Parliamentary Assembly
Assemblée parlementaire
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 2030 (2015)[1]
Final version

The honouring of obligations and commitments by Montenegro

Parliamentary Assembly

1. In June 2012, the Parliamentary Assembly adopted Resolution 1890 (2012) on the honouring of obligations and commitments by Montenegro, deciding to pursue the monitoring procedure while encouraging Montenegro to make progress on five "key issues", namely the independence of the judiciary, the situation of the media, the fight against corruption and organised crime, the rights of minorities and the fight against discrimination, and the situation of refugees and internally displaced persons (IDPs).

2. Since then, Montenegro has continued to play a positive role in the stabilisation of the region and to be a reliable and constructive partner, involved in several regional and multilateral initiatives. There has been excellent co-operation between the Montenegrin authorities and the Council of Europe, especially the European Commission for Democracy through Law (Venice Commission), which has adopted many opinions on essential legislation since 2012. The Assembly in particular congratulates Montenegro on the ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210, "Istanbul Convention") on 22 April 2013, bringing the number of conventions ratified by this country to 87.

3. The Assembly notes that there is in Montenegro a strong consensus on integration into the European Union, which has been a driving force behind the acceleration of the reform process. In particular, the opening of Chapters 23 and 24 of the accession negotiations in December 2014 should further boost the reforms launched in the fields of justice, human rights and fundamental freedoms. The Assembly welcomes the fruitful co-operation established between the Council of Europe and the European Union to improve democratic standards in Montenegro. It trusts that Montenegro's efforts towards European integration will also contribute to consolidating the fulfilment of its statutory obligations towards the Council of Europe.

4. The Assembly believes that policies focusing on democratic standards, consolidation of the rule of law, enhanced transparency and accountability of public institutions and equitable representation of minorities could help Montenegro overcome the polarisation which exists along political and ethnic lines in all spheres of society and which impedes the country's development.

5. Further to the disputed 2012 parliamentary elections and 2013 presidential election, the Assembly believes that building trust in the electoral processes has become even more necessary to ensure political stability and fair elections. The Assembly welcomed the setting up of a parliamentary working group on building trust in the election process in May 2013, which led to the adoption, in February 2014, of the Law on the Voter Register, the Law on Amendments to the Law on Identity Cards and the Law on Local Self-Government, and the adoption, in December 2014, of the Law on Amendments to the Law on Financing of Political Parties and Electoral Campaigns.

6. In the light of the recent developments, the Assembly has assessed progress made in the five key areas identified in 2012.

1. *Assembly debate* on 27 January 2015 (4th Sitting) (see Doc. 13665, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: Mr Kimmo Sasi and Mr Terry Leyden). *Text adopted by the Assembly* on 27 January 2015 (4th Sitting).

7. As regards the independence of the judiciary, the Assembly:

7.1. welcomes the adoption of the constitutional amendments on the judiciary of July 2013, which introduced qualified majorities for the election of judges to the Constitutional Court, of the Supreme State Prosecutor and of members of the Judicial Council, whilst also introducing anti-deadlock mechanisms;

7.2. expects the Montenegrin authorities to adopt the necessary laws on the courts, the rights and duties of judges, the Judicial Council, the Constitutional Court and the Public Prosecution Office, taking into account all the recommendations of the Venice Commission;

7.3. welcomes the election of the Supreme State Prosecutor in November 2014, in line with the constitutional amendments of July 2013.

8. As regards the situation of the media, the Assembly:

8.1. welcomes the setting up, in December 2013, of the Commission for Monitoring the Actions of the Competent Authorities in the Investigation of Cases of Threats and Violence Against Journalists, Assassinations of Journalists and Attacks on Media Property, which could make a useful and much-needed contribution to resolving the 12 cases of attacks and murders of journalists it has been dealing with. It also welcomes the fact that two of these cases have been solved thanks to enhanced co-operation between the State Prosecutor's Office, the police and the National Security Agency;

8.2. urges the Montenegrin authorities to ensure, notably through appropriate funding, that the self-regulation bodies, in particular the Media Council for Self-Regulation and the Self-Regulatory Council for Local Press and Periodicals, have the capacity to perform their professional tasks;

8.3. welcomes the decriminalisation of defamation in 2012;

8.4. is, however, concerned about repeated breaches of the law by one specific media outlet that undermines human dignity; it urges the Montenegrin authorities not to condone such abuse of the freedom of the media and to take all necessary steps to ensure full respect of the law and the enforcement of court decisions.

