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

### **State of the parliamentary monitoring procedure for the Russian Federation on 16 March 2022**

**Former co-rapporteurs: Mr Axel Schäfer, Germany, SOC and Ms Ria Oomen-Ruijten, Netherlands, EPP/CD**

#### **Information note**

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<sup>1</sup> Document declassified by the Monitoring Committee at its meeting on 26 April 2022.

## 1. Introduction

1. 24 February 2022 marked a turning point in the relations between the Russian Federation and the Council of Europe. The act of military aggression against Ukraine, in clear violation of the Charter of the United Nations, the Council of Europe Statute (ETS No. 1) and the Russian Federation's obligations and commitments as a member of the Organisation prompted a quick and unequivocal reaction from all the Organisation's instances.

2. On 25 February 2022, the President of the Assembly, convened an Extraordinary Session of the Assembly on 14-15 March 2022 to hold an urgent debate on the consequences of the Russian Federation's aggression against Ukraine and on the same day the Committee of Ministers of the Council of Europe decided to suspend the representation rights of the Russian Federation with immediate effect, pursuant to Article 8 of the Council of Europe Statute.<sup>2</sup> On 10 March, in reaction to further developments in Ukraine, the Committee of Ministers asked the Assembly to provide its Opinion in relation to the potential further recourse to Article 8 of the Statute, with a view to the Russian Federation's withdrawal from the Organisation.<sup>3</sup>

3. On 15 March 2022, the Assembly unanimously adopted [Opinion 300 \(2022\)](#) expressing its conviction that the gravity of the violations of the Council of Europe Statute, committed by the Russian Federation, incompatible with the status of a Council of Europe member State, fully justify the further recourse to Article 8 of the Statute leading to the deprivation of Council of Europe membership.

4. The Assembly, therefore, agreed that the Committee of Ministers should request the Russian Federation to withdraw from the Council of Europe and in the case of the Russian Federation's non-compliance with this request, the Assembly suggested that the Committee of Ministers envisage the immediate possible date from which the Russian Federation would cease to be a member of the Council of Europe. For a more detailed information concerning PACE's position, arguments and reasoning leading to the adoption of the Opinion, please refer to [Doc. 15477](#).

5. Taking the Parliamentary Assembly's Opinion into account, the Committee of Ministers adopted, on 16 and 23 March 2022 respectively, Resolutions [CM/Res\(2022\)2](#) and [CM/Res\(2022\)3](#) which terminated the Russian Federation's membership in accordance with Article 8 of the Statute of the Council of Europe, as well as setting out the legal and financial consequences of the cessation of membership.

6. With the expulsion of the Russian Federation, the parliamentary Monitoring procedure, which is strictly reserved for member states, has been terminated. While the Parliamentary Assembly throughout its different committees can – and should – continue its work related to the political situation in the Russian Federation, the Monitoring Committee's mandate is limited to the countries which are Council of Europe member states and therefore can only touch upon the Russian Federation insofar as its policies touch upon issues covered under the monitoring procedure of other member states. This is particularly the case in relation to the work of the Subcommittee on Conflicts between Council of Europe Member States.

7. In order to preserve the work in respect of the Russian Federation accomplished by the Monitoring Committee so far, the former rapporteurs have decided – with the Committee's agreement – to prepare the present Information Note. This Note is not meant to assess the state of fulfilment of Russia's obligations and commitments to the Council of Europe, nor does it seek to identify the outstanding concerns with regard to democracy, the rule of law and human rights in the Russian Federation over the whole reporting period. Such information can be found in the Monitoring Committee's reports submitted to the Assembly or declassified Information Notes prepared during 26 years of the monitoring procedure in respect of Russia and we will refer to them when relevant.

8. The aim of this Information Note is to take stock of the parliamentary monitoring procedure in respect of the Russian Federation and of the work accomplished by the Committee and rapporteurs with a view to identifying and reflecting on possible weaknesses and drawing lessons for the future.

