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Complementary joint procedure between the Committee of Ministers and the Parliamentary Assembly in response to a serious violation by a member State of its statutory obligations

Report[1]
Committee on Political Affairs and Democracy
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Summary

The Committee on Political Affairs and Democracy welcomes the intensification of dialogue and contacts with the Committee of Ministers with a view to setting up a complementary joint procedure between the two statutory organs of the Council of Europe in response to a serious violation by a member State of its statutory obligations. It reiterates that such a procedure, in which the two statutory organs and the Secretary General of the Council of Europe participate, will strengthen the Organisation's ability to react more effectively in such situations and will enhance the impact of any measures to be taken both regarding the member State concerned and the Organisation as a whole.

In light of the previous decisions by the Assembly and the Committee of Ministers, discussions in and between the two statutory organs, at various levels and in various forms, with the participation of the former and current Secretary General of the Organisation, the report details the basic principles which should govern the complementary joint procedure emphasising its credible, predictable, reactive and reversible nature. It then defines a step by step process, which may ultimately lead to a decision by the Committee of Ministers, after prior consultation of the Assembly, to act under Article 8 of the Statute of the Council of Europe.

1. Reference to committee: Doc. 15007, Reference 4478 of 29 November 2019.

Contents **Page**

A. Draft resolution 3
B. Explanatory memorandum by Mr Frank Schwabe, rapporteur 6
1. Origin of the procedure and scope of the present report 6
2. Basic principles 8
3. The steps of the complementary joint procedure 9
3.1. The procedure is initiated 9
3.2. The first step: a joint high-level mission to the member State in question 11
3.3. The second step: adoption and implementation of the joint Roadmap 12
3.4. The third and final step: possible decision on the suspension of a member State's right of representation in the Committee of Ministers and/or the Parliamentary Assembly, or to request a member State to withdraw 13
4. Conclusions 14

A. Draft resolution[2]

1. The Parliamentary Assembly welcomes the intensification of dialogue and contacts with the Committee of Ministers with a view to setting up a complementary joint procedure between the two statutory organs of the Council of Europe in response to a serious violation by a member State of its statutory obligations. It reiterates that such a procedure, in which the two statutory organs and the Secretary General of the Council of Europe participate, will strengthen the Organisation's ability to react more effectively in situations where a member State violates its statutory obligations and will enhance the impact of any measures to be taken both regarding the member State concerned and the Organisation as a whole.

2. The Assembly refers in this respect to its initial proposal to set up a joint response procedure, in addition to existing procedures, included in Resolution 2277 (2019) and Recommendation 2153 (2019) "Role and mission of the Parliamentary Assembly: main challenges for the future", adopted in April 2019, and the positive follow-up given in the Decision on "A shared responsibility for democratic security in Europe – Ensuring respect for rights and obligations, principles, standards and values", adopted by the Committee of Ministers at its 129th Session (CM/Del/Dec(2019)129/2, Helsinki, 17 May 2019). It further recalls its Resolution 2287 (2019) "Strengthening the decision-making process of the Parliamentary Assembly concerning credentials and voting", adopted on 24 June 2019, in which it expressed its firm commitment to making this proposal operational as soon as possible.

3. The Assembly takes note that, on 25 November 2019, Ms Amélie de Montchalin, French Secretary of State for European Affairs, transmitted to Ms Liliane Maury Pasquier, President of the Assembly, a draft decision by the Ministers' Deputies for the application of Articles 3 and 8 of the Statute of the Council of Europe "which enjoys a very broad support within the Committee of Ministers and could serve as a basis for an agreement with the Parliamentary Assembly". Referring to the Committee of Ministers extensive work "to define the principles and practical arrangements for the complementary joint reaction procedure" and "the close dialogue with the Parliamentary Assembly", the French Secretary of State underlined that "the objective is for us, working together, to be stronger and more effective in ensuring that all member States fully honour their commitments and duties".

4. In light of the above-mentioned decisions by the Assembly and the Committee of Ministers, discussions in and between the two statutory organs, at various levels and in various forms, with the participation of the former and current Secretary General of the Organisation, the Assembly resolves that the complementary joint procedure should be credible, predictable, reactive and reversible and governed by the following basic principles:

4.1. the primary aim of the complementary joint procedure is to bring a member State, through constructive dialogue and co-operation, into compliance with the obligations and principles of the Organisation, and avoid imposing sanctions;

4.2. this procedure, of an exceptional nature, is complementary to existing rules and regulations, building upon the 1994 Committee of Ministers Declaration on compliance with commitments accepted by member States of the Council of Europe, and its implementation will not require any changes to the Statute. It will not affect existing procedures arising from statutory or conventional control mechanisms, neither will it affect the Assembly's existing monitoring procedure;

4.3. an underlying requirement is the conformity with existing roles and mandates of the two statutory organs, as well as of the Secretary General;

4.4. the procedure will address only the most serious violations of fundamental principles and values enshrined in the Statute of the Council of Europe;

4.5. the procedure can be initiated by either the Committee of Ministers, the Parliamentary Assembly or the Secretary General, and all three parties will participate in it;

4.6. the procedure will include a number of concrete and well-defined steps, with a strict timeframe fixed for each step by common agreement of the three parties;

4.7. before taking any decision throughout the process, any of the three parties will consult the other two. The active involvement of the member State concerned in all stages of the process is necessary as the aim of the procedure is to return, through constructive dialogue and co-operation, to a situation in which the member State concerned respects the obligations and principles of the Organisation;

2. Draft resolution adopted unanimously by the committee on 9 December 2019.

4.8. it is a primary responsibility of any member State having violated the statutory obligations to take steps towards resolving the situation;

4.9. the procedure may ultimately lead to a decision to act under Article 8 of the Statute, which in all aspects lies with the Committee of Ministers, after prior consultation of the Parliamentary Assembly, in line with Statutory Resolution (51)30. The procedure does not preclude the direct implementation by the Committee of Ministers of Article 8, as provided in the Statute; neither does it preclude the possibility for the Assembly to ask the Committee of Ministers, through a recommendation, to directly act under Article 8 of the Statute.

