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Reinforcing the selection processes for experts of key Council of Europe human rights monitoring mechanisms

Report[1]
Committee on Legal Affairs and Human Rights
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Summary

The Committee on Legal Affairs and Human Rights calls for reinforcement of the selection procedures for experts involved in the principal human rights monitoring mechanisms of the Council of Europe, at both national and international level. The key role of these mechanisms is to ensure that the member States honour their obligations. Often the conclusions of monitoring bodies are perceived as expressing the Organisation's point of view; hence the importance of making sure that a meticulous and transparent selection procedure is applied.

The Committee emphasises the need to define clear selection criteria such as experts' proficiency, independence and integrity and respect for gender balance, in conjunction with the stipulation of strict rules on the term of appointment and its renewal, or the arrangements to be made in order to ensure a transparent competition open to all. At the Council of Europe level, the Parliamentary Assembly and the Committee of Ministers should be involved. The Assembly should have the possibility to reject lists of candidates not meeting the criteria of competence, integrity, independence and complementarity of expertise, including appropriate gender balance. The monitoring body itself should also be consulted, as appropriate.

1. Reference to committee: Doc. 12586, Reference 3773 of 27 May 2011.

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A. Draft resolution[2]

1. The credibility of the Council of Europe depends on the efficacy and quality of its key human rights monitoring mechanisms, which ensure that States honour their obligations towards the Council of Europe and each other. These mechanisms include, in particular, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the European Commission against Racism and Intolerance (ECRI), the European Committee of Social Rights and the Advisory Committee of the Framework Convention for the Protection of National Minorities. Although the conclusions of monitoring bodies do not formally represent the official position of the Council of Europe, they are in practice often perceived as the Organisation's views.

2. According to the respective conventions and other texts setting up these monitoring bodies, their members should be chosen only for their competence and relevant experience. In order for such monitoring mechanisms to maintain the high quality of their work, a careful selection process of their members is therefore essential. In practice, selection procedures vary greatly.

3. The procedure and criteria for the selection of members of the CPT, as specified by the Assembly in Resolutions 1540 (2007) and 1808 (2011), are particularly apt for achieving the above-stated objective and should therefore serve as a positive example.

4. Any selection procedure must ensure the competence, independence and integrity of experts, while respecting States' sovereign choices in putting forward candidates.

5. The Assembly therefore proposes the following general minimum standards for selection procedures:

5.1. the terms of service of experts should be reasonably limited and no more than two renewals should be allowed;

5.2. eligibility criteria should include independence and integrity, availability, as well as recognised expertise in relevant areas and language skills. In addition, objective requirements should be taken into account in order to ensure diversity and complementarity of expertise within the monitoring body, including the need for appropriate gender balance;

5.3. experts should not be appointed until they have relinquished, or been moved from, positions that might lead to a real or perceived conflict of interest situation;

5.4. at the national level, selection procedures must be transparent and open to competition, including through public calls for candidatures. Involvement of relevant State and non-governmental bodies, in particular of national parliaments, would increase the legitimacy of the selection process. Use of a model curriculum vitae and the conduct of interviews for shortlisted candidates should be encouraged;

5.5. at the Council of Europe level, both statutory organs, the Parliamentary Assembly and the Committee of Ministers, should be involved. The Assembly should have the possibility to reject lists of candidates who do not meet the criteria of competence, integrity, independence and complementarity of expertise, including appropriate gender balance. The monitoring body itself should also be consulted, as appropriate.

2. Draft resolution adopted unanimously by the committee on 11 December 2012.

B. Draft recommendation[3]

1. The Parliamentary Assembly refers to Resolution … (2013) on reinforcing the selection processes for experts of key Council of Europe human rights monitoring mechanisms and invites the Committee of Ministers to take into account, in the context of its work relating to the designation of experts serving on Council of Europe human rights monitoring bodies of its recommendations therein with respect to reinforcement of national selection procedures and the quality of such experts.