## 2. Monitoring procedure in respect of the Russian Federation

9. The Russian Federation joined the Council of Europe on 28 February 1996. Upon accession, it committed itself to respect the obligations incumbent upon every member State under Article 3 of the Statute, with regard to pluralist democracy, the rule of law and human rights. It also undertook a number of specific

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<sup>2</sup> See CM/Del/Dec(2022)1426ter/2.3.

<sup>3</sup> See CM/Del/Dec(2022)1428bis/2.3.

commitments listed in Parliamentary Assembly [Opinion 193 \(1996\)](#)<sup>4</sup> on the application by Russia for membership of the Council of Europe.

10. Since then, the monitoring reports have been debated by the Parliamentary Assembly in 1998 ([Doc. 8127](#)), in 2002 ([Doc. 9396](#)), in 2005 ([Doc. 10568](#)) and in 2012 ([Doc. 13018](#)). In 2016, an Information Note was prepared in the absence of the Russian delegation.

11. In the meantime, some particularly worrying developments relating to various aspects of the honouring of obligations and commitments by the Russian Federation have been dealt with occasionally by other Assembly Committees, in particular by the Committee on Political Affairs and Democracy [[Doc. 8585](#) and [Resolution 1201 \(1999\)](#); [Doc. 8630](#) and [Recommendation 1444 \(2000\)](#); [Doc. 8697](#) and [Recommendation 1456 \(2000\)](#); [Doc. 8785](#) and [Resolution 1221 \(2000\)](#); [Doc. 8840](#) and [Resolution 1227 \(2000\)](#); [Doc. 8929](#) and [Resolution 1240 \(2001\)](#)]; by the Committee on Legal Affairs and Human Rights [[Doc. 15270](#) and [Resolution 2375 \(2021\)](#); [Doc. 15434](#) and [Resolution 2423 \(2022\)](#); [Doc. 14902](#) and [Resolution 2297 \(2019\)](#); [Doc. 14607](#) and [Resolution 2246 \(2018\)](#); [Doc. 14661](#) and [Resolution 2252 \(2019\)](#); [Doc. 13356](#) and [Resolution 1966 \(2014\)](#); [Doc. 14139](#) and [Resolution 2133 \(2016\)](#); [Doc. 13713](#) and [Resolution 2040 \(2015\)](#); [Doc. 11031](#) and [Resolution 1551 \(2007\)](#); [Doc. 12276](#) and [Resolution 1738 \(2010\)](#); [Doc. 14083](#) and [Resolution 2157 \(2017\)](#)] and by the Committee on Migration, Refugees and Displaced Persons [[Doc. 11789](#) and [Resolution 1648 \(2009\)](#); [Doc. 11859](#) and [Resolution 1664 \(2009\)](#); [Doc. 13083](#) and [Resolution 1916 \(2013\)](#)]. A series of reports has been devoted to the war between Georgia and Russia which broke out in 2008 [[Doc. 11724](#) and [Resolution 1633 \(2008\)](#); [Doc. 11800](#) and [Resolution 1647 \(2009\)](#); [Doc. 12010](#) and [Resolution 1683 \(2009\)](#)].

12. The following reports on the reconsideration of ratified or still unratified credentials of the Russian delegation have been adopted: [Doc. 11726](#) and [Resolution 1631 \(2008\)](#); [Doc. 12045](#) and [Resolution 1687 \(2009\)](#); [Doc. 13483](#) and [Resolution 1990 \(2014\)](#); [Doc. 13685](#) and [Resolution 2034 \(2015\)](#); [Doc. 13800](#) and [Resolution 2063 \(2015\)](#); [Doc. 14922](#) and [Resolution 2292 \(2019\)](#); [Doc. 15050](#) and [Resolution 2320 \(2020\)](#); [Doc. 15126](#) and [Resolution 2363 \(2021\)](#); [Doc. 15443](#) and [Resolution 2422 \(2022\)](#).

