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Role and mission of the Parliamentary Assembly: main challenges for the future

Committee Opinion[1]
Committee on Rules of Procedure, Immunities and Institutional Affairs
Rapporteur: Mr Mart van de VEN, Netherlands, Alliance of Liberals and Democrats for Europe

A. Conclusions of the committee

1. The Committee on Rules of Procedure, Immunities and Institutional Affairs thanks the rapporteur of the Committee of Political Affairs and Democracy, Mr Tiny Kox (Netherlands, UEL), for his report and supports the proposed draft resolution and draft recommendation.

2. Throughout the years the Parliamentary Assembly has developed a more active political role and has become, in addition to its statutory duties, an indispensable actor in maintaining the Council of Europe's conventional system, upholding the European system of protection of human rights, observing elections and others. The increase in the Assembly's political relevance was progressive and was accompanied by regular reforms aiming to achieve coherence between the Assembly's political weight, on the one side, and its powers and its working methods, on the other. In particular, Recommendation 1763 (2006) on the institutional balance at the Council of Europe was set to provide a more active Assembly oversight into budgetary matters and a closer association with the Committee of Minister's decision-making. Resolution 1822 (2011) on reform of the Parliamentary Assembly and subsequent implementation resolutions extensively modified the Assembly's working methods by, in particular, reducing the number of committees and refocusing the committee's terms of reference.

3. The work of the Ad hoc Committee on the role and mission of the Parliamentary Assembly was an ever-bigger consultation exercise which involved national delegations, political groups and individual parliamentarians and resulted in a series of proposals, part of which have been converted into practical actions specified in the current draft resolution and draft recommendation. The committee welcomes, in particular, the definition of the role of the Assembly, the priority setting guidance for the Assembly's work programme, the proposals related to an enhanced co-operation with national parliaments as well as to concrete steps to achieving greater interaction with the European Union, the United Nations and the Organisation for Economic Co-operation and Development (OECD).

4. The committee welcomes the proposal to step up the political dialogue between the Assembly and the Committee of Ministers. It recalls on this occasion that the proposals aiming at strengthening the dialogue at regular intervals by the Assembly – for instance, in Resolution 1880 (2012) and Recommendation 1999 (2012) on the follow-up by the Committee of Ministers to the work of the Assembly" and Recommendation 2114 (2014) "Defending the *acquis* of the Council of Europe: preserving 65 years of successful intergovernmental co-operation" – already called for relations with the Council of Europe's major partners to be reassessed.

1. Reference to committee: Bureau decision, Reference 4341 of 13 October 2017. Reporting committee: Committee on Political Affairs and Democracy. See Doc. 14863. Opinion approved by the committee on 9 April 2019.

5. In previous documents, the Assembly referred to the following reasons, while making proposals for an enhanced institutional dialogue between the two statutory bodies: need for democratic control over the Organisation's activities, achieving democratic legitimacy and accountability within the Organisation and achieving effectiveness and complementarity in both bodies' work. The objective of developing joint action to address cases when a member State violates its statutory obligations or does not respect the fundamental principles and values upheld by the Council of Europe takes the interaction between the two organs to an even higher level.

6. This clarification is made necessary by the current confusion among the main Council of Europe actors actively involved in assessing member States' statutory commitments and obligations, namely the Committee of Ministers, the Parliamentary Assembly and the Secretary General of the Council of Europe, as to each other's role and responsibility. This lack of clarity was transformed into a real strategic disadvantage when in 2016, the Parliament of the Russian Federation decided not to submit its credentials – a situation which has occurred at the opening of each session since.

7. That is why the committee fully agrees that the new envisaged procedure could bring a new impetus to the current procedure framework and provide a better tailored way of achieving the common objective to appropriately and efficiently respond to a violation of the Statute of the Council of Europe (ETS No. 1) by a member State. Not only would the joint procedure bring more clarity as to the action by each actor involved and make its action coherent with each actor's competences and responsibilities, it would also make an eventual decision more legitimate in the eyes of the States concerned and create a leverage effect enabling parliamentarians to use the existing national mechanisms to call the governments for action.

8. The committee considers, however, that the wording of paragraph 15.3 of the draft resolution and of paragraph 5.4 of the draft recommendation could be further strengthened in order to provide more guarantees as to the effectiveness of a new joint procedure by setting a fixed time-frame. Moreover, all institutional actors involved have to act in good faith. The fact that the joint procedure foreseen would be set up in addition, without prejudice to each organ's existing separate powers and responsibilities provides the necessary safeguard if the procedure is circumvented or used in bad faith.