5. The Assembly reiterates that the complementary joint procedure can be initiated by either the Committee of Ministers, the Parliamentary Assembly or the Secretary General. As regards initiation by the Assembly:

5.1. a motion for recommendation to initiate the complementary joint procedure between the Committee of Ministers and the Parliamentary Assembly in response to a serious violation by a member State of its statutory obligations will be presented in both official languages and signed by at least one fifth of the component members (representatives and substitutes) of the Assembly, belonging to at least three political groups and fifteen national delegations; this will be the only means through which the complementary joint procedure can be initiated by the Assembly;

5.2. as soon as a motion to initiate the complementary joint procedure is tabled, the Committee on Political Affairs and Democracy will be automatically seized for report on this matter. The motion will be published as an official document within twenty-four working hours and immediately forwarded to the chairperson of the Committee on Political Affairs and Democracy who will place the item on the agenda of the following meeting of the committee for the appointment of a rapporteur. The draft report, including a preliminary draft recommendation on whether or not to initiate the complementary joint procedure, will be considered for adoption at the following committee meeting;

5.3. the report, including a draft recommendation, will be debated by the Assembly at the part-session which immediately follows its adoption by the committee. It will not be possible to propose a debate under urgent procedure for the initiation of the complementary joint procedure;

5.4. with a view to strengthening its legitimacy, the decision by the Assembly to initiate the complementary joint procedure will require a double majority, namely the relevant recommendation will have to be adopted by a majority of two thirds of the votes cast and a number of votes in favour equivalent to at least one third of the total number of members of the Assembly authorised to vote; if at least one of these two conditions is not met, the draft recommendation will be rejected;

5.5. taking into account that such procedure may ultimately lead to a decision to act under Article 8 of the Statute of the Council of Europe and in line with the above-mentioned basic principles, only the most serious violations of fundamental principles and values enshrined in the Statute of the Council of Europe, namely Article 3 of, and the Preamble to, the Statute, can justify the decision of the Assembly to initiate the complementary joint procedure with respect to a member State.

6. Immediately after any of the parties has initiated the procedure, a meeting of the Chairperson of the Committee of Ministers, the President of the Parliamentary Assembly and the Secretary General will take place, followed by a joint high-level mission to the member State in question, within four weeks of the decision of any of the three parties to initiate the procedure, in order to discuss the concerns that led to the initiation of the procedure and to seek clarification of the situation. They will thereafter report back on the outcome of the mission to the two statutory organs. As regards the follow-up:

6.1. the President of the Assembly will present to the Bureau of the Assembly the above-mentioned report on the outcome of the joint mission. This report, together with any proposals by the President of the Assembly for the Roadmap to be subsequently developed by the Secretary General of the Council of Europe, will be appended to the Bureau’s progress report and debated by the Assembly in the context of the debate and vote on the Bureau’s progress report;

6.2. on the basis of the outcome of the joint mission, if the situation were to be remedied, or significant positive progress made, the Committee of Ministers, having consulted the Assembly and the Secretary General, may decide to terminate the complementary joint procedure; otherwise it will move to the second step of the procedure.

7. Within the following eight weeks, upon proposals by the Committee of Ministers and the Parliamentary Assembly, and after consultations with the member State concerned, the Secretary General will develop and submit to the two statutory organs a Roadmap, co-ordinating the various proposed measures. More specifically:

7.1. the Roadmap will contain concrete actions, with strict time frames, which the member State concerned should take, and it will list initiatives and activities proposed and planned by the Committee of Ministers, the Parliamentary Assembly and the Secretary General, such as initiatives and activities proposed and planned by different Assembly committees, by monitoring or advisory bodies of the Organisation or by the Office of the Human Rights Commissioner that would help bringing the member State concerned into compliance with the obligations and principles of the Organisation;

7.2. the Bureau of the Assembly will consider the Roadmap at the meeting which immediately follows the submission of the text by the Secretary General. The proposal of the Bureau to approve or reject the Roadmap will be included, together with the Roadmap, in its progress report; the Assembly will have the opportunity to approve or reject the Roadmap in the context of the debate and vote on the Bureau's progress report;

7.3. if approved by the Assembly, the Roadmap will be examined and adopted by the Committee of Ministers; if rejected, there should be new consultations to revise it.

8. After the adoption of the Roadmap, the procedure will continue with the implementation of the Roadmap. The implementation of the Roadmap will be conducted in close co-operation with the member State concerned and will be co-ordinated by the Secretary General. More specifically:

8.1. the aim will be to engage with the member State concerned in a constructive and co-operative dialogue to help remedy the situation;

8.2. in the course of the implementation of the Roadmap, the three parties may agree to make joint public statements;

8.3. regular dialogue will take place with the member State concerned, as well as between the Committee of Ministers, the Parliamentary Assembly and the Secretary General in a format to be defined in the Roadmap, including the Joint Committee;

8.4. the Assembly will regularly assess the implementation of the Roadmap through the debate on its Bureau's progress report;

8.5. if the situation were to be remedied, or significant positive progress made, the Committee of Ministers, having consulted the Parliamentary Assembly and the Secretary General, may decide to terminate the procedure without undue delay;

8.6. the implementation of the Roadmap should be foreseen within a total of 9 months of its adoption by the Committee of Ministers.

