Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 2337 (2020)[1]

Democracies facing the Covid-19 pandemic

Parliamentary Assembly

1. The Covid-19 pandemic is the greatest public health crisis the world has faced in recent history. It has already claimed more than 1 million lives across all continents and has had unprecedented multifaceted, wide-ranging and possibly lasting consequences for the social, economic and political life of our societies. It has also been a crash test for governance systems and institutions at national and international levels.

2. In view of the exceptional nature of this public health crisis, governments in Europe enacted, under time constraints, a variety of immediate and extraordinary measures aimed at stopping, delaying or limiting the spread of the virus. These measures, whether or not introduced under a state of emergency or other special situation status, have had a significant impact on people's daily, professional and social lives, on their enjoyment of fundamental rights and on the functioning of, and balance between, democratic institutions and processes.

3. The Parliamentary Assembly, while supporting States and public authorities in giving priority to saving lives and protecting populations, stresses that democracy, human rights and the rule of law cannot be allowed to become "collateral damage" of the pandemic. No public health emergency may be used as a pretext to destroy democratic *acquis*.

4. The Assembly notes that emergency situations, especially when a state of emergency is formally declared, generally have a detrimental effect on the system of checks and balances. It warns against the risk of abuse of emergency powers by governments to, *inter alia*, silence the opposition and restrict human rights. In this context, the Assembly stresses that all emergency measures introduced in response to the pandemic must be limited in duration and not exceed the duration of the emergency situation warranting them.

5. The Assembly underlines that, as cornerstone institutions of democracy, parliaments must continue to play their triple role in terms of representation, legislation and oversight, the latter being even more essential in times of emergency, when the executive acquires additional powers. The continuity of parliament and the media coverage of its work during a public health emergency are also essential insofar as they allow all major political forces to be represented and to participate in democratic decision making, thus also ensuring the legitimacy of government. Rising above party divisions, politicians must act with the utmost responsibility to minimise the harm to the population, economy, social structures and public institutions; address the causes of the crisis; and work in concert on a post-pandemic recovery plan which also prepares for future crises.

6. The Assembly is aware that assessment of the compliance of emergency measures with democratic standards cannot be undertaken without taking account of a specific country's constitutional framework and legal order, as well as its democratic practice. While no internal context can justify departure from the democratic process and principles, the specific national context should be taken into account when evaluating a country's conformity with its commitments and obligations.

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1. *Text adopted by the Standing Committee*, acting on behalf of the Assembly, on 13 October 2020 (see Doc. 15157, report of the Committee on Political Affairs and Democracy, rapporteur: Mr Ian Liddell-Grainger, and Doc. 15164, opinion of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), rapporteur: Ms Yuliya Lovochkina).
See also Recommendation 2179 (2020).

7. Citizens' confidence in public authorities and democratic institutions and processes is essential in times of crisis. Curtailing public debate and restricting the functioning of key elements of the democratic system may not only undermine democracy as such but also damage people's adherence to, and the effectiveness of, any emergency policies and actions taken to address the primary causes of the crisis and protect the population.

8. In view of these elements and in line with the principles applicable to states of emergency drafted by the European Commission for Democracy through Law (Venice Commission), the Assembly calls on Council of Europe member and observer States, as well as States whose parliaments enjoy observer or partner for democracy status, to respect the system of democratic checks and balances and, in particular, to apply the following principles when facing a public health emergency:

8.1. limit, both in time and in scope, the declaration of the state of emergency and/or the application of emergency legislation and executive decrees, which must be adopted within the constitutional framework and comply with international standards, in particular those set by the European Convention on Human Rights (ETS No. 5) where appropriate;

8.2. ensure that parliaments have the power to:

8.2.1. exercise regular control at all stages of the procedure related to a public health emergency (namely its declaration, prolongation or termination);

8.2.2. review, and where necessary repeal, any emergency decrees where the executive has used powers normally belonging to the legislator;

