Doc. 13085 – Compendium of written amendments

(Final version)

Post-monitoring dialogue with Bulgaria

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A. Draft Resolution

1. The Parliamentary Assembly refers to its Resolution 1211 (2000) on the honouring of obligations and commitments by Bulgaria, in which it decided to close the monitoring procedure and to open a dialogue with the Bulgarian authorities on a number of outstanding concerns contained in the resolution, or on any other issue arising from the obligations incumbent upon every member State of the Council of Europe under Article 3 of the Statute with regard to pluralist democracy, the rule of law and human rights.

2. During the entire period of the post-monitoring dialogue, Bulgaria has continued to make substantial progress towards the fulfilment of its remaining obligations. This was confirmed by its accession, in 2007, to the European Union. Since the adoption by the Assembly of Resolution 1730 (2010) on post-monitoring dialogue with Bulgaria, the country has taken a number of important measures designed to implement the Assembly's recommendations.

3. The Assembly notes with satisfaction that the Bulgarian authorities have shown and continue to demonstrate a sustained political will and commitment to achieve the full accomplishment of their obligations and commitments resulting from membership of the Council of Europe and compliance with democratic standards, as confirmed by their extensive co-operation with the European Commission for Democracy through Law (Venice Commission).

Amendment 3
Tabled by Mr Yanaki STOILOV, Mr Stefan SCHENNACH, Mr Björn von SYDOW, Mr Tadeusz IWIŃSKI, Mr Pietro MARCENARO, Ms Josette DURRIEU, Mr Patrick MORIAU, Mr Jordi XUCLÀ, Lord Donald ANDERSON

In the draft resolution, paragraph 3, replace the words "notes with satisfaction that the Bulgarian authorities have shown" with the following words: "expects that the Bulgarian authorities show".

4. The Assembly recognises important progress in terms of the legislative framework and the crucial reforms put in place since the closure of the monitoring procedure, especially since accession to the European Union. In particular, the Assembly welcomes the introduction of laws on the functioning of the judiciary, aimed at increasing its independence, accountability and transparency.

5. Successive amendments to the Judicial System Act, introduced between 2008 and 2012 in line with the Venice Commission's recommendations, particularly those concerning the introduction of a new selection and appointment procedure for the members of the Supreme Judicial Council and the Inspectorate, procedures for appointments and appraisals of magistrates, as well as measures aimed at improving judicial and investigative practice, have to a large extent created favourable conditions for the functioning of the judiciary.

6. The adoption, in 2010, of the Strategy to Continue the Judicial Reform with the objective of increasing public confidence, improving management and countering corruption in the judiciary, with the involvement of civil society and magistrates, should further contribute to the improvement of the functioning of the judiciary.

7. However, a number of concerns, including the role of the Minister of Justice in the Supreme Judicial Council, its structure and the method of appointment of its members, the probationary period of five years for new judges and the separation of and non-interference between the three judicial branches (judges, prosecutors and investigating magistrates), require further reflection and should be addressed. Regretfully, some fundamental principles, such as the independence of the judiciary, have not always been fully respected and some important appointments have not been made on the basis of merit and integrity. At the same time, it has to be acknowledged that some changes require the courage to challenge vested interests. This is also true within the judiciary itself.

8. Ensuring the effective implementation and using the full potential of the legislative framework, in particular with regard to the managerial and leading role of the Supreme Judicial Council, whose independence and integrity should remain beyond any doubt, is a necessary condition for the sustainability and irreversibility of the process. It is now crucial that the authorities, as well as the judiciary, assume full ownership of the reforms.

9. The Assembly commends the efforts that Bulgaria has made to introduce a comprehensive legislative and administrative framework and preventative measures to combat corruption and organised crime, which have been intensified since its accession to the European Union. In particular, it expresses its satisfaction at the final adoption, in 2012, of the Law on Forfeiture in favour of the State of Illegally Acquired Assets and, in 2010, of the strengthened Law on Conflict of Interests.

Amendment 7
Tabled by Mr Luca VOLONTÈ, Mr Thierry MARIANI, Ms Marie-Jo ZIMMERMANN, Mr Hans FRANKEN, Mr Joseph O'REILLY, Mr Václav KUBATA, Mr Rom KOSTŘICA

In the draft resolution, after paragraph 9, insert the following paragraph:

"The Assembly appreciates the important efforts made by the Bulgarian authorities, in particular the ratification of the Money Laundering Convention by the parliament on 19 December 2012, which was a significant step in the right direction and confirms the sustainability and irreversibility of the democratic process. The Assembly strongly encourages the Bulgarian parliament and government to fully implement all the provisions of that Convention."