9. If the Committee of Ministers, after consultations with the Parliamentary Assembly and the Secretary General, concludes that there has been no improvement of the situation, and a serious violation of Article 3 by the member State concerned continues to exist, it will move to the final stage of the procedure. More specifically:

9.1. a decision by the Committee of Ministers based on Article 8 of the Statute will follow;

9.2. the prior consultation of the Assembly, in line with Statutory Resolution (51)30, will require the preparation of a report and an Assembly debate with a view to providing the Committee of Ministers with an Opinion on the application of Article 8 of the Statute;

9.3. should the member State concerned eventually remedy the situation, bringing it into compliance with the Statute, the Committee of Ministers may, after consultations with the Parliamentary Assembly and the Secretary General, revoke its decision under Article 8. In case of exclusion, the State concerned will have to reapply for membership.

10. Any changes required to implement the present resolution will be introduced into its Rules of Procedure through a subsequent resolution to be adopted on the basis of a report by the Committee on Rules of Procedure, Immunities and Institutional Affairs. The complementary joint procedure will enter into force upon adoption of the latter resolution and a decision by the Committees of Ministers along the same lines.

B. Explanatory memorandum by Mr Frank Schwabe, rapporteur

1. Origin of the procedure and scope of the present report

1. The proposal to put into place a complementary joint reaction procedure between the two statutory organs in response to a serious violation by a member State of its statutory obligations was raised during the Finnish Presidency of the Committee of Ministers (November 2018-May 2019) and was endorsed by both the Assembly and the Committee of Ministers in April and May 2019 respectively. The main idea behind this initiative is that a joint action by the two statutory organs and the Secretary General of the Organisation will not only enhance the legitimacy and credibility of their action, but also the impact and relevance of any measures to be taken, both in relation to the member State concerned and the Council of Europe as a whole, without prejudice to each organ's existing separate powers and responsibilities.

2. More specifically, the Assembly, with the adoption of Resolution 2277 (2019) and Recommendation 2153 (2019) "Role and Mission of the Parliamentary Assembly: main challenges for the future", on 10 April 2019, noted that there was "urgent need to develop synergies and provide for joint action by the two statutory organs in order to strengthen the Organisation's ability to react more effectively in situations where a member State violates its statutory obligations or does not respect the fundamental principles and values upheld by the Council of Europe."

3. Thus the Assembly, welcoming the fact that contacts and dialogue with the Committee of Ministers had intensified at different levels and in different formats, proposed to the Committee of Ministers to "put into place [in situations where a member State violates its statutory obligations or does not respect the fundamental principles and values upheld by the Council of Europe], in addition, a joint response procedure which could be triggered by either the Parliamentary Assembly, the Committee of Ministers or the Secretary General and in which all three of them would participate". The Assembly text develops in more detail the proposed step-by-step process, within strict timeframes.

4. One month later, meeting on 17 May 2019 in Helsinki, the Ministers, in their Decision "A shared responsibility for democratic security in Europe – Ensuring respect for rights and obligations, principles, standards and values" noted the same "urgent need" as the Assembly and, building upon their 1994 "Declaration on compliance with commitments accepted by member States of the Council of Europe", instructed their Deputies "to develop – in co-operation with the Parliamentary Assembly – a clearly defined complementary procedure, which could be initiated by either the Parliamentary Assembly, the Committee of Ministers or the Secretary General, and in which all three of them would participate."

5. The Ministers, taking into consideration Assembly Recommendation 2153 (2019), "agreed further that such a co-ordinated response, carried out in a constructive manner, encouraging member States, through dialogue and co-operation, to take all appropriate measures to conform with the principles of the Statute, will include a number of concrete and well-defined steps, with a strict time frame fixed for each step by common agreement of the three parties, and may ultimately lead to a decision to act under Articles 8 or 9 of the Statute, which lies with the Committee of Ministers."

6. At its June 2019 part-session, the Assembly, in turn, welcomed the positive reception by the Committee of Ministers of its call for an enhanced political dialogue between the two statutory organs and its encouraging support for the proposal to set up, in addition to existing procedures, a joint procedure of reaction, resolved to immediately start working on the establishment of such a joint mechanism, which should be politically impartial and effective and expressed its firm commitment to making this proposal operational as soon as possible. It did so on two occasions: on 24 June, when adopting Resolution 2287 (2019) "Strengthening the decision-making process of the Parliamentary Assembly concerning credentials and voting", whereby it invited the parliaments of Council of Europe member States which were not represented by a delegation to the Assembly to present credentials of their representatives and substitutes; and two days later, when adopting Resolution 2292 (2019) "Challenge, on substantive grounds, of the still ungratified credentials of the parliamentary delegation of the Russian Federation", whereby it ratified the credentials of the Russian delegation expecting that its clear offer of dialogue would be accepted and would lead to concrete results.

7. In the meantime, discussions on the complementary joint procedure in and between the two statutory organs continued under the French Presidency either in the format of the Joint Committee or as part of informal exchanges of views between the Assembly Presidential Committee and the Bureau of the Committee of Ministers, with the participation of the former and current Secretary General. Implementation of this procedure was a priority of the French Presidency as also highlighted by the President of the French Republic in his address to the Assembly on 1 October 2019 and in the context of the 70th anniversary of the

Organisation. Thus, contacts and dialogue between the two statutory organs have continued to intensify over the last 6 months. Furthermore, the Committee on Political Affairs and Democracy has discussed this issue in the context of the follow-up to Resolution 2277 (2019) in each of its meetings held after its adoption.

