



Resolution 1890 (2012)¹

Final version

The honouring of obligations and commitments by Montenegro

Parliamentary Assembly

1. Since the adoption by the Parliamentary Assembly of [Resolution 1724 \(2010\)](#) on the honouring of obligations and commitments by Montenegro, the country has continued to make substantial progress towards the fulfilment of its remaining obligations and commitments. Montenegro has signed and ratified 83 conventions of the Council of Europe, thus fully complying with all the requirements contained in [Resolution 1724 \(2010\)](#), and has continued to fully co-operate with the European Commission for Democracy through Law (Venice Commission) and other Council of Europe monitoring bodies such as the Group of States against Corruption (GRECO) and the European Commission against Racism and Intolerance (ECRI).

2. The Assembly congratulates Montenegro on its positive role in the stabilisation of the region. Montenegro has continued to be a reliable and constructive partner, involved in several regional and multilateral initiatives.

3. Montenegro has made progress towards integration into the European Union: after obtaining visa liberalisation in December 2009, Montenegro was granted candidate country status by the European Council in December 2010. In December 2011, it was proposed to open accession negotiations in June 2012, subject to further progress, which was confirmed by the European Commission on 22 May 2012. This achievement is a clear recognition of the progress made by Montenegro these past three months. The Assembly also takes note of the “new approach” adopted by the European Commission for accession negotiations, namely verifying first of all Montenegro’s compliance with Chapter 23 (judiciary and fundamental rights) and Chapter 24 (justice, freedom and security) of the accession procedure based on the European Union *acquis*.

In the field of democracy

4. The Assembly welcomes the efforts undertaken to increase the transparency of the parliament’s work and the capacity of the parliamentary committees. It welcomes the adoption of the amendments to the Rules of Procedure of the Parliament of Montenegro, in particular the establishment of the new Anti-corruption Committee, which will be led by a representative of the opposition and which should improve the fight against corruption and strengthen the oversight role of the parliament. It notes that the rights of the parliamentary opposition within the context of the parliament are still under discussion.

5. It appeals to all members of parliament to work in a constructive way and improve the relationship between the parliamentary majority and the minority/opposition.

6. It encourages Montenegro to further strengthen the administrative capacity and other resources required for professional, efficient and transparent work by the parliament, to ensure that oversight hearings in parliamentary committees lead to the adoption of conclusions that are properly followed up by the relevant authorities, and to better interact with civil society in the light of the memorandum of understanding that was signed between the parliament and non-governmental organisations (NGOs) in April 2011.

1. Assembly debate on 27 June 2012 (24th Sitting) (see [Doc. 12952](#), report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: Mr Gardetto and Ms Memecan). Text adopted by the Assembly on 27 June 2012 (24th Sitting).



7. The Assembly, taking into account that the Law on the Election of Councillors and Members of Parliament was revised on 17 June 2011, in line with the recommendations of the Venice Commission, the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR) and the Parliamentary Assembly:

7.1. welcomes these amendments which finally bring electoral legislation into line with the 2007 Constitution of Montenegro, now restricting the right to vote to persons holding Montenegrin citizenship;

7.2. notes that the amendments to the Law on Montenegrin Citizenship, adopted on 8 September 2011, should facilitate the granting of Montenegrin citizenship to those citizens of former Yugoslav republics who already had their permanent residence in Montenegro for two years before the date of independence of Montenegro;

7.3. as regards the issue of “authentic representation” of minorities, considers as a positive step the extension of affirmative action to all minority groups that account for less than 15% of the population and calls on all political parties to find the necessary consensus in order to ensure the smooth functioning of minority councils and the transparent use of the Minority Fund. In addition, it also encourages Montenegro to further improve the Law on Minority Rights and Freedoms;

7.4. while welcoming the fact that the revised electoral law prescribes a 30% participation of the under-represented sex in electoral lists, invites Montenegro to amend this provision in order to secure effective access for the under-represented sex to elected positions (by means of a “zip system”, reserving every third position on the candidate list for members of the under-represented sex). In the meantime, the Assembly calls on all political parties to apply this rule on a voluntary basis with a view to the next elections.

8. The Assembly welcomes the positive developments related to the State Electoral Commission, and encourages Montenegro to address the remaining issues highlighted in the OSCE/ODIHR and Venice Commission recommendations, such as the dissolution of coalitions and their funding obligations, the extension of the mandate of the State Electoral Commission to municipal elections, and the constitutional two-year residency requirement (instead of six months for local elections) before citizens can obtain the right to vote.

9. The Assembly reiterates its firm conviction that the multi-ethnic and multireligious components of its society are an asset for Montenegro. In this context, the Assembly welcomes the agreement reached in September 2011 to amend the Law on Education adopted in September 2011 and hopes that consensus-based discussion and a spirit of compromise will prevail when new issues related to minority rights arise.

