years so I will not return to this question.

191. At the same time, we are confronted with a situation in which a number of countries do not seem to advance in any meaningful way in terms of the fulfilment of their obligations and commitments. The problem is amplified by the fact that ongoing political crises in these countries, and the need for quick responses, make it

45. . The initiative to amend the rules was the result of the Bureau's decision to block the opening of a monitoring procedure in respect of Liechtenstein as proposed by the committee.
46. . The procedures regarding Estonia and Romania were closed by the Committee on Legal Affairs and Human Rights in 1997, just before the Monitoring Committee was set up.
47. . See Doc. 10960 rev.

difficult if not impossible for the Assembly to proceed with an overall assessment of progress as regards the fulfilment of their obligations and commitments. This reflection brings me to another question: the efficiency of our procedure.

192. I will not repeat the comments on the working methods of the committee, made by my predecessor in the progress report prepared last year,[48] but I strongly believe that they deserve in-depth consideration and I intend to devote some time in the near future to discussing them in the committee. Here, I would like to raise only two questions, which were not raised last year and could be also considered during our future discussion on the working methods and impact of our action: the frequency of the presentation of monitoring reports and the duration of (co)rapporteurs' terms of reference.

193. Both questions were tackled by Resolution 1710 (2010) on the term of office of co-rapporteurs of the Monitoring Committee, adopted by the Standing Committee two years ago. On that occasion, the (co-) rapporteurs' term of office was limited to five years (before there was no limit to the duration). As a result, a majority of rapporteurs, some of them long-standing, had to be replaced. This has certainly had a positive effect, allowing for greater involvement of members in the committee work, improving the participation of women, and broadening the spectrum of new ideas and approaches.

194. The principle of terms of reference limited in duration is certainly good and justified. However, given the complex situation in many countries under the monitoring procedure, five years may be too short to prepare at least two reports on one country. Past experience shows that a political crisis, like the one in Bosnia and Herzegovina or in the Republic of Moldova, may prevent co-rapporteurs from preparing a report for almost half of the duration of their terms of reference. In my view, seven years would be an optimal period for the term of office of (co)rapporteurs.

195. Similarly, I believe that the deadline of two years for the preparation of a report on monitoring (four years for post-monitoring) is sometimes difficult to respect and this has been fully confirmed by past experience. Furthermore, the wish to comply with the rules incites some (co-)rapporteurs to propose reports under urgent procedure. This is fully justified in the majority of cases, but sometimes a full report would be more appropriate. In my view, however, an effort should be made by all those concerned to respect a two-year interval.

196. Last but not least, I would like to refer to our periodic reports relating to countries which are neither under monitoring procedure nor post-monitoring dialogue. You will have noticed that, in the present report, I have introduced a completely different presentation, which of course required a modified methodology for its preparation. Instead of a lengthy appendix reproducing findings of other Council of Europe monitoring mechanisms, I have opted for a more analytical approach: I have pointed to concerns and tried to assess progress in the fulfilment of recommendations made by Council of Europe mechanisms, somewhat along the lines that we use for countries under monitoring *stricto sensu.*

197. I encountered, however, some methodological difficulties. Each monitoring mechanism has its own monitoring cycle, which does not correspond to our cycle foreseen for periodic reports. This makes it impossible to give a balanced overview of all countries, and assess the real progress. Furthermore, our practice of dividing 33 countries from this category into three sub-groups, contributes to further confusion. Finally, while I am convinced that the inclusion of the periodic report into the body of the progress report in the form of a more analytical text constitutes a better solution than an appendix, I have to admit that there is considerable room for further improvement.

198. The major problem of the current presentation is that it is not sufficiently balanced. It may even give the impression that the concerns in the countries which are not under parliamentary monitoring procedure outweigh the concerns in those which are. This can be easily explained by the fact that the part concerning the 14 countries under monitoring or post-monitoring dialogue refers to the Assembly's or our committee's documents and does not need to be extensively developed. But still I think that we should be more balanced.

199. Taking all the above considerations into account, I suggest that, next year, the progress report be divided into two distinct parts: one on the progress of the monitoring procedure with respect to the countries which fall under the parliamentary monitoring procedure or post-monitoring dialogue. And a second part, which would be devoted to an analytical presentation of the findings of the monitoring mechanisms of the Council of Europe with respect to all 33 countries covered by periodic reports.

48. . See Doc. 12634.

200. Let me briefly explain the logic behind this proposal: at present, each convention monitoring mechanism has its own cycle of assessment which does not necessarily correspond to our division into three sub-groups. As a result, there is no consistency in the presentation of conclusions and, moreover, some reports of the monitoring mechanisms are as much as three years old. This is unavoidable if we maintain our three-year cycle.

201. Including all 33 countries in a yearly report would not mean that each of them is submitted to a more frequent reporting than countries under the monitoring *stricto sensu* on which we prepare reports every two years, because we will still refer only to those findings of convention monitoring mechanisms which have been published during the reporting period. In practice, the findings on each particular country will be presented with the same frequency as before and they will all be up to date.