13. Almost all parliamentary and presidential elections (respectively in 2003, 2007, 2011, 2021 and in 2004, 2008, 2012) except for the parliamentary elections in 2017 and presidential elections in 2018 were either observed by Assembly's ad hoc committees with the participation of monitoring rapporteurs or, in the case of the most recent parliamentary elections, attended by the Election Assessment Mission, their reports were submitted to the Assembly and taken into account in monitoring reports/information notes where appropriate. In 2017 and in 2018, due to the co-operation crisis, the Assembly did not receive an invitation from the Russian authorities to observe the elections which stands in contradiction with the Rules of Procedure ([Complementary texts, XIII, paragraph 2](#)).

14. The duration of monitoring rapporteurs' mandates is five years. As in the case of other countries under the monitoring procedure, there was a relatively frequent rotation of co-rapporteurs in respect of the Russian Federation, which is, firstly a result of the duration of the monitoring process (twenty-six years) but also of national commitments of some rapporteurs who were unable to complete their mandates.

15. Against this background we were appointed rapporteurs on the monitoring for the Russian Federation on 13 November 2019 (Mr Axel Schafer) and on 30 January 2020 (Ms Ria Oomen-Ruijten).

### 3. Outstanding concerns identified by the rapporteurs

16. In its subsequent reports, the Committee highlighted a number of exacerbating negative tendencies with regard to democracy, the rule of law and human rights in the Russian Federation including a lack of checks and balances, insufficient pluralism, lack of independence of the judiciary, crackdowns on civil society, extra-parliamentary opposition, and critical journalists as well as a widespread corruption which affects society as a whole, including the public institutions in place to counteract corruption. It referred to restrictions imposed by the Russian authorities on basic freedoms including freedom of assembly, freedom of expression and freedom of association. It denounced the restrictive political environment. It deplored Russian aggressions against its neighbours and the lack of response to Assembly's recommendations which have remained totally unaddressed.

17. The whole reporting period was marked by a strengthening of the executive power, a reduction in parliamentary oversight and narrowing pluralism. The constitutional amendments adopted last year confirmed this direction and added new concerns with regard to the extension of the eligibility of the incumbent President. Their content and the procedure for their adoption have been criticised by the Venice Commission.

<sup>4</sup> See [Doc. 7443](#) and [Doc. 7463](#).

18. Deficiencies in, and restrictive implementation of, laws crucial for the functioning of democratic institutions and the political environment, in particular the laws on political parties, on freedom of assembly, on foreign agents, on extremism and the law on undesirable organisations have led to serious deterioration of the conditions for genuine political pluralism.

19. The systematic persecution of political opponents, the delegalisation of existing political parties and the refusal to register new ones, the systematic non-authorisation of peaceful demonstrations, the use of disproportionate force to disperse them and severe punishment for participants, the creation of restrictive conditions for the media and harassment of any critics, have all had negative effects on the state of democracy in Russia throughout the whole period of Russia's membership of the Council of Europe.

20. As a result of the restrictive environment, all parliamentary and presidential elections which have taken place over the reporting period were marked by serious shortcomings and concerns relating to the whole electoral process, identified by both international and national observers. In consequence, there has been no genuine parliamentary opposition in the Duma. In particular, the last parliamentary elections, spread over 3 days on 17-20 September 2021 marked a particularly serious backslide. In the absence of a fully-fledged International Election Observation Mission, upon the decision of the Bureau, an *ad hoc* Committee of the PACE met in Moscow, in the format of an Election Assessment Mission composed of representatives of the five political groups of the Assembly.

21. Building upon the information collected within the framework of the remote pre-electoral meetings, the findings of the Venice Commission as well as in situ meetings with political stakeholders, the Election Assessment Mission identified serious concerns with regard to the electoral legal framework, candidate registration, deregistration by the CEC of a number of candidates on the basis of information received from the authorities without any judicial decision; allegations of pressure on state employees to vote on Friday; the security of ballots overnight; unequal campaigning conditions, in particular media coverage, allegations of misuse of state and administrative resources and the impact of the foreign agent legislation.

