

Resolution 2374 (2021)¹

Post-monitoring dialogue with Montenegro

Parliamentary Assembly

1. Montenegro joined the Council of Europe in 2007. It was subject to the full monitoring procedure until 2015. The Parliamentary Assembly refers to its [Resolution 2030 \(2015\)](#) “The honouring of obligations and commitments by Montenegro”, in which it decided to close the monitoring procedure and to open a post-monitoring dialogue on four key issues, namely the independence of the judiciary, the trust in the electoral process, the fight against corruption and the situation of the media. The Assembly also gave itself mandate to follow up on developments in the fields of the rights of minorities, the fight against discrimination and the situation of refugees and internally displaced persons.
2. The Assembly commends the Montenegrin authorities for demonstrating sustained political will and commitment to fully respecting their obligations, as confirmed by their continued co-operation with Council of Europe monitoring mechanisms, legal experts and the European Commission for Democracy through Law (Venice Commission). The Assembly also welcomes the level of their involvement in the post-monitoring dialogue.
3. The Assembly reiterates that Montenegro continues to play a positive role in the stabilisation of the region and is a reliable and constructive partner that is involved in several regional and multilateral initiatives.
4. In light of the developments that have occurred since 2015, the Assembly has assessed progress made in the four key areas and other outstanding fields of concern identified in 2015.
5. As regards the independence of the judiciary, the Assembly:
 - 5.1. welcomes the implementation by the Montenegrin authorities of constitutional amendments related to the judiciary, which were adopted in July 2013, and the setting up of a comprehensive legal framework regulating the courts, the State prosecutors’ offices, the Judicial Council and judges, the Prosecutorial Council, and the Constitutional Court; acknowledges the important scale of the changes that this framework introduced in the judiciary and that they were mostly implemented in line with the recommendations of the Venice Commission;
 - 5.2. commends the Montenegrin authorities for the genuine improvement in the training for judicial professions, notably thanks to the Centre for Training in Judiciary and State Prosecution, which should have long-lasting effects on the professionalism of new magistrates, and thereby on the efficiency of the justice system;
 - 5.3. deeply regrets the re-appointments by the Judicial Council in 2019 and 2020 of several presidents of basic courts and the President of the Supreme Court, who had already served two terms or more. The limitation of mandates to two terms, which has been enshrined in the constitution since 2013 and in the law, and which was aimed at preventing the over-concentration of powers within the judiciary, has been violated in its spirit, if not in its letter;

1. *Assembly debate* on 21 April 2021 (13th sitting) (see [Doc. 15132](#), report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) and [Doc. 15132 addendum](#), co-rapporteurs: Mr Damien Cottier and Mr Emanuelis Zingeris). *Text adopted by the Assembly* on 21 April 2021 (13th sitting).



5.4. notes that, after wrong signals were sent in 2018 with regard to the transparency of judges' selection and appointments, the Judicial Council seemed to have improved its procedure of selection in 2020;

5.5. deeply regrets, in accordance with the European Commission and the Group of States against Corruption (GRECO), that no progress has been made in reviewing the disciplinary framework for judges and prosecutors;

5.6. commends the decision of the Montenegrin authorities to request the opinion of the Venice Commission on the draft laws amending the Law on the State Prosecutor's Office and the Law on the Prosecutor's Office for Organised Crime and Corruption and to suspend their adoption until after the opinion is issued; calls on the authorities to fully implement the recommendations formulated by the Venice Commission and, in particular, not to ignore those related to the security of tenure and the risk of politicisation of lay members of the Prosecutorial Council.