3. Draft recommendation adopted unanimously by the committee on 11 December 2012.

C. Explanatory memorandum by Mr Cilevičs, rapporteur

1. Introduction

1.1. Procedure to date

1. On 27 May 2011, the Parliamentary Assembly decided to refer to the Committee on Legal Affairs and Human Rights, for report, the motion for a resolution on reinforcing the selection processes for experts of the monitoring mechanisms of the Council of Europe (Doc. 12586). At its meeting on 23 June 2011, the committee appointed me as rapporteur. In order to gain an overview of some practical aspects of the topic, on 26 April 2012, a hearing was held jointly with the Committee on Equality and Non-Discrimination, with the participation of:

– Mr Jenö Kaltenbach, Chairperson of the European Commission against Racism and Intolerance;

– Mr Trevor Stevens, Executive Secretary of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT);

– Ms Marieke Sanders, member of the Advisory Committee of the Framework Convention on National Minorities and of the Committee of Experts of the European Charter for Regional or Minority Languages.

1.2. Scope of this report

2. The purpose of this report is to carry out a stocktaking exercise on the selection procedures for members of the Council of Europe's human rights monitoring mechanisms and to explore means to reinforce these procedures in line with the transparency and quality requirements that must govern them.

3. The preparatory work on this report[4] has demonstrated the multifaceted context of Council of Europe monitoring activities. A large number of monitoring mechanisms have been set up under the auspices of the Organisation with significant disparities, in particular as to the nature and the extent of their mandate, as well as to the issues covered by their monitoring, namely human rights, democracy and the rule of law.

4. For the sake of clarity and coherence, the scope of this report will be limited to only some of these mechanisms. Having regard to the fundamental importance of the protection of human rights, which lies at the heart of the Council of Europe's mission, this report will focus on monitoring mechanisms directly involved in this field. It will cover four of these key monitoring mechanisms: the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the European Commission against Racism and Intolerance (ECRI), the European Committee of Social Rights (ECSR) and the Advisory Committee of the Framework Convention on National Minorities (ACFC).

5. Hence, certain other important monitoring (and related verification) mechanisms, such as the Group of Experts of Action against Trafficking in Human Beings (monitoring the Convention on Action against Trafficking in Human Beings (CETS No. 197)), the Conference of the Parties under the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (ETS No. 141); the Group of States against Corruption (GRECO), the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) and monitoring undertaken with respect to the European Charter for Regional or Minority Languages (ETS No. 148), are not dealt with in this report. See, in this connection, the recently published study by Renate Kicker and Markus Möstl,[5] which contains a comprehensive overview and analysis of these mechanisms.

6. The above clarification of the scope of the report implies changing the title accordingly. It was therefore decided to replace the initial title "Reinforcing the selection processes for experts of the monitoring mechanisms of the Council of Europe" by "Reinforcing the selection processes for experts of key Council of Europe human rights monitoring mechanisms".

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4. See the information document by the Committee on Legal Affairs and Human Rights entitled "Overview of Core Council of Europe human rights monitoring mechanisms and relates activities" (document AS/Jur (2012) 04. See also Renate Kicker and Markus Möstl, "Standard-setting through monitoring? The role of Council of Europe expert bodies in the development of human rights", 2012, Council of Europe Publishing, *passim*. Due to its highly specific nature, the (national) nomination procedure of candidates and election by the Parliamentary Assembly of judges to the European Court of Human Rights is not discussed in this report. For background information, see document AS/Jur/Inf (2012) 02 rev 4.

5. Ibid.

2. Context

2.1. Definition of monitoring in the global human rights context

7. Although the term "monitoring" is used extensively by the international community, there is no single definition of human rights monitoring that distinguishes it from related terminology such as verification, fact-finding, assessment and observation of human rights. Frequently the terms are used inter-changeably.