9. Needless to say, the Assembly has to be closely associated with the preparation of the joint procedure foreseen. It should be recalled that any modification of the Assembly's Rules of Procedures must be subject to prior consultation of the Rules Committee which, according to Rule 70 of the Rules of Procedure, is the only committee entitled to present to the Assembly reports on proposals regarding any modification to the Rules of Procedure.

10. The Committee on Rules of Procedure would therefore like to propose amendments aimed at better targeting the proposals contained in the draft resolution and the draft recommendation.

B. Proposed amendments

Amendment A (to the draft resolution)

In paragraph 11.2, after the words "legal instruments should be" add "prioritised and".

Explanatory note

In 2012-2013, the Secretary General of the Council of Europe carried out a comprehensive review of the Council of Europe conventions following which a series of measures was taken by the Committee of Ministers. Today the main objective would rather be to define on which conventions the Assembly could intensify its activities to compensate for the downsizing of intergovernmental co-operation due to budgetary restrictions.

Amendment B (to the draft resolution)

Replace paragraph 14 by the following paragraph:

> *"Concerned by the consistency and effectiveness of the decisions and activities of the Council of Europe and aware of the importance of local democracy and the central role that local and regional powers play in relations with citizens, the Assembly decides to set in motion a reflection on mechanisms for periodical consultations and permanent co-operation between the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe and their structures."*

Explanatory note

Article 2.2 of Statutory Resolution CM/Res(2015)9 relating to the Congress of Local and Regional Authorities of the Council of Europe sets up a sound basis for co-operation between the Congress and the Assembly. Departing from the current wording is necessary to examine, prior to making a concrete proposal, if and how the exiting co-operation patterns have to be modified.

Amendment C (to the draft resolution)

In paragraph 15.3, replace the words "within a fixed time-frame" by the following words:

> *"within three months which could be extended with another period of three months, up to six months in total, if specific circumstances require granting a State additional time to implement recommendations aimed at addressing the violation at stake;"*

Explanatory note

It would be preferable to identify the time-frame to create additional guarantees that all parties are genuinely involved in addressing the violation concerned. The deadline of three months is the usual time-frame in relations between the Assembly and the Committee of Ministers when it comes, for instance, to giving replies to Assembly questions or recommendations or, for the Assembly, to deliver its opinion on a new draft Council of Europe treaty.

Amendment D (to the draft recommendation)

After paragraph 5.3, add the following paragraph:

> *"referring to its Recommendation 1999 (2012) on the follow-up by the Committee of Ministers to the work of the Parliamentary Assembly, reiterates the call it made to the chairs of the Committee of Ministers rapporteur groups and working parties to maintain regular working relations with the Assembly's committee chairs, rapporteurs and general rapporteurs operating in the relevant areas. A steady practice of having an annual meeting between a general rapporteur and the relevant rapporteur group could be introduced".*

Explanatory note

Ministers' Deputies are based in Strasbourg throughout the year and regularly meet within different rapporteurs' groups and working parties. The representatives of the Assembly travel to Strasbourg a limited number of times per year. Having an exchange scheduled in advance would enable both parties to establish sustainable working relations and to set up an agenda in advance. For instance, a regular exchange between the Parliamentary Assembly General Rapporteur on the budget and intergovernmental programme and the Committee of Ministers' Rapporteur Group on Programme, Budget et Administration (GR-PBA) would help to consider alternative ways of handling the current budgetary crisis.

Amendment E (to the draft recommendation)

In paragraph 5.4, replace the words "within a fixed time-frame" by the following words:

> *"within three months which could be extended with another period of three months, up to six months in total, if specific circumstances require granting a State additional time to implement recommendations aimed at addressing the violation at stake;"*

Explanatory note

It would be preferable to identify the time-frame to create additional guarantees that all parties are genuinely involved in addressing the violation concerned. The deadline of three months is the usual time-frame in relations between the Assembly and the Committee of Ministers when it comes, for instance, to giving replies to Assembly questions or recommendations or, for the Assembly, to deliver its opinion on a new draft Council of Europe treaty.