8. The secretariats of the two statutory organs jointly prepared a "non-paper" (dated 23 July 2019) with a view to defining the practical modalities for the complementary joint procedure. This non-paper was submitted to and discussed by the chairpersons of national delegations and the Presidential Committee on 2 October 2019 and was subsequently sent to national delegations for written comments by 25 October. It was also submitted to and discussed by the Joint Committee on 3 October 2019. A further consultation with the chairpersons of national delegations and the Presidential Committee was held on 28 November 2019 in Strasbourg.

9. For their part, the Ministers' Deputies held several informal meetings, under the French Presidency, to discuss the practical modalities of the complementary joint procedure and an informal exchange of views between the Bureau of the Committee of Ministers, the Presidential Committee and the Secretary General of the Organisation took place on 15 November 2019 in Berlin.

10. To reflect the political will to approve the complementary joint procedure by January 2020 and make it operational as soon as possible, the Bureau of the Assembly, when drawing up the preliminary draft agenda for the January 2020 part-session of the Assembly at its meeting on 4 October 2019, envisaged a possible debate on this matter during that part-session.

11. To allow such a debate to take place, thus providing all Assembly members the opportunity to discuss, in an open and transparent manner, the modalities of the procedure, a motion for resolution and/or recommendation was adopted by the Committee on Political Affairs and Democracy at its meeting on 14 November 2019 in Berlin. The committee agreed to consider a draft report on the new motion for possible adoption at its meeting on 9 December 2019 (subject to referral of this motion to the committee by the Bureau of the Assembly) and appointed me as rapporteur. The Bureau of the Assembly referred the motion to the committee on 28 November 2019 and the following day this reference was ratified by the Standing Committee. A debate on this matter was included by the Bureau of the Assembly in the preliminary draft agenda of the January 2020 part-session.

12. On 25 November 2019, with the French Presidency coming to an end, Ms Amélie de Montchalin, French Secretary of State for European Affairs, transmitted to the President of the Assembly, Ms Liliane Maury Pasquier, a draft decision by the Ministers' Deputies "which enjoys a very broad support within the Committee of Ministers and could serve as a basis for an agreement with the Parliamentary Assembly". Referring to the Committee of Ministers extensive work "to define the principles and practical arrangements for the complementary joint reaction procedure" and "the close dialogue with the Parliamentary Assembly", the French Secretary of State underlined that "the objective is for us, working together, to be stronger and more effective in ensuring that all member States fully honour their commitments and duties". The French Secretary of State, confirming the Committee of Ministers' readiness to continue the dialogue with the Parliamentary Assembly as an essential precondition for the efficient functioning of the Council of Europe, asked the President of the Assembly to forward this draft decision to the members of the Assembly, including myself as rapporteur of the Committee on Political Affairs and Democracy.[3]

13. As the principled decision to set up a complementary joint response procedure between the two statutory organs has already been taken by the Assembly and the Committee of Ministers, the present report, including the draft resolution, primarily aims at proposing practical modalities for the implementation of the procedure. Some of them concern both statutory organs and the Secretary General, others concern the internal functioning of the Assembly. It is understood that any political decisions taken by the Assembly when debating the present report will be translated into its Rules of Procedure on the basis of a subsequent report and resolution to be prepared by the Committee on Rules of Procedure, Immunities and Institutional Affairs.

14. The title of the report and of the procedure it aims to regulate reflects the title of the procedure as elaborated by the Ministers' Deputies with one addition: the adjective "joint", included in the initial proposal by the Assembly in its Resolution 2277 (2019) and Recommendation 2153 (2019) and reiterated by the French Secretary State for European Affairs, in her letter dated 25 November 2019, is an essential element of the proposed procedure which aims at responding to the need for synergy between the two statutory organs.

3. Letter by the French Secretary of State and draft decision of the Ministers' Deputies: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=090000168098f323.

2. Basic principles

15. Following informal discussions within the Ministers' Deputies and between their Bureau, the Presidential Committee of the Assembly and the former and current Secretary General of the Council of Europe, a number of basic principles are included in the draft decision by the Ministers' Deputies transmitted to the President of the Assembly by the French Secretary of State for European Affairs. In my view, they should be supplemented by some additional elements, mainly for reasons of clarity or institutional balance, and then endorsed by the Assembly. More specifically:

i. the primary aim of the complementary joint procedure is to bring a member State, through constructive dialogue and co-operation, into compliance with the obligations and principles of the Organisation, and avoid imposing sanctions;

ii. this procedure, of an exceptional nature, is complementary to existing rules and regulations, building upon the 1994 Declaration on compliance with commitments accepted by member States of the Council of Europe, and its implementation will not require any changes to the Statute. It will not affect existing procedures arising from statutory or conventional control mechanisms, neither will it affect the existing Assembly's monitoring procedure;

iii. an underlying requirement is the conformity with existing roles and mandates of the two statutory organs, as well as the Secretary General;

iv. the procedure will address only the most serious violations of fundamental principles and values enshrined in the Statute of the Council of Europe;

v. the procedure can be initiated by either the Committee of Ministers, the Parliamentary Assembly or the Secretary General, and all three parties will participate in it;

vi. the procedure will include a number of concrete and well-defined steps, with a strict timeframe fixed for each step by common agreement of the three parties;

vii. before taking any decision throughout the process, any of the three parties will consult the other two. The active involvement of the member State concerned in all stages of the process is necessary as the aim of the procedure is to return, through constructive dialogue and co-operation, to a situation in which the member State concerned respects the obligations and principles of the Organisation;

viii. it is a primary responsibility of any member State having violated the statutory obligations to take steps towards resolving the situation;

ix. the procedure may ultimately lead to a decision to act under Article 8 of the Statute, which in all aspects lies with the Committee of Ministers, after prior consultation of the Parliamentary Assembly, in line with Statutory Resolution (51)30.[4] The procedure does not preclude the direct implementation by the Committee of Ministers of Article 8, as provided in the Statute.[5] Neither does it preclude the possibility for the Assembly to ask the Committee of Ministers, through a recommendation, to directly act under Article 8 of the Statute.