8. Monitoring is a broad term used to describe a wide range of activities, including the active collection, verification and use of information to address human rights problems. It encompasses, *inter alia*, gathering information about incidents, observing events, visiting sites and holding discussions with government authorities to obtain information and to pursue remedies and other immediate follow-up.[6]

9. Monitoring is a method of improving the protection of human rights. The principal objective of human rights monitoring is to reinforce State responsibility to protect human rights.[7]

10. Various groups or organisations might be involved in forms of monitoring, including intergovernmental organisations and civil society actors.

2.2. Monitoring in the context of the Council of Europe

2.2.1. Definition

11. The term "monitoring" is not defined, either in the Statute of the Council of Europe of 1949 (ETS No. 1) or in any of the principal legal instruments which have set up monitoring mechanisms. As understood by the Council of Europe, monitoring includes verifying member States' compliance with human rights standards and addressing policy recommendations to individual countries.[8] Monitoring mechanisms thereby constitute mechanisms of warning and censure regarding the situation in specific fields related to democracy and human rights in Europe. They enable the Council of Europe to supervise the implementation of its standards, to discern cases of non-compliance, and to propose solutions or address recommendations to its member States.[9]

2.2.2. Council of Europe mandate with respect to monitoring

12. All member States of the Council of Europe are required to respect their obligations under the Statute, the European Convention on Human Rights (ETS No. 5) and other conventions to which they are Parties, as well as to observe a series of principles and standards which have been elaborated within the Organisation with regard to democratic pluralism, human rights and the rule of law.

13. In addition to the obligations incumbent on all member States, a number of States which have become members since 1989 have also freely entered into specific commitments. The main accession commitments first undertaken vis-à-vis the Parliamentary Assembly, and then with the Committee of Ministers, are explicitly referred to in the relevant opinions adopted by the Assembly and/or in resolutions adopted by the Committee of Ministers when it invites States to become members of the Council of Europe.

14. The Council of Europe member States are individually and collectively responsible for ensuring proper compliance with their commitments. Compliance with commitments has always been a key principle of the Organisation and received further political impetus when the Heads of State and Government of the Council of Europe, gathered in Vienna in 1993 for their 1st Summit, resolved "to ensure full compliance with the commitments accepted by all member States within the Council".[10] This commitment has been constantly

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6. Definition elaborated by the United Nations High Commissioner for Human Rights ("Training Manual on Human Rights Monitoring", 2001, p. 9: www.ohchr.org/Documents/Publications/training7Introen.pdf) and used by the Organisation for Security and Co-operation in Europe (See notably "Handbook on Monitoring Freedom of Peaceful Assembly", OSCE Office for Democratic Institutions and Human Rights, 2011, p. 28: www.osce.org/odihr/82979?download=true).
7. Ibid, p. 87: www.hrea.org/erc/Library/display_doc.php?url=http%3A%2F%2Fwww1.umn.edu%2Fhumanrts%2Fmonitoring%2Fmonitoring-training.html&external=N.
8. For a convenient overview, see Appendix in the Assembly report on "The state of human rights and democracy in Europe", Doc. 11202.
9. Giakoumopoulos C., "Practical impact of the Council of Europe monitoring mechanisms", Directorate General of Human Rights and Legal Affairs (2010), p. 7: www.coe.int/t/dg4/education/minlang/Publications/ImpactBrochure_en.pdf.
10. Vienna Declaration, 9 October 1993: https://wcd.coe.int/wcd/ViewDoc.jsp?id=621771&Site=COE.

renewed by member States on the occasion of each Summit of the Organisation's Heads of State and Government, first in Strasbourg[11] in 1997 and then in Warsaw[12] in 2005, where they expressly reaffirmed their "firm support" to monitoring.

