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(Revised version)

New threats to the rule of law in Council of Europe member States: selected examples

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A. Draft Resolution

1. The Parliamentary Assembly recalls its previous resolutions on upholding the rule of law in the member States of the Council of Europe, in particular Resolutions 1594 (2007) on the principle of the rule of law, Resolution 1685 (2009) on allegations of politically motivated abuses of the criminal justice system in Council of Europe member States, Resolution 2040 (2015) "Threats to the rule of law in Council of Europe member States: asserting the Parliamentary Assembly's authority", Resolution 1703 (2010) and Recommendation 1896 (2010) on judicial corruption, Resolution 1943 (2013) and Recommendation 2019 (2013) on corruption as a threat to the rule of law and Resolution 2098 (2016) and Recommendation 2087 (2016) "Judicial Corruption: urgent need to implement the Assembly's proposals".
2. The Assembly notes with concern serious problems related to the rule of law in many member States of the Council of Europe. In its Resolution 2040 (2015), it regretted that a number of its recommendations concerning the safeguarding and strengthening of the rule of law had still not been implemented by certain member States.
3. Fully aware of the diversity of the legal systems and cultures of the member States, the Assembly recalls that respect for the rule of law is one of the core values of the Organisation and is closely interlinked with democracy and respect for human rights. Article 6 of the European Convention on Human Rights (ETS No. 5) enshrines one of its main components: the principle of independence and impartiality of the judiciary. Furthermore, the Council of Europe is the main international organisation to have developed legal and political documents in this field, through the work of its statutory bodies and specialised instances, such as the European Commission for Democracy through Law (Venice Commission), the Group of States against Corruption (GRECO), the European Commission for the Efficiency of Justice (CEPEJ), the Consultative Council of European Judges (CCJE) and the Consultative Council of European Prosecutors (CCPE).

Amendment 10

Tabled by Ms Olena SOTNYK, Mr Vladyslav GOLUB, Mr Nigel EVANS, Mr Jarosław OBREMSKI, Mr Kostiantyn USOVI, Mr Serhii KIRAL, Mr Arkadiusz MULARCZYK, Mr Viktor VOVK

In the draft resolution, after paragraph 2, insert the following paragraph:

"The Assembly is also deeply concerned by cases in certain member States in which national judiciaries are used to silence political opponents and to repress those who disagree with government policies. One of the most notorious examples is the mass political persecution in the annexed Crimea by the Russian Federation. The latest case concerns Akhtem Chygoz, a member of Mejlis of the Crimean Tatar People, who was sentenced to eight years in a penal colony. He was found guilty of having organised "mass disturbances" linked to clashes between pro-Ukrainian and pro-Russian supporters that led to the death of two people on 26 February 2014."

4. The Assembly calls again on all Council of Europe member States to fully implement the principle of the rule of law, in line with the above-mentioned instruments of the Council of Europe and to continue to co-operate with its relevant bodies and instances.
5. The Assembly has thoroughly examined the situation in five member States: Bulgaria, the Republic of Moldova, Poland, Romania and Turkey. Although the list of problems found in those States does not include all of those to be found in Council of Europe member States, the Assembly is concerned about some recent developments which put at risk respect for the rule of law, and, in particular, the independence of the judiciary and the principle of the separation of powers. This is mainly due to tendencies to limit the independence of the judiciary made through attempts to politicise the judicial councils and the courts (mainly in Bulgaria, Poland and Turkey), massive revocation of judges and prosecutors (Turkey) or attempts to do so (Poland) and tendencies to limit the legislative power of the parliament (the Republic of Moldova, Romania and Turkey). Moreover, corruption, which is a major challenge to the rule of law, remains a widespread phenomenon in Bulgaria, the Republic of Moldova and Romania.

Amendment 15

Tabled by Mr Dominik TARCZYŃSKI, Mr Arkadiusz MULARCZYK, Mr Józef LEŚNIAK, Mr Jarosław OBREMSKI, Mr Jacek OSUCH

In the draft resolution, paragraph 5, in the first sentence, replace the word "five" with the word: "four".