9. As regards the fight against corruption and organised crime, the Assembly:

9.1. believes that, despite the many policies launched to root out corruption, it remains widespread and should be further tackled;

9.2. takes note of the plan to establish an agency for the prevention of corruption as of 2016 and urges the authorities to provide all the necessary means to enable this agency to properly conduct its essential duties, which include control of the financing of political parties and election campaigns, the handling of whistle-blower complaints and whistle-blower protection, as well as the application of the law on lobbying;

9.3. highlights in this respect the role of public scrutiny to detect and denounce acts of corruption, and the need to ensure the protection of whistle-blowers and investigative journalists active in this field;

9.4. expects the draft law on the Special Prosecutor on Corruption and Organised Crime to provide all necessary means to the Special Prosecutor to handle high-level corruption cases and war crimes cases and conduct his/her work fully independently and proactively;

9.5. encourages Montenegro to further adopt and implement a number of laws that could improve the fight against corruption, including a law on confiscation of assets acquired from criminal activity;

9.6. stresses the active role that the parliament and its Anti-Corruption Committee can play in fighting corruption, and invites the Montenegrin Parliament to participate actively in the recently created Parliamentary Assembly anti-corruption platform in order to draw inspiration from good practices developed in other member States.

10. As regards the rights of minorities and the fight against discrimination, the Assembly:

10.1. welcomes the adoption of the amendments to the Anti-Discrimination Law in March 2014, and to the Law on the Protector of Human Rights and Freedoms (Ombudsman) of Montenegro in July 2014. The Assembly notes that the Ombudsman will now act as the mechanism for the prevention of torture under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the United Nations and the mechanism for protection against

discrimination under the Convention on the Elimination of All Forms of Racial Discrimination. It calls on the Montenegrin authorities to ensure that the Ombudsman has all the necessary financial and human resources to carry out his/her mandate in an effective and independent manner;

10.2. expects the speedy adoption of amendments to the Law on Minority Rights and Freedoms and the adoption of the Law on Religious Communities;

10.3. invites the Montenegrin authorities to further implement the strategy for improving the position of Roma and Egyptians in Montenegro and to continue to put great emphasis on education for Roma children;

10.4. congratulates the Montenegrin authorities on ensuring the peaceful organisation of three "Pride Parades" in 2013 and 2014 under police protection, with the support and the participation of high-level officials;

10.5. welcomes the comprehensive strategy and action plan launched by the authorities to combat discrimination, including that based on sexual orientation, and acknowledges the political will demonstrated by the authorities to make progress in this area;

10.6. notes, however, that discrimination against lesbian, gay, bisexual and transgender people (LGBTs) remains widespread in traditional Montenegrin society. It encourages the Montenegrin authorities to further conduct awareness-raising activities to change mentalities and train the law-enforcement agencies, in particular the prosecution office, the police and magistrates, to take all the necessary measures to prosecute and punish any discriminatory acts or behaviour and hate speech;

10.7. encourages the Montenegrin authorities to promote equality and inclusion for people with disabilities and to ensure that the fund for the professional rehabilitation and employment of people with disabilities be exclusively used for disabled persons, in line with the law.

11. As regards the situation of refugees and internally displaced persons, the Assembly:

11.1. reiterates its appreciation of the efforts made by the Montenegrin authorities to accommodate thousands of refugees and IDPs in the 1990s. It praises the commitment of the authorities, notably with the adoption of the 2011 Law on Foreigners, to either integrate refugees and IDPs by granting them the status of foreigner with permanent or temporary residence, or facilitate their voluntary return to their place of origin;

11.2. welcomes the fact that over 70% of the 16 000 IDPs and refugees still registered in Montenegro have applied for a legal status, and encourages the Montenegrin authorities, with the support of the Office of the United Nations High Commissioner for Refugees (UNHCR) and neighbouring authorities, to further facilitate the submission of applications and attainment of legal status. The Assembly remains confident that the Montenegrin authorities will find a legal solution for refugees and IDPs without legal status after the expiration of the 31 December 2014 deadline;

11.3. notes that the Montenegrin authorities remain committed to solving this issue through a number of social mechanisms. The Assembly is aware that the registration of some IDPs remains a challenge, but it is confident that the Montenegrin authorities, together with the neighbouring authorities, will find the means and legal solutions to solve the remaining pending cases;

11.4. pays special tribute to the work carried out by the UNHCR and the Red Cross and the invaluable legal and humanitarian assistance provided to the IDPs and refugees, in particular in the Konik camps. It welcomes the continuation of the Regional Housing Programme and the support of the Council of Europe Development Bank to promote durable housing solutions. It urges the Montenegrin authorities to remain committed to this remarkable regional initiative, which is a contribution to the post-Yugoslav conflict stabilisation and reconciliation process;

11.5. welcomes the ratification of the 1961 United Nations Convention for the Reduction of Statelessness by Montenegro in October 2013 and encourages the Montenegrin authorities to avoid any situation that could expose people living in Montenegro to statelessness.