2.2.3. Council of Europe monitoring procedures

15. The setting-up of monitoring procedures has various origins. In the first place, the Council of Europe's statutory organs have established their own monitoring procedures to reflect their particular statutory responsibilities. Similarly, certain treaties[13] lay down a procedure or require the establishment of machinery for monitoring their application and/or fostering closer co-operation between Parties. Other monitoring bodies were the final product of reflection initiated when defining a common policy, such as ECRI. Finally, as part of the Organisation's intergovernmental activities, steering (or other) committees, composed of experts designated by member States and answerable to the Committee of Ministers, may also be required, in their field of competence, to review the application of conventions and/or Committee of Ministers recommendations, on the basis of information supplied by their members.[14]

16. A distinction can be drawn between monitoring procedures that are more general in scope, namely those of the statutory organs (the Committee of Ministers and the Parliamentary Assembly), and the specialised monitoring procedures dealing with specific issues relating to different aspects of human rights, democracy and the rule of law.

17. As to the first category of monitoring procedures, a brief overview should be given of the mechanisms set up by the Committee of Ministers and by the Parliamentary Assembly.

18. Since the adoption of its 1994 Declaration on compliance with commitments,[15] the Committee of Ministers has developed a range of procedures for ensuring strict compliance with the undertakings entered into by each member State.[16] Two forms of monitoring by the Committee of Ministers are based on the 1994 Declaration: a country specific procedure and a thematic monitoring. The scope of the latter has been however significantly reduced under new modalities[17] adopted in 2007 which provide that thematic monitoring exercises take place only on an ad hoc basis and on a theme chosen by the Committee of Ministers. In addition to these two procedures, the Committee of Ministers has set up a post-accession monitoring mechanism for the member States which last joined the Organisation. As outlined above, the Committee of Ministers has also mandated a number of intergovernmental committees[18] to conduct activities connected to monitoring.

19. This report does not cover the European Court of Human Rights, although some monitoring procedures do, of course, deal with the implementation of its judgments. The election of judges to the Court, by the Parliamentary Assembly, stands apart and is particularly well developed.[19]

20. The Parliamentary Assembly has established a Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, known as the "Monitoring Committee". This committee is responsible for verifying the fulfilment of obligations assumed by member States under the terms of the Organisation's Statute, the European Convention on Human Rights and all other Council of Europe conventions, as well as the honouring of commitments entered into by the authorities of member States upon

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11. Strasbourg Declaration, 11 October 1997: https://wcd.coe.int/ViewDoc.jsp?Ref=CM%2897%29169&Sector=secCM&Language=lanEnglish.
12. Warsaw Declaration, 17 May 2005: www.coe.int/t/dcr/summit/20050517_decl_varsovie_en.asp.
13. See, *inter alia*, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126), the Framework Convention on National Minorities (ETS No. 157) and the European Social Charter (ETS No. 35).
14. See "Council of Europe monitoring procedures: an overview", Council of Europe Directorate of Strategic Planning, document Monitor/Inf(2004)2: https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Inf(2008)37.
15. Declaration on compliance with commitments accepted by member States of the Council of Europe, 10 November 1994: https://wcd.coe.int/ViewDoc.jsp?Ref=Decl-10.11.94&Language=lanEnglish.
16. See "Overview of the monitoring mechanisms in the Council of Europe", CM/Inf(2008)37 revised: https://wcd.coe.int/ViewDoc.jsp?id=1339367. This procedure appears to be "dormant" at present.
17. Decision by the Committee of Ministers, 5 July 2007: https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec(2007)999/2.2&Ver=app2&Language=lanEnglish.
18. Examples of these intergovernmental committees include the European Committee on Legal Co-operation (CDCJ), the Steering Committee for Human Rights (CDDH), the Steering Committee on Information Society (CDSI) and the Committee of Experts on Terrorism (CODEXTER).
19. See footnote 4 above.

accession to the Council of Europe. The Monitoring Committee submits regular reports to the Assembly both on the general progress of monitoring procedures (progress reports) and on each country being monitored or subject to a post-monitoring dialogue (country reports).