Amendment 16

Tabled by Mr Dominik TARCZYŃSKI, Mr Arkadiusz MULARCZYK, Mr Józef LEŚNIAK, Mr Jarosław OBREMSKI, Mr Jacek OSUCH

In the draft resolution, paragraph 5, in the first sentence, delete the following word: "Poland".

Amendment 20

(If adopted, amendments 17, 18 falls)

Tabled by Mr Talip KÜÇÜKCAN, Mr Şaban DİŞLİ, Ms Emine Nur GÜNAY, Mr Suat ÖNAL, Ms Leyla ŞAHİN USTA

In the draft resolution, paragraph 5, replace the last two sentences with the following sentences: "This is mainly due to tendencies to limit the independence of the judiciary made through attempts to politicise the judicial councils and the courts, massive revocation of judges and prosecutors or attempts to do so and tendencies to limit the legislative power of the parliament. Moreover, corruption, which is a major challenge to the rule of law, remains a widespread phenomenon in some member States."

Amendment 17

(Falls if amendment 20 is adopted)

Tabled by Mr Dominik TARCZYŃSKI, Mr Arkadiusz MULARCZYK, Mr Józef LEŚNIAK, Mr Jarosław OBREMSKI, Mr Jacek OSUCH

In the draft resolution, paragraph 5, in the third sentence, after the words "mainly in Bulgaria", delete the following word: ", Poland".

6. The Assembly therefore calls on the Bulgarian authorities to:
 - 6.1. continue the reform of the Supreme Judicial Council, the judiciary and the prosecution service in line with Council of Europe recommendations;
 - 6.2. strengthen efforts to combat corruption and, in particular, establish an anti-corruption agency.
7. The Assembly calls on the authorities of the Republic of Moldova to:
 - 7.1. continue the reform of the Superior Council of Magistracy, the judiciary and the prosecution service in line with the recommendations of Council of Europe bodies;
 - 7.2. considerably strengthen its efforts to combat corruption and, in particular, ensure full independence of the major institutions competent in this field;
 - 7.3. refrain from taking measures which would undermine the separation of powers.
8. The Assembly calls on the Polish authorities to:
 - 8.1. refrain from conducting any reform which would put at risk respect for the rule of law, and in particular the independence of the judiciary;

Amendment 18

(Falls if amendment 20 is adopted)

Tabled by Mr Dominik TARCZYŃSKI, Mr Arkadiusz MULARCZYK, Mr Józef LEŚNIAK, Mr Jarosław OBREMSKI, Mr Jacek OSUCH

In the draft resolution, paragraph 5, in the third sentence, delete the following words: "or attempts to do so (Poland)".

Amendment 19

(If adopted, amendments 12, 13 falls)

Tabled by Mr Dominik TARCZYŃSKI, Mr Arkadiusz MULARCZYK, Mr Józef LEŚNIAK, Mr Jarosław OBREMSKI, Mr Jacek OSUCH

In the draft resolution, delete paragraph 8.

Amendment 12

(Falls if amendment 19 is adopted)

Tabled by Mr Krzysztof TRUSKOLASKI, Mr Killion MUNYAMA, Ms Marianne MIKKO, Sir Alan MEALE, Ms Tineke STRIK

In the draft resolution, at the end of paragraph 8.1, insert the following words: " and in this context, to refrain from amending the Act on the National Council of the Judiciary in a way that would modify the procedure for appointing judge members of the Council and would establish political control over the appointment process of judge members;"

8.2. ensure that the justice reform which is now under way will be compliant with Council of Europe standards on the rule of law, democracy and human rights;

Amendment 13

(Falls if amendment 19 is adopted)

Tabled by Mr Krzysztof TRUSKOLASKI, Mr Killion MUNYAMA, Ms Marianne MIKKO, Sir Alan MEALE, Ms Tineke STRIK

In the draft resolution, at the end of paragraph 8.2, insert the following words: "and, in this context, to refrain from implementing any legal provisions that would terminate the term of office of judge members of the National Council of Judiciary in Poland or of the First President of the Supreme Court;"

8.3. fully co-operate with the Venice Commission and implement its recommendations, especially those with respect to the composition and the functioning of the Constitutional Court.