6. As regards trust in the electoral process, the Assembly:

6.1. is concerned that, apart from the voter register, no progress has been made in the implementation of the five requirements set by [Resolution 2030 \(2015\)](#);

6.2. strongly emphasises that the parliament is the arena where political competition should take place, that boycotting its work does not comply with the European way of participating in this competition and that reforming the legal framework on electoral campaigns cannot take place in an inclusive manner if major parties from the opposition do not take part in it;

6.3. recalls that every political group in the parliament shares the responsibility for the creation of an atmosphere and a culture of parliamentary democracy;

6.4. commends the political maturity demonstrated by both the new majority and the new opposition in the immediate aftermath of the elections held in August 2020, which allowed for a peaceful shift of power, and urges them to continue with this positive trend; at the same time, the Assembly regrets that the electoral legal framework remained largely unchanged during the last general elections, despite the repeated recommendations of the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR) to address its flaws and limitations, and that practices contrary to OSCE/ODIHR principles were once again observed during these elections, notably in the fields of abuse of State resources, independent media coverage and campaign financing.

7. As regards the fight against corruption, the Assembly:

7.1. takes note of the implementation of the Law on Prevention of Corruption and the Law on Prevention of Conflict of Interest, as well as of preventive policies set up by the Agency for the Prevention of Corruption;

7.2. regrets that the Law on the Financing of Political Entities and Election Campaigns had limited effects on the prevention of and punishment for illegal donations, as stated by the ad hoc committees of the Bureau of the Assembly for the observation of the parliamentary elections in 2016 and the presidential election in 2018;

7.3. welcomes the passing of the Law on the Special Public Prosecutor's Office, which office is tasked with fighting corruption and organised crime, the continuous increase of its resources, as well as those of the Special Police Unit, and the recent results obtained against Montenegrin crime groups thanks to the increased participation in international police co-operation;

7.4. takes note of the "initial track record", as stated by the European Commission, of investigations, prosecution and final convictions in corruption cases;

7.5. congratulates the Montenegrin authorities for having satisfactorily implemented 12 out of 14 recommendations made by GRECO in the Third Evaluation Round on transparency of party funding, and 8 out of 11 in the Fourth Evaluation Round on corruption prevention in respect of members of parliament, judges and prosecutors, concluded in December 2019;

7.6. is, however, concerned with the assessment by the European Commission that the criminal justice system appears generally lenient, with sentences, fines and asset recoveries disproportionately low compared with the gravity of the crimes.

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

8.1. welcomes the visible efforts of both the prosecutors and the judges to address the attacks against journalists; welcomes moreover the efforts by the police forces to arrest the perpetrators and suspects of such attacks, as well as the government's public support of the commission for monitoring actions of the competent authorities in the investigation of cases of threats and violence against journalists, assassinations of journalists and attacks on media property, and the recent and adequate involvement of the parliament in debating the reports of this commission;

8.2. remains very concerned, however, by the threats and violence against journalists, recently demonstrated in several cases;

8.3. strongly welcomes the ongoing efforts by the Montenegrin authorities to revise the legal framework on the media in close co-operation with the Council of Europe;

8.4. regrets the dismissals in 2017 and 2018 of members of the councils of the national public broadcaster (Radio Televizija Crne Gore, RTCG) and the Agency for Electronic Media by the parliament following investigations led by the Agency for the Prevention of Corruption, as they could be seen as political interference;

8.5. is particularly worried by the tendency of public entities to restrict access to public documents, which contradicts the acute need for transparency in Montenegro and access to information for the media; the Assembly fully recognises that freedom of expression needs to be regulated but it stresses that this regulation must be in line with European standards and that the concept of "abuse of the right to information" is not appropriate.

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

9.1. welcomes the implementation of 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 the protection against discrimination under the Convention on the Elimination of All Forms of Racial Discrimination of the United Nations. It also notes that, for the latter, the competences of the Protector of Human Rights and Freedoms (ombudsman) were clarified in 2017;

9.2. welcomes the adoption in 2017 of the Law on Minority Rights and Freedoms, which complied with four out of five recommendations of the Venice Commission;

9.3. expresses its satisfaction at the very positive opinion on Montenegro from the Advisory Committee on the Framework Convention for the Protection of National Minorities of the Council of Europe in March 2019 and calls upon the Montenegrin authorities to undertake the urgent efforts benefitting Roma and Egyptians mentioned in the opinion;

9.4. commends Montenegro for setting a good example for the whole region when it comes to the level of protection provided to lesbian, gay, bisexual, trans and intersex (LGBTI) people, and welcomes the adoption of the Law on Life Partnership of Same-Sex Partners by the parliament in July 2020.

