Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 1953 (2013)[1]
Final version

The progress of the Assembly's monitoring procedure (June 2012 – September 2013)

Parliamentary Assembly

1. The Parliamentary Assembly acknowledges the work carried out by the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) in fulfilling its mandate as defined in Resolution 1115 (1997) on setting up of an Assembly committee on the honouring of obligations and commitments by member states of the Council of Europe (Monitoring Committee) and modified by Resolutions 1431 (2005) on the initiation of a monitoring procedure and post-monitoring dialogue, 1515 (2006) on the progress of the Assembly's Monitoring Procedure (May 2005-June 2006), 1710 (2010) on the terms of office of co-rapporteurs of the Monitoring Committee and 1936 (2013) on the harmonisation of regulatory and para-regulatory provisions of monitoring and post-monitoring dialogue procedures.

2. In particular, the Assembly commends the committee on its action in accompanying 10 countries under specific monitoring (Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, the Republic of Moldova, Montenegro, the Russian Federation, Serbia and Ukraine), and four countries engaged in a post-monitoring dialogue (Bulgaria, Monaco, "the former Yugoslav Republic of Macedonia" and Turkey) in their efforts to fully comply with the obligations and commitments they entered into upon accession to the Council of Europe.

3. Furthermore, the Assembly expresses its satisfaction at the new approach adopted by the committee in the progress report with respect to the monitoring of the 33 member States which are not under a specific procedure, regarding their compliance with the statutory obligations they entered into upon accession; it encourages the committee to pursue its reflection on possible ways to increase the efficiency and impact of its monitoring of these countries with regard to respect for democracy and the rule of law and the protection of human rights.

4. Moreover, the Assembly takes note of the committee's continued work on the consequences of the war between Georgia and Russia and regrets that, despite the announced intention by the co-rapporteurs on the Russian Federation and on Georgia to visit Moscow, Tbilisi, Tskhinvali and Sukhumi during a joint mission led by the Chair of the committee, only the visit to Moscow and Tbilisi took place, in May 2013, due to the rejection of this initiative by the *de facto* authorities of the breakaway regions. The Assembly endorses the committee's decision to closely follow developments with regard to the consequences of the war and engage in a dialogue with the *de facto* authorities in Sukhumi and Tskhinvali without status-related preconditions, if it receives signals that such a wish for dialogue exists.

5. The Assembly notes with satisfaction that the committee accomplished its task of preparing a written opinion on the motion for a resolution on "Serious setbacks in the fields of the rule of law and human rights in Hungary", and submitted it, in accordance with the Rules of Procedure, to the Bureau of the Assembly, thus enabling the Assembly to hold a debate on the subject.

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1. *Assembly debate* on 1 October 2013 (31st Sitting) (see Doc. 13304, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), rapporteur: Mr Herkel). *Text adopted by the Assembly* on 1 October 2013 (31st Sitting).

6. During the reporting period, the committee produced full monitoring reports on Montenegro, the Russian Federation, Azerbaijan and the Republic of Moldova, and reports on post-monitoring dialogue with Bulgaria, Turkey and "the former Yugoslav Republic of Macedonia". In addition, the committee approved a preliminary draft report on the post-monitoring dialogue with Monaco and transmitted it to the authorities for comments, which were subsequently considered by the committee. The committee also approved a report on the functioning of democratic institutions in Bosnia and Herzegovina in September 2013.

7. The respective rapporteurs carried out fact-finding visits to: Albania, Azerbaijan (3 visits), Bosnia and Herzegovina (2 visits), Georgia (2 visits), the Republic of Moldova, the Russian Federation (2 visits), Ukraine, Bulgaria, Monaco, "the former Yugoslav Republic of Macedonia", Turkey (2 visits), Montenegro and Hungary. The rapporteur on Bulgaria and the co-rapporteurs on Hungary paid visits to the European Commission in Brussels. The respective rapporteurs also participated in the pre-electoral and/or electoral missions to the following countries: Armenia, Georgia, Montenegro, Ukraine, Bulgaria and Monaco.