9. The Assembly calls on the Romanian authorities to:

Amendment 14

Tabled by Mr Philippe MAHOUX, Mr Frank SCHWABE, Mr Boriss CILEVIČS, Mr Mart van de VEN, Mr Pierre-Alain FRIDEZ

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

"The Assembly asks the Venice Commission for an opinion on the compatibility with the Council of Europe's standards on the rule of law of the Polish law of 12 July 2017 on the Ordinary Courts Organisation, as well as of the two draft laws recently submitted to the Sejm by the President of the Republic, on amending the law on the National Council of the Judiciary and on the Supreme Court."

9.1. support an appropriate public debate on the constitutional criteria for lifting parliamentary immunity;

Amendment 1

Tabled by Ms Anne BRASSEUR, Ms Ute FINCKH-KRÄMER, Mr Boriss CILEVIČS, Mr Mart van de VEN, Ms Stella KYRIAKIDES

In the draft resolution, at the end of paragraph 9.1, insert the following words: "and adopt clear criteria for this, respecting the recommendations of the Venice Commission".

9.2. revise as soon as possible the criminal legislation by implementing the decisions of the Constitutional Court that declared unconstitutional an important number of articles of the Criminal Code and the Criminal Procedure Code;

Amendment 2

Tabled by Ms Anne BRASSEUR, Ms Ute FINCKH-KRÄMER, Mr Boriss CILEVIČS, Mr Mart van de VEN, Ms Stella KYRIAKIDES

In the draft resolution, at the end of paragraph 9.2, insert the following words: "focusing on the fight against corruption and the abuse of authority, by implementing the recommendations of the Venice Commission and GRECO"

9.3. ensure that the separation of powers is respected by the government and the judiciary as regards the competences of the parliament;

Amendment 3

Tabled by Ms Anne BRASSEUR, Ms Ute FINCKH-KRÄMER, Mr Boriss CILEVIČS, Mr Mart van de VEN, Ms Stella KYRIAKIDES

In the draft resolution, at the end of paragraph 9.3, insert the following words: ", refraining especially from abusive law-making by emergency ordinances".

9.4. support, politically and financially, the work of the National Anti-Corruption Directorate; the latter should respect fundamental human rights during criminal investigations;

Amendment 4

Tabled by Ms Anne BRASSEUR, Ms Ute FINCKH-KRÄMER, Mr Boriss CILEVIČS, Mr Mart van de VEN, Ms Stella KYRIAKIDES

In the draft resolution, paragraph 9.4, before the word "work", insert the following word: "remarkable".

Amendment 5

(If adopted, amendment 23 falls)

Tabled by Ms Anne BRASSEUR, Mr Boriss CILEVIČS, Mr Mart van de VEN, Ms Stella KYRIAKIDES, Ms Ute FINCKH-KRÄMER

In the draft resolution, paragraph 9.4, replace the words "the latter should respect fundamental human rights during criminal investigations" with the following words: "respecting the legal framework and the need for an effective fight against corruption and the abuse of authority".

Amendment 23

(Falls if amendment 5 is adopted)

Tabled by Mr Titus CORLĂȚEAN, Mr Corneliu ȘTEFAN, Ms Adriana Diana TUȘA, Mr Valeriu GHILETCHI, Mr Marian LUPU, Mr Evangelos VENIZELOS, Mr Attila KORODI

In the draft resolution, paragraph 9.4, after the words "fundamental human rights", insert the following words: "and the domestic legal criminal procedures".

9.5. ensure respect for the essential role and the authority of the Constitutional Court throughout Romanian society.

Amendment 6

Tabled by Ms Anne BRASSEUR, Ms Ute FINCKH-KRÄMER, Mr Boriss CILEVIČS, Mr Mart van de VEN, Ms Stella KYRIAKIDES

In the draft resolution, paragraph 9.5, after the word "Court", insert the following words: "and the National Anti-Corruption Directorate (DNA)".