16. It has also been suggested that the procedure will be:

– credible: it must be a useful tool, that can be implemented in practice, and that is seen as a relevant and credible response to the crisis that attempts are being made to resolve;

– predictable: the various steps of the procedure need to be sufficiently predictable and clear to allow the Committee of Ministers, the Parliamentary Assembly and the Secretary General to follow concrete and well-defined steps, as stipulated by the Helsinki Ministerial Decision. This is also of particular importance for the member State concerned and will help make the procedure more efficient;

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4. Statutory Resolution Res(51)30 adopted by the Committee of Ministers on 3 May 1951 reads as follows: "The Committee of Ministers before inviting a State to become a Member or Associate Member of the Council of Europe, in accordance with Articles 4 and 5 of the Statute, or inviting a Member of the Council of Europe to withdraw, in accordance with Article 8, shall first consult the Consultative (Parliamentary) Assembly in accordance with existing practice." Although Res(51)30 does not explicitly require consultation of the Assembly for the suspension of a member State it should be understood that such prior consultation should also take place in this case as the Assembly will also be affected by the suspension of a member State.

5. Article 8 of the Statute reads as follows: "Any member of the Council of Europe which has seriously violated Article 3 may be suspended from its rights of representation and requested by the Committee of Ministers to withdraw under Article 7. If such member does not comply with this request, the Committee may decide that it has ceased to be a member of the Council as from such date as the Committee may determine."

– reactive: the procedure needs to provide enough time for dialogue with the member State concerned on all necessary issues, with due regard to the need to react quickly to events, and to avoid inconclusive or indeterminate discussions;

– reversible: it will be important to develop a well-defined exit-strategy, that also foresees how the procedure can be terminated at each step of the procedure, if the member State concerned takes appropriate steps to rectify the situation.

3. The steps of the complementary joint procedure

3.1. The procedure is initiated

17. As agreed in Assembly Resolution 2277 (2019) and Recommendation 2153 (2019) and in the Helsinki Ministerial Decision, and in line with the above-mentioned basic principles, the complementary joint procedure can be initiated by either the Committee of Ministers, the Parliamentary Assembly or the Secretary General. Both statutory organs thus obtain a right to decide autonomously to initiate the procedure.

18. Whereas the Secretary General can initiate the procedure on the basis of a motivated decision, the Committee of Ministers and the Assembly should follow pre-established rules and procedures while relevant majorities have to be defined to exclude cases of abuse and limit the use of the procedure to those cases which have the genuine support of members.

3.1.1. Initiation of the procedure by the Committee of Ministers

19. There seems to be agreement within the Ministers' Deputies that a decision by the Committee of Ministers to initiate the procedure, as proposed by a member State or a group of member States, will require a two thirds majority, according to Article 20d of the Statute of the Council of Europe.

3.1.2. Initiation of the procedure by the Assembly

20. If it is the Assembly which initiates the procedure, the fact that, by doing so, the Assembly engages the Committee of Ministers and the Secretary General in a joint action with respect to the situation in a member State, which may lead to action under Article 8 of the Statute, implies that this should be done with the relevant degree of rigour and legitimacy. This requirement has also been confirmed in consultations held with the chairpersons of national delegations and the Presidential Committee. In this respect, four questions have to be considered: Who can propose that the Assembly initiates the complementary joint procedure? Which committee should be seized for report? Under what voting modalities can the Assembly decide to initiate the complementary joint procedure? On what grounds?

– *Who can propose that the Assembly initiates the complementary joint procedure?*

21. In my view, and this seems to be confirmed in the consultations with the chairpersons of national delegations and the Presidential Committee, it is important to avoid any attempt to manipulate the initiation of the complementary joint procedure on political grounds.

22. This is why I would draw analogy from the recently agreed Rules of Procedure for the dismissal of the President of the Assembly, which provide for the highest threshold foreseen at present in our Rules of Procedure for signing a motion (see Rule 54.3). I would therefore propose that, to initiate the complementary joint procedure between the Committee of Ministers and the Parliamentary Assembly in response to a serious violation by a member State of its statutory obligations, we would need a motion signed by at least 1/5 of the component members (representatives and substitutes) of the Assembly belonging to at least 3 political groups and 15 national delegations. If we take into consideration the statutory number of members of the Assembly, that is 648 (324 representatives +324 substitutes),[6] this means that such motion would need to be signed by at least 130 members (whether representatives or substitutes) belonging to at least 3 political groups and 15 national delegations. If this requirement is considered necessary for initiating a motion to dismiss the President of the Assembly, we cannot require less for engaging the complementary joint procedure with the other statutory organ and the Secretary General vis-à-vis a member State. This should be the only means through which the complementary joint procedure could be initiated by the Assembly.

