



**Provisional version**  
10 September 2013

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

Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe  
(Monitoring Committee)

Rapporteur: Mr Andres HERKEL, Estonia, Group of the European People's Party

### **Draft resolution<sup>1</sup>**

1. The Parliamentary Assembly of the Council of Europe 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) and modified by Resolutions 1431(2005), 1515 (2006), 1710 (2010) and 1936 (2013).

2. In particular, the Assembly commends the committee on its action in accompanying ten 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 States which are not under a specific monitoring procedure, on their compliance with the statutory obligations they entered into upon accession, and 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 the respect for democracy, 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, 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 the 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 pre-conditions, 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, to the Bureau of the Assembly, thus enabling the Assembly's debate on the subject.

6. During the reporting period, the committee has produced full monitoring reports on Montenegro, the Russian Federation, Azerbaijan and reports on post-monitoring dialogue with Bulgaria, Turkey and "the former Yugoslav Republic of Macedonia". The committee approved a preliminary draft report on the honouring of obligations and commitments by the Republic of Moldova and a preliminary draft report on the

<sup>1</sup> Draft resolution adopted unanimously by the committee on 6 September 2013.

post-monitoring dialogue with Monaco; both were transmitted to the respective authorities for comments, which were subsequently considered by the committee. The committee adopted the draft resolutions on the Republic of Moldova and Bosnia and Herzegovina in September 2013.

7. The respective rapporteurs carried out fact-finding visits to: Albania, Azerbaijan (3 visits), Bosnia-Herzegovina (2 visits), Georgia (2 visits), Republic of Moldova, 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 (co)rapporteur(s) 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 external meeting held 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 organised 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 the 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 organised an exchange of views with the participation of Mr Stefan 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 with respect for 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 ratification of 83 conventions and 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 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 ECHR, 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.

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 about the 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 implementation of the ECtHR Sejdić and Finci judgment; 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 and 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 IDPs and refugees; 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 NGOs and on propaganda of homosexuality to minors), as well as serious concerns about politically motivated justice, reinforced by recent judgments against Mr Navalny and the late Mr Magnitsky; 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 remaining laws; 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 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 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 spousal 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 combatting racial discrimination in all fields of life; in Malta, increasing number of incidents of State violence against migrants and refugees; in Poland, increased number of racially-motivated offences; in the Slovak Republic, 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 the 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 and the Criminal Law Convention on Corruption (ETS No. 173) and its Additional Protocol (ETS No. 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, Slovak Republic and Slovenia.

20. In consequence, 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 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 into a fully functioning democracy; 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 of Human Rights (ECHR); to implement the Sejdi and Findic judgment of the European Court of Human Rights (ECtHR), 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 the former government officials, including Prime Minister and the former Minister of Health, are conducted transparently and in full compliance with Georgia's obligations under Articles 5 and 6 of the ECHR;

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 internally displaced persons and refugees;

20.7. the parliament of the Russian Federation to revise controversial laws adopted recently in particular the law on the criminalisation of defamation, on Internet, on assemblies, on NGOs (law "on foreign agents") and on the propaganda of homosexuality to minors; 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 Tymoshenko given that the judiciary 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;

20.10. the parliament of Turkey to continue its reform programme, such as 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 *stricto sensu*, 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 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. 009), adding the right to peaceful enjoyment of property, the right to education and the right to free elections by secret ballot to 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 (ETS No. 174);

21.9. Austria, Germany, Liechtenstein and San Marino to ratify the Criminal Law Convention on Corruption (ETS No. 173);

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 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 ECtHR, and to initiate legislative changes aimed at eliminating structural problems leading to repeated violations of the ECHR.

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

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

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 European Commissioner for Human Rights, 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 the 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 to comply with recommendations of the Council of Europe's Group of States against Corruption (GRECO), which so far have been considered "globally unsatisfactory".

23. The Assembly stresses the importance it attaches to the full independence of rapporteurs on the monitoring of obligations and commitments and political neutrality of the Monitoring Committee in accomplishing the 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 part of the Organisation aimed at strengthening and improving cooperation 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.

## **B. Draft recommendation<sup>2</sup>**

1. The Parliamentary Assembly of the Council of Europe refers to its Resolution ... (2013) on the progress of the monitoring procedure, in which it 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.
2. Enhanced co-operation and increased synergy between the Assembly and the Committee of Ministers may largely contribute to improving coherence and strategies in the area of monitoring the obligations and commitments entered into by all members upon accession to the Council of Europe, thus strengthening and improving the procedure. The Assembly commends the remarkable work carried out by the Council of Europe monitoring mechanisms, and the *acquis* they have established over the years.
3. The Assembly calls on the Council of Europe Committee of Ministers to give due consideration to the most recent PACE monitoring reports on each country, and from now on to systematically put all future PACE monitoring reports on their agenda.

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<sup>2</sup> Draft recommendation adopted unanimously by the committee on 6 September 2013.