12. The Assembly stresses the importance of the implementation of adopted legislation to fulfil the obligations towards the Council of Europe. It will therefore closely follow how the authorities in Montenegro enforce and implement the adopted legislation.

13. In the light of the progress made since the adoption of Resolution 1890 (2012) in the five key areas then identified by the Assembly, it decides to close the monitoring procedure and to engage in a post-monitoring dialogue. This dialogue could be concluded by the end of 2017 if Montenegro fulfils the following requirements, which the Assembly deems necessary for Montenegro to honour its obligations and commitments to the Council of Europe, namely:

13.1. as regards the independence of the judiciary:

13.1.1. fully implement the constitutional amendments related to the judiciary adopted in July 2013 and adopt the laws on the courts, the rights and duties of judges, the Judicial Council, the Constitutional Court and the State Prosecution Office, in full compliance with the relevant recommendations of the Venice Commission adopted in December 2014;

13.1.2. provide ongoing professional training to, and enhance the co-ordination between, the prosecution, the police and the judiciary, so as to ensure effective and professionally administered justice;

13.1.3. strengthen the position and the means of the newly elected Supreme State Prosecutor, who must be held accountable for bringing to court cases motivated by sound and reasoned indictments;

13.2. as regards trust in the electoral process:

13.2.1. implement the Law on the Funding of Political Parties and Electoral Campaigns, including regulations on the use of administrative resources during electoral campaigns;

13.2.2. finalise the establishment, and ensure the correct use of, electronic voter lists in future elections;

13.2.3. take measures to fully involve local authorities and local political leaders in building trust in the electoral process at local level;

13.2.4. adopt legislation that facilitates the recognition of Montenegrin citizenship according to Resolution 1989 (2014) on access to nationality and the effective implementation of the European Convention on Nationality;

13.2.5. address the remaining issues highlighted in the recommendations from the OSCE's Office for Democratic Institutions and Human Rights and the Venice Commission, such as reducing the constitutional two-year residency requirement to six months, the same as for local elections, before citizens can obtain the right to vote;

13.3. as regards the fight against corruption:

13.3.1. implement the Law on the Prevention of Corruption and the Law on the Prevention of Conflict of Interest; entrust to the future Agency for the Prevention of Corruption the implementation of efficient preventive policies and give it all necessary means to properly control the funding of political parties and electoral campaigns;

13.3.2. adopt the Law on the Special Prosecutor on Corruption and Organised Crime, provide this office with the necessary human and financial resources and ensure co-ordination with the other bodies active in the field of corruption, so as to duly and diligently prosecute cases of corruption as soon as possible;

13.3.3. establish a record of high-level cases, ensure the full implementation of the law and enable courts to reach final decisions;

13.3.4. further implement the recommendations made by the Group of States against Corruption (GRECO) related to the third and fourth evaluation rounds focusing on incrimination, funding of political parties, parliamentarians and the judiciary;

13.4. as regards the situation of the media:

13.4.1. refrain from condoning any abuse of freedom of the media and of expression, adopt legislation to punish attacks on human dignity in the media, and ensure that court decisions are duly enforced;

13.4.2. ensure that the Commission for Monitoring the Actions of the Competent Authorities in the Investigation of Cases of Threats and Violence Against Journalists, Assassinations of Journalists and Attacks on Media Property has full access to data and that all public bodies reply at the earliest opportunity to all information requests made by the commission in order to solve the 10 remaining cases of attacks, threats and murders of journalists that it is dealing with;

13.4.3. promote the effective work of the media's self-regulatory bodies and actively encourage ethical journalism and better professional standards.

14. Should the Montenegrin authorities fail to meet the above-mentioned commitments by the end of 2017, the Assembly expects its Monitoring Committee to consider whether Montenegro should be returned to the full monitoring procedure.