– *Which committee should be seized for report?*

6. It is worth noting that the total number of members of the Assembly may at a given moment of time be lower than the statutory number.

23. Initiating the complementary joint procedure should be done through a recommendation to the Committee of Ministers.

24. Once a motion to initiate the complementary joint procedure is tabled under the above-mentioned conditions, a committee should be seized to prepare and submit to the Assembly the relevant report, including a draft recommendation in favour or against the initiation of the procedure.

25. Following discussions in the Presidential Committee and with the chairpersons of national delegations, my proposal would be that, for reasons of clarity, transparency and equality, the committee to be seized for report in such case should be decided by the Assembly once and for all and not on an ad hoc basis, upon a proposal by the Bureau, which could differ from one case to another. Then, the question is of course which committee should be pre-determined to deal with motions proposing the initiation of the complementary joint procedure.

26. My proposal is that the Assembly should entrust this task to the Committee on Political Affairs and Democracy for two main reasons, one with respect to its composition and one with respect to its terms of reference. This committee is in fact composed of representatives of all national delegations, including both the majority and opposition, as well as *ex officio* all group leaders. It is its task to report on urgent political situations and crisis in Council of Europe member States and the circumstances authorising the initiation of the complementary joint procedure vis-à-vis a member State are surely close to what can be described as a "crisis" (see also below under iv). It is also this committee which is responsible for considering requests for accession of States and preparing the relevant Assembly Opinion in response to the Committee of Ministers, in line with Statutory Resolution (51)30. It should therefore, by analogy, be the best placed committee to also liaise with the Committee of Ministers in the context of the complementary joint procedure.

27. I could not agree with those who suggest that the pre-determined committee to prepare the report to initiate the complementary joint procedure should be the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), not only because of its composition and special rules of its functioning (the Monitoring Committee is composed of representatives of political groups with no guarantee that all national delegations will be represented, its meetings are held *in camera*, reports are prepared by two co-rapporteurs etc.) but mainly because the procedure the present report is envisaging is a "complementary" one, of an "exceptional nature", aimed at bringing together the two statutory organs and the Secretary General "to address only the most serious violations". It should thus not affect existing procedures, such as the Assembly's monitoring procedure. It would be confusing and could endanger the existing monitoring procedure of the Assembly if the decision to initiate the "complementary" procedure was entrusted to the committee which is competent for the Assembly's monitoring procedure.

28. If it is agreed by the Assembly that the Committee on Political Affairs and Democracy will be automatically seized for report on motions proposing to initiate the complementary joint procedure, then, once such a motion is tabled, the Table Office, after verifying that the motion is signed by 1/5 of members (representatives or substitutes) representing at least 3 political groups and 15 national delegations, will send it directly to the chairperson of this committee who will then have to place the item on the agenda of the next committee meeting for the appointment of rapporteur. There will thus be no need to wait for this motion to be considered by the Presidential Committee, the Bureau and the Assembly or the Standing Committee.

29. The rapporteur will have to prepare a draft report, including a preliminary draft recommendation on whether or not to initiate the complementary joint procedure, for the next meeting of the Committee on Political Affairs and Democracy following the appointment. Once the report is adopted by the committee, the Assembly will have to debate it at its following part-session. If the Assembly sets these rules, there will be no risk that the consideration of whether to propose to the Assembly to initiate the complementary joint procedure will last unnecessarily long. Of course, the above-mentioned decisions, if taken, will have to be translated into the Rules of Procedure of the Assembly.

– *Under what voting modalities can the Assembly decide to initiate the complementary joint procedure?*

30. As said above, the Assembly will decide to initiate the complementary joint procedure by way of a recommendation to the Committee of Ministers. As for the adoption of any recommendation, this decision will thus require the majority of two thirds of the votes cast (see Rule 41.a).

31. To ensure a higher threshold for such a politically important decision, both for the member State concerned and the Organisation as a whole and, as also said above, to enhance the legitimacy and credibility of this decision, I would propose a double majority condition, namely: the relevant recommendation should be adopted with a two thirds majority of the votes cast (total of "yes" or "no" votes as in the calculation of votes cast only affirmative and negative votes count) and with no less than one third of the total number of members

entitled to vote (108 voting in favour out of a total number of 324 members of the Assembly authorised to vote if we take into consideration the statutory number of members of the Assembly). This means that a decision to initiate the complementary joint procedure, with all the consequences that this implies for the member State concerned and the Organisation, will under no circumstances be taken with less than 108 votes in favour. At the same time, if a higher number of members participate in the vote, a two thirds majority will require a higher number of votes in favour. For instance, if 210 members cast their vote (total of "yes" or "no" votes), at least 140 members have to vote in favour to initiate the complementary joint procedure.

32. Moreover, with the addition of this double majority condition, there is no need to discuss the quorum condition. In fact, the requirement of a quorum plays into the hands of those who do not show up in the Chamber or decide (even at the last moment) not to participate in the vote. What we want to achieve with the double majority condition is, on the contrary, to encourage participation as the ultimate aim is to enhance legitimacy and credibility of the Assembly decision on whether or not to initiate the complementary joint procedure.

– *On what grounds?*

33. According to the wording of the earlier Assembly decisions (Resolution 2277 (2019) and Recommendation 2153 (2019)) and the Helsinki Ministerial Decision, the complementary joint procedure is to be initiated as a response to situations where a member State "violates its statutory obligations or does not respect the standards, fundamental principles and values upheld by the Council of Europe".