21. It should be highlighted that the approach taken by the Committee of Ministers and the Parliamentary Assembly in their respective monitoring differs fundamentally. Unlike the Parliamentary Assembly's work (reports, parliamentary debate and adoption of texts by majority votes), which is eventually made public, the Committee of Ministers' procedures are confidential, based principally on persuasion, peer pressure and diplomatic negotiation.

3. Key Council of Europe specialised monitoring mechanisms

3.1. Issues at stake

22. Specialised monitoring mechanisms are complementary to the monitoring mechanisms of a general and political nature put into place principally, but not exclusively, by the Parliamentary Assembly and the Committee of Ministers.

23. The key monitoring mechanisms studied in this report are expert bodies whose powers comprise conducting country-by-country fact-finding and assessment, notably through country visits and examination of periodic reports by States Parties, as well as making policy recommendations to improve compliance with relevant Council of Europe standards. They issue decisions and reports, usually forwarded to the Committee of Ministers for information and, in principle, made public, with the exception of the CPT reports on its visits, which are published at the request of the country concerned. While the CPT, the ESCR and the ACFC have been set up by treaties adopted within the framework of the Council of Europe and signed and ratified by States Parties, ECRI is based on a resolution of the Committee of Ministers.

24. These mechanisms are intended to assist member States in upholding the Organisation's principles and standards and to prevent human rights violations. The qualification, the experience and independence of their members is crucial in discharging their mandates. To maintain the efficiency and authority of these mechanisms, the procedures for the selection of their members should include safeguards to ensure the competence and independence of the experts.

3.2. Existing selection procedures

25. As highlighted in the tables in the appendices, the current system is characterised by a great disparity in selection procedures for members of the key human rights monitoring mechanisms. Such a disparity may be observed in the number of experts and mandate features, and, more significantly, in the eligibility criteria and modalities of the selection process.

26. The length of service for members of the Council of Europe's key specialised monitoring mechanisms is usually limited to a period of time comprised between eight and twelve years, with the exception of ECRI, which allows indefinite renewals.

27. The lack of any limitation raises the issue of the independence of the experts as well as of the need to ensure the renewal, diversity and complementarity of expertise in the membership of monitoring mechanisms (as is the case of the CPT where a balance is sought between "lawyers" – prison experts, criminologists, etc. – and "medical doctors" – psychologists, experts in hygiene, etc.). These concerns are reflected in the recent discussions held in the context of the United Nations Treaty Body Strengthening Process.[20] They are also in line with the stipulations of the most recent treaties allowing a maximum of two terms.[21]

20. See notably in that respect "Non-exhaustive list of emerging proposals identified so far in the context of the treaty body strengthening informal consultations", 9 November 2011, p. 9: http://www2.ohchr.org/english/bodies/HRTD/docs/ProposalsTBStrengtheningProcess.pdf.

21. See notably the United Nations 2006 Convention on the Rights of Persons with Disabilities.

3.2.1. Eligibility criteria

3.2.1.1. Individual requirements

28. Impartiality and independence as well as recognised expertise in the areas related to the mandate of the mechanisms should be considered as the most important criteria for the selection of experts. “Moral values” or similarly-phrased criteria should be interpreted narrowly, as requiring the absence of a criminal record or of professional disqualifications.

29. Whereas candidates seeking election to the European Court of Human Rights are required to possess an active knowledge of one of the official languages of the Council of Europe and a passive knowledge of the other, no similar language requirements have been introduced in the selection process of the specialised monitoring mechanisms, with the notable exception of the CPT (to a certain extent). This shortcoming should be remedied, bearing in mind that the linguistic ability of the experts directly affects the practical work of the mechanism and the quality and credibility of its results.[22]

3.2.1.2. Objective requirements

30. It is commonly accepted that particular attention should also be paid to objective criteria when considering candidates for human rights monitoring mechanisms.[23] Such requirements, which may include professional background, gender and age, aim to ensure a balanced composition of the body and therefore to reinforce the effectiveness of its work.