10. As regards the situation of refugees and internally displaced persons, the Assembly takes note of the positive opinion of the Advisory Committee on the progress made by Montenegro in resolving the issue of displaced persons, mostly Roma and Egyptians who arrived in Montenegro in the late 1990s, and almost completing the regularisation of their legal status.

11. As regards the Law on Freedom of Religion or Belief and the Legal Status of Religious Communities (Law on Freedom of Religion) passed in December 2019, the Assembly:

11.1. emphasises that the regulation of religious communities is a matter of national sovereignty that should be exercised without any foreign interference;

11.2. regrets that the part of the law related to "property rights" created a very divisive climate, while most of the provisions constitute genuine progress compared to the previous legal framework, as stated by the Venice Commission in its opinion on the draft law;

11.3. is fully aware of the understandable concerns of members of the Serbian Orthodox Church, given the large extent of possible transfers of properties from the church to the Montenegrin State, on the ground that they are "cultural heritage", which could possibly mean most religious properties built before 1918;

- 11.4. welcomes the adoption of amendments to the law on 28 December 2020, as a solution that both respects democracy and the rule of law, and focuses on the controversial provisions, while retaining those that constitute genuine progress; at the same time, the Assembly regrets that the consultation of all religious communities on these amendments was not fully inclusive.
12. In this context, the Assembly resolves to continue a post-monitoring dialogue with Montenegro in the following areas.
13. As regards the independence of the judiciary, the Assembly will closely monitor:
- 13.1. the implementation of recommendation v of GRECO's Fourth Evaluation Round, and in particular the spirit of the constitutional and legislative changes regarding the two-term limitation for presidents of courts; this could be achieved by a change in the legal framework, or a change of practice initiated by the judiciary itself;
- 13.2. whether the transparency in the selection of magistrates and in their appointments continues to be applied;
- 13.3. whether the enforcement of the code of ethics and disciplinary accountability for magistrates is improving.
14. As regards trust in the electoral process, the Assembly will monitor progress in re-starting, just after the elections, a comprehensive and inclusive process on reforming the electoral framework, in line with the recommendations of OSCE/ODIHR and the Venice Commission, and in line with the recommendations of the Congress of Local and Regional Authorities of the Council of Europe, especially when it comes to holding local elections in a single day and at least six months apart from parliamentary elections.
15. As regards the fight against corruption, the Assembly will monitor progress in:
- 15.1. addressing the loopholes in the criminal justice system that make it appear as generally lenient;
- 15.2. addressing the risks pointed out both by the Venice Commission and the European Commission of *de facto* control of the executive power in investigations led by the Special Police Unit under the supervision of the Special Public Prosecutor's Office, given the hierarchical link between the Special Police Unit members, including its head, and the Police Directorate;
- 15.3. building on the initial track records in the fight against corruption and organised crime.
16. As regards the situation of the media, the Assembly will closely monitor progress in:
- 16.1. changing irreversibly the climate of impunity concerning attacks against journalists, by continuing to address them directly, but also by enforcing transparency in cases where the competent authorities fail to investigate properly and in due time;
- 16.2. refraining from restricting access to information;
- 16.3. revising the mechanisms that are currently addressing political interference in the media, including the composition of the RTCG and the Agency for Electronic Media.
17. As regards the Law on Freedom of Religion, the Assembly will monitor whether the implementation of the law will be in line with European standards, as well as the recommendations of the Venice Commission.
18. As regards the situation of minorities, the Assembly will closely monitor the investigations into allegations of hate crimes and ethnically and religiously motivated attacks that have taken place since the announcement of the August 2020 election results.
19. The Assembly resolves to assess the progress made in the aforementioned areas after the general election held in 2020.