8. The respective co-rapporteurs also submitted information notes on Albania, Bosnia and Herzegovina and Georgia; these were declassified by the committee.

9. In the framework of the preparation of reports on specific countries, during the reporting period, the committee requested the legal expertise of the European Commission for Democracy through Law (Venice Commission) with regard to legal acts in Azerbaijan, Hungary, Georgia, Monaco, "the former Yugoslav Republic of Macedonia", Ukraine and the Russian Federation. In June 2012, it held an exchange of views with the President of the Venice Commission, Mr Gianni Buquicchio, and the Director, Mr Thomas Markert.

10. The committee organised a hearing on frozen conflicts in the framework of its meeting in Tallinn in May 2013, conceived as a follow-up to the hearing held in Berlin in 2007, with the participation of experts on Abkhazia and South Ossetia, on Nagorno-Karabakh and on Transnistria.

11. Furthermore, the committee held an exchange of views with Ms Ursula Gacek, Chair of the Committee of Ministers' Group of Rapporteurs on Democracy (GR-DEM), on possible ways to enhance co-operation, and continued its reflection on this subject at subsequent meetings. The committee also held an exchange of views with Mr Thorbjørn Jagland, Secretary General of the Council of Europe, during the reporting period.

12. The committee held an exchange of views with the participation of Mr Štefan Füle, European Commissioner on European Union Enlargement and Neighbourhood Policy.

13. The Assembly expresses its satisfaction at some positive developments in a number of countries under the monitoring or post-monitoring procedure over the reporting period. It welcomes, in particular: in Albania, the improved co-operation between the ruling party and the opposition, which has allowed for a number of important laws and reforms that needed a two-thirds majority to be passed in parliament; in Armenia, the presidential election, which, according to the international observers' assessment, was well administered, respected fundamental freedoms and constituted a clear improvement in the electoral process in the country; in Montenegro, the substantial progress made since 2010 towards the fulfilment of its remaining obligations and commitments towards the Council of Europe and in particular the ratification of 83 conventions and the adoption of many laws and constitutional amendments in the field of the rule of law, democracy and human rights; in Ukraine, the continuing efforts displayed by the Ukrainian authorities to reform the judiciary, as well as the release of Mr Yuri Lutsenko following a presidential pardon; in Georgia, the peaceful constitutional transfer of power and the emergence of a genuine pluralistic and democratic framework following the 2012 parliamentary elections; in Bulgaria, the substantial progress made towards the fulfilment of its remaining obligations; in Turkey, a process of major reform which is taking place against a complex background of political transition involving the judiciary and the army, and progress in bringing the legislation into line with the European Convention on Human Rights (ETS No. 5), the resumption of talks by the authorities with a view to finding a political solution to the Kurdish question and promoting the cultural and linguistic rights of the Kurds; in the Russian Federation, the reduction of the electoral threshold from 7% to 5% and the liberalisation of political parties' registration procedure.

14. At the same time, the Assembly expresses its concern about worrying developments in some of the countries under the monitoring procedure and post-monitoring dialogue. In particular: in Albania, with regard to the ineffective delivery of justice, discrimination against minorities and the social exclusion of Roma, as well as corruption and money laundering based on organised crime; in Azerbaijan, with regard to the lack of independence of the judiciary and restrictions on basic freedoms, including freedom of expression, freedom of assembly and freedom of association, as well as the reports of alleged political prisoners and alleged cases of torture and ill-treatment by the police; in Bosnia and Herzegovina, with regard to the lack of substantial constitutional reform which would enable the full functioning of democratic institutions, as well as the lack of progress in the implementation of the judgment of the European Court of Human Rights in the case of *Sejdić*