31. Although it appears from the hearing held in the context of this report that monitoring bodies generally agree on the importance of such requirements – in particular with respect to professional background –, the selection process for CPT members is the only one with formal criteria in that regard.

32. However, even having a position that is not formally subordinated to a government may not necessarily safeguard the actual independence of a member of a monitoring body. In reality, an expert’s independence can be “affected” by a government in other ways. Note can be taken, for example, of the case of a member of the Committee of Experts of the European Charter for Regional or Minority Languages who, in March 2012, had been denied permission to attend the meeting of the Committee, and after having actually attended that meeting, was dismissed from a high university position. Discussing the incident, the Committee admitted that there might be valid reasons for a member not to attend a meeting, for example pressing duties of his or her ordinary work. However, valid reasons should be given in each instance. The rapporteur is of the view that in this case diligent implementation of commitments undertaken by the State concerned – upon ratification of the relevant international instrument – is at stake, rather than infringement of the independence of an expert. Nevertheless, this incident may add an essential dimension to the interpretation of the concept of independence of experts and their capability to fulfil their duties.

3.2.1.3. Requirements related to the performance of duties

33. Shortcomings in independence and impartiality may affect the credibility of the monitoring body and its effectiveness. These eligibility criteria have been clarified by the Parliamentary Assembly[24] for CPT candidates, who should not be “persons who are, at central government level, in charge of the definition of national policies in the sector concerned and who could be held politically responsible for any shortcomings”. In the absence of any similar definition in the Statute or in relevant texts applying to the ECRI, the ESCR and the ACFC, these criteria may however raise some issues when applied to the selection process of the latter mechanisms. If the independence of candidates shall not be put into question by the mere fact that they are civil servants or otherwise employed in the public sector, such a situation may be in contradiction with the European Court of Human Rights’ standards regarding membership of tribunals adjudicating legal disputes[25] as well as with Addis Ababa Guidelines.[26]

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22. See the Protocol of the Conference on “Creating Synergies and Learning from Each Other: Strengths and Weaknesses of Council of Europe Expert Bodies Monitoring Human Rights”, held in Graz in September 2010, p. 34: www.uni-graz.at/vrewww/deutsch/forschung/Conference_Protocol_Standardsetting_through_Monitoring.pdf.
23. See the above-mentioned “Non-exhaustive list of emerging proposals identified so far in the context of the treaty body strengthening informal consultations”, p. 9.
24. See its Resolution 1540 (2007) on improving selection procedures for CPT members.
25. See notably *Daktaras v. Lithuania*, Application No. 42095/98, paragraph 30: “the tribunal must be subjectively impartial, that is, no member of the tribunal should hold any personal prejudice or bias. ... the tribunal must also be impartial from an objective viewpoint, meaning it must offer sufficient guarantees to exclude any legitimate doubt in this respect”.

3.2.2. Selection procedures

34. The table in Appendix 3 shows that the current situation is characterised by a great disparity in selection procedures. In the ECRI selection process, the power of appointment lies with the national governments, while the Council of Europe is given a power of control and rectification via the Committee of Ministers. In the three other selection processes (CPT, ESCR, ACFC), the power of appointment lies with the Committee of Ministers. It should however be outlined that the CPT procedure provides for a much more elaborate system of checks and balances at both national and international selection level. First, it requires an open and transparent national selection process, which includes, in principle, public calls for candidatures, the involvement of relevant State and non-governmental bodies, the use of a common format for curriculum vitae and, ideally, interviews of shortlisted candidates. Then, it involves both statutory organs of the Organisation – the Parliamentary Assembly and the Committee of Ministers – as well as the bureau of the monitoring mechanism which, in practice, is informally consulted. This selection process is in part inspired by the nomination of candidates and election of judges to the European Court of Human Rights, which aim to reflect the principles of democratic procedure, transparency and non-discrimination.