10. Despite progress in this field, some concerns remain only partially addressed, as confirmed by the lack of results in terms of final court rulings with regard to high profile corruption cases. This low level of efficiency can be explained to a great extent by deficiencies in investigatory procedures and by the weakness of judicial practice. While some shortcomings in the existing legislation, which have been highlighted by the Group of States against Corruption (GRECO) and the European Commission, should be remedied without delay, the implementation of the existing legislation and using the full potential of the tools available remain essential challenges.

11. The future adoption of the new penal code, which is currently being drawn up in co-operation with Council of Europe legal experts, should further contribute to improving the situation.

12. With regard to the implementation of decisions of the European Court of Human Rights, the Assembly notes

with satisfaction that the National Assembly adopted, in September 2012, a law providing for the introduction of an obligation for the government to submit to parliament an annual report on the number and nature of judgments and information on the implementation of the Court's decisions, in accordance with the recommendations of the Parliamentary Assembly.

13. The Assembly recognises the progress made by Bulgaria in the field of combating human rights abuses by law enforcement officials, following a number of measures, including the amendment to the Interior Ministry Act, adopted in May 2012, setting up systematic human rights training for police officers and the introduction of concrete measures to eradicate impunity and the lack of accountability for abuses.

14. While commending the adoption, in 2010, of a new law obliging the print media to disclose the names of their actual owners, the Assembly stresses the need for the adoption of similar provisions for the broadcasting sector.

15. The Assembly is preoccupied by the rise in nationalist ideology and actions and by the climate of increasing hostility towards minorities, as illustrated by the aggressive conduct of the Ataca Political Party supporters towards believers in front of the Mosque in Sofia in May 2011, and the hate speech and incitement to violence against Roma in Sofia and 14 other cities in October 2011. Moreover, despite undeniable progress and efforts with regard to the rights of people belonging to minorities, a number of concerns, which have been identified by the relevant Council of Europe monitoring mechanisms, still remain and should be addressed without further delay.

16. The Assembly recalls the concerns identified by its observers during the last parliamentary elections in 2009, as well as the recommendations made by the Venice Commission in respect of the current Electoral Code, and calls on the Bulgarian authorities to address these concerns in time for the forthcoming elections in the summer of 2013.

17. In order to continue the progress and confirm the sustainability and irreversibility of the reforms in Bulgaria, the Assembly calls on the authorities to take the following measures:

17.1. With regard to the independence of the judiciary:

17.1.1. safeguard the independence of the judiciary and refrain from exerting any pressure on it;

17.1.2. review the role of the Minister of Justice in the Supreme Judicial Council and consider the introduction of a qualified majority vote in the election of the parliamentary quota of the Supreme Judicial Council;

17.1.3. shorten the length of the probationary period for new judges;

17.1.4. ensure the separation of and non-interference between the three judicial branches (judges, prosecutors and investigating magistrates) within the Supreme Judicial Council, in compliance with the Venice Commission's recommendations;

17.1.5. encourage and support the Supreme Judicial Council and the Inspectorate in their task of increasing the efficiency of the judiciary and judicial practice, particularly in the following areas:

17.1.5.1. develop a human resources strategy which would encourage professionalism, independence and integrity, notably by addressing the deficiencies in the system of appraisals, establishing a uniform and consistent mechanism for assessing the performance of judges, prosecutors and investigating magistrates and linking it with career development;

17.1.5.2. ensure consistency in sanctions, notably in cases concerning delays in issuing the motivation of decisions, and establish a single, effective system of random, nationwide allocation of cases and clear criteria for the assessment of the complexity of cases and their impact on the distribution of workload;

17.1.5.3. conduct an analysis of the deficiencies in judicial practice with a view to addressing them, develop a strategy for reducing the backlogs in publishing the motivation of decisions, and remedy loopholes in the effective implementation of court decisions, such as absconding to evade prison sentences or failure to apply financial sanctions decided by the court;

Amendment 4
Tabled by Mr Stefan SCHENNACH, Mr Björn von SYDOW, Mr Tadeusz IWIŃSKI, Mr Pietro MARCENARO, Ms Josette DURRIEU, Mr Patrick MORIAU, Mr Jordi XUCLÀ, Lord Donald ANDERSON, Mr Yanaki STOILOV

In the draft resolution, after paragraph 17.1.5.3, insert the following paragraph:

"carry out the upcoming elections of the new member of the Constitutional Court and of the Chief Inspector of the Inspectorate to the Supreme Judicial Council in accordance with the highest standards of professionalism and integrity as opposed to the demonstrated bad practices."

