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## The state of democracy in Europe and the progress of the Assembly's monitoring procedure

### Report<sup>1</sup>

Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

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### Summary

Throughout the reporting period (June 2009 – June 2010), the Monitoring Committee has produced assessments of functioning of democratic institutions in Albania, Armenia, Bosnia and Herzegovina, Monaco, Moldova, Montenegro, Serbia and, in the framework of the post-monitoring dialogue, Bulgaria. It has also produced a report on “the war between Georgia and Russia: one year after” and it has been seized with reconsideration of previously ratified credentials of the Russian delegation on substantial grounds.

The objective of this report is to provide a meaningful contribution to the Assembly's 2010 debate on the state of democracy in Europe. It is not limited to simply presenting the activities of the Monitoring Committee during the reporting period, but it enters into the merits and is focused on the efficiency of parliaments and the role of political parties in Council of Europe member States covered by the monitoring procedure or engaged in post-monitoring dialogue.

Moreover, the second cycle of periodic reports on member states which are not subject to a monitoring procedure or involved in a post-monitoring dialogue is continued. The periodic reports on the second group of 11 member states have been prepared and are set out in the addendum to this report: Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta and the Netherlands.

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## A. Draft resolution<sup>2</sup>

1. The Parliamentary Assembly acknowledges the work of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) in assisting ten countries currently under monitoring procedure (Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Moldova, Montenegro, Russian Federation, Serbia and Ukraine) and four countries engaged in the post-monitoring dialogue (Bulgaria, Monaco, the “former Yugoslav Republic of Macedonia” and Turkey) in the process of consolidating their democratic institutions with a view to ensuring full respect for human rights, democracy and the rule of law.
2. During the reporting period (June 2009 – June 2010), the Monitoring Committee has produced assessments of the functioning of democratic institutions in Albania, Armenia, Bosnia and Herzegovina, Monaco, Moldova, Montenegro, Serbia and, in the framework of the post-monitoring dialogue, Bulgaria. Furthermore, the Committee has produced a report on “the war between Georgia and Russia: one year after”. It has also been seized with reconsideration of previously ratified credentials of the Russian delegation on substantial grounds.
3. The Assembly is satisfied with the rapid and efficient way in which the Committee has reacted to the developments of concern in the countries covered by its mandate, and in particular to the post-electoral crises in Albania ([Resolution 1709 \(2010\)](#)), Armenia ([Resolution 1677 \(2009\)](#)) and Moldova ([Resolution 1666 \(2009\)](#) and [1692 \(2009\)](#)), the functioning of democratic institutions in Bosnia and Herzegovina ([Resolution 1701 \(2010\)](#)) and in the context of the urgent need for constitutional changes in Bosnia and Herzegovina ([Resolution 1725 \(2010\)](#)).
4. As a result of the Committee’s co-operation with the Monegasque authorities over the past five years, Monaco has clearly marked progress in fulfilling the undertakings made upon its accession to the Council of Europe and demonstrated its determination and ability to honour its statutory obligations. Consequently, taking into account the Committee’s assessment of the progress made, the Assembly decided, in [Resolution 1690 \(2009\)](#), to close the monitoring procedure in respect of this country and invited the Committee to carry out a post-monitoring dialogue with the Monegasque authorities.
5. Moreover, the Committee has been engaged in a more general reflection on a number of procedural questions with regard to its monitoring activity, and presented to the Assembly some proposals on the term of office of co-rapporteurs of the Monitoring Committee. These were adopted and integrated into the Assembly’s Rules of Procedure, as well as the Committee’s terms of reference.
6. The Assembly notes that the Committee’s contribution to the 2010 debate on the state of democracy in Europe is focused on the efficiency of parliaments and the role of political parties in Council of Europe member states covered by the monitoring procedure or engaged in post-monitoring dialogue.
7. Representative democracy is a core principle of a democratic system. Free and fair elections based on political pluralism are essential for the proper functioning of the democratic process. In this context, although substantial progress has been made overall with regard to electoral reform, the Assembly is concerned that serious shortcomings have been noted in the electoral process in some Council of Europe member states.
8. In Albania, although the parliamentary elections of 2009 were considered globally free and fair, the politicisation of the electoral process and infringements found during the campaign, some irregularities during the vote, as well as a parliamentary boycott and hungerstrikes of the opposition triggered off the current serious political crisis. In Armenia, the lack of public confidence in the electoral process during the 2008 presidential election, aggravated by unequal campaign conditions and problems noted during the vote counting and tabulation, as well as with the handling of election related complaints, gave rise to a political crisis which has dominated political life for the better part of the reporting period. In the Russian Federation, according to the Assembly’s observers, while the outcome of the parliamentary elections of 2007 and the presidential election in 2008 overall reflected the political will expressed by the Russian voters, significant shortcomings resulted in an election process that undermined political pluralism and did not comply with Council of Europe standards for democratic elections. In Azerbaijan, the outcome of the presidential election of 2008 “was the reflection of the will of the country’s electorate” but violations were noted during the vote counting, and in particular, the tabulation of the votes. Regrettably, five political parties did not take part in the election and there was no real competition between the platforms and political ideas. The presidential election which took place in Ukraine in 2010 was considered in line with Council of Europe standards, notwithstanding attempts by different political forces to manipulate the legal framework for the elections up to the day of voting.

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2. Draft resolution adopted unanimously by the committee on 19 May 2010.

9. Electoral reform is needed in a number of countries. The Albanian authorities have been invited by the Assembly to improve the legislative framework and enhance the capabilities of the electoral administration in a number of areas. In Armenia, electoral reform is essential to restore public confidence in the electoral process. In Azerbaijan, the forthcoming parliamentary elections in 2010 should be preceded by further amendments to the Electoral Code, which is still too complex with regard to the provisions on the registration of candidates, campaign financing and other regulations relating to the electoral campaign. In Bosnia and Herzegovina, there is an urgent need to remove ethnicity-based limitations on the right to stand for elections to the House of Peoples, as well as elections to the Presidency, which are in contradiction with the European Convention for Human Rights. In Georgia, the current electoral code is criticised for being favourable to the ruling party. The Assembly welcomes the establishment of a cross-party working group to draft a new election code, which resulted in the legal framework for local elections being changed on a consensual basis. The Assembly urges all political forces in Georgia to pursue the dialogue and agree on the reform of the election code, including the electoral system, well before the next parliamentary elections in the country. The inconsistencies in the legal framework for elections in Ukraine, and the manipulation of the legal framework by all contestants, clearly underscore the need for a unified election code, as repeatedly recommended by the Assembly. Electoral legislation has to be further improved in Moldova. In particular, the threshold for party lists to access the allocation of seats in Parliament should be reviewed and the accuracy in the voters' lists should be improved. The Montenegrin authorities have been called upon by the Assembly to promptly adopt a new law governing the election of members of parliament, in order to increase the voters' influence on the choice of a specific candidate within a party list. The Russian Federation has been urged to request an opinion of the European Commission for Democracy through Law (Venice Commission) on the legal framework for its elections and to amend the provisions having a negative impact on political pluralism. Further issues of concern are restrictions on party registration, the increase in the threshold to enter parliament from 5% to a high 7%, the prohibition of the formation of electoral blocks, as well as the introduction of an imperative mandate for deputies.

10. The efficiency of parliaments is to a great extent a result of their representativity, and capacity for serving as a platform for dialogue between different political forces. Regrettably, in a number of countries, dialogue is jeopardised for different reasons: in some of them, parliaments are monopolised by the limited number of political forces (Azerbaijan, Armenia, Russian Federation, Georgia), and/or the opposition is too weak and/or fragmented (Azerbaijan, Russian Federation, Georgia).

11. The Assembly is concerned about the abuse of boycott strategies by opposition parties of the Parliament (Albania, Georgia, Moldova) or their refusal to participate in elections (for example in Azerbaijan). Such actions do not foster the democratic process.

12. At the same time, it should be emphasised out that a strong and active opposition is beneficial to democracy. The respect for the rights of opposition, as well as the establishment of a democratic environment in which the opposition can work and flourish, is a necessary feature of a stable democracy. Regrettably, such conditions are still not met in a number of countries where the Assembly has noted violations of basic freedoms for example freedom of assembly, freedom of expression, or free press.

13. In some countries, partly as a result of flawed electoral processes, a situation has developed, where the political opposition mainly exists and operates outside the parliamentary framework. In such cases, in the interest of the democratic process as a whole, the pursuit of a political dialogue with the extra-parliamentary opposition should be a priority for the authorities and their inclusion in the political decision-making process should be ensured. This is the case in Armenia, Azerbaijan and Georgia. However, the only long-term solution is the establishment of an electoral framework that allows the participation of a wide array of political forces on equal terms and, with no undue restrictions for any contestant.

14. In a number of countries, the role of parliament as a necessary counterweight to the executive power is not always well established. This weakness may be due to a variety of reasons, including shortcomings in the constitutional framework, as well as the lack of the necessary structures, staff and legal expertise.

15. The lack of expertise and capacity of the parliament is particularly prevalent in Montenegro, Moldova and Bosnia and Herzegovina. In this context, the Assembly welcomes the introduction of a joint European Union/Council of Europe co-operation programme "Democracy support" for Moldova, including its parliamentary component aimed at the strengthening of legislative capacities of the Moldovan Parliament.

16. In some countries, constitutional reform is still needed to ensure a well-functioning system of checks and balances. This is particularly the case in Azerbaijan, Georgia and Ukraine. The Assembly takes note of the changes to constitution proposed by state Constitutional Commission of Georgia with the stated purpose of, *inter alia*, strengthening the role of the parliament and implementing an enhanced system of checks and balances.

17. The proper functioning of the parliamentary system depends to a large extent on the existence of an enabling democratic environment. However, in some countries shortcomings are still noted.

18. Media freedom and pluralism are hampered by excessive ownership concentration, or oligarchic control of media outlets (the Russian Federation, Armenia). Freedom of expression is not fully respected, with journalists arrested on questionable grounds (Azerbaijan) and numerous prosecutions or even physical threats to journalists (the Russian Federation, Turkey, Armenia and Azerbaijan), and assassinations (Russian Federation) still occur. In general, the intertwining of financial and political interest is of concern in a number of countries (Ukraine, Russian Federation).