8.2.3. conduct inquiries and investigations on the execution of emergency powers, even after the public health emergency has come to an end;

8.3. refrain from permanent changes to legislation, in particular concerning the electoral system, as well as constitutional amendments, organic laws or other long-term and fundamental reforms and referendums, especially constitutional referendums, until the end of the emergency;

8.4. enable the opposition to participate effectively in the approval or any extension of the state of emergency as well as in *ex-post* scrutiny of emergency decrees, in particular by introducing a requirement for qualified majority voting when prolonging the state of emergency;

8.5. respect the principle of loyal co-operation and mutual respect between national, regional and local authorities;

8.6. ensure, as regularly as possible, the availability of easily understandable, full and accurate information to citizens, by providing the media with access to State institutions, thus guaranteeing transparency and encouraging public debate.

9. The Assembly welcomes the fact that, since the outbreak of the Covid-19 pandemic, most parliaments of Council of Europe member States have continued to exercise, without interruption, their statutory duties relating to representing the interests of citizens, considering new legislation to alleviate the effects of the pandemic and overseeing the emergency measures introduced by governments. Parliaments have responded with flexibility and creativity by adapting their work to the extraordinary circumstances resulting from the pandemic and implementing, to various degrees, a combination of measures such as reducing the number of plenary sittings and limiting the number of members who can attend them; limiting work in plenary to a strict minimum (namely consideration of emergency legislation related to the pandemic and overseeing the emergency measures introduced by the government); increasing the use of modern communication technologies and platforms, and allowing online participation in committee meetings, plenary sittings and even in voting; and setting up new ad hoc structures for scrutiny and accountability regarding actions taken by the government in response to the pandemic.

10. The Assembly is aware that finding ad hoc solutions to continue carrying out parliamentary work has not been an easy task and may have raised issues of procedure, competence, authority, priorities, relations between majority and opposition parties and within party groups, as well as with government and citizens. It therefore calls upon the parliaments of Council of Europe member and observer States and parliaments which enjoy observer or partner for democracy status to take stock of their experience gained during the pandemic and use it to prepare for any future crises by:

10.1. introducing, preferably on the basis of a cross-party agreement, necessary changes to their internal structures, rules and procedures with a view to allowing an uninterrupted exercise of parliamentary duties in emergency situations;

10.2. carefully assessing the management of pandemics by governments, namely the execution of emergency powers, implementation of an exit strategy and preparedness for possible new waves of pandemics;

10.3. reviewing and, where necessary, revising legislation on emergency situations in a way that would ensure maximum efficiency while being fully compliant with fundamental principles of democracy, respect for human rights and the rule of law;

10.4. considering granting the opposition the right to chair relevant inquiry committees;

10.5. sharing experience and good practice of pandemic management with other parliaments using, in particular, multilateral parliamentary assemblies as platforms, and co-operating with international partners.

11. The Assembly notes that, since the outbreak of the Covid-19 pandemic, elections at various levels have been postponed in a number of Council of Europe member States, while in others their organisation has given rise to controversies either about the principle of holding elections during the pandemic or the specific modalities involved. The Assembly calls upon member States to apply the following principles, as devised by the Venice Commission, when deciding whether to hold or postpone elections during a public health emergency:

11.1. ensure that postponement is foreseen by law, that it is necessary, proportionate and limited in time;

11.2. involve all political parties, candidates and other stakeholders, including health authorities and experts, in the discussion concerning a possible postponement; a qualified majority in the parliament may be required, especially for longer postponements; judicial control by an independent and impartial national court should be possible;

11.3. ensure that the conditions for universal, equal, free, secret and direct suffrage are met, including by guaranteeing an open and fair electoral campaign and a meaningful public debate;

11.4. assess how far it is possible to compensate for limitations on door-to-door campaigning or public rallies by means of public or private media or the use of the internet, including social media; special attention should be paid to the authorities' duty of neutrality, as well as to the obligation of the broadcast media to cover election campaigns in a fair, balanced and impartial manner in all of their programmes;

11.5. consider using different voting modalities such as postal voting, mobile ballot boxes, voting by internet or proxy voting, if provided for by law and if the conditions for universal, free, secret and direct suffrage are met.