10. The Assembly takes note of further progress achieved in the decentralisation process, including the adoption of the Law on Territorial Organisation and the Law on Local Finances in 2011, the adoption, in June 2011, of the Development Strategy for Inter-municipal Co-operation 2011-2016 and the ratification of the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207). The Assembly invites Montenegro to implement Recommendation 293 (2010) on local democracy in Montenegro, adopted by the Congress of Local and Regional Authorities of the Council of Europe, and to continue to make use of the Council of Europe’s expertise to complete the reforms in the area of local democracy and ensure a transparent, democratic and efficient functioning of local authorities.

In the field of the rule of law

11. The Assembly considers that the reform of the judiciary remains a priority to be addressed by the Montenegrin authorities to fulfil their obligations. In this respect, the Assembly:

11.1. acknowledges that important pieces of legislation were amended (such as the laws on courts, on the State Prosecutor’s Office and on the Judicial Council of Montenegro, as well as the Criminal Code) or adopted (such as the Law on Misdemeanours and the Law on Free Legal Aid) in 2011. The new Criminal Procedure Code entered into force in August 2011;

11.2. regrets, however, that the parliament failed to amend the constitution with respect to the appointment of high-level judiciary officials. The Assembly calls on all political parties to support the agreed constitutional reform in compliance with the recommendations of the Venice Commission in order to build a solid and independent judiciary. Parliament should no longer be involved in the election of the President of the Supreme Court, and the composition of the Constitutional Court and the Judicial Council should be revised;

11.3. invites the Montenegrin authorities to submit the draft constitutional amendments on the appointment of high-level judicial officials to the Venice Commission prior to their adoption in parliament;

11.4. stresses that more efforts should be made regarding the initial and lifelong training of judges and prosecutors and invites the Montenegrin authorities to allocate the necessary resources to the Judicial Training Centre.

12. The Assembly congratulates Montenegro for launching the Public Administration Reform Strategy for 2011-2016 and adopting important pieces of legislation in 2011, such as the Law on Public Internal Financial Control, the Law on General Administrative Procedure, the Law on Civil Servants and State Employees based on the principles of merit-based recruitment and promotion, and the Law on Salaries of Civil Servants and State Employees. The Assembly invites Montenegro to implement this legislation, which will contribute to a more efficient and transparent functioning of the public administration. It also reminds the Montenegrin authorities to take into account the need to ensure an equitable representation of minorities in public administration.

13. At regional level, the Assembly welcomes the ratification by Montenegro of extradition agreements with Croatia, Serbia and "the former Yugoslav Republic of Macedonia", covering their own nationals involved in serious and organised crime, as well as the signature of agreements on police co-operation with Croatia and Serbia, and the ratification of agreements with Bosnia and Herzegovina on mutual legal assistance in civil and criminal matters and on mutual recognition of decisions in criminal matters.

14. The Assembly welcomes the steps taken to combat corruption and organised crime, in particular the amendments to the Penal Code in April 2010, the adoption of a new Criminal Procedure Code in July 2010 and the revision of the Law on Prevention of Money Laundering and Terrorist Financing in February 2012.

15. The Assembly in particular welcomes the enactment of the Law on Financing of Political Parties and the Law on Public Procurement, as well as the amendments to the Law on the Conflict of Interests in July 2011 and the Law on Lobbying adopted in November 2011. The Assembly underlines the importance of this new legislation and trusts that these laws will contribute to reducing opportunities for corruption and increasing transparency in this field. The Assembly urges the Montenegrin authorities to ensure that these laws will be fully implemented, and that the role of the State Audit Institution, the State Electoral Commission and the Commission for the Prevention of Conflicts of Interest will be reinforced and able to fully perform their duties.

In the field of human rights

16. The Assembly notes the progress made regarding lesbian, gay, bisexual and transgender (LGBT) rights and congratulates Montenegro on the adoption of the comprehensive Anti-discrimination Law in 2010 and on the recent initiatives taken by the Montenegrin authorities, including the appointment of an adviser to the prime minister on human rights and protection against discrimination and on the leading role taken in this field by Montenegro in the region. The Assembly also welcomes the announced organisation of the "Pride Parade", which is planned to be held in June 2013, in co-operation with the Protector of Human Rights and Freedoms (Ombudsman) and relevant institutions.

17. The Assembly stresses, however, that these laws now need to be fully implemented. Effective measures need to be taken to promote tolerant attitudes in society and prosecute violence perpetrated on any ground, including sexual orientation. In this respect, the Assembly urges the authorities to investigate and prosecute all cases of violence and intimidation against members of the LGBT community and to guarantee the freedom of assembly and the safety of public events such as the Gay Pride Parade.