19. In consequence, the Assembly urges:

19.1. with respect to elections and political pluralism:

19.1.1. the Parliament of Albania to improve the legislative framework for the electoral process and enhance the capabilities of the electoral administration as regards the electoral register, regulation of media coverage and funding of campaigns, the rules of transparency relating to media ownership, the electoral commissions and lists of candidates;

19.1.2. the Parliament of Armenia to implement without delay, and in good time before the next parliamentary elections, comprehensive electoral reform with a view to ensuring fair and equal conditions for all candidates and increasing public confidence in the electoral process, including the appeals and complaints procedures;

19.1.3. the Parliament of Azerbaijan to revise a number of provisions in the Electoral Code of 2008 with regard to the registration of candidates, campaign funding and lists of persons entitled to conduct the pre-election campaigns;

19.1.4. the Parliament of Bosnia and Herzegovina to bring the Constitution and the electoral legislation into line with the European Convention of Human Rights with a view to eliminating discrimination based on ethnicity;

19.1.5. the Parliament of Georgia to pursue the electoral reform in time for the next parliamentary elections and to restore the dialogue with the opposition so as to reach a consensus among the widest possible range of political forces on the country's electoral system;

19.1.6. the Parliament of Moldova to improve the electoral legislation as regards the threshold for party lists, the formation of electoral coalitions, the accuracy of the voters' lists, as well as the voting of Moldovan citizens residing abroad;

19.1.7. the Parliament of Montenegro to harmonise the legislation governing parliamentary elections with the new Constitution, in line with the country's accession commitments;

19.1.8. the Parliament of the Russian Federation to eliminate legal provisions which limit political pluralism, including restrictive provisions for party and candidate registration and to lower the threshold to enter parliament;

19.1.9. the Russian Federation authorities to ask the opinion of the Venice Commission on its legal framework for elections and seek its co-operation in addressing any shortcomings and to implement its recommendations contained in such an opinion;

19.1.10. the Parliament of Serbia to amend the existing constitutional framework with a view to abolishing a party-administered mandate and amend the electoral legislation accordingly, in order to increase the transparency for the voters of the process of allocation of seats from party lists;

19.1.11. the Parliament of Ukraine to make good on its long-standing promise to adopt, without further delay, a Unified Election Code that is in line with European Standards;

19.2. with respect to the dialogue between political parties in Parliament:

19.2.1. the main opposition party in Albania (Socialist Party) to terminate its boycott of the work of the Parliament and enter into a constructive political dialogue with other political forces, recalling the Bureau statement of 26 April 2010 in this respect;

19.2.2. the Armenian authorities to pursue their efforts to establish a meaningful dialogue with all political forces of the opposition on the political reforms needed for the normalisation of political life in the country;

19.2.3. the Azerbaijani authorities to establish a meaningful political dialogue with the opposition;

19.2.4. the Georgian authorities to pursue their efforts to establish a meaningful dialogue on the direction and content of the constitutional and electoral reform packages that are being prepared;

19.2.5. the political forces in Moldova to engage in a constructive and meaningful dialogue with a view to creating the necessary guarantees against a repetition of the current institutional crisis, including by amending the Constitution;

19.2.6. the political forces in Bosnia and Herzegovina to establish a serious institutionalised process for the preparation of a comprehensive package of constitutional amendments, in accordance with the country's post-accession commitments, while making full use of the expertise and recommendations of the Venice Commission;

19.3. with respect to parliamentary oversight over the activities of the executive and strengthening of the capacity of parliaments:

19.3.1. the Parliaments of Armenia, Azerbaijan, Georgia, the Russian Federation, and Ukraine to review their legislation with a view to strengthening their role of parliamentary oversight over the activities of the executive;

19.3.2. the Parliaments of Moldova, Montenegro, Serbia to strengthen their material and administrative organisational capacities.

20. The Assembly urges all states currently under a monitoring procedure or engaged in a post-monitoring dialogue to intensify their co-operation with the Monitoring Committee and to promptly implement the recommendations contained in the specific resolutions adopted by the Assembly. It stands ready to provide all the necessary support to the countries concerned through its parliamentary co-operation programmes.

21. The Assembly is fully aware that democracy is an ongoing process. Therefore, countries which are not under monitoring procedure or engaged in a post-monitoring dialogue should also be reminded, as necessary, to respect their statutory obligations as member states of the Council of Europe. In accordance with the practice established in 2006 to monitor the record of these countries, the Committee has appended to its annual progress report periodic reports on 11 member states (Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands).

22. The Assembly welcomes the fact that, since the adoption of its Resolution 1548 (2007) on the progress of the Assembly's monitoring procedure (June 2006 – June 2007):

22.1. Hungary has signed and ratified the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198), and that Latvia, Malta and the Netherlands have ratified it;

22.2. Latvia, Luxembourg, Malta and the Netherlands have ratified Convention on Action against Trafficking in Human Beings (CETS No. 197);

22.3. Netherlands has ratified the Civil Law Convention on Corruption (ETS No. 174).

23. Noting that a number of the states under the periodic reporting are not subject to certain specific monitoring mechanisms of the Organisation because they have not ratified the relevant conventions, the Assembly urges once more:

23.1. Ireland, Liechtenstein and Lithuania to sign and ratify, and Greece, Iceland, Italy and Luxembourg to ratify the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198);

- 23.2. Liechtenstein to sign and ratify, and Greece, Hungary, Iceland, Ireland, Italy, and Lithuania to ratify the Convention on Action against Trafficking in Human Beings (CETS No. 197);
- 23.3. Greece, Iceland and Luxembourg to ratify the Framework Convention for the Protection of National Minorities (ETS No. 157);
- 23.4. Liechtenstein to sign and ratify, and Greece, Iceland, Latvia and Luxembourg to ratify the Revised European Social Charter (ETS No. 163);
- 23.5. Iceland, Latvia, Liechtenstein, Lithuania, Luxembourg and Malta to sign and ratify the Additional Protocol to the European Social Charter providing for a system of collective complaints (ETS No. 158);
- 23.6. Greece, Ireland, Latvia and Lithuania to sign and ratify, and Iceland, Italy and Malta to ratify the European Charter for Regional and Minority Languages (ETS No. 148);
- 23.7. Liechtenstein to sign and ratify, and Iceland, Ireland, Italy and Luxembourg to ratify the Civil Law Convention on Corruption (ETS No. 174);
- 23.8. Lithuania to sign and ratify, and Hungary, Iceland, Italy, Liechtenstein and Malta to ratify Additional Protocol (ETS No. 191) to the Criminal Law Convention on Corruption.

24. In carrying out this periodic reporting, as well as its own country-specific monitoring procedure through its Monitoring Committee, the Assembly has continued to benefit from the work carried out by other Council of Europe institutions and monitoring bodies. It particularly welcomes the co-operation and synergies that the Monitoring Committee has developed with some of them in handling crisis situations, and it recommends that this practice be further developed, including a systematic exchange of information.

## **B. Explanatory memorandum, by Mr Marty, rapporteur**

### **1. Foreword**

1. In June 2008, my predecessor, Mr Holovaty, prepared a comprehensive progress report covering the functioning of democratic institutions in Europe, as the contribution of the Monitoring Committee to the Assembly's debate on the State of democracy in Europe. Mr Holovaty's comprehensive analysis took stock of all key developments with respect to the functioning of democratic institutions in all member states engaged in the monitoring procedure and post-monitoring dialogue. In order to avoid repetitions and, in some respects, duplicating Mr Holovaty's work, I suggested to the Monitoring Committee that this year's progress report should be more focused and address a particular element of the functioning of democratic institutions in order to identify challenges which are common to all member states engaged in the Assembly's monitoring procedure as well as suggest targeted recommendations.

2. On the basis of an exchange of views in the committee which took place on 17 March 2010, it was suggested that this year's progress report should focus on the efficiency of Parliaments in the member states covered by the monitoring procedure and engaged in a post-monitoring dialogue. Consequently, I prepared an outline of the report, suggesting to focus the analysis on the following key issues: a) firstly, the report would analyse the electoral arrangements and their implications for ensuring pluralism in Parliaments; b) secondly, the report would deal with the issue of dialogue between political parties working in Parliament; c) thirdly, the report would address the role of Parliaments in exercising oversight functions, as well as attempt to analyse the challenges Parliaments in some member states have to face in terms of expert, financial and material capacities.

3. In preparing this report, I have of course limited myself to references to texts adopted by the Assembly, reports or other public documents prepared by our committee's co-rapporteurs who follow the situation in each specific country. I have also used the reports drawn up by the Ad Hoc Committees of the Bureau of the Assembly on election observation in these countries since this exercise is closely linked to the work carried out by our committee. I have not engaged myself in any analysis or conclusions beyond what has been proposed by the co-rapporteurs concerned or the Assembly observer delegations. In some cases, I also make reference to the documents of the European Commission for Democracy through Law (Venice Commission) which have been used by committee co-rapporteurs in the preparation of their fact-finding visits.

4. In the draft resolution, I have tried to make a synthesis of the recurrent issues raised in all countries under monitoring and (to a lesser extent) in countries engaged in a post-monitoring dialogue with respect to the subject-matter of the report.

5. At the same time, and in accordance with the practice established since 2006, periodic reports on the second group of 11 member states among those member states which are not subject to a monitoring procedure or involved in a post-monitoring dialogue have been prepared and are appended in the addendum to this report: Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta and the Netherlands. As in the previous two years, they are based on the country-by-country assessments made by the Commissioner for Human Rights and other Council of Europe monitoring bodies and human rights institutions. The draft resolution contains conclusions drawn from these periodic reports (see also Appendix).

## **2. Efficiency of Parliaments in Council of Europe member states covered by the monitoring procedure**

### ***2.1. Elections and political pluralism***

#### ***2.1.1. Albania***

6. The parliamentary elections of 28 June 2009 marked the beginning of the current serious political crisis. Although they were conducted on the basis of to the provisions of the revised Electoral Code, amended in 2008 in line with the recommendations of the Venice Commission, particularly in respect of the procedures for registering and identifying voters, and the functioning of the Central Election Commission, these improvements were overshadowed by the politicisation of the electoral process and infringements noted during the campaign.

7. Under the new electoral system, the 140 members of the Albanian Parliament, for the first time, were elected by a regional proportional voting system. The threshold for representation in parliament was set at 3% of the votes cast in a given constituency for political parties, and 5% for coalitions.

8. The Assembly's Ad Hoc Committee observing the elections concluded that, despite progress, some irregularities had persisted from one election to the next, referring in particular to cases of administrative resources being misused, pressure exerted on people during the election campaign, lack of editorial independence, and lack of transparency regarding the funding of the media, as well as to the alleged existing links between the owners of the media and the political party leaders.

9. The vote count was marked by a very high level of mistrust among the representatives of political parties at all levels of election administration. In many cases, the vote count was temporarily blocked, and, ten days after the elections, the official results had not been announced. In several cases, the problem was to decide whether votes from certain voting centres should be recounted or not. Consequently, the Ad Hoc Committee recommended that, for future elections, the vote counting procedure should be considerably improved and the number of counting teams be substantially increased in each of the regional counting centres.