Amendment 7

Tabled by Ms Anne BRASSEUR, Ms Ute FINCKH-KRÄMER, Mr Boriss CILEVIČS, Mr Mart van de VEN, Ms Stella KYRIAKIDES

In the draft resolution, paragraph 9.5, replace the words "Romanian society" with the following words: "political parties".

10. Recalling its Resolution 2156 (2017) on the functioning of democratic institutions in Turkey, the Assembly reiterates its deepest concern about the scope of measures taken under the state of emergency and the amendments to the Constitution adopted by the Grand National Assembly on 21 January 2017 and approved in the national referendum of 16 April 2017. It therefore calls on the Turkish authorities to:

10.1. lift the state of emergency as soon as the circumstances and threats which led to the declaration of the state of emergency have ceased;

Amendment 8

Tabled by Ms Anne BRASSEUR, Ms Ute FINCKH-KRÄMER, Mr Boriss CILEVIČS, Mr Mart van de VEN, Ms Stella KYRIAKIDES

In the draft resolution, paragraph 10.1, replace the words "the circumstances and threats which led to the declaration of the state of emergency have ceased" with the following word: "possible".

10.2. reconsider the constitutional amendments approved in the referendum of 16 April 2017, in line with Opinion No. 875/2017 of the Venice Commission, so that there will again be a functioning separation of powers, especially with respect to the parliament and the Constitutional Court;

Amendment 21

Tabled by Mr Talip KÜÇÜKCAN, Mr Şaban DİŞLİ, Ms Emine Nur GÜNAY, Mr Suat ÖNAL, Ms Leyla ŞAHİN USTA

In the draft resolution, delete paragraph 10.2.

10.3. make sure that all emergency decree laws passed by the government under the state of emergency are approved by the parliament and that their constitutionality can be verified by the Constitutional Court;

10.4. put an immediate end to the collective dismissal of judges and prosecutors through decree laws and ensure that those who have already been dismissed will have their cases reviewed by a "tribunal" fulfilling the requirements of Article 6 of the European Convention on Human Rights.

Amendment 22

(If adopted, amendment 9 falls)

Tabled by Mr Talip KÜÇÜKCAN, Mr Şaban DİŞLİ, Ms Leyla ŞAHİN USTA, Mr Suat ÖNAL, Ms Emine Nur GÜNAY

In the draft resolution, replace paragraph 10.4 with the following paragraph:

"proceed carefully with the dismissal through decree laws of those judges and prosecutors who have allegedly taken part in the activities of terrorist organizations and ensure that those who have already been dismissed will have their cases reviewed by a 'tribunal' fulfilling the requirements of Article 6 of the Convention. In this context, the Assembly welcomes the establishment of the inspection commission on the state of emergency decrees which enables judicial review."

11. The Assembly recalls its Resolution 2178 (2017) on the implementation of judgments of the European Court of Human Rights and calls on all member States of the Council of Europe to fully implement the Court's judgments and give political priority to those which reveal a strong need to carry out comprehensive reforms of the judicial system.
12. The Assembly calls on all member States to promote a legal and political culture conducive to the implementation of the rule of law, in conformity with the underlying principles of all Council of Europe standards.

Amendment 9

(Falls if amendment 22 is adopted)

Tabled by Ms Ute FINCKH-KRÄMER, Ms Doris BARNETT, Mr Frank SCHWABE, Mr Stefan SCHENNACH, Ms Anne BRASSEUR

In the draft resolution, paragraph 10.4, after the word "prosecutors", insert the following words: ", as well as other civil servants,"

Amendment 11

Tabled by Ms Olena SOTNYK, Mr Vladyslav GOLUB, Mr Nigel EVANS, Dame Cheryl GILLAN, Mr Jarosław OBREMSKI, Mr Kostiantyn USOV, Mr Serhii KIRAL, Mr Arkadiusz MULARCZYK, Mr Viktor VOVK

In the draft resolution, at the end of paragraph 11, insert the following words: "The Assembly regards with great disappointment the fact that, in 2015, the Russian Federation introduced a legal instrument to enable the overturning of rulings by the ECHR."