34. Taking into account that such procedure may ultimately lead to a decision to act under Article 8 of the Statute of the Council of Europe, which requires a "serious violation of Article 3 of the Statute" and in light of its complementary and exceptional nature, it has already been suggested in the above mentioned "basic principles" that "only the most serious violations of fundamental principles and values enshrined in the Statute of the Council of Europe" can justify the decision to initiate the complementary joint procedure by either of the two statutory organs or the Secretary General. Rule 8.2 of the Assembly's Rules of Procedure also refers to a "serious violation of the basic principles of the Council of Europe mentioned in Article 3 of, and the Preamble to, the Statute."

35. Each statutory organ or the Secretary General, before deciding to initiate the complementary joint procedure, will have to assess the seriousness of the violations of fundamental principles and values. I would be against the idea of trying to provide a detailed or exhaustive list of possible violations or more precise definitions. The majorities needed to initiate the procedure by either statutory organ, as described above, provide enough safeguards against misuse and attempts to overregulate could eventually make it impossible to initiate the procedure.

3.2. The first step: a joint high-level mission to the member State in question

36. Immediately after any of the parties has initiated the procedure, a meeting of the Chairperson of the Committee of Ministers, the President of the Parliamentary Assembly and the Secretary General will take place, followed by a joint high-level mission to the member State in question to discuss the concerns that led to the initiation of the procedure and to seek clarification of the situation. They will thereafter report back on the outcome of the mission to the two statutory organs.

37. As mentioned above, it is clear that, in line with the letter and spirit of both the decisions adopted by the Assembly and the Helsinki Ministerial Decision, if either of the two statutory organs or the Secretary General initiates the complementary joint procedure, this decision will automatically engage the other two parties in this first step of the complementary joint procedure, that is the organisation of a joint high-level mission to the member State concerned.

38. At the same time, it is suggested as part of the "basic principles" governing the complementary joint procedure (see above), that the procedure should be "reversible" in the sense that there is a need to develop a well-defined exit-strategy, that also foresees how the procedure can be terminated at each step, if the member State concerned takes appropriate steps to rectify the situation.

39. Following discussions between the Bureau of the Committee of Ministers, the Presidential Committee and the Secretary General, and in conformity with existing roles and mandates of the two statutory organs and the Secretary General, it is suggested that the decision to terminate the complementary joint procedure, once the first step – that is the joint high-level mission to the member State in question – has taken place and if the member State concerned takes appropriate steps to rectify the situation, lies with the Committee of Ministers, which will have first to consult the Assembly and the Secretary General.

40. However, in the draft decision as discussed by the Ministers' Deputies and transmitted to the President of the Assembly by the French Secretary of State for European Affairs, it is provided that, on the basis of the outcome of the joint high-level mission, the Committee of Ministers, having consulted the Assembly and the Secretary General, will decide, by a two-thirds majority according to Article 20d of the Statute, "on moving to the second step of the procedure".

41. It could be a misunderstanding, but such wording seems to fail to reflect earlier discussions between the Bureau of the Committee of Ministers and the Presidential Committee and does not seem to be in line with the above-mentioned "basic principle" on the reversibility of the procedure because the decision that the Committee of Ministers is called upon to take, following the joint high-level mission, with a two thirds majority of the representatives casting a vote (and a majority of the representatives entitled to sit in the Committee of Ministers, see Article 20d of the Statute), is no longer about the termination of the procedure (the so-called "exit-strategy"), but on whether the procedure can "move on to the second step". This means that one third of the representatives of the member States casting a vote plus one (for instance 16 out of 47 representatives in case there are no abstentions) can block the decision to move on to the second step and thus "terminate" the complementary joint procedure. Whereas it is not for the Assembly to express any position on the majorities by which the Committee of Ministers will take its decisions, what is put into question here is the content of the decision on which the Committee of Ministers is called upon to vote. I therefore propose a wording in the preliminary draft resolution which I think reflects better the letter and spirit of earlier decisions by the Assembly as well as the Helsinki Ministerial Decision. The proposed wording also covers the situation in which there is simply no decision at all by the Committee of Ministers.

42. As regards the Assembly's "consultation" by the Committee of Ministers following the joint high-level mission, it can take place through the debate and adoption of the Bureau's progress report. It is suggested in particular that, following this mission to the member State concerned, the President of the Assembly will report to the Bureau on the outcome of the mission. On the basis of the President's report, the Bureau will decide what opinion to give to the Committee of Ministers on whether the procedure can be terminated, in case the State takes appropriate steps to rectify the situation, or, in the absence of any significant positive progress, move on to the second step of the procedure, namely the elaboration and adoption of a joint Roadmap with respect to the State concerned.

43. In the latter case, the report by the President of the Assembly to the Bureau on the outcome of the joint mission may also include proposals for the Roadmap to be subsequently developed by the Secretary General.

44. The President's report on the outcome of the joint mission, including any proposals for the Roadmap, will be appended to the Bureau's progress report and debated by the Assembly in the context of the debate and vote on the Bureau's progress report.

45. It is proposed that the joint high-level mission to the member State in question is concluded within 4 weeks of the decision of any of the three parties to initiate the procedure.

3.3. The second step: adoption and implementation of the joint Roadmap

3.3.1. Adoption of the Roadmap

46. Upon proposals by the Committee of Ministers and the Parliamentary Assembly, and after consultations with the member State concerned, the Secretary General will prepare and submit to the two statutory organs a Roadmap, co-ordinating the various proposed measures. The Roadmap will contain concrete actions, with strict time frames, which the member State concerned should take, and it will list initiatives and activities proposed and planned by the Committee of Ministers, the Parliamentary Assembly and the Secretary General respectively. Initiatives and activities proposed and planned by different Assembly committees, by monitoring or advisory bodies of the Organisation or by the Office of the Human Rights Commissioner, that would help bringing the member State concerned into compliance with the obligations and principles of the Organisation, could be integrated in the Roadmap.