10. The Ad Hoc Committee also emphasised that it was unacceptable that, ten or more days after the date of the ballot, Albania's citizens and the international community were not informed of the official results of the parliamentary elections in a country with some 3.1 million voters. The significant lapse of time between the closure of the polls and the announcement of the official election results considerably weakened the people's confidence in the electoral process and its outcomes.

11. The Ad Hoc Committee invited the Albanian authorities, under the procedure for monitoring their compliance with their commitments and obligations, and in close co-operation with the Venice Commission, to improve the legislative framework and enhance the capabilities of the electoral administration as regards:

- the civil status register and the electoral register, and in that context, the need to find a solution to the problem of the franchise for Albanian citizens resident abroad;
- regulation of media coverage and public funding of campaigns, which disadvantages political parties not represented in Parliament;
- the rules of transparency relating to media ownership and their effective implementation so as to strengthen voters' confidence in the equity of the electoral system;
- the manner of dismissal of members of the lower-level election commissions, which is incompatible with an impartial, professional electoral administration;
- the ambiguous requirements as to the inclusion of women on the lists of candidates, which should be reviewed so as to guarantee that women candidates are in an eligible position;
- the need to abolish the granting of special rights to political party chairs to stand for parliamentary elections.

12. In the opinion of the Ad Hoc Committee, the Electoral Code should undergo revision only on those points where this was dictated by the need to ensure compliance with international standards or to solve particular problems. For the remainder, in order to guarantee the confidence of the country's citizens, the Albanian authorities were invited to step up their efforts to implement in full the electoral legislation. The Ad Hoc Committee also recalled that sincere implementation of the rules was just as important as the rules themselves.

13. Following what it considered as frauds in some electoral zones, the main opposition party of the newly elected Parliament, which won 66 seats, namely the Socialist Party (SP), made use of all legal remedies stipulated in the Electoral Code in order to contest the results. When the case was finally dismissed it decided to boycott the work of the parliament. This boycott continues to date and prevents the parliament from passing necessary constitutional and other reforms.

14. In [Resolution 1709 \(2010\)](#) on the functioning of democratic institutions in Albania, the Assembly deplored the political and institutional crisis, and regretted the absence of any meaningful parliamentary dialogue.

15. In February 2010, the Assembly's Presidential Committee carried out a visit to Albania in order to support the process of resolving the political crisis and assist President Topi in his role of mediator and his efforts to restore political dialogue, and help achieve an end to the boycott.

16. On 25 February, MPs of the Socialist Party entered the Parliament and took their oath, on condition that their further presence in the Parliament was subject to the setting up of an inquiry committee into the June 2009 parliamentary elections, which was done on 19 March. In the absence of an agreement between the two main parties on the mandate of this inquiry committee, Socialist Party MPs refused to join the committee. The sitting of the inquiry parliamentary committee was put on hold and the committee did not convene.

17. The situation continues to worsen, following demonstrations of both opposition and governing parties on 30 April and 1 May 2010, and the subsequent confusion in the main avenue of Tirana where some 200 supporters of the Socialist Party, including 22 MPs, who have gone on hungerstrike since then. This deadlock is all the more regrettable that all political leaders should ensure the resumption of political dialogue within the Parliament and ensure the support of the population for this democratic process. It is the responsibility of political leaders to call on the population to demonstrate their support within the democratic institutions and not in the street.

### 2.1.2. Armenia

18. The presidential election in Armenia, held on 19 February 2008, triggered one of the worst political crises in Armenia since its accession to the Council of Europe. This crisis underscored the lack of public confidence in the electoral system and raised questions about the credibility of the electoral process. Regrettably, the elections have remained a controversial issue in Armenia since the 2008 presidential election.

19. In [Resolution 1609 \(2008\)](#) on the functioning of democratic institutions in Armenia, the Assembly noted that electoral reform was essential to restore public confidence in the electoral process. In response to this Resolution, the National Assembly of Armenia set up an ad hoc Committee on electoral reform. However, in February 2010 the co-rapporteurs for Armenia expressed their concern that this ad hoc Committee had been inactive for a number of months and had not yet produced its recommendations, despite calls from the Assembly to the authorities to make electoral reform one of its main priorities.

20. In the same resolution, the Assembly pointed out that a relevant part of the political spectrum in Armenia is not represented in the current National Assembly. In this situation, it considered that the only way to allow the country to move forward with urgently needed reforms is to establish a political dialogue that includes both parliamentary and extra-parliamentary forces.

21. On 1 August 2008, a coalition of parties that had supported the presidential candidature of Mr Levon Ter-Petrossian formed the Armenian National Congress (HAK) and decided to participate in the Yerevan City Council elections. Its establishment and entry into politics has substantially strengthened the opposition and, in consequence, increased, to a certain extent, the pluralism of the Armenian political environment. However, as a result of its recent establishment, the HAK is not represented in the Armenian National Assembly.

22. On 31 May 2009, elections for the City Council of Yerevan took place. Given that Yerevan houses more than 40% of the population of Armenia and is responsible for more than half of the country's economic output, these elections had an important national dimension and were widely seen as a test for the authorities to make good their promise to firmly establish the principle of genuinely democratic elections in Armenia.

23. The elections for the Yerevan City Council were observed by the Congress of Local and Regional Authorities. In their statement issued the day after the elections, the observation mission of the Congress declared that "[their] satisfaction in seeing the citizens electing their city council has been tempered by deficiencies in the conduct of the vote". For their side, the opposition in Armenia alleged that these elections were marred by widespread fraud and violations. The authorities conceded that irregularities had taken place, but asserted that they were localised and did not affect the overall outcome of this election. The Prosecutor General of Armenia brought charges against a number of persons for electoral fraud committed during these elections.

24. In a separate development, the Armenian Revolutionary Federation (Dashnaktsutyun) announced that it was leaving the governing coalition as a result of its disagreement with the signature by Armenia and Turkey of a road map to normalise their relationship. This increased the number of parties belonging to, and generally strengthened the opposition in the National Assembly.

### 2.1.3. Azerbaijan

25. On 15 October 2008, a presidential election took place. The Ad Hoc Committee of the Parliamentary Assembly<sup>3</sup>, which observed the election process, concluded that the results “were the reflection of the will of that country’s electorate”. The voter turnout was 75.64% and the election was won by Mr Ilham Aliyev, who obtained 88.73% of the votes cast.

26. In general, the election took place in a calm and orderly manner, but on election day in some constituencies some violations were noted during the counting and, in particular, the tabulation of the votes. According to the Ad hoc Committee’s report, it is also regrettable that five political parties did not take part in the election. There is still no real competition in the country between the platforms and political ideas.

27. On 18 March 2009, a referendum on the amendments and the additions to the Constitution took place. The final results of this referendum, in which 70.83% of the voters took part, were announced by the Central Electoral Commission (CEC) on 30 March. The 41 amendments presented in 29 questions were accepted, with the percentage of “Yes” votes between 87.15% and 91.76%.

28. A delegation from the Parliamentary Assembly was present in the country during the referendum and published a statement on the day after the ballot<sup>4</sup>, in which they concluded that “the result of the referendum shows the willingness of the people of Azerbaijan to have greater stability and elements for further democratisation; a better balance of power will nevertheless require further reforms in the future”.

29. Municipal elections held on 23 December 2009 were observed by an eleven-member delegation of the Congress of Local and Regional Authorities at the invitation of the Azerbaijani authorities. The delegation concluded<sup>5</sup> that the elections were generally well-prepared from the technical point of view and that they taken place off in a calm and orderly atmosphere. It welcomed the considerable step forward in relation to the previous local elections, but raised three issues of concern:

- the lack of genuine political pluralism among the parties; there were few candidates who represented the opposition; the campaign was not very active (either in the streets or on television);
- the candidate registration process and vote counting procedure (owing to incidents in some polling stations);
- the situation of territorial democracy in Azerbaijan.

30. Referring to the reports of its Ad hoc Committees on the observation of the 2008 presidential election and of the 2005 parliamentary elections, as well as to the report of the Congress of Local and Regional Authorities on the 2009 Municipal elections, it can be noted that considerable progress has been made, particularly during the last presidential election in 2008, in meeting European standards. Regrettably, however, none of these elections has fully complied with democratic requirements.

31. The Electoral Code, as amended in 2008, remains complex, especially with regard to the provisions on the registration of candidates, campaign financing, lists of persons entitled to conduct pre-election campaigns and limitations on the content of election campaign material. According to the Venice Commission, a number of important issues relating to the composition of the Central Electoral Commission, and territorial commissions, candidate registration, observers, the electoral roll and its accuracy, as well as the complaints and appeals procedure, still need to be addressed.

32. The recent judgment of the European Court of Human Rights in the case of *Namat Aliyev v. Azerbaijan*, concluded that the actions of the electoral commissions and courts concerned had resulted in the violation of the applicant’s right to stand freely and effectively for election in his constituency.

33. Furthermore, as regards the general environment needed to allow the democratic electoral process to develop, concerns are raised by reported violations of basic freedoms such as freedom of assembly and the media, in particular the frequent arrests and intimidation of journalists.

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3. [Doc. 11769](#). report by the Ad hoc Committee of the PACE, rapporteur: Mr Andres Herkel, Estonia, EPP/CD.

4. “Azerbaijani people vote positively”, says PACE delegation present at constitutional referendum, Baku, 19 March 2009.

5. See the report by the Congress, Chamber of Local Authorities, 18th session, CPL(18)2 of 8 February 2010, on the Municipal Elections in Azerbaijan (23 December 2009), rapporteur: Francis LEC (France, SOC).

34. The period since the previous parliamentary elections has been marked by a further weakening of the opposition both within and outside the Parliament, which has been exacerbated by subsequent splits within the opposition itself. This has resulted in the scarcity of opposition candidates, which is damaging the democratic process of the country.

35. In November 2010, Azerbaijan will be holding the second parliamentary elections since the country's accession to the Council of Europe. The Monitoring Committee attaches great importance to the setting up of conditions which will enable these elections to comply fully with European standards and be considered as free and fair.