18. As regards the institution of the Protector of Human Rights and Freedoms (Ombudsman), the Assembly:

18.1. welcomes the adoption, in July 2011, of the Law on the Protector of Human Rights and Freedoms of Montenegro (Ombudsman). According to the 2010 Anti-discrimination Law, the Ombudsman is the national preventive mechanism for the prevention of torture and other forms of inhuman treatment and punishment under the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), as well as the national mechanism for prevention of and protection against discrimination;

18.2. urges Montenegro to amend the constitution in line with the recommendations of the Venice Commission to strengthen the independence of the Ombudsman and ensure that he or she is elected by a qualified majority in parliament;

18.3. regrets, however, that the law does not make any reference to the Anti-discrimination Law or provide the Ombudsman with the powers and competences described in ECRI General Policy Recommendation No. 7;

18.4. expects the Montenegrin authorities to provide the Ombudsperson with the necessary financial and human resources to carry out his or her task properly in order to become an effective implementation mechanism of the anti-discrimination legislation and the prevention of torture.

19. The Assembly remains concerned about the situation of the Roma, Ashkali and Egyptian (RAE) communities. The Assembly recognises that Montenegro has undertaken many efforts to improve the living conditions and educational programmes for these communities. However, considering the multiple discriminations faced by the RAE communities, the Assembly urges Montenegro to continue its programmes in order to facilitate the civil registration of RAE persons; ensure their access to housing, education, health services and employment; include a gender dimension in the programmes; and develop mainstreamed policies.

20. As regards the situation of refugees and internally displaced persons (IDPs), the Assembly:

20.1. pays tribute to the role played by Montenegro during the wars in the former Yugoslavia in the 1990s when hosting refugees and displaced persons from neighbouring countries;

20.2. congratulates Montenegro for signing the "Sarajevo Declaration" in November 2011, together with Serbia, Bosnia and Herzegovina and Croatia, and for taking an active part in this regional initiative which should facilitate the return of refugees and/or find long-term solutions for refugees and IDPs. The Assembly calls on donors to provide the necessary funds to make this initiative successful, in particular the improvement of living conditions in the Konik camps, which in some respects still give cause for concern;

20.3. invites the Montenegrin authorities, in co-operation with the Office of the United Nations High Commissioner for Refugees (UNHCR) and the Red Cross, to further facilitate the voluntary return of refugees to their municipality of origin or to integrate locally those who wish to stay in Montenegro, in line with the Strategy for a Permanent Solution to the Issue of Displaced and Internally Displaced Persons in Montenegro drafted by the Montenegrin authorities;

20.4. further to the revision of the Law on Foreigners, calls on the Montenegrin authorities to facilitate the granting of a legal status and of a temporary or permanent residence permit for refugees and IDPs still living in Montenegro. It expects Montenegro to find a suitable way to resolve those cases of people facing statelessness when proper identification documents are no longer available or cannot be obtained for registration.

21. Referring to the situation of the media, the Assembly:

21.1. remains particularly concerned about cases of intimidation, pressure and violence exerted against investigative journalists;

21.2. urges the Montenegrin authorities to investigate and prosecute all perpetrators of violence against journalists;

21.3. welcomes the amendments to the Penal Code of 22 June 2011, which resulted in the decriminalisation of defamation, and the guidelines issued by the Supreme Court regulating the level of pecuniary compensation in defamation cases against the media; calls for a full implementation of these guidelines to avoid endangering the viability of the media concerned; and welcomes the adoption of the Law on Amnesty for the persons convicted of insult and defamation in June 2012, which should contribute to a better protection of freedom of speech, in line with the case law of the European Court of Human Rights. The Assembly encourages Montenegro to further support a more pluralistic media environment;

21.4. considering the economic sustainability of the media, calls for transparency in media funding, the reform of the public broadcasting service and the fulfilment of the privatisation process, and urges the Montenegrin authorities to take the necessary measures to this end;

21.5. invites the authorities to ensure the independence of self-regulation bodies and calls on journalists to enhance professional ethics.

22. The Assembly invites Montenegro to continue to implement the recommendations made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in 2008, in particular regarding allegations of ill-treatment and conditions of detention and health-care services in police stations, prisons and specialised institutions. To this end, the Assembly invites the Montenegrin authorities to continue to co-operate with and provide updated data to the CPT.

23. In conclusion, the Assembly underlines that Montenegro has made substantial progress in fulfilling its remaining obligations and commitments. The Assembly expects this positive trend to be continued by the authorities that will govern the country after the parliamentary elections to be held before the beginning of 2013.

24. The Assembly, while welcoming the efforts made, stresses that some key steps still need to be taken and encourages Montenegro to make further progress in some key areas that will remain as the focus of the monitoring procedure, namely:

- 24.1. the completion of the reform of the judiciary and the amendments to the constitution;
- 24.2. the capacity of the political parties to reach the necessary compromises and ensure that the rights of all minorities, including those of LGBT people, are respected and implemented. Special attention will be paid to the situation of Roma, Ashkali and Egyptian communities;
- 24.3. the fight against corruption and organised crime and the strengthening of the monitoring bodies;
- 24.4. the situation of the media and the working environment provided to journalists;
- 24.5. the legal status of, and the search for a durable solution for, IDPs and refugees based on voluntary return or local integration.

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