and Finci; in Georgia, with regard to the difficult cohabitation and a number of arrests of leading members of the opposition and, more generally, the independence of the judiciary and the administration of justice; in the Republic of Moldova, with regard to the need for revision of Article 78 of the Constitution, insufficient efforts in the fight against corruption, the reform of the Prosecutor's Office and the police, and the independence of the judiciary; in Montenegro, with regard to the need for further progress in five key areas, namely the judiciary, minority rights, the fight against corruption and organised crime, the media and the situation of refugees and internally displaced persons; in the Russian Federation, with regard to a number of recently adopted laws restricting basic freedoms (the law on the criminalisation of defamation, on the Internet, on assemblies, on non-governmental organisations (NGOs) and on propaganda of homosexuality to minors), as well as serious concerns about politically motivated justice, reinforced by recent judgments against Mr Alexei Navalny and the late Mr Sergei Magnitsky, and the non-implementation of the resolutions on the consequences of the war between Georgia and Russia (Resolutions 1633 (2008) on the consequences of the war between Georgia and Russia, 1647 (2009) on the implementation of Resolution 1633 (2008) on the consequences of the war between Georgia and Russia and 1683 (2009) on the war between Georgia and Russia: one year after); in Ukraine, with regard to the deficiencies of the judicial system and criminal proceedings initiated against a number of former government members on controversial charges; in Monaco, with regard to the tensions which characterised the electoral campaign and the outstanding reforms to be accomplished; in "the former Yugoslav Republic of Macedonia", with regard to the division of the country across both political and ethnic lines and the implementation of laws not yet in force; in Turkey, with regard to the concerns about the criminal code, restrictions on freedom of expression and pre-trial detention, taking note of the progress in the aforementioned fields.

15. With respect to the countries which are not subject to the monitoring procedure *stricto sensu*, the Assembly expresses its concern that a number of these countries have not signed and/or ratified some major Council of Europe conventions, thus preventing convention mechanisms attached to them from monitoring their implementation.

16. Furthermore, the Assembly is concerned about worrying developments in some of these countries with regard to the situation of Roma, in particular Roma segregation, including: the segregation of Roma children in schools in the Czech Republic; the lack of personal identity or citizenship documents of many Roma in Croatia; the evictions of Roma travellers in France, Italy and the United Kingdom; forced repatriations to Kosovo[2] from Germany; the precarious situation of stateless Roma in the Netherlands; social exclusion, including segregation in schools and various forms of discrimination, in Portugal, the Slovak Republic and Slovenia; and insufficient Roma integration policies in Spain;

17. Other problems in some of these countries have been identified by different Council of Europe monitoring mechanisms: in Andorra, indirect discrimination in employment based on citizenship and the government's reluctance to enact comprehensive legislation against racism and discrimination; in Austria, some concerns with regard to the rights of asylum seekers, women and persons with disabilities; in Belgium, Greece and France, restrictions on defenders of migrants' rights; in Denmark, discrimination in employment, education and housing, as well as restrictive rules for family reunification; in Estonia, the unemployment rate among non-Estonians is still disproportionately high compared to that of ethnic Estonians; in Greece, hate crimes targeting migrants as well as incidents of State violence against migrants and refugees; in Ireland, insufficient rights for asylum seekers; in Liechtenstein, unsatisfactory legislation on foreigners and administrative legal framework aimed at combating racial discrimination in all fields of life; in Malta, the increasing number of incidents of State violence against migrants and refugees; in Poland, the increased number of racially motivated offences; in the Slovak Republic, the lack of adequate policies with respect to the integration of refugees; in Switzerland, the growth of racist political discourse against non-citizens and insufficiently developed legislation to deal with direct racial discrimination.

18. The Assembly expresses its concern that a number of these countries, including Greece, Italy, Poland and Romania, face major structural problems leading to delays in the execution of judgments of the European Court of Human Rights.