#### 2.1.4. Bosnia and Herzegovina

36. In Bosnia and Herzegovina, electoral legislation provides for the participation of a wide array of political forces in elections. In 2006, thirty-six registered political parties, with 8 formal coalitions, and 12 independent candidates, participated in the general election. In the last election observation report, the Assembly noted that the manner in which the 1 October 2006 general elections in Bosnia and Herzegovina were conducted was generally in line with Council of Europe standards. However, as a result of constitutional ethnicity-based limitations to the right to stand for office, these elections were again in violation of standards of the European Convention of Human Rights and Council of Europe commitments.<sup>6</sup>

37. The composition of Parliament is directly affected by the constitutional ethnicity-based limitations on the right to stand for office. While the members of the House of Representatives are elected on the basis of free, equal and universal suffrage, according to the proportional system, the delegates to the House of People are elected on the basis of an indirect procedure. According to Article IV, § 1 of the Constitution of Bosnia and Herzegovina, the House of Peoples shall comprise 15 delegates, two-thirds from the Federation (including 5 Croats and 5 Bosniacs) and one third from Republika Srpska (5 Serbs). The delegates from the Federation are elected by the House of Peoples of the Federation while the delegates from Republika Srpska are elected by the RS National Assembly.

38. The Assembly has, on several occasions, called upon the authorities of Bosnia and Herzegovina to remove these limitations in order to bring the electoral legislation and composition of Parliament in compliance with the standards of the European Convention of Human Rights.<sup>7</sup> In late 2009, the European Court of Human Rights adopted its Judgment in the case *Sejdic and Finci v. Bosnia and Herzegovina* (Applications Nos. 27996/05 and 34836/06), which confirmed that the electoral arrangements as well as the constitutional ethnicity-based limitations on the right to run for elections to the House of Peoples are contrary to the European Convention of Human Rights. In this context, the question of the democratic legitimacy of the members of the Parliamentary Assembly of Bosnia and Herzegovina arises.

39. Virtually no progress on the constitutional reform front has been made by the authorities and the key political stakeholders to date. In this context, the Assembly held a debate on the functioning of democratic institutions in Bosnia and Herzegovina during its January 2010 part-session calling upon the authorities to “*fully engage in a meaningful and constructive dialogue about concrete proposals for amendments to the Constitution, in line with the 2005 recommendations of the Venice Commission, with a view to adopting a reform package in time for the 2010 parliamentary elections which should be organised in accordance with the revised Constitution*”.<sup>8</sup>

40. Within the framework of a debate under urgent procedure on “the urgent need for a constitutional reform in Bosnia and Herzegovina” during its April 2010 part-session, the Assembly expressed serious concern about the fact that the initiatives launched by the authorities have not so far led to any concrete results. It noted that there was a serious risk that the October 2010 general elections would be once again held in violation of the European Convention of Human Rights and its Additional Protocols, as well as of the judgment of the Court in the *Sejdic and Finci* case. While reserving the right to take the requisite political stance on this matter in due course, the Assembly called upon the authorities to lose no time and launch, before the general elections of October 2010, a serious institutionalised process for the preparation of a comprehensive package of constitutional amendments, in accordance with the country's post-accession commitments, while making full use of the expertise and recommendations of the European Commission for

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6. See [Doc. 11101](#), 22 November 2006

7. See [Resolution 1383 \(2004\)](#), [Resolution 1513 \(2006\)](#), [Resolution 1626 \(2008\)](#)

8. [Resolution 1701 \(2010\)](#)

Democracy through Law (Venice Commission). The Monitoring Committee will continue to examine regularly the progress achieved by the authorities of Bosnia and Herzegovina in this process, in order to propose to the Assembly any further action to be taken as required by the situation.

#### 2.1.5. Georgia

41. In Georgia, the electoral reform is a key element of the so-called “new wave of democratic reforms” package that was introduced by the authorities in the wake of the August 2008 war with the Russian Federation. The current Electoral Code and other laws that govern the elections, have seen multiple cycles of amendments to address shortcomings noted during elections. This has resulted in, at times, contradictory or ambiguous provisions in the Electoral Code. Moreover, prior to the last parliamentary elections in 2007, negotiations were started between the ruling party and the opposition on a new electoral system. However, these negotiations broke down in the polarised and tense political climate at that time. As a result, an election system was adopted that is heavily criticised by the opposition as being favourable to the ruling party. The Assembly has therefore recommended that a new Electoral Code be drafted and a new election system agreed upon that has the widest possible consensus among the political forces in Georgia.

42. A special cross-party working group to reform the electoral system and to draft a new Electoral Code was established, moderated by the National Democratic Institute (NDI). The work of this group was guided by a code of conduct in which all participating parties committed themselves to constructive co-operation, consensus-based decision-making and no prior pre-conditions for the discussions. After some hesitations, a significant number of opposition parties agreed to participate in the work of this working group. The ruling United National Movement, which has a constitutional majority in Parliament, publicly committed itself to supporting any consensus agreement reached by the working group, thereby guaranteeing its adoption in Parliament.

43. The work of the election group focused on the changes of the electoral framework for the municipal elections foreseen for 31 May 2010. While the group could reach consensus on most issues, regrettably, no agreement could be reached on the threshold for the election of the Mayor of Tbilisi, with one party, the Alliance for Georgia insisting on a 50%, later 45%, threshold for election in the first round, while the ruling United National Movement refused any threshold higher than 30%. In the end, the 30% threshold was adopted by the Parliament in addition to those items on which the group had reached consensus. The working group suspended its work pending the municipal elections. The Assembly should urge all political forces in Georgia to pursue the dialogue on the reform of the electoral code and electoral system and agree on a new election code in good time before the next parliamentary elections in Georgia.

44. The political scene in Georgia has changed since the last parliamentary elections with the entry of new opposition parties founded by former high-level officials from the ruling party and authorities, which has enlarged the political spectrum in Georgia. Regrettably the political atmosphere between the authorities and the opposition is generally polarised and acrimonious. Among the notable exceptions are the Christian Democratic party, which is represented in parliament and the Alliance for Georgia, led by Irakli Alasania, who advocates dialogue and a more consensual approach to the interaction between the ruling coalition and opposition.

45. The ruling United Movement has a constitutional majority in the parliament and is accused by opposition parties of imposing its will and limiting political plurality. The authorities have on several occasions indicated their willingness to strive for increased pluralism in Georgian politics. The democratic reform package announced after the war, therefore, also aims at strengthening party building and the functioning of the extra-parliamentary opposition. Amendments were adopted to the Law on Political Parties, which restore the state funding for parties that did not qualify to enter parliament, or who refused to take their seats, after the last parliamentary elections, and to provide funding for research and development activities of political parties and NGOs.

#### 2.1.6. Moldova

46. In Moldova, electoral legislation needs to be further improved in order to increase pluralism. Two problems should be addressed as a priority. Firstly, the threshold for party lists to access the allocation of seats in Parliament has to be thoroughly reviewed. Since the last progress report on the functioning of democratic institutions, it has been modified several times. In 2008, contrary to previous Assembly recommendations, it was raised to 6%.<sup>9</sup> At the same time, the establishment of coalitions of political parties was prohibited. In the opinion of the Committee’s co-rapporteurs, the combined effect of these measures did not help increase pluralism in Parliament. After the parliamentary elections of April 2009, only 4 parties

cleared the threshold and were eligible for the allocation of seats. The votes cast for the contenders who failed to clear the threshold represented approximately 15% of all votes cast. Subsequently, before its dissolution, in June 2009, as a result of the failure to elect the President, Parliament revised again the Electoral Code by lowering the threshold to 5% and reducing the participation threshold from 50% plus one to 33% plus one vote for the elections to be valid. In the opinion of the Assembly observers, the “early parliamentary elections of [29 July 2009] overall were well administered, allowing for competition of political parties representing a plurality of views. Many of the OSCE and Council of Europe commitments were met. However, the campaign environment was negatively affected by subtle intimidation and bias in media coverage”.<sup>10</sup> As a result of these elections, 5 parties cleared the threshold and were allocated seats in Parliament.

47. Secondly, the lack of accuracy in the voters’ lists negatively affects the electoral process. According to the amendments to the Electoral Code adopted in 2007, it was anticipated that an “Electronic Register of Voters” would be put in place in 2009. However, reportedly for various reasons, including financial ones, this system was not available for the elections of 5 April and 29 July 2009. Consequently, the voters’ list was compiled on the basis of the permanent population registry the quality of which varies between municipalities, opening the door for manipulations. As noted by the Assembly members who observed the elections of 5 April 2009, the difference between the number of voters on the electoral lists compiled on the basis of municipal registers and the initial data of the CEC from the 2005 parliamentary elections, amounts to approximately 315 641 voters, which represents an increase of over 10% in relation to the 2005 elections.<sup>11</sup> This difference has raised serious concern among observers and leaders of opposition parties about the accuracy of the voters’ lists.

48. During the election observation in April 2009, observers saw people voting with their ID cards without being included in the main voters’ register; their names were added to the so-called “supplementary register of voters”. According to the data provided by the Central Election Commission, around 7.55% of voters who participated in the ballot voted on the basis of the supplementary register of voters. This is a high figure, especially because a significant proportion of Moldova’s citizens live abroad and can vote only at polling stations open in diplomatic and consular offices (in some 35 countries). In this context, in [Resolution 1666 \(2009\)](#), the Assembly called upon the Moldovan authorities to “resume reform of the electoral legislation, in co-operation with the European Commission for Democracy through Law (Venice Commission), in order to lower the electoral threshold for political parties, thus opening up the political process for more pluralism; immediately review the voters’ lists in order to establish them definitively, introducing an obligation for regular review, and abolish in future supplementary lists; put in place mechanisms and procedures enabling the many Moldovan citizens residing abroad to exercise effectively their voting rights”.

49. A third related problem also hampered the electoral process in 2009. In fact, on the basis of amendments to the Electoral Code adopted in April 2008, Moldovan citizens holding multiple citizenship were prevented from exercising public functions, including becoming members of Parliament. The adoption of this amendment triggered an application to the European Court of Human Rights; the latter found this requirement contrary to Article 3 of the Additional Protocol to the European Convention of Human Rights (ECHR), as well as to the European Convention on Nationality, which Moldova ratified on 30 November 1999.<sup>12</sup> The Moldovan authorities subsequently appealed against this decision before the Grand Chamber of the Court. In this context, in [Resolution 1666 \(2009\)](#), the Assembly called upon the authorities to suspend the application of the corresponding articles of the Electoral Code, while awaiting the judgment of the Grand Chamber of the European Court of Human Rights. I have to note, however, that the Moldovan authorities have subsequently implemented this recommendation by repealing the contested amendment. This was one of the first measures taken by the new governing coalition established after the early elections of 29 July 2009.

### 2.1.7. Montenegro

50. Contrary to the Assembly Opinion on accession, the Montenegrin authorities have failed so far to harmonise the legislation governing parliamentary elections with the new Constitution. The elections of 29 March 2009 were held in accordance with the 1998 Law on the Election of Councilors and Representatives, which was amended several times since 1998 and, most recently in 2006. This law provides for the allocation of mandates on the basis of a proportional list system, within a single nationwide constituency, with a 3% threshold.