47. Following the submission of the Roadmap by the Secretary General, the Parliamentary Assembly and, finally, the Committee of Ministers will examine and adopt the Roadmap, according to their respective rules of procedure.

48. The consideration and approval of the Roadmap by the Assembly can take place through the debate and adoption of its Bureau's progress report. The Secretary General will present the Roadmap to the Bureau of the Assembly as soon as it is prepared and will seek its approval. It is understood that it is not up to the

Bureau to modify the Roadmap but to propose to the Assembly to either approve it or reject it. Its proposal will be included, together with the Roadmap, in its progress report and the Assembly will have the opportunity to approve or reject it when adopting its Bureau's progress report.

49. If approved by the Assembly, the Roadmap will be examined and adopted by the Committee of Ministers; if rejected, there should be new consultations to revise it.

50. It is proposed that the Roadmap is prepared and submitted to the Bureau of the Assembly by the Secretary General within 8 weeks of the start of the second step of the procedure. The Bureau of the Assembly will have to consider the Roadmap at its next meeting following the submission of the text by the Secretary General.

3.3.2. Implementation of the Roadmap

51. After the adoption of the Roadmap, the procedure will continue with the implementation of the Roadmap, which will be conducted in close co-operation with the member State concerned and will be co-ordinated by the Secretary General.

52. The aim will be to engage with the member State concerned in a constructive and co-operative dialogue to help remedy the situation.

53. In the course of the implementation of the Roadmap, the three parties may agree to make joint public statements.

54. Regular dialogue will take place with the member State concerned, as well as between the Committee of Ministers, the Parliamentary Assembly and the Secretary General in a format to be defined in the Roadmap, including the Joint Committee.

55. In the draft decision as discussed by the Ministers' Deputies and transmitted to the Assembly, it is provided that, "if the situation were to be remedied, or positive progress made, the Committee of Ministers may decide, by a two-thirds majority according to Article 20d, to pause or terminate the procedure without undue delay." If the "exit" decision lies rightly with the Committee of Ministers, it should be taken "after consultations with the Parliamentary Assembly and the Secretary General". I also suggest adding the word "significant" before the word "positive progress". Moreover, the decision to take is whether or not to "terminate" the procedure and not to "pause" it.

56. The Assembly could regularly assess the implementation of the Roadmap through the debate on its Bureau's progress report.

57. While the details will be agreed in the Roadmap, it is proposed that the implementation of the Roadmap should be foreseen within a total of 9 months of its adoption by the Committee of Ministers.

3.4. The third and final step: possible decision on the suspension of a member State's right of representation in the Committee of Ministers and/or the Parliamentary Assembly, or to request a member State to withdraw

58. If the Committee of Ministers through a decision, by a two thirds majority according to Article 20d, after consultations with the Parliamentary Assembly and the Secretary General, concludes that there has been no improvement of the situation, and a serious violation of Article 3 by the member State concerned continues to exist, it will move to the third and final stage of the process.

59. A decision by the Committee of Ministers based on Article 8 of the Statute will follow. The prior consultation of the Assembly, provided in Statutory Resolution (51)30, would require the preparation of a report and an Assembly debate with a view to providing the Committee of Ministers with an Opinion on the application of Article 8 of the Statute.[7]

60. Should the member State concerned eventually remedy the situation, bringing it into compliance with the Statute, the Committee of Ministers may, after consultations with the Parliamentary Assembly and the Secretary General, revoke its decision under Article 8. In case of exclusion, the State concerned will have to reapply for membership.

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7. See also above basic principle ix and footnotes 3 and 4.

4. Conclusions

61. The complementary joint procedure between the Committee of Ministers and the Parliamentary Assembly in response to a serious violation by a member State of its statutory obligations, in which the Secretary General also plays a significant role, is meant to enhance the credibility of the Organisation and the impact of any measures to be taken with respect to the State in question. Its political importance has been highlighted by its endorsement at ministerial level and the commitment shown by both the Finnish and French presidencies of the Committee of Ministers, at the highest political level, to allow for approval by January 2020. The Secretary General elected in June 2019 has also shown her commitment to achieve this goal.

62. Although the principled decisions have been taken and no changes to the Statute are necessary, the task is still particularly challenging as the practical modalities have to be agreed by the Ministers' Deputies of 47 member States and by the Assembly following discussions within each statutory organ and between the two of them.

63. The present report aims at offering a basis for an open and transparent discussion first in the Committee on Political Affairs and Democracy and ultimately in the Assembly, taking into consideration the modalities as discussed and broadly agreed within the Ministers Deputies and between the Bureau of the Committee of Ministers, the Presidential Committee and the Secretary General. On a few points, it suggests changes or improvements, inviting the Ministers' Deputies to take these suggestions into consideration with a view to reaching an agreement between the two statutory organs.

64. All changes required in the Assembly's Rules of Procedure to implement the decisions the Assembly will take on the basis of the present report will be introduced, in a subsequent resolution, on the basis of a report by the Committee on Rules of Procedure, Immunities and Institutional Affairs. The complementary joint procedure will enter into force with the adoption by the Assembly of the latter resolution, hopefully at the Assembly April 2020 part-session, and the adoption of a decision by the Committees of Ministers along the same lines. The political message will however be already given with the debate of the present report in January 2020.