35. The unique selection procedure has proved to be efficient. Statistical data on the impact of the recommendations made by the Sub-Committee on Human Rights of the Committee on Legal Affairs and Human Rights show that of the 120 recommendations drawn up by the sub-committee since 2002, 100 were followed by the Committee of Ministers. Also, in the same period of time, the sub-committee made 16 proposals for lists to be rejected, all of which were followed by both the plenary Legal Affairs Committee and the Bureau of the Assembly. In seven more instances, additional information was provided after a postponement and one postponement led to the voluntary replacement of a list by a new and more satisfactory one.

4. Conclusion and proposals

36. The underlying objective of the monitoring mechanisms is to ensure effective implementation of the various international human rights standards set by the Council of Europe. Expert bodies, through, among others, peer review and recommendations, assist member States in respecting their treaty obligations and/or implementing recommendations made by the monitoring mechanisms. The results of such monitoring should inform domestic policy makers and trigger appropriate adjustment and remedial measures. The quality, integrity, and independence of experts are crucial for these mechanisms to function as they were meant to when they were established.

37. However, the above developments show that there is currently a great disparity among selection processes of key Council of Europe monitoring mechanisms. Some of the procedures may be perceived as lacking transparency and/or objective criteria for ensuring the necessary quality, integrity and independence of experts. This can have adverse effects on the functioning of the monitoring mechanisms. In order to ensure the efficiency and credibility of monitoring mechanisms, it is expedient to reinforce further the procedures of selection of their members. Another, related matter which merits further reflection is the appropriateness or otherwise of governments nominating three candidates for each body, so as to ensure a real choice of the most appropriate candidate (as is done in respect of the CPT).

38. I therefore suggest that the following general principles apply, in the light of the CPT selection procedure:

– As regards the length of service for members of monitoring mechanisms, indefinite renewals should be avoided, bearing in mind that the possibility of one or two renewals should enable a balance to be found between a change in membership and preserving the institutional memory of the mechanism;

– Eligibility criteria should include individual requirements, notably with respect to recognised expertise in relevant areas and language skills, as well as objective requirements, such as availability to carry out the required functions;

– In order to fulfil the independence and impartiality criteria, nomination or election of experts should be avoided while they are holding positions in the government or any other positions that might lead to a real or perceived conflict of interest situation;

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26. Guidelines on the independence and impartiality of members of the human rights treaty bodies (“Addis Ababa Guidelines”): “The independence and impartiality of members of the human rights treaty bodies is essential for the performance of their duties and responsibilities and requires that they serve in their personal capacity. Treaty body members shall not only be independent and impartial, but shall also be seen by a reasonable observer to be so”.

– At the national level, open and transparent selection processes should be established, including public calls for candidatures, involvement of relevant State and non-governmental bodies – among which national parliaments – use of a model curriculum vitae, considerations of gender balance, where appropriate, and interviews of shortlisted candidates;

– At the Council of Europe level, both statutory organs of the Organisation, namely the Committee of Ministers and the Parliamentary Assembly, should be involved in selection procedures. The role of the Parliamentary Assembly is crucial in this respect and its relevant committees should be involved in the verification process;[27]

– Furthermore, the monitoring body itself should be informally consulted (for example through its bureau).

39. Finally, I wish to reconfirm the Assembly's recommendations concerning the CPT based on a report by Mr Jean-Charles Gardetto.[28] I consider that the Assembly should have the possibility to reject lists of candidates who do not meet the criteria of competence, integrity, independence and professionalism. An enhanced role for the Assembly would increase the democratic legitimacy of the selection procedure and thereby the authority of the monitoring bodies.

27. For example, drawing upon the work undertaken by the Sub-Committee on Human Rights (of the Committee on Legal Affairs and Human Rights) in respect of CPT lists, a sub-committee of the Committee on Social Affairs, Health and Sustainable Development could consider candidates for the ECSR, while a sub-committee of the Committee on Equality and Non-Discrimination could consider candidatures for ECRI and the ACFC.