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9. These changes made the electoral arrangements more restrictive again, after the initial lowering of the electoral threshold to 4% for single parties and to 8% for electoral coalitions in 2007.

10. Statement of preliminary findings and conclusions. IEOM, Chisinau, 30 July 2009.

11. Doc. AS/Bur/Ah mold (2009) 6.

12. See *Tanase and Chirtoaca v. Moldova* (Judgment of 18 November 2008, application No 7/08).

51. A serious flaw in the Law on the Election of Councillors and Representatives is that, while it stipulates that half of the mandates won by electoral lists must be awarded to candidates in their list order, it provides that the other half of the mandates can be allocated to remaining candidates in any order established by the party leadership. This provision has been criticised both by the OSCE/ODIHR and the Council of Europe as problematic because it restricts transparency and risks misleading voters, who cannot be sure which candidates will represent them. Another point of concern in the law is a provision stipulating that, if a MP ceases to be a member of the political party on whose list he or she has been elected, the mandate of that MP terminates (i.e. party-administered mandate).

52. In this context, in [Resolution 1724 \(2010\)](#), the Assembly called upon the Montenegrin authorities to promptly adopt a new law governing the elections of members of Parliament, in close co-operation with the Venice Commission. I am aware of the fact that the Montenegrin authorities are currently working on developing a new draft law on elections. The draft law, prepared by a group of domestic legal experts has been forwarded to the Venice Commission for opinion. The Committee co-rapporteurs will continue to follow this issue closely and report to the Assembly on the progress achieved by the authorities in reforming electoral legislation.

### *2.1.8. Russian Federation*

53. A presidential election was held in the Russian Federation on 2 March 2008, parliamentary elections on 2 December 2007 and regional and local elections were organised in a number of subjects of the Russian Federation on 1 March 2009. The Ad Hoc Committee from the Parliamentary Assembly that observed the parliamentary elections concluded that, while the outcome of the elections overall reflected the political will expressed by the Russian voters, significant shortcomings resulted in an election process that undermined political pluralism and did not comply with Council of Europe standards for democratic elections. The Assembly delegation observing the 2 March 2008 presidential election concluded that these elections reflected the will of an electorate whose democratic potential was, unfortunately, not tapped. The ad hoc committee highlighted that this election repeated most of the flaws revealed during the parliamentary elections of December 2007. Candidate registration concerns could not be accommodated, putting into question the degree of how free the election was. The equal access of the candidates to the media and the public sphere in general did not improve, putting into question the fairness of the election. Independent observers also raised some concerns with regard to the elections to some of the regional parliaments held on 1 March 2009 and 14 March 2010.

54. Legal provisions that limit political pluralism are of particular concern. In order to qualify for registration, a political party needs to have at least 50 000 members and at least 500 members in half of the subjects of the Russian Federation and at least 250 in the other half (the so-called double threshold). In addition, in order to register for parliamentary elections, parties not represented in the Duma must either pay a deposit of 60 million roubles or collect 200 000 supporting signatures of which less than 10 000 signatures can come from one and the same region. Moreover, in order to compete in a presidential election, candidates not nominated by a registered party must submit to the Central Electoral Commission (CEC) 2 million signatures, with not more than 50 000 coming from the same subject of the Federation, in support of their registration.

55. In addition to these registration requirements in 2005, the threshold to enter parliament was raised from 5% to 7%, the formation of electoral blocs was forbidden and an imperative mandate for deputies was introduced. The combined effect of these provisions is to undermine political pluralism and make the participation of new and/or small parties in the democratic process extremely difficult.

56. A number of recent legislative initiatives have been taken by the Russian authorities since the parliamentary elections in 2007 to address some of the concerns noted. Several draft laws that aim, inter alia, at: introducing "reserved seats" for parties which obtain between 5% and 7% of the votes in the elections to the State Duma (2 seats would be reserved for parties which reach between 6 and 7% of votes and 1 seat for parties which reach from 5 to 6% of votes); lowering the mandatory membership of political parties from the current 50 000 members down to 40 000 members over the period of 2010-2012; abolishing the electoral deposit for the registration of party lists for political parties not represented in the State Duma; decreasing the number of signatures necessary for registering a party list for the elections to the State Duma from the current 200 000 signatures down to 150 000, for the next parliamentary elections (to be held normally in 2011), and to 120 000 for all subsequent elections. Moreover, parties that are represented in more than 1/3 of the legislative assemblies of the Subjects of the Russian Federation are no longer required to collect signatures in order to register for a federal election, as was already the case for parties represented in the Federal Parliament.

While welcoming these initiatives, the co-rapporteurs with regard to the Russian Federation have stressed that further improvements should be made in order to ensure that the electoral system is genuinely pluralist and democratic.

57. Further reform of the legal framework for elections is therefore necessary in the Russian Federation to ensure that future elections are fully in line with Council of Europe standards. The Monitoring Committee of the Assembly has repeatedly urged the authorities of the Russian Federation to seek the opinion of the Venice Commission on the legal framework for elections in the Russian Federation and to establish close co-operation with it in addressing the shortcomings, and implementing any recommendations, that such an opinion could contain.

#### 2.1.9. Serbia

58. In Serbia, the legislation allows for the participation of a wide range of political parties in the electoral process. Elections to Parliament are organised on the basis of a proportional system, with a 5% threshold which parties have to clear in order to access the allocation of seats. This threshold is waived for political parties representing national minorities in order to facilitate their participation in the electoral process. That said, although a wide range of political parties can participate in elections and are represented in Parliament, political pluralism is hindered by the so-called “party-administered mandate” system. In accordance with the Constitution, the MPs are free to put their mandate at the disposal of political parties. On the basis of this constitutional principle, a practice of signing blank resignations upon taking up duties has been established. These blank resignations are kept by the leadership of the political parties in order to exercise control over individual MPs elected on the basis of lists submitted by political parties. Following the same logic, the electoral legislation allows the leadership of the party arbitrarily to choose the candidates from their lists to sit in Parliament *after the election* instead of determining the order of candidates beforehand. In the view of the Venice Commission and of the OSCE/ODIHR, “this limits the transparency of the system and gives political parties a disproportionately strong position vis-à-vis candidates”.<sup>13</sup> Seen together with the constitutional provision on “party-administrated mandates” of MPs, this provision constitutes a serious violation of European standards and a threat to the proper functioning of democratic institutions.<sup>14</sup>

59. In this context, in [Resolution 1661 \(2009\)](#), the Assembly noted that “the problems which the National Assembly of Serbia is facing are, to a large extent, rooted in the existing constitutional framework, which establishes a “party-administered mandate” of MPs, as well as in the arrangements for the allocation of seats in Parliament, which make the MPs dependent on the decisions of their parties’ leadership and prevent them from expressing their views freely, as democratically elected representatives of the citizens of Serbia”. It furthermore recommended that the authorities should amend the electoral legislation, in accordance with the joint recommendations of the European Commission for Democracy through Law (Venice Commission) and the Organization for Security and Co-operation in Europe/Office for Democratic Institutions and Human Rights (OSCE/ODIHR), in particular, to bring the system of allocation of mandates in Parliament and in municipal assemblies into line with European standards. Moreover, the Assembly called upon the authorities to “eliminate from the Constitution the provisions establishing party-administered mandates of members of parliament and strengthen the capacity of the National Assembly to play an increasingly active role in the political process”.

60. I am aware of the fact that the Serbian authorities are currently working with the Venice Commission on the revision of the electoral legislation. A new draft law governing local elections was submitted to the Venice Commission for opinion in 2009 and an opinion was subsequently adopted on 9-10 October 2009, at the Commission’s 80th plenary session. In the view of the Commission, the draft governing local elections responds to several issues previously identified by the Venice Commission and OSCE/ODIHR, including changes to protect elected councilors from arbitrary forfeiture of mandates and a number of important provisions to promote democratic election practices. A changed system for candidacy and mandate distribution system is proposed. I therefore would like to encourage our Serbian colleagues to continue close co-operation with the Venice Commission on improving the electoral legislation, using the law on local elections as a basis and possible model for reforming electoral legislation governing parliamentary elections.

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13. CDL-AD(2006)013, p.12.

14. Although this is not the subject matter of this report, I should note that a similar system of allocation of mandates is in operation in local assemblies: only 1/3 of the mandates are allocated to the candidates according to their sequence on the list and the allocation of remaining mandates is left to the discretion of the political party, political organisation or group of citizens which had submitted the list.

### 2.1.10. Ukraine

61. A presidential election took place in Ukraine on 17 January and 7 February 2010. This election, which was observed by the Assembly, was won by Mr Victor Yanukovich, who defeated Ms Yulia Tymoshenko in the second round of voting on 7 February 2010.

62. The Ad Hoc Committee of the Assembly that observed this election concluded that the election was held in line with Council of Europe standards for democratic elections, and consolidated the progress made in the electoral field since 2004.

63. However, the Ad Hoc Committee also noted that the election had been democratic despite the legal framework for this election, which all parties had been trying to manipulate, even after the first round was concluded. In that respect, the Ad Hoc Committee underscored that stable election legislation is an essential prerequisite for the holding of democratic elections and that, although the vote had shown the democratic nature of the elections, it was concerned about the dangerous habit of Ukrainian politicians to play with the electoral rules rather than playing by those rules.

64. Ukraine does not have a unified electoral code. The electoral process is governed by a series of different laws and legal acts which are unnecessarily complex and unclear and at times in contradiction with one another. In its joint opinion with the OSCE/ODIHR, the Venice Commission noted a significant number of shortcomings with regard to, inter alia: the electoral complaints procedure, the tabulation of election results, the composition of election commissions, the transparency of the electoral process and the integrity of the voters' list. The Assembly, on several occasions, has therefore called upon the Verkhovna Rada to adopt, in close consultation with the Venice Commission, a Unified Election Code that would address the concerns and shortcomings noted by, inter alia, the Assembly.

65. Ukraine has a diverse and pluralist political environment which is reflected in the Verkhovna Rada. However, the Ad Hoc Committee that observed the presidential elections in 2010 expressed its concern about the role of finance and economic interest in the elections and political process, which could negatively affect the pluralist character of Ukrainian politics.

### 2.2. Dialogue between political parties in Parliament

66. **Albania** is now undergoing a major political crisis, as mentioned in paragraphs 6 to 17 above. The Assembly has already in the past regretted that relations between the political parties remained polarised and fraught, thus slowing down parliamentary work on reform. Albanian political parties share responsibility for strengthening the powers and role of the Parliament, which remains a major challenge for this country.

