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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 2188 (2017)[1]

New threats to the rule of law in Council of Europe member States: selected examples

Parliamentary Assembly

1. The Parliamentary Assembly recalls its previous resolutions on upholding the rule of law in the member States of the Council of Europe, in particular Resolutions 1594 (2007) on the principle of the rule of law, Resolution 1685 (2009) on allegations of politically motivated abuses of the criminal justice system in Council of Europe member States, Resolution 2040 (2015) "Threats to the rule of law in Council of Europe member states: asserting the Parliamentary Assembly's authority", Resolution 1703 (2010) and Recommendation 1896 (2010) on judicial corruption, Resolution 1943 (2013) and Recommendation 2019 (2013) on corruption as a threat to the rule of law, and Resolution 2098 (2016) and Recommendation 2087 (2016) "Judicial corruption: urgent need to implement the Assembly's proposals".

2. The Assembly notes with concern serious problems related to the rule of law in many member States of the Council of Europe. In its Resolution 2040 (2015), it regretted that a number of its recommendations concerning the safeguarding and strengthening of the rule of law had still not been implemented by certain member States.

3. The Assembly is also deeply concerned about cases in certain member States in which national judiciaries are used to silence political opponents and to repress those who disagree with government policies.

4. Fully aware of the diversity of the legal systems and cultures of the member States, the Assembly underlines that respect for the rule of law is one of the core values of the Organisation and is closely interlinked with democracy and respect for human rights. Article 6 of the European Convention on Human Rights (ETS No. 5) enshrines one of its main components: the principle of independence and impartiality of the judiciary. Furthermore, the Council of Europe is the international organisation that developed legal and political documents in this field, through the work of its statutory bodies and specialised instances, such as the European Commission for Democracy through Law (Venice Commission), the Group of States against Corruption (GRECO), the European Commission for the Efficiency of Justice (CEPEJ), the Consultative Council of European Judges (CCJE) and the Consultative Council of European Prosecutors (CCPE).

5. The Assembly calls again on all Council of Europe member States to fully implement the principle of the rule of law, in line with the above-mentioned instruments of the Council of Europe, and to continue to co-operate with its relevant bodies and instances.

6. The Assembly has thoroughly examined the situation in five member States: Bulgaria, the Republic of Moldova, Poland, Romania and Turkey. Although the list of problems found in these States does not encompass all of those to be found in Council of Europe member States, the Assembly is concerned about some recent developments which put at risk the respect for the rule of law, and, in particular, the independence of the judiciary and the principle of the separation of powers. This is mainly due to tendencies to limit the independence of the judiciary though attempts to politicise the judicial councils and the courts (mainly in Bulgaria, Poland and Turkey), the massive revocation of judges and prosecutors (Turkey) or

1. *Assembly debate* on 11 October 2017 (33rd Sitting) (see Doc. 14405, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Bernd Fabritius). *Text adopted by the Assembly* on 11 October 2017 (33rd Sitting).

attempts to do so (Poland) and tendencies to limit the legislative power of the parliament (the Republic of Moldova, Romania and Turkey). Moreover, corruption, which is a major challenge to the rule of law, remains a widespread phenomenon in Bulgaria, the Republic of Moldova and Romania.

7. The Assembly therefore calls on the Bulgarian authorities to:

7.1. continue the reform of the Supreme Judicial Council, the judiciary and the prosecution service in line with Council of Europe recommendations;

7.2. strengthen efforts to combat corruption and, in particular, establish an anti-corruption agency.

8. The Assembly calls on the authorities of the Republic of Moldova to:

8.1. continue the reform of the Superior Council of Magistracy, the judiciary and the prosecution service in line with the recommendations of Council of Europe bodies;

8.2. considerably strengthen its efforts to combat corruption and, in particular, ensure full independence of the major institutions that are competent in this field;

8.3. refrain from taking measures which would undermine the separation of powers.

9. The Assembly calls on the Polish authorities to:

9.1. refrain from conducting any reform which would put at risk respect for the rule of law, and in particular the independence of the judiciary, and, in this context, to refrain from amending the Act on the National Council of the Judiciary in a way that would modify the procedure for appointing member judges of the council and would establish political control over the appointment process of member judges;

9.2. ensure that the justice reform which is now under way will be compliant with Council of Europe standards on the rule of law, democracy and human rights and, in this context, to refrain from implementing any legal provisions that would terminate the term of office of member judges of the Polish National Council of the Judiciary or of the First President of the Supreme Court;

9.3. fully co-operate with the Venice Commission and implement its recommendations, especially those with respect to the composition and the functioning of the Constitutional Court.

10. The Assembly asks the Venice Commission for an opinion on the compatibility with the Council of Europe's standards on the rule of law of the Polish Ordinary Courts Organisation Act of 12 July 2017, as well as of the two bills recently submitted to the Sejm by the President of the Republic, on amending the National Council of the Judiciary and the Supreme Court Act.

11. The Assembly calls on the Romanian authorities to:

11.1. facilitate an appropriate public debate on the constitutional criteria for lifting parliamentary immunity and adopt clear criteria for this, respecting the recommendations of the Venice Commission;

11.2. revise as soon as possible the country’s criminal legislation by implementing the decisions of the Constitutional Court that declared unconstitutional an important number of articles of the Criminal Code and the Criminal Procedure Code focusing on the fight against corruption and the abuse of authority, and by implementing the recommendations of the Venice Commission and GRECO;

11.3. ensure that the separation of powers is respected by the government and the judiciary as regards the competences of the parliament, refraining especially from the excessive use of emergency ordinances;

11.4. support, politically and financially, the remarkable work of the National Anti-Corruption Directorate, respecting the legal framework and the need for an effective fight against corruption and the abuse of authority;

11.5. ensure that all political parties respect the essential role and the authority of the Constitutional Court and the National Anti-Corruption Directorate.

12. Recalling its Resolution 2156 (2017) on the functioning of democratic institutions in Turkey, the Assembly reiterates its deepest concern about the scope of measures taken under the state of emergency and the amendments to the constitution adopted by the Grand National Assembly on 21 January 2017 and approved in the national referendum of 16 April 2017. It therefore calls on the Turkish authorities to:

12.1. lift the state of emergency as soon as possible;

12.2. reconsider the constitutional amendments approved in the referendum of 16 April 2017, in line with Opinion No. 875/2017 of the Venice Commission, so that there will again be a functioning separation of powers, especially with respect to the parliament and the Constitutional Court;

12.3. make sure that all emergency decree laws passed by the government under the state of emergency are approved by the parliament and that their constitutionality can be verified by the Constitutional Court;

12.4. put an immediate end to the collective dismissal of judges and prosecutors, as well as other civil servants, through decree laws and ensure that those who have already been dismissed will have their cases reviewed by a "tribunal" fulfilling the requirements of Article 6 of the European Convention on Human Rights.

13. The Assembly recalls its Resolution 2178 (2017) on the implementation of judgments of the European Court of Human Rights and calls on all member States of the Council of Europe to fully implement these judgments and give political priority to those which reveal a strong need to carry out comprehensive reforms of the judicial system. The Assembly is greatly disappointed by the fact that some member States are discussing and introducing legal instruments to avoid implementing rulings of the European Court of Human Rights.

14. The Assembly calls on all member States to promote a legal and political culture that is conducive to the implementation of the rule of law, in conformity with the underlying principles of all Council of Europe standards.