17.1.6. encourage the involvement of civil society and professional organisations in defining and monitoring further strategies for the reform of the judiciary;

17.1.7. complete the work on a new penal code, in full co-operation with Council of Europe legal experts, and ensure its implementation once adopted;

17.2. With regard to the fight against corruption and organised crime:

17.2.1. implement the recommendations made by GRECO, in particular with regard to the clear incrimination of bribery and trading in influence, ensure broader interpretation of the concept of undue advantage, and ensure full implementation and use of the potential of the Law on Forfeiture in favour of the State of Illegally Acquired Assets, adopted in May 2012;

17.2.2. review the Law on Conflict of Interest so as to ensure a more efficient application of dissuasive sanctions; revise the asset declaration and verification system with a view to increasing its efficiency as an effective instrument to detect illicit enrichment;

17.2.3. establish independent institutions in the area of anticorruption with the authority and obligation to make

proposals, to intervene in a proactive way and to ensure independent monitoring in line with the European Commission's recommendations; and ensure that they have sufficient capacity to conduct complex financial investigations;

17.2.4. conduct a full analysis of the deficiencies in investigatory procedures with a view to remedying the situation and, on the basis of past experience, improve the performance of the police, the prosecution and the courts;

Amendment 10
Tabled by Mr Luca VOLONTÈ, Mr Thierry MARIANI, Ms Marie-Jo ZIMMERMANN, Mr Pieter OMTZIGT, Mr Hans FRANKEN, Mr Joseph O'REILLY, Mr Václav KUBATA, Mr Rom KOSTŘICA

In the draft resolution, after paragraph 17.2.4, insert the following paragraph:

"ensure full implementation of the Money Laundering Convention, which was recently ratified by the parliament and is an important step forward for the country;"

17.3. With regard to abuses by law enforcement officials:

17.3.1. pursue efforts to eradicate abuses by law enforcement officials by effectively implementing the measures to eliminate impunity and the lack of accountability of such abuses, in particular by ensuring proper investigations into individual cases, introducing procedural safeguards during police custody, promoting civil society monitoring and developing further training and awareness-raising measures;

17.4. With regard to the independence of the media:

17.4.1. adopt legislation obliging the broadcast media to disclose the names of their actual owners, as is now the case for the print media;

17.4.2. ensure that defamation and libel are not criminalised in the new penal code under preparation;

17.5. With regard to the rights of people belonging to national minorities:

17.5.1. systematically and unconditionally condemn hate speech against minorities, step up measures aimed at fostering tolerance and mutual respect, and encourage exemplary behaviour by political leaders;

Amendment 8
Tabled by Mr Luca VOLONTÈ, Mr Thierry MARIANI, Ms Marie-Jo ZIMMERMANN, Mr Pieter OMTZIGT, Mr Hans FRANKEN, Mr Joseph O'REILLY

In the draft resolution, paragraph 17.5.1, after the words "against minorities", insert the following words: ", in particular any aggressive action against Roma and Sinti peoples,"

17.5.2. ensure full implementation of all the provisions of the Framework Convention for the Protection of National Minorities (ETS No. 157), in particular those concerning the personal scope of application of the convention, in view of the non-recognition of the existence in Bulgaria of the Pomak and Macedonian minorities, and sign and ratify the European Charter for Regional or Minority Languages (ETS No. 148);

Amendment 13
(If adopted, amendment 2 falls)
Tabled by Mr Latchezar TOSHEV, Mr Kirtcho DIMITROV, Mr Hans FRANKEN, Mr Petar PETROV, Mr Gebhard NEGELE, Ms Dzhema

GROZDANOVA, Mr Piotr WACH, Mr Václav KUBATA, Mr Egidijus VAREIKIS

In the draft resolution, paragraph 17.5.2, delete the words ", in view of the non-recognition of the existence in Bulgaria of the Pomak and Macedonian minorities,"

Amendment 2
(Falls if amendment 13 is adopted)
Tabled by Mr Latchezar TOSHEV, Mr Erich Georg FRITZ, Ms Anette HÜBINGER, Mr Joseph O'REILLY, Mr Kirtcho DIMITROV, Mr Petar PETROV, Mr Gebhard NEGELE, Ms Dzhema GROZDANOVA, Mr Joachim HÖRSTER

In the draft resolution, paragraph 17.5.2, delete the words "Pomak and".