202. Furthermore, the methodology for the analysis would have to be further developed, and we should also include any concerns which might arise, even if they have not been identified by other monitoring mechanisms. This would be done on the understanding that the rapporteur will use available information sources, but there would be no fact-finding visits.

203. This means there would be no possibility of closely following developments in each country of this category and maintaining political dialogue by means of information visits. But there is no need for that. The objective of periodic reports would not be to conduct a monitoring procedure *stricto sensu.* Nor would it be a substitute for the procedure relating to the (re)opening of the monitoring procedure foreseen in the rules. The justification for these newly designed periodic reports would be to ensure equal treatment for all Council of Europe member States which are obliged to fulfil the obligations associated with Council of Europe membership, irrespective of whether they are under a monitoring procedure *stricto sensu* or subject to a post-monitoring dialogue.

204. I trust that the committee can accede to this proposal, and that the Assembly approves it, and I stand ready, as chair of the committee, to implement this new concept as from the next year. Next year, we may come back to our discussion, assess the added value of this new form of periodic reporting and decide whether we shall continue in the same way in the future.

205. In conclusion, I wish to stress that the added value of the Assembly's monitoring process, as compared to convention mechanisms within and outside the Council of Europe, remains unquestionable. Its essential feature is its political nature and weight. It also benefits from direct relations between the Assembly as a whole and its members, who at the same time are members of national parliaments – both from governing majorities and opposition – and, as a logical consequence, from the influence that the Assembly can exert directly on the legislatures of the countries under monitoring. It is a peer-to-peer monitoring mechanism, and this specific feature offers precious opportunities. We should take full advantage of them.

Appendix 1 – Chart of ratifications and signatures of the main Council of Europe conventions with a monitoring mechanism by the first group of 11 member States

(situation on 23 May 2012)

CoE member States not currently under monitoring procedure or post-monitoring dialogue	Total number of CoE conventions ratified or signed (out of 211)	DEMOCRACY	RULE OF LAW			HUMAN RIGHTS									
		ECLS-G	Convention on Corruption		Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990 or rev)	ECHR	Protocols to the ECHR				ECPT	Social rights		Minority rights	
			Civil law	*Criminal Law*			6	12	13	14		ESC	Protocol to the ESC on collective complaints	FCNM	ECRML
Andorra	42 R 3 S	**R**	S	**R**	R 1990 – rev	**R**	**R**	**R**	**R**	**R**	**R**	**R** rev	–	–	–
Austria	105 R 32 S	**R**	**R**	S	R 1990 S rev	**R**	**R**	S	**R**	**R**	**R**	**R** 1961 & rev	S	**R**	**R**
Belgium	128 R 34 S	**R**	**R**	**R**	R 1990 R rev	**R**	**R**	S	**R**	**R**	**R**	**R**1961 & rev	**R**	S	–
Croatia	90 R 5 S	**R**	**R**	**R**	R 1990 R rev	**R**	**R**	**R**	**R**	**R**	**R**	R 1961 S rev	**R**	**R**	**R**
Cyprus	123 R 24 S	**R**	**R**	**R**	R 1990 R rev	**R**	**R**	**R**	**R**	**R**	**R**	**R**1961 & rev	**R**	**R**	**R**
Czech Republic	100 R 12 S	**R**	**R**	**R**	R 1990 – rev	**R**	**R**	S	**R**	**R**	**R**	R 1961 S rev	**R**	**R**	**R**
Denmark	133 R 16 S	**R**	S	**R**	R 1990 – rev	**R**	**R**	–	**R**	**R**	**R**	R 1961 S rev	S	**R**	**R**
Estonia	83 R 11 S	**R**	**R**	**R**	R 1990 – rev	**R**	**R**	S	**R**	**R**	**R**	**R** rev	–	**R**	–
Finland	107 R 15 S	**R**	**R**	**R**	R 1990 S rev	**R**	**R**	**R**	**R**	**R**	**R**	**R**1961 & rev	**R**	**R**	**R**
France	131 R 37 S	**R**	**R**	**R**	R 1990 S rev	**R**	**R**	–	**R**	**R**	**R**	**R**1961 & rev	**R**	–	S
Germany	120 R 48 S	**R**	S	S	R 1990 – rev	**R**	**R**	S	**R**	**R**	**R**	R 1961 S rev	–	**R**	**R**

Appendix 2 – Chart of ratifications and signatures of the main Council of Europe conventions with a monitoring mechanism by the second group of 11 member States

(situation on 23 May 2012)