12. The Assembly notes that the organisation of elections during a public health emergency raises legal and practical challenges for election observation, thus increasing the risk of possible fraud and manipulation of election results. In view of the importance of its election observation role, the Assembly resolves to consider modalities which would allow it to carry out election observation missions during such an emergency situation, in co-ordination with its institutional partners, in the framework of international election observation missions.

13. The observation of elections should continue to be an important tool for the assessment of the electoral process. Given the possible limitations on the presence of international observers, as well as the increased use of alternative voting mechanisms to replace voting in person, as a result of the pandemic, the Assembly should develop alternative modalities for the assessment of elections. The Assembly underscores that the assessment of the electoral process goes well beyond the physical observation on election day(s).

14. The Assembly, in line with its Resolution 2329 (2020) and Recommendation 2174 (2020) on lessons for the future from an effective and rights-based response to the Covid-19 pandemic, stresses the urgent need for an evidence-based, internationally co-ordinated and human rights compliant approach to public health crises. In the face of a pandemic – and the inevitable next one – that threatens humanity, the current international context must shift from rivalry among powers to an opportunity for multilateral co-operation that goes beyond partisan divisions.

15. Genuine and constructive multilateralism is essential for anticipating and addressing real threats and for restoring confidence in intergovernmental institutions, as well as for tackling the far-reaching health, economic, political, infrastructural and social implications of the current crisis. In this context, multilateral organisations, such as the World Health Organization (WHO), are central to finding common solutions to common problems and require support from all member States, including proper funding in order to act swiftly and issue recommendations based on evidence.

16. In light of the above, the Assembly calls upon member and observer States as well as States whose parliaments enjoy observer or partner for democracy status to:

16.1. seek and maintain a united global focus on pandemic preparedness and response, and to commit to building trust and a shared sense of purpose among all States;

16.2. positively respond to the United Nations Security Council's call for a general and immediate cessation of hostilities in all situations and for the urgent need for unity and mutual support in the battle against a common enemy;

16.3. carefully scrutinise the way their national healthcare system coped or failed to cope with the pandemic, with a view to enhancing preparedness, resilience and responsiveness in the future;

16.4. share good practice in handling the pandemic;

16.5. raise awareness of disinformation and misinformation about the pandemic and ensure that individuals stay alert and abstain from spreading false or misleading content;

16.6. support the independent review of WHO's co-ordination of the global response to the Covid-19 pandemic, ensure adequate funding for the organisation to make it independent of voluntary contributions and provide it with appropriate tools to effectively monitor the health situation in all member States;

16.7. strengthen the International Health Regulations (IHR) to improve preparedness and create a more efficient early alert and response system;

16.8. ensure that diagnostic tools, treatments and vaccines are accessible and affordable for everyone, in all countries, starting with those persons at highest risk, and adopt a common European approach, so that each of Europe's 830 million citizens can benefit from equal protection from Covid-19.

17. The Assembly welcomes the fact that, in the face of the challenges raised by the pandemic, the Council of Europe bodies and institutions – in particular, the Parliamentary Assembly, the Committee of Ministers and the Venice Commission – as well as the Secretary General and the Commissioner for Human Rights have provided timely and adequate support to member States by sharing with their governments and parliaments tools, standards and guidelines aimed at ensuring compliance with the principles of democracy, human rights and the rule of law in their response to the pandemic.

18. Therefore, the Assembly resolves to develop further its co-operation with national parliaments by encouraging national delegations to share good practices and organising peer reviews on various aspects of the measures taken to address the consequences and implications of the pandemic, *inter alia*, through the organisation of parliamentary hearings with the participation of Council of Europe experts, with a view to developing viable and sustainable solutions and approaches for addressing similar crisis situations in the future.