28. Doc. 12551 .

Appendix 1 – Number of experts and mandate features

	Legal basis	*Number of experts per member State / State Party*	*Mandate*	
			Duration	*Maximum renewals*
CPT	– European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Articles 4 and 5)	1	4 years	2
ECRI	– Statute of ECRI – Committee of Ministers Resolution Res(2002)8 (Articles 2 and 3)	1	5 years	Indefinite
ESCR	– European Social Charter (1961) (Article 25) – Committee of Ministers Decision (751st meeting of the Ministers' Deputies, 2-7 May 2001).	15 Committee members for 43 States Parties	6 years	1
ACFC	– Committee of Ministers Resolution (97) 10 (paragraphs 2 and 16)	18 Committee members for 39 States Parties	4 years	1

Appendix 2 – Eligibility criteria

Legal basis		Requirements: Individual requirements			Requirements: Objective requirements			Requirements related to the performance of duties		
		Integrity	*Expertise*	*Linguistic skills*	*Professional background*	*Gender*	*Age*	*To serve in their individual capacity*	*Impartiality / Independence*	*Availability*
CPT	European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Articles 4 and 5) Assembly Recommendation 1323 (1997) (paragraph 10.*v*) Assembly Resolution 1540 (2007) (paragraph 6)	R[29]	Competence in the field of human rights or professional experience in the areas covered by this Convention.	R	R	R	R	R	R	R
ECRI	Statute of the ECRI Committee of Ministers Resolution Res(2002)8 (Articles 2 to 5)	R	Recognised expertise in dealing with racism, racial discrimination, xenophobia, anti-Semitism and intolerance.	–[30]	–	–	–	R	R	–
ECSR	European Social Charter (1961) (Article 25) Rules of the ESCR (Rule 3)	R	Recognised competence in international social questions.	–	–	–	–	R	R	R
ACFC	Committee of Ministers Resolution (97) 10 (paragraphs 5 and 6)	–	Recognised expertise in the field of the protection of national minorities.	–	–	–	–	R	R	R

29. R: Required
30. –: Not required

Appendix 3 – Selection process

	Legal basis	National selection process			International selection process			Decision process
		Publication process	Consultation process	Selection process	Presentation of candidates	Consultation with body concerned	Advisory process	
CPT	European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Articles 4 and 5) Assembly Resolution 1248 (2001) (paragraph 7) Assembly Resolution 1540 (2007) (paragraph 6)	Public call for candidates	Consultation on candidates with relevant State and non-governmental bodies	Use of a model curriculum vitae Interviews with shortlisted candidates possibly carried out by an independent panel of experts 3 candidates put forward by the national delegation to the Assembly	Use of a model curriculum vitae	In practice, Bureau is consulted	The Committee on Legal Affairs and Human Rights (Sub-Committee on Human Rights) examines the list of candidates and draws up a recommendation to the Assembly's Bureau (power of rejection)	Committee of Ministers elects CPT members by an absolute majority of votes
ECRI	Statute of the ECRI Committee of Ministers, Resolution Res(2002)8 (Articles 2 and 3)	No specific requirements		1 candidate (plus 1 deputy, if desired) appointed by the government concerned	Appointment notified to the Secretary General. The Committee of Ministers has power to reject the appointment in specific cases	No specific requirements		
ECSR	European Social Charter (1961) (Article 25)	No specific requirements			Each Contracting Party to the ESC submits the name of a candidate it deems suitable for a vacant seat	No specific requirements		Committee of Ministers elects ECSR members
ACFC	Committee of Ministers, Resolution (97) 10 (paragraphs 8 to 10)	No specific requirements			Submission of at least two candidates with curriculum vitae	No specific requirements		Committee of Ministers elects national member from among those proposed by member States