19. Moreover, with respect to this group of countries, the Assembly is concerned by the conclusions of the third round compliance reports on the implementation of the Civil Law Convention on Corruption (ETS No. 174) and the Criminal Law Convention on Corruption (ETS No. 173) and its Additional Protocol (ETS No.

2. All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

191). It is particularly worrying that the degree of compliance with the recommendations of the Council of Europe's Group of States against Corruption (GRECO) is considered "globally unsatisfactory" in the case of the Czech Republic, Germany, Greece, the Netherlands, Portugal, the Slovak Republic and Slovenia.

20. Consequently, the Assembly urges all countries which remain under the specific monitoring procedure or are engaged in a post-monitoring dialogue to fulfil the remaining obligations and commitments entered into upon on accession to the Council of Europe, and in particular it calls on:

20.1. the Parliament of Albania to pursue work on reform and step up efforts to improve co-operation between the ruling party and the opposition;

20.2. the Parliament and the authorities of Azerbaijan to create conditions which would allow for a fair electoral campaign and presidential election, in compliance with democratic standards;

20.3. the Parliament of Bosnia and Herzegovina to carry out a substantial constitutional reform which would allow the country to become a fully functioning democracy; to revise the constitution and electoral legislation with a view to eliminating ethnicity-based limitations on the right to stand for office, in order to comply with the standards of the European Convention on Human Rights; to implement the *Sejdić and Finci* judgment of the European Court of Human Rights; to introduce reforms in the judiciary, the fight against corruption and regarding governance;

20.4. the authorities of Georgia to ensure that the legal proceedings against former government officials, including the former prime minister, the former minister of health and the former minister of defence, are conducted transparently and in full compliance with Georgia's obligations under Articles 5 and 6 of the European Convention on Human Rights;

20.5. the Parliament of the Republic of Moldova to pursue the reform process, including the necessary revision of the constitution;

20.6. the Parliament of Montenegro to make further progress, in five key areas, namely the judiciary, minority rights, the fight against corruption and organised crime, the media and the situation of refugees and internally displaced persons;

20.7. the Parliament of the Russian Federation to revise controversial laws adopted recently, in particular the law on the criminalisation of defamation, on the Internet, on assemblies, on NGOs (law "on foreign agents") and on the propaganda of homosexuality to minors; to ensure that the executive authorities refrain from exercising influence on the judiciary;

20.8. the authorities of Ukraine to implement the newly adopted laws and strategies in order to ensure an independent and impartial judiciary that fully respects the principles of the rule of law, and to use available legal means to release Ms Yulia Timoshenko given that the judicial procedure leading to her conviction has raised heavy criticism;

20.9. the National Council of Monaco to adopt the legislation recommended by the Parliamentary Assembly in 2009 in its Resolution 1690 (2009) on the honouring of obligations and commitments by Monaco;

20.10. the Parliament of Turkey to continue its reform programme, that is, further reform of the constitution and continued revision of the criminal code, as well as to ensure progress on freedom of expression, pre-trial detention, local and regional decentralisation and resolving the Kurdish question, taking note of the ongoing reconciliation process.

21. With respect to the honouring of obligations by the countries which are not subject to the monitoring procedure *sensu stricto,* the Assembly calls on:

21.1. Andorra, Belgium, Estonia, Greece, Ireland, Latvia, Lithuania, Portugal and San Marino to sign and ratify, and France, Iceland, Italy and Malta to ratify the European Charter for Regional or Minority Languages (ETS No. 148);

21.2. Andorra and France to sign and ratify, and Belgium, Greece, Iceland and Luxembourg to ratify the Framework Convention for the Protection of National Minorities (ETS No. 157);

21.3. the Czech Republic and Liechtenstein to sign and ratify, and Estonia and Greece to ratify the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197);

21.4. Denmark, France, Lithuania, Malta, Poland, Sweden, Switzerland and the United Kingdom to sign and ratify, and Austria, Belgium, the Czech Republic, Estonia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Norway, Portugal and the Slovak Republic to ratify Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 177) concerning the fight against discrimination;