17.5.3. address the concerns identified by the Council of Europe Commissioner for Human Rights with regard to the human rights of Roma, in particular concerning forced evictions and access to social rights, including education, housing and health care;

17.5.4. give due consideration to the claims of the former prisoners of Belene Island, in accordance with the Bulgarian Act on Political and Civil Rehabilitation of Persons Repressed During the Totalitarian Regime;

Amendment 1
Tabled by Mr Latchezar TOSHEV, Mr Kirtcho DIMITROV, Mr Hans FRANKEN, Ms Dzhema GROZDANOVA, Mr Agustín CONDE, Mr Piotr WACH

In the draft resolution, paragraph 17.5.4, replace the words "former prisoners" with the following words : "former political prisoners".

17.5.5. continue to improve the rights of persons belonging to minorities as regards teaching of and in their mother language, promote knowledge of the cultural identity of minorities and foster tolerance through education.

Amendment 11
Tabled by Ms Pelin GÜNDEŞ BAKIR, Mr Rovshan RZAYEV, Mr Şaban DİŞLİ, Mr Ahmet Kutalmiş TÜRKEŞ, Mr Cezar Florin PREDA, Mr Florin IORDACHE, Ms Tülin ERKAL KARA

In the draft resolution, after paragraph 17.5.5, insert the following paragraph:

"ensure and guarantee equal opportunities in public employment to persons belonging to minorities."

Amendment 12
Tabled by Ms Pelin GÜNDEŞ BAKIR, Mr Rovshan RZAYEV, Mr Şaban DİŞLİ, Mr Ahmet Kutalmiş TÜRKEŞ, Mr Cezar Florin PREDA, Mr Florin IORDACHE, Ms Tülin ERKAL KARA

In the draft resolution, after paragraph 17.5.5, insert the following paragraph:

"sign and ratify bilateral agreements on Social Security with Turkey."

Amendment 5
Tabled by Mr Yanaki STOILOV, Mr Stefan SCHENNACH, Mr Björn von SYDOW, Mr Tadeusz IWIŃSKI, Mr Pietro MARCENARO, Ms Josette DURRIEU, Mr Patrick MORIAU, Mr Jordi XUCLÀ, Lord Donald ANDERSON

In the draft resolution, after paragraph 17.5.5, insert the following paragraph:

"With regards to the Electoral Code and electoral process: in order to apply Council of Europe standards and to answer the identified concerns and recommendations of the OSCE, the Bulgarian Parliament should adopt amendments to the Electoral Code in order to ensure the equality and transparency of the electoral process and free and fair parliamentary elections in the summer of 2013."

18. The Assembly encourages the Bulgarian authorities to implement and fulfil all commitments to ensure democratic progress. It hopes its confidence that Bulgaria will continue to advance in the right direction is not misplaced. It expects the remaining concerns to be addressed democratically and in full compliance with the relevant mechanisms and procedures.

19. The Assembly expects the Bulgarian authorities to pursue their fruitful co-operation with the Venice Commission and Council of Europe legal experts with a view to remedying remaining deficiencies in existing legislation.

20. Against this background, the Assembly resolves to continue the post-monitoring dialogue with the Bulgarian authorities and, in accordance with its internal procedures, to closely follow the developments in this country.

Amendment 6
(If adopted, amendments 9, 14 falls)
Tabled by Ms Dzhema GROZDANOVA, Ms Romana TOMC, Ms Elvira KOVÁCS, Ms Chiora TAKTAKISHVILI, Ms Dora BAKOYANNIS

In the draft resolution, replace paragraph 20 with the following paragraph:

"The Assembly resolves to close the post-monitoring dialogue with the Bulgarian authorities."

Amendment 9
(Falls if amendment 6 is adopted)
(If adopted, amendment 14 falls)
Tabled by Mr Luca VOLONTÈ, Mr Thierry MARIANI, Ms Marie-Jo ZIMMERMANN, Mr Joseph O'REILLY, Mr Václav KUBATA, Mr Rom KOSTŘICA

In the draft resolution, paragraph 20, replace the word "continue" with the word "close".

Amendment 14
(Falls if amendments 6, 9 are adopted)
Tabled by Mr Latchezar TOSHEV, Mr Kirtcho DIMITROV, Mr Václav KUBATA, Mr Hans

FRANKEN, Mr Egidijus VAREIKIS, Mr Emanuelis ZINGERIS

In the draft resolution, paragraph 20, after the words "post-monitoring dialogue with Bulgarian authorities", insert the following words: "in respect of reform of the Judiciary, Media freedom and transparency of ownership, as well as the revision of the Electoral Code".