Amendment F (to the draft recommendation)

After paragraph 5.4, add the following new paragraph:

> *"With respect to member States' contributions, asks the Committee of Ministers to consult the Assembly by means of an ad hoc urgent procedure if and when a member State has not made its due contribution to the budget for a period in excess of six months;"*

Explanatory note

According to Article 39 of the Statute, member States' contributions to the Organisation's budget must be paid to the Secretary General "not later than six months" after notification of the amount. Discussing the non-payment issue at an earlier stage would create an early-warning system and develop the synergy which is the proclaimed objective of the joint procedure foreseen.

C. Explanatory memorandum by Mr Mart van de Ven, rapporteur for opinion

1. I can only thank Mr Kox for the thorough work he has done to convert into concrete proposals and outlined steps the numerous conclusions made by the Ad hoc Committee on the role and mission of the Parliamentary Assembly.

2. In particular, I would like to welcome the report's attempts to frame the Assembly's missions through focusing its work programme, enhancing relations with both national parliaments and partners' international institutions. Also, the proposed measures aimed at strengthening the Assembly's relations with the Committee of Ministers merit special attention.

3. In my capacity as rapporteur of the Committee on Rules of Procedure, Immunities and Institutional Affairs, guardian of the Assembly's procedural institutional memory, I consider it my role to deepen the historical retrospective related to topics addressed in Mr Kox's report.

4. The Assembly reassesses its role and mission within the Council of Europe at regular intervals. In 2006, after the 3rd Summit of Heads of State and Government of the Council of Europe, the Assembly carried out a thorough analysis into whether its power and its place within the Organisation was in adequate relation with its actual weight in the fast-developing Organisation's structure. Recommendation 1763 (2006) on the institutional balance at the Council of Europe made far-reaching and ambitious proposals to review the Assembly's competences. In particular, the Assembly suggested it had to be involved to an extent in the Committee of Ministers decision-making process; be granted the right to bring a case before the European Court of Human Rights; be consulted in advance on numerous budgetary matters; be in position to require that the Committee of Ministers follow up on the Assembly's statutory opinions; have Assembly representatives participate in the work of the Committee of Ministers' groups; hold co-ordination meetings with the main international partners and many others. Also, the resolution welcomed the fact that the verification of the credential procedure enabled the Assembly to exert considerable political influence and suggested, in addition, that the Assembly be consulted before a member State is suspended from its right of representation under Articles 8 and 9 of the Statute.

5. Some of the 2006 proposals were implemented fully or partially, others not at all. Some were reiterated in 2010 when inter-institutional relations received a fresh political boost under the Slovenian chairmanship of the Committee of Ministers, and later the Swiss chairmanship. The document entitled "Enhanced dialogue between the Parliamentary Assembly and the Committee of Ministers", adopted in September 2009, was the result of a joint agreement on proposals to intensify dialogue and co-operation between the two bodies.

6. To implement the 2010 inter-institutional agreement, the Assembly adopted Resolution 1822 (2011) on the reform of the Parliamentary Assembly, calling for the enhancement of inter-institutional dialogue. In 2017, the Ad hoc Committee on the role and mission of the Parliamentary Assembly was again commissioned to reassess the Assembly's procedures and working methods in light of the Assembly's ambition, competences and new challenges. The conclusion of the ad hoc committee was followed up by the two committees – the Committee on Political Affairs and Democracy and the Committee on Rules of Procedure, Immunities and Institutional Affairs – charged with converting the proposals into practical action.

7. In addition to concrete steps related to enhanced co-operation with national parliaments and international partner organisations, as well as guidance as how to set up the priorities of the Assembly's work programme, I would like to particularly mention the proposal to set up a joint procedure in reaction to a violation by a member State of its statutory obligations and/or of the values of the Council of Europe. I more

than welcome the establishing of this procedure as it would dissipate the confusion around the extent of responsibility borne by each of the actors concerned – the Committee of Ministers, the Parliamentary Assembly and the Secretary General of the Council of Europe – in order to work towards a cessation of the violation.

8. Even though the procedure is being described in very general terms I do not think that more details have to be given at this stage. First the Assembly has to commit itself to having such a procedure and then to receiving a similar commitment from the Committee of Ministers and the Secretary General before it starts elaborating details. However, a guarantee should be given that the Assembly will be the co-author of the procedure. On the other hand, in order to avoid speculation and to make sure that all of the institutional actors are genuinely involved in addressing the violation concerned it seems nevertheless necessary to provide already at this stage the time-frame for the procedure foreseen.