21.5. Switzerland to ratify Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 9), adding the right to peaceful enjoyment of property, the right to education and the right to free elections by secret ballot to the fundamental rights protected by the Convention;

21.6. Liechtenstein and Switzerland to sign and ratify, and Croatia, the Czech Republic, Denmark, Germany, Greece, Iceland, Luxembourg, Poland, San Marino, Spain and the United Kingdom to ratify the European Social Charter (revised) (ETS No. 163);

21.7. Andorra, Austria, Denmark, Estonia, Germany, Hungary, Iceland, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Poland, Romania, San Marino, the Slovak Republic, Spain, Switzerland and the United Kingdom to sign and/or ratify the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (ETS No. 158) or to accept the complaints procedure pursuant to Article D.2 of the European Social Charter (revised), as the case may be;

21.8. Liechtenstein, Portugal, San Marino and Switzerland to sign and ratify, and Andorra, Denmark, Germany, Iceland, Ireland, Luxembourg and the United Kingdom to ratify the Civil Law Convention on Corruption;

21.9. Austria, Germany, Liechtenstein and San Marino to ratify the Criminal Law Convention on Corruption;

21.10. Andorra, the Czech Republic, Germany, Ireland, Liechtenstein, Lithuania, Norway, Switzerland and the United Kingdom to sign and ratify, and Austria, Denmark, Estonia, Finland, France, Greece, Iceland, Italy, Luxembourg and Sweden to ratify the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198);

21.11. the Parliaments of Greece, Italy, Poland and Romania to promote progress in the implementation of judgments of the European Court of Human Rights, and to initiate legislative changes aimed at eliminating structural problems leading to repeated violations of the European Convention on Human Rights.

22. Furthermore, the Assembly urges these countries to fully comply with recommendations made by the respective monitoring mechanisms of the Council of Europe, and in particular calls on:

22.1. Croatia, the Czech Republic, France, Germany, Italy, the Netherlands, Portugal, the Slovak Republic, Slovenia, Spain and the United Kingdom to undertake the necessary measures to remedy the situation of Roma, bring to an end their social exclusion and educational segregation, as well as all forms of discrimination, to enhance integration policies and to refrain from forced evictions and repatriations;

22.2. Andorra, Austria, Belgium, Greece, France, Denmark, Estonia, Ireland, Liechtenstein, Malta, the Slovak Republic and Switzerland to eliminate, where appropriate, all forms of discrimination identified by the Council of Europe Commissioner for Human Rights, the European Commission against Racism and Intolerance (ECRI) and the monitoring mechanism of the Framework Convention on the Protection of Minorities;

22.3. Greece, Italy, Poland and Romania to eliminate major structural problems leading to delays in the execution of judgments of the European Court of Human Rights;

22.4. the Czech Republic, Germany, Greece, the Netherlands, Portugal, the Slovak Republic and Slovenia to step up efforts – which so far have been considered “globally unsatisfactory” – to comply with recommendations of the Council of Europe’s Group of States against Corruption (GRECO).

23. The Assembly stresses the importance it attaches to the full independence of rapporteurs on the monitoring of obligations and commitments and the political neutrality of the Monitoring Committee in accomplishing their work.

24. The Assembly commends the remarkable work carried out by the Council of Europe monitoring mechanisms, and the *acquis* they have established over the years. It also welcomes the initiative by the Secretary General of the Council of Europe to launch a process of reflection on the monitoring procedures in the intergovernmental sector of the Organisation, aimed at strengthening and improving co-operation between the different monitoring mechanisms.

25. The Assembly resolves to pursue a more general reflection on ways to enhance the efficiency and the impact of the Assembly monitoring procedures with regard to all Council of Europe member States and takes note of the intention of the Monitoring Committee to establish a working group tasked with the preparation of concrete proposals in this respect.