67. In a Parliament where the governing majority does not have the three-fifths majority required to pass major constitutional reforms, the current boycott by the main opposition party makes further much-needed reforms well nigh impossible. This situation harms the Albanian people and their ambitions for European integration.

68. The political environment in **Armenia** remains polarised and tense both between the authorities and the opposition as well as within the opposition itself. The only exception to this seems to be the Armenian Revolutionary Federation (Dashnaktsutyun) which appears to maintain a normal dialogue with the authorities despite having left the governing coalition. The Assembly has regretted on several occasions that structures established in the wake of the March 2008 events to promote dialogue between the opposition and authorities either broke down, were in effect boycotted by part of the political spectrum, or otherwise failed to fulfill their intended function.

69. With regard to the reform of the political system, with a view to giving a proper place and rights to the opposition, amendments were passed to the Rules of Procedure of the National Assembly. These amendments provide for, inter alia, the distribution of all leadership positions on the Standing Committees of the Assembly on the basis of the d'Hondt system, which will ensure opposition representation in these leadership functions; the right of the opposition to table an issue for debate during one of the sittings of each four-day regular sessions; the introduction of the presentation of a minority position in the reports of the Standing Committees that are sent for debate in plenary session; and priority for opposition representatives in tabling questions to the government. The co-rapporteurs with respect of Armenia have welcomed these initiatives although they have noted that some of the provisions will only come into force after the next convocation of the National Assembly. The possibility of implementing them at a much earlier stage should be considered by the National Assembly.

70. In its [Resolution 1614 \(2008\)](#) on the functioning of democratic institutions in **Azerbaijan**, the Assembly regrets that the main opposition parties did not participate in the discussion of amendments to the Electoral Code of Azerbaijan concerning the composition of the electoral commissions and the complaints and appeals procedures. The Assembly has stressed several times that it is urgent to install a political dialogue between the ruling majority and the opposition, both within and outside Parliament, if the political climate in the country is to be improved and the population's confidence in the electoral process is to be restored.

71. So far, no progress has been made in this area. The opposition parties consider they have not been involved in the revision of the Electoral Code and believe the forthcoming parliamentary elections will be a farce. The co-rapporteurs of the Monitoring Committee have urged all political parties to take part in the elections. The current lack of confidence of the population in the electoral process is a direct threat to the credibility of the forthcoming parliamentary elections.

72. In **Bosnia and Herzegovina**, power sharing deals between the 3 constituent peoples hamper the development of a common and shared-by-all political vision of the country's future. The monopolisation of political decision making through informal meetings of the 6 major political parties (SDA and SBiH for the Bosniaks, HDZ and HDZ 1990 for the Croats, SNSD and PDP for the Serbs, all in an unlikely coalition at the State level) deprives both the Council of Ministers and Parliament of their constitutional responsibilities. Lack of trust, more or less systematic obstruction, and narrow party interests have taken their toll on legislative and governmental activity. Important reforms relating to democratic institutions, rule of law and human rights are being delayed and the country is lagging behind in the implementation of its remaining post-accession commitments. A constitutional revision and a profound reform of the country's democratic institutions, aimed at increasing their functionality, is the ultimate recipe which will improve the functioning of democratic institutions in Bosnia and Herzegovina. This process cannot be completed overnight. In the meantime, pending the implementation of this reform, the key political stakeholders should stop obstructionism and work constructively at the level of state institutions, in order to speedily enact key legislation necessary to advance on the path of Euro-Atlantic integration.

73. Moreover, the Assembly has, on several occasions, expressed concerns about the increase in confrontational and inflammatory rhetoric. Statements and possible actions by politicians at the highest level of Republika Srpska, which undermine state institutions and challenge the authority and powers of the High Representative, are not contributing to strengthening trust and constructive dialogue between key political stakeholders.

74. In October 2010, Bosnia and Herzegovina will hold a general election. In the current context of division and confrontation, it is important to ensure that these elections are held in an environment which is conducive to the free and fair expression of the will of the people. I therefore call again upon all political stakeholders within and outside Parliament to refrain from inflammatory statements and engage in a normal political debate around issues important for society, as well as the country's advancement on the path of Euro-Atlantic integration, including the completion of the reforms required by Council of Europe post-accession commitments.

75. In **Georgia**, the political atmosphere between the authorities and the opposition is generally polarised and acrimonious. In spring 2009, a series of protests, lasting several months, were organised by the extra-parliamentary opposition with the aim of changing the power in Georgia via early parliamentary and presidential elections in Georgia.

76. In order to strengthen the role of the opposition in the work of Parliament, the opposition has been granted, inter alia, the right to nominate up to three vice-chairpersonships of the Georgian Parliament, as well as the right to nominate a vice-chairperson on each parliamentary Committee. Also the procedures to set up a parliamentary faction have been simplified and the number of MPs to form a faction has been reduced from 10 to 6. In addition, a member of the parliamentary minority has been elected to the High Council of Justice, which manages the judiciary, and the number of MPs from the parliamentary minority has been increased on the Trust Group, which supervises information in the defence area.

77. In **Moldova**, relations between the majority and the opposition are extremely polarised. This has led to a political and institutional deadlock over the election by Parliament of the President of the country. After the parliamentary elections of 5 April 2009, none of the four political parties represented in Parliament could secure the necessary majority of 3/5th (61 seats) in order to elect the Head of State. Subsequently, after two rounds of voting, in which the opposition did not participate, the Acting President of the country had to dissolve Parliament and call a new election. As a result of the early parliamentary elections of 29 July 2009, the balance of political forces in Parliament has changed. A new majority coalition, called Alliance for European Integration, bringing together four political parties (which previously were in opposition), managed to appoint a

new government (without the participation of the opposition in the voting) but failed to secure the necessary majority to elect the President of the State. Two rounds of presidential elections were held again, in October and December 2009, with no candidate securing the necessary majority. Consequently, the current Speaker of the Moldovan Parliament is now exercising the functions of the President on an interim basis.

78. According to Moldova's Constitution, the current Parliament has to be dissolved and early elections have to be organised. However, the Constitution is silent as to the exact timetable. It also contains some ambiguous provisions which may give rise to different interpretations. In this context, the Moldovan Constitutional court asked the Venice Commission's opinion on the key open issues. On 12 March 2010, the Venice Commission approved an *Amicus Curiae* brief on the interpretation of articles 78.5 and 85.3 of the Constitution, stressing that a dissolution of Parliament cannot take place twice within one year, even if Parliament fails to elect the President twice. According to the Commission, the words "in the course of a year" should be interpreted as meaning one year, counting from the last dissolution of Parliament and not within one calendar year. This means that Parliament could be dissolved at the earliest on 16 June 2010. The Commission underlined that, following this date, dissolution must take place within a reasonable timeframe.<sup>15</sup>

79. At the same time, the Venice Commission noted that it was necessary to amend the Constitution before dissolving Parliament in order to avoid similar institutional crisis situations in future. In the opinion of the Venice Commission, the proposal to revise Article 78 of the Constitution so as to make it easier to elect the President should be agreed as soon as possible by the leaders of the political parties represented in Parliament. The proposal could provide for a lower majority in Parliament to elect the President as from the third round of voting or for a direct election of the President by the people. The proposal should be voted by the current Parliament as soon as possible following its approval by the Constitutional Court, but would take effect only for the next Parliament. Parliament should be dissolved after this vote. A more comprehensive revision of the Constitution could take place during the term of office of the newly elected Parliament.<sup>16</sup>

80. The co-rapporteurs of the Monitoring Committee are following the situation in Moldova very closely and will propose to the Committee and to the Assembly any further action which may be required by the situation.

81. In **Montenegro**, the Coalition for a European Montenegro (composed of the Democratic Party of Socialists, Social Democratic Party, Bosniak Party and Croatian Civic Initiative) won a strong mandate in the parliamentary elections of 29 March 2009, with nearly 52% of the votes and 48 out of the 81 seats in Parliament. The other 33 seats are distributed between the Socialist People's Party (SNP, 16 seats), New Serbian Democracy (NOVA, 8 seats), Movement for Changes (PzP, 5 seats) and 4 small Albanian parties (1 seat each). Milo Djukanovic, President of the Democratic Party of Socialists and former President of Montenegro, was appointed Prime Minister. This is his fifth (non-consecutive) term.

82. In political terms, the Assembly co-rapporteurs noted that, although the ruling coalition has a comfortable majority, it still needs to engage in a constructive dialogue with the opposition, which appears to hold a solid mandate in the new Parliament. This is particularly important as the adoption of some laws (for example, amendments to the electoral legislation) require a qualified majority. Dialogue between the majority and the opposition is therefore essential and the Assembly expects both the ruling coalition and the opposition to shoulder their political responsibilities and engage in constructive co-operation.

83. In **Serbia**, the newly achieved political stability after the parliamentary elections of May 2008 creates a favourable environment for society to progress and implement the necessary reforms in the field of democracy, human rights and the rule of law. In [Resolution 1661 \(2009\)](#), the Assembly called upon the majority coalition to create conditions for a meaningful dialogue with the opposition on key issues. At the same time, it urged some of the opposition parties to stop obstructionism and the opposition in general to adopt a constructive attitude in the parliamentary arena. Although some amendments were made to the Rules of procedure of Parliament in spring 2009, parliamentary procedure still needs to be improved and sufficient guarantees against abuse of the procedure, together with effective guarantees of the rights of the opposition, have to be established. In this context, the Assembly noted that it was essential to adopt a new law on the National Assembly of Serbia and new rules of procedure of Parliament, in close co-operation with the Venice Commission.

84. More fundamentally, the system of "party-administered mandates" needs to be changed in order to ensure that the members of Parliament act as free, democratically elected representatives of the citizens and not "spokespersons" of the leaderships of their political parties. As long as the current system remains in place, a normal political debate between and inside political parties cannot take place, as exemplified by the

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15. Opinion 565/2009, CDL-AD(2010)002.

16. Press release n° 218a10.

long negotiations about the mandates of MPs between the Serbian Radical Party and the Serbian Progressive Party, which was established in 2008 as a result of a split inside the Serbian Radical Party. In Resolution 1661 (2009), the Assembly therefore called upon the authorities to remedy this problem as a matter of urgency.