CoE member States not currently under monitoring procedure or post-monitoring dialogue	Total number of CoE conventions ratified or signed (out of 211)	DEMOCRACY	RULE OF LAW			HUMAN RIGHTS									
		ECLS-G	Convention on Corruption		Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990 or rev)	ECHR	Protocols to the ECHR				ECPT	Social rights		Minority rights	
			Civil law	*Criminal Law*			6	12	13	14		ESC	Protocol to the ESC on collective complaints	FCNM	ECRML
Greece	94 R 57 S	**R**	**R**	**R**	R 1990 S rev	**R**	**R**	S	**R**	**R**	**R**	R 1961 S rev	**R**	S	–
Hungary	79 R 18 S	**R**	**R**	**R**	R 1990 R rev	**R**	**R**	S	**R**	**R**	**R**	**R**1961 & rev	S	**R**	**R**
Iceland	82 R 37 S	**R**	S	**R**	R 1990 S rev	**R**	**R**	S	**R**	**R**	**R**	R 1961 S rev	–	S	S
Ireland	99 R 18 S	**R**	S	**R**	R 1990 – rev	**R**	**R**	S	**R**	**R**	**R**	**R**1961 & rev	**R**	**R**	–
Italy	122 R 43 S	**R**	S	S	R 1990 S rev	**R**	**R**	S	**R**	**R**	**R**	**R**1961 & rev	**R**	**R**	S
Latvia	91 R 6 S	**R**	**R**	**R**	R 1990 R rev	**R**	**R**	S	**R**	**R**	**R**	R 1961 S rev	–	**R**	–
Liechtenstein	79 R 10 S	**R**	–	S	R 1990 – rev	**R**	**R**	S	**R**	**R**	**R**	S 1961 – rev	–	**R**	**R**
Lituania	88 R 14 S	**R**	**R**	**R**	R 1990 – rev	**R**	**R**	–	**R**	**R**	**R**	**R** rev	–	**R**	–
Luxembourg	127 R 51 S	**R**	S	**R**	R 1990 S rev	**R**	**R**	**R**	**R**	**R**	**R**	R 1961 S rev	–	S	**R**
Malta	82 R 21 S	**R**	**R**	**R**	R 1990 R rev	**R**	**R**	–	**R**	**R**	**R**	**R**1961 & rev	–	**R**	S
Netherlands	145 R 18 S	**R**	**R**	**R**	R 1990 R rev	**R**	**R**	**R**	**R**	**R**	**R**	**R**1961 & rev	**R**	**R**	**R**

Appendix 3 – Chart of ratifications and signatures of the main Council of Europe conventions with a monitoring mechanism by the third group of 11 member States

(situation on 23 May 2012)

CoE member States not currently under monitoring procedure or post-monitoring dialogue	Total number of CoE conventions ratified or signed (out of 211)	DEMOCRACY	RULE OF LAW			HUMAN RIGHTS									
		ECLS-G	Convention on Corruption		Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990 or rev)	ECHR	Protocols to the ECHR				ECPT	Social rights		Minority rights	
			Civil law	*Criminal Law*			6	12	13	14		ESC	Protocol to the ESC on collective complaints	FCNM	ECRML
Norway	142 R 13 S	**R**	**R**	**R**	R 1990 – rev	**R**	**R**	S	**R**	**R**	**R**	**R**1961 & rev	**R**	**R**	**R**
Poland	86 R 16 S	**R**	**R**	**R**	R 1990 R rev	**R**	**R**	–	S	**R**	**R**	R 1961 S rev	–	**R**	**R**
Portugal	109 R 42 S	**R**	–	**R**	R 1990 R rev	**R**	**R**	S	**R**	**R**	**R**	**R**1961 & rev	**R**	**R**	–
Romania	102 R 11 S	**R**	**R**	**R**	R 1990 R rev	**R**	**R**	**R**	**R**	**R**	**R**	S 1961 **R** rev	–	**R**	**R**
San Marino	45 R 12 S	–	–	S	R 1990 R rev	**R**	**R**	**R**	**R**	**R**	**R**	S rev	–	**R**	–
Slovak Republic	96 R 7 S	**R**	**R**	**R**	R 1990 R rev	**R**	**R**	S	**R**	**R**	**R**	**R**1961 & rev	S	**R**	**R**
Slovenia	103 R 15 S	**R**	**R**	**R**	R 1990 R rev	**R**	**R**	**R**	**R**	**R**	**R**	S 1961 **R** rev	S	**R**	**R**
Spain	121 R 9 S	**R**	**R**	**R**	R 1990 R rev	**R**	**R**	**R**	**R**	**R**	**R**	R 1961 S rev	–	**R**	**R**
Sweden	134 R 17 S	**R**	**R**	**R**	R 1990 S rev	**R**	**R**	–	**R**	**R**	**R**	**R**1961 & rev	**R**	**R**	**R**
Switzerland	111 R 14 S	**R**	–	**R**	R 1990 – rev	**R**	**R**	–	**R**	**R**	**R**	S 1961 – rev	–	**R**	**R**
United Kingdom	117 R 20 S	**R**	S	**R**	R 1990 – rev	**R**	**R**	–	**R**	**R**	**R**	R 1961 S rev	–	**R**	**R**

Table of abbreviations

R: ratified

S: signed but not yet ratified

-: neither signed nor ratified

ECHR: Convention for the Protection of Human Rights and Fundamental Freedoms

ECPT: European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

ESC: European Social Charter (1961 or revised)

FCNM: Framework Convention for the Protection of National Minorities

ECRML: European Charter for Regional or Minority Languages

ECLS-G: European Charter of Local Self-Government