22. The lack of independence of the judiciary has remained a serious concern since the Russian Federation's accession to the Council of Europe. The system puts pressure on judges to show loyalty to State bodies or certain officials and to take into account political considerations. Threats to judicial independence are reported to be particularly acute in cases where powerful political or economic actors have an interest in the outcome of a case. The poor state of judicial independence is clearly facilitated by a legislative and administrative framework that fails to protect judges from undue influence by State or private interests. The way the judiciary operates puts pressure on judges through a complex system which is not always apparent or visible and includes not only external pressure, but also internal mechanisms and bureaucracy.

23. These internal mechanisms have become more significant as a result of the government's drive to strengthen the powers of the executive, i.e., as mentioned above "the vertical power". Political interference has increased under laws brought into force in the wake of the Beslan siege, allegedly for "counter-terrorism" purposes. The executive wields considerable power through the High Qualification Collegium and Judicial Qualification Collegial, which are intended to be bodies of judicial self-governance controlling the appointment, promotion, and dismissals of judges. The excessive role played by the *Prokuratura* in criminal cases and its general function continues to raise concern.

24. ECtHR judgements have revealed a number of major structural problems in the Russian legal system which have led to the shortcomings in implementation. Legal uncertainty, a lack of implementation of internal judgements, unfair trials, conditions of detention and violence by law enforcement forces continue to be major problems.

25. The dramatic crackdown on civil society with the introduction of a number of restrictive laws including the foreign agents' law, the law on undesirable organisations and the law on extremism, all subsequently amended to make them more restrictive, culminated in the liquidation of Memorial which meant a further blow to Russian civil society.

26. The procedure and content of constitutional amendments introduced into the Russian legislation in 2021, despite the negative Opinion of the Venice Commission adopted following the Monitoring Committee's request, reveal some serious flaws. The Venice Commission concluded that the changes went far beyond what is appropriate under the principle of the separation of powers, even in presidential regimes.

27. As one of its accession commitments, Russia agreed to "denounce as wrong the concept of two different categories of foreign countries, whereby some are treated as a zone of special influence called 'the near

abroad". The understanding behind this commitment was that Russia should not only denounce as wrong the concept of "near abroad", but effectively cease to treat some countries as zones of their special influence with insufficient regard to their sovereignty and territorial integrity.

28. Subsequent developments such as the conflict in Georgia, the consequences of which we follow together with the rapporteurs for Georgia, as well as the developments in Ukraine since 2013, clearly raise questions with regard to Russia's intention to fulfil this commitment, the importance of which was underestimated by the Assembly, including in the context of our Monitoring procedure regarding the country.

29. This Note does not go beyond 24 February 2022. Even if we are fully aware of the dramatic deterioration of democratic standards in the Russian Federation, the plight of civil society, restrictions imposed on media and freedom of expression and, more generally, any independent civic activity, we do not intend to raise these questions in the present Note as we have no such mandate.

#### **4. Dialogue as a privileged instrument in the Assembly's relations with the Russian Federation.**

30. The decision paving the way to the Russian Federation's return to PACE in June 2019, as well as the ratification of the delegation's credentials, left no doubt as to the Assembly's position favouring co-operation. It was clear that the Assembly remained committed to dialogue as a means of finding lasting solutions to all concerns and problematic issues and expressed its belief that dialogue should be the privileged way forward in the settlement of conflicts.

31. At that time, the Assembly considered that the approval of the credentials would benefit the goal that the Council of Europe was pursuing and allow PACE to foster political dialogue. The Russian Parliament's decision to finally submit the credentials of its delegation, after 4 years of absence at the parliamentary level of the Council of Europe, was also perceived as a sign of readiness to restore such dialogue. Taking the decision to welcome back the Russian parliamentarians, our Assembly stressed that it was the best placed pan-European platform for an exchange of opinions and discussions, at parliamentary level, on possible ways to improve shortcomings in the Russian Federation.