85. The political landscape in **Ukraine** has been dominated for the last few years by the systemic political crisis, as a result of the unclear separation of powers between the President, Parliament and Prime Minister, and the resulting political in-fighting between the different political forces. This has seriously affected the work of the Verkhovna Rada, as well as the relationship between the ruling coalition and opposition.<sup>17</sup>

### **2.3. Parliamentary oversight over the activities of the executive and strengthening of the capacity of Parliaments**

86. In several Resolutions and reports, the Assembly has underscored the role of the National Assembly of **Armenia** in trying to diffuse the political crisis that ensued after 1 March 2008, and in initiating reforms and laws to address the underlying causes of this crisis. It is clear that the National Assembly is willing to strengthen its role in the legislative process as well as in supervising the activities of the executive. In a parallel development, on 17 September 2009, the parliamentary ad hoc Committee of the National Assembly of Armenia to conduct an inquiry into the March 2008 events and “the reasons thereof” published its report. In an information note on the conclusions of the ad hoc Committee, the co-rapporteurs of the Monitoring Committee welcomed the comprehensive recommendations produced by the ad hoc Committee, while regretting, at the same time, the manner in which certain issues were either stressed or avoided in the report. This has given the impression that the ad hoc Committee wanted, at all cost, to avoid discrediting too overtly the official version of the events or criticising too harshly the authorities on their handling of them. This tends to indicate a need to further strengthen the independence of the parliamentary oversight function.

87. Since accession to the Council of Europe, the Parliament of **Azerbaijan** is reinforcing step by step its role vis-à-vis other State institutions. However, much remains to be done to strengthen parliamentary control over the executive and improve the checks and balances in a state governed by a strong presidential system. As underlined in previous Assembly reports on the functioning of democratic institutions in Azerbaijan and on the monitoring of the country, the separation of powers as enshrined in the Constitution remains to be implemented in practice, in particular by increasing the role of the Parliament vis-à-vis the executive authorities.

88. As noted earlier, the performance of the Parliamentary Assembly of **Bosnia and Herzegovina** has been rather poor over the past years. Because of the complex power-sharing mechanisms, as well as of the domination in the debate of the entity and ethnic rhetoric, the work of Parliament is often obstructed by different political forces and the legislative process remains extremely slow. There is an urgent need to operate a comprehensive reform of State institutions, including at the level of the Constitution, in order to improve their functionality and enable the Parliamentary Assembly, the Council of Ministers and the Presidency effectively to exercise their respective roles. In the view of the Venice Commission, expressed in several opinions, the executive powers have to be concentrated in the Council of Ministers which has to be made truly accountable to the Parliamentary Assembly. At the same time, the Parliamentary Assembly, especially the House of Representatives, whose members are elected on the basis of a universal, free and direct suffrage, in accordance with the proportional system, should exercise fully its powers of parliamentary oversight over the activities of the Council of Ministers, especially with regard to the implementation of adopted laws.

89. In **Georgia**, a comprehensive package of democratic reforms was introduced after the August 2008 war, with a view to, inter alia, strengthening the institutional role of Parliament vis-à-vis the executive, strengthening the role of the opposition in the work of Parliament as well as in state oversight institutions, including those that oversee the defence and national security sectors. An Anti-Crisis Council was formed, with the aim to oversee the post-war reconstruction and distribution of aid to IDPs, as well as to discuss further democratic reforms. This Council is composed of representatives of the government, as well as members of the parliamentary majority and opposition.

90. In addition, in order to strengthen the role of Parliament, constitutional amendments are proposed that would, inter alia: make it necessary for a newly elected Parliament to give its vote of confidence to the Cabinet of Ministers; simplify the procedure for Parliament to adopt a motion of no-confidence in the Cabinet of Ministers and limit the number of times the President can dissolve Parliament. The opinion of the Venice Commission has been sought on these amendments. On 8 July 2009, the State Constitution Commission of

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17. See [Resolution 1549 \(2007\)](#)

Georgia was established, composed of representatives of political parties, representatives of the civil society and prominent academics, with the aim of drafting a new constitution especially with a view to, inter alia, strengthening the role of the Parliament, strengthening the independence of the judiciary and enhancing the system of checks balances.

91. In **Moldova**, the ongoing political and institutional crisis has prevented Parliament from being fully engaged in the legislative process. The fact that, since the failure of Parliament to elect the President of State after two attempts in October and December 2009, the MPs from the Party of Communists boycott the plenary sessions of Parliament does not help develop a constructive co-operation between the majority and the opposition. However, the majority and the opposition appear to work together at committee level. It is important to note that the majority and the opposition co-operate in a constructive manner within the framework of the parliamentary inquiry committee which was established in order to investigate the events of April 2009. The Committee is expected to make its report public soon. It is important to ensure that the report should be agreed to by all members of the inquiry committee; this, of course, does not mean that the individual members of the committee cannot express dissenting opinions on the interpretation of the facts to be established by the inquiry committee. Constructive co-operation between the majority and the opposition has to be developed in the implementation of the recommendations to be contained in the report, which have to be translated into a set of concrete measures aimed at completing the implementation of the remaining post-accession commitments, in accordance with Assembly Resolutions.

92. In **Montenegro**, in accordance with the post-accession commitments, provisions governing parliamentary control over the armed and security forces were included in the Constitution. A Security and Defence Council was created. The Speaker of Parliament is a member of the Security and Defence Council. The Council deals with issues of national security and defence strategy and takes decisions regarding the inclusion of army units in international forces.

93. At the same time, in [Resolution 1724 \(2010\)](#), the Assembly noted that the capacity of the Parliament should be further strengthened in order to enable MPs to play an active role in the legislative process, as well as to ensure parliamentary oversight over the implementation of adopted laws. In fact, the Committee co-rapporteurs have gained the impression that, although Parliament works efficiently and expediently, in particular, with respect to laws relating to European integration laws are sometimes adopted too quickly, without substantial discussion and without prior dialogue with civil society.

94. This is partially due to the fact that Parliament has no real capacity to provide MPs with expertise on technical and legal issues. Moreover, the electoral system (providing for party-administered mandates) makes MPs dependent on the goodwill of party leaderships, which does not stimulate their personal involvement in law-making. As a result, some tend to believe that Parliament is too often “rubber stamping” legislation and, according to some surveys and public opinion polls, amongst all public institutions, the public has a rather low level of trust and the highest level of distrust in the Parliament<sup>18</sup>. In this context, it is necessary to strengthen the capacity of Parliament to exercise its supervisory functions better. At the same time, Parliament should actively seek to involve civil society representatives in the debate, within the framework of the legislative process, in order to ensure that a wide consultation with all actors concerned takes place in respect of draft laws submitted to Parliament.

95. In the report on “Reconsideration on substantive grounds of previously ratified credentials of the Russian delegation (Rule 9 of the Rules of Procedure of the Assembly)”<sup>19</sup>, the rapporteur stressed the limits of the influence of the **Russian Parliament** [...] on the political course of the government. This is partially due to the fact that the electoral arrangements should be further improved in order to increase pluralism in Parliament by giving an effective possibility to a wide array of political forces to compete in parliamentary elections. At the same time, Parliament has to develop further its oversight function of the activities of the executive.

96. In **Serbia**, in accordance with the Constitution, effective mechanisms of democratic parliamentary oversight of the activities of the Army, Security Forces and Police have been established. The competent committees of the National Assembly are responsible for this task.<sup>20</sup> However, just as in Montenegro, due to the system of “party-administered mandates”, the role of Parliament in the political process as well as in the oversight over the executive should be further strengthened. In parallel with the reform of the electoral

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18. See [Doc. 12192](#).

19. See [Doc. 12045](#).

20. See [Doc. 11701](#)

legislation and mandate system of MPs, the Serbian authorities should deal with this problem in the process of development of new legislation on the National Assembly, as well as in the preparation of new Rules of Procedure of Parliament.

97. In [Resolution 1549 \(2007\)](#), adopted in April 2007, the Assembly recommended that the **Ukrainian** authorities re-launch the constitutional reform project, in close co-operation with the Venice Commission, in order to improve the Constitution of Ukraine and bring it in line with European standards, in particular as regards the provisions on the separation between the different branches of power.

### 3. Role of parliaments in countries engaged in a post-monitoring dialogue

98. The 5 July 2009 parliamentary elections in **Bulgaria** were the first national elections since the country joined the European Union in 2007. The elections were held four weeks after the elections to the European Parliament and the two campaigns were closely linked.

99. In its report on the observation of the parliamentary elections in Bulgaria (5 July 2009)<sup>21</sup>, the Ad hoc Committee of the Bureau noted a broad difference between the overall orderly voting day and the defects revealed in the run-up to the vote. Last minute changes of the electoral legislation ran counter to the recommendations set out in the Code of Good Practice in Electoral Matters worked out by the Venice Commission and approved by the Assembly. The Ad hoc Committee deplored the lack of public confidence in the democratic process in Bulgaria resulting in wide-scale electoral cynicism, as exemplified by the reportedly widespread practice of vote selling and vote buying.

100. That said, as a result of the July 2009 elections, a pluralistic Parliament was formed. The centre-right GERB (Citizens for a European Bulgaria) movement won 39.7% of the votes, while the former ruling Coalition for Bulgaria obtained 17.7%; the Movement for Rights and Freedoms (DPS, supported by Bulgarians of Turkish ethnic origin) obtained 14.5% of the votes, the radical nationalistic ATAKA received 9.36%, the liberal Blue Coalition obtained 6.7%, and the centre-right Order, Law and Security, 4.13%.<sup>22</sup>

101. With 116 seats out of 240 secured, including 50 women (i.e. 20.8%), the results did not allow Prime Minister Boyko Borisov to form an outright majority. In this situation, he opted to form a minority government as opposed to entering into a coalition with other small right-wing parties. On the other hand, all right-wing parties, including the extreme right nationalists declared that they would support the Government with a view to solving Bulgaria's problems.

102. The issues relating to post-monitoring dialogue with the Assembly are among the top priorities of the new Government. Particular attention is being paid to guaranteeing the rule of law, to the fight against corruption and crime, as well as the reform of the judiciary. The Assembly rapporteur on post-monitoring dialogue noted in his report that the new government has to seize the momentum and the strong support of the population to set Bulgaria on the right track of a modern democracy, in order to complete the necessary reforms. I would like to encourage the Bulgarian authorities to pursue the positive dynamic and work closely with the competent bodies of the Council of Europe, in particular the Venice Commission, in order to fulfil the Assembly recommendations in the post-monitoring dialogue contained in [Resolution 1730 \(2010\)](#).

103. **Monaco** held parliamentary elections on 3 February 2008. In its report on the observation of these elections, the Ad hoc Committee of the Bureau of the Assembly concluded that, given the particular situation of Monaco, the election had taken place largely in line with Council of Europe electoral standards. The Electoral Commission had conducted its work in an impartial and professional manner, displaying considerable transparency and efficiency. Following the recommendations of the Ad hoc Committee on the observation of the elections, the Assembly, in its [Resolution 1690 \(2009\)](#) on the honouring of obligations and commitments by Monaco, reiterating earlier recommendations, invited the Monegasque authorities to envisage preparing a law on political parties, particularly to ensure greater transparency in political party financing, and a law on the organisation of elections and the election campaign.

104. However, it should be pointed out that the Principality of Monaco remains a hereditary and constitutional monarchy in which the Prince is an active Head of State and possesses extensive powers that have no counterpart in other European monarchies, except perhaps Liechtenstein (see [Doc. 11299](#)). That

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21. [Doc. 12008](#) of 16 September 2009, Observation of the parliamentary elections in Bulgaria (5 July 2009), report by the Ad hoc Committee of the Bureau of the Assembly, rapporteur: Mr Tadeusz Iwiński, Poland, Socialist Group.

22. Repartition in the National assembly: GERB (Citizens for a European Bulgaria) 116 seats, Coalition for Bulgaria 40 seats, Movement for Rights and Freedoms 38 seats, ATAKA 21 seats, Blue Coalition 15 seats, Order, Law and Security 10 seats (the latter parliamentary group has been dissolved, following the dismissal of one of its members).

said, strengthening the powers of the National Council was the subject of intense negotiation during the accession procedure so that Monaco would fulfil the criterion of “pluralist democracy” within the meaning of the Council of Europe’s statute.

105. On this issue, in its Resolution 1690 (2009), the Assembly recalled the recommendations in paragraph 11 of [Opinion 250 \(2004\)](#) on supervision of government action, particularly as regards the annual presentation of the governmental programme, the right of legislative initiative, and the budgetary debate. It is aware that the 2002 constitutional revision prepared the way for an improvement in the institutional balance specific to Monaco’s hereditary constitutional monarchy. It nevertheless expects that these constitutional provisions be transposed into the legislative and regulatory texts, thus allowing the legislature’s independence vis-à-vis the executive, and balance between the institutions, to be secured.

106. The Sovereign Prince expressed his view on this issue during the meeting with the co-rapporteurs on 28 July 2009, stating that the extension of the powers of the National Council desired by the Assembly can be achieved by including the presentation of the governmental programme and the discussion of the initial and rectified budgets in the annual joint meetings between the government and the National Council on the economic and social situation in the Principality.

107. In fact, the National Council has no legal personality and does not possess budgetary independence: it has to request Government authorisation to use the funds allocated to it, as well as authorisation on how it may spend them. The Government limits the National Council’s scope for action and exercises indirect political control over its activities through the control it exercises over its financial resources.

108. A joint National Council-Government working group has been set up. It has met on several occasions and the Assembly sincerely wishes that its proceedings may lead to the early enactment of a new law on the operation and organisation of the National Council, accommodating the constitutional amendments which had been made in 2002.

109. Therefore, in its [Resolution 1690 \(2009\)](#), the Assembly invited the National Council to revise its rules of procedure accordingly. It furthermore encourages the government to espouse transparency in its relations with the National Council to enable it to consolidate its role and improve the system of checks and balances and, through its press centre, to secure direct access for the National Council members to the local television channel.

110. Moreover, it is important that the Monegasque authorities revise the list of international conventions and treaties requiring the passage of a ratifying law by the National Council under Article 14 of the Constitution and, in the meantime, put to the National Council any draft reservation or declaration pertaining to a treaty on which the National Council must pass a ratifying law.

111. The Assembly, through its Monitoring Committee, will carry on the post-monitoring dialogue with the Monegasque authorities on the questions raised in this Resolution 1690 (2009).

112. Since the last progress report on the functioning of democratic institutions, no new reports on the post-monitoring dialogue with **“the former Yugoslav Republic of Macedonia”** have been prepared. In the present report, I would like to refer to the statement which the President of the Assembly, Mr Lluís Maria de Puig, made after his official visit to the country in June 2009.

113. In the official statement about the conclusions of his visit, the President of the Assembly noted that the country had made steady progress on the path of strengthening its democratic institutions, affirming the principles of rule of law and effectively protecting human rights and national minorities. At the same time, he stressed that **“the former Yugoslav Republic of Macedonia”** still has issues to face in the process of consolidating its democratic institutions and that confidence of all political players in the parliamentary process must be bolstered. In particular, the President of the Assembly called on the parliamentary majority and the opposition to continue with constructive political dialogue, with due regard for legitimate interests on either side. He also stressed in this connection that the President of the Republic must help to facilitate a democratic debate that included all the political forces and ethnic communities in the country.

114. I trust the new rapporteur on post-monitoring dialogue with **“the former Yugoslav Republic of Macedonia”** to be appointed soon, in accordance with the amended [Resolution 1115 \(1997\)](#) on the setting up of the Assembly Monitoring Committee, will promptly re-launch dialogue with the authorities on the remaining issues, in accordance with the Assembly [Resolution 1213 \(2000\)](#) on the closing of the monitoring procedure and the opening of post-monitoring dialogue.

115. As regards **Turkey**, [Resolution 1622 \(2008\)](#) was the last report on this country to the Assembly. The Assembly recalls that parliamentary elections in July 2007 were considered by the Assembly and other international observers as generally in compliance with Turkey's commitments as a member state of the Council of Europe and European standards for free and fair elections. The Assembly notes that the high voter turnout confirmed that confidence in the democratic process exists in Turkey. While regretting the Turkish authorities' failure to comply with its previous calls to lower the 10% electoral threshold, the Assembly notes that the current parliament is more representative of the country's political diversity than the previous one, representing about 90% of the opinions of the electorate.

116. Resolution 1622 (2008) on the functioning of democratic institutions in Turkey: recent developments, was adopted following the political crisis which had erupted as a result of the failure of the Turkish Grand National Assembly (hereafter "the parliament") to elect a new President of the Republic and the judicial proceedings instituted to dissolve the ruling AK Party. The lawsuit against the ruling party sparked a renewed debate about the legal basis for the closure of political parties in the country and show that, despite the above-mentioned reforms, the issue of dissolution of political parties in Turkey is not closed.

117. In this regard, the Assembly reiterates that, in pursuing such reforms, the Turkish authorities should in particular envisage introducing stricter criteria for the dissolution of political parties, such as condoning or inciting violence or overt threats to fundamental democratic values, in line with the guidelines of the Venice Commission. The full revision of the 1982 Constitution which, despite repeated revisions, still bears the marks of the 1980 military coup d'état, and a comprehensive review of the law on political parties, are required in order to bring these texts fully into line with European standards. A package of constitutional amendments has been adopted in first reading on 29 April 2010. The second reading was underway at the time of the drafting of this report.

118. The Monitoring Committee is following this issue within its post-monitoring dialogue started with the Turkish authorities since the closing of the monitoring procedure in 2004. A new rapporteur on this post-monitoring dialogue will be appointed in June 2010 and, according to the new Rules of Procedure, a report based on the information notes considered previously by the Committee<sup>23</sup> should be presented to the Assembly shortly. This report will deal with the current constitutional reform.

#### **4. Conclusions and recommendations for follow-up**

##### **4.1. Country-specific recommendations**

119. In the light of the above considerations, the following conclusions may be drawn:

- a. with respect to elections and political pluralism:
  - the Parliament of Albania should improve the legislative framework for electoral process and enhance the capabilities of the electoral administration as regards the electoral register, regulation of media coverage and funding of campaigns, the rules of transparency relating to media ownership, the electoral commissions and lists of candidates;
  - the Parliament of Armenia should implement without delay, and well before the next parliamentary elections, far going electoral reform with a view to ensuring equal and fair conditions for all candidates and increasing public confidence in the electoral process, including the complaint resolution processes;
  - the Parliament of Azerbaijan should revise in the Electoral Code of 2008, a number of provisions with regard to the registration of candidates, campaign financing and lists of persons entitled to conduct pre-election campaign;
  - the Parliament of Bosnia and Herzegovina should bring the constitution and the electoral legislation into line with the European Convention of Human Rights with a view to eliminating discrimination based on ethnicity;
  - the Parliament of Georgia should proceed with the electoral reform in time for the next parliamentary elections and to restart the dialogue with the opposition with the aim of reaching a consensus among an as wide as possible range of political forces on the electoral system for the country;

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23. AS/Mon (2009) 10 rev.

- the Parliament of Moldova should improve the electoral legislation as regards the threshold for party lists, the formation of electoral coalitions, the accuracy of the voter lists as well as the voting of Moldovan citizens residing abroad;
  - the Parliament of Montenegro should harmonise the legislation governing parliamentary elections with the new Constitution, in line with accession commitments;
  - the Parliament of the Russian Federation should eliminate legal provisions which limit political pluralism, including restrictive provisions for party and candidate registration and 7% threshold to enter parliament;
  - the authorities of the Russian Federation should be invited to ask an opinion of the Venice Commission on its legal framework for elections and seek its co-operation in addressing any shortcomings and implement recommendations contained in such an opinion;
  - the Parliament of Serbia should review the existing constitutional framework with a view to abolishing a party administered mandate and review the electoral legislation accordingly, in order to increase the transparency for the voters of the process of seats to party lists;
  - the Parliament of Ukraine should make good on its long standing promise and to adopt, without further delay, a Unified Election Code that is in line with European Standards.
- b. with respect to the dialogue between political parties in Parliament:
- the main opposition party in Albania (Socialist Party) should finish boycott of the work of the Parliament and enter a constructive political dialogue with other political forces;
  - the Armenian authorities should continue its efforts to establish a meaningful dialogue with the extraparlimentary opposition on the political reforms needed for the normalization of political life in the country;
  - the Azerbaijani authorities should establish a meaningful political dialogue with the opposition;
  - the Georgian authorities should continue its efforts to establish a meaningful dialogue on the direction and content of the constitutional and electoral reform packages that are being prepared;
  - the political forces in Moldova should engage in a constructive and meaningful dialogue with a view to creating the necessary guarantees against the repletion of the current institutional crisis, including by amending the constitution;
  - the political forces in Bosnia and Herzegovina should establish a serious institutionalised process for the preparation of a comprehensive package of constitutional amendments, in accordance with the country's post-accession commitments, while making full use of the expertise and recommendations of the European Commission for Democracy through Law (Venice Commission).
- a. with respect to parliamentary oversight over the activities of the executive and strengthening of the capacity of Parliaments:
- Parliaments of Armenia, Azerbaijan, the Russian Federation, Georgia and Ukraine should review their legislations with a view to strengthening their role as parliamentary oversight over the activities of the executive;
  - Parliaments of Moldova, Montenegro, Serbia should strengthen their material and organisational capacities.