32. This decision highlighted the obvious benefits that access to the ECtHR offered to 160 million Russian citizens, although other delegations questioned the willingness of the Russian authorities to implement Court judgements felt to run counter to its political objectives.

33. When getting acquainted with the situation in the country and the work of our predecessors, we had cautiously acknowledged some positive developments addressing long-standing concerns expressed by the Assembly on many occasions such as the decision of the Constitutional Court of 19 November 2009, to abolish de facto the death penalty and the adoption of a number of reforms in the field of the judiciary, such as the establishment of the Investigative Committee and its separation from the Prosecutor's Office, the adoption of the Compensation Act, penitentiary reform and a considerable decrease in the number of detainees in pre-trial detention.

34. Positive developments have unfortunately been overshadowed by anti-democratic trends and highly restrictive measures systematically undertaken by the Russian authorities over the whole reporting period. Restrictive laws which have been heavily criticised by the Assembly, instead of being repealed, have been reinforced. One of the constitutional amendments adopted in 2021, gave priority to national legislation over ECtHR judgements which was criticised by the Venice Commission as incompatible with the ECHR. Non-execution of certain Court decisions along with a declared unwillingness to do so has also raised grave concern.

35. Negative trends have been exacerbated by an increasingly assertive foreign policy of the Russian Federation, as witnessed for example by the continuous violation of sovereignty and territorial integrity of Georgia and Ukraine, which clearly indicates the authorities' renunciation of their commitment not to treat some countries as zones of special influence of the Russian Federation

36. While all these circumstances have been highly worrying, we were determined to follow the Assembly's wish and try to establish a meaningful dialogue with a view to addressing all identified concerns with those forces within the Russian authorities which have been open for constructive co-operation.

37. Following several online meetings with the Russian delegation, civil society, and other relevant interlocutors, we visited Moscow from 28 to 30 June 2021 despite a very difficult sanitary situation. Before meeting the officials, we held a series of meetings with prominent Russian NGOs and with the leader of Yabloko extra-parliamentary opposition party who shared their concerns. In our meetings with officials, at the

Ministry of Justice, the Prosecutor's General Office and at the Supreme Court, we raised these concerns and noted that all our interlocutors declared themselves to be open to dialogue.

38. Furthermore, following the discussions with the members of the Russian delegation, we agreed to draw up a Roadmap accompanied by a concrete timetable, based on recommendations by the Venice Commission, which would identify concrete measures aimed to address the identified concerns. We also agreed to define in April 2022, concrete action translated into concrete changes to the legislation with deadlines for their accomplishment. We stressed that declarations should be followed by acts. In this respect, we underlined the Assembly's expectation that the Russian Federation would pursue the path of democratisation and would refrain from taking any further measures which may hinder democratic progress.

39. We were encouraged by the renewed commitment of the Russian authorities and members of the delegation to pursue the fulfilment of their commitments and obligations. We had confidence in their sincerity. We were shocked by the fact that the Russian Duma unanimously approved the recognition of two separatist republics in Ukraine and all its members have supported the aggression against Ukraine. We feel betrayed by our Russian interlocutors who have never shared with us their position concerning this question. We were extremely disturbed to hear some statements by our former Russian colleagues and officials whom we met in Moscow.

40. It is not the objective of this Information Note to make a thorough analysis and assessment of the state of the Monitoring procedure but a debate in the Monitoring Committee might be useful and it could contribute to our future actions. We hope that such a debate will take place. At the same time the Committee may wish to look into the manner in which, within its overall mandate, it could put its knowledge and experience to good use to support the democratic forces in the Russian Federation.

41. The Sub-Committee on Conflicts between Council of Europe Member States deals with a number of conflicts in which the Russian Federation is a party. Within its mandate the Monitoring Committee can and should continue to pay attention to developments and policies of the Russian Federation which directly affect the functioning of democratic institutions in the Countries that are subject to the different forms of monitoring by the Committee, including with regard to conflicts to which these countries are a part. We are therefore glad to see that the Sub-Committee has started discussions on proposals to adapt its mandate and name to reflect the new situation.