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Provisional version

## Progress of the Assembly's monitoring procedure (January – December 2021)

### Draft report<sup>1</sup>

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### *Summary*

In its annual progress report, the Monitoring Committee takes stock of its activities since January to December 2021 and assesses the progress made by the eleven countries under the Assembly's full monitoring procedure, three countries engaged in a post monitoring dialogue, and countries under periodic review in honouring, respectively, their obligations and commitments to the Council of Europe. It welcomes progress made and expresses concerns at setbacks, and addresses specific recommendations to the countries concerned.

The Committee underlines that, despite sanitary and travel restrictions due to the Covid-19 pandemic, several fact-finding visits have taken place – including to Armenia, Georgia, Malta, the Republic of Moldova, the Russian Federation and Ukraine – and rapporteurs' work has continued including through online meetings. It stresses however that in-person contacts are a necessary condition for a meaningful political dialogue.

During the reporting period, the Committee continued its reflection on the improvement of its impact and efficiency of its working methods, in particular with regard to rapporteurs' appointments and mandates, and duration of validity of periodic review references.

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<sup>1</sup> Reference to Committee: [Resolution 1115\(1997\)](#)

## A. Preliminary draft resolution<sup>2</sup>

1. The Parliamentary Assembly acknowledges the work carried out by the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) in fulfilling its mandate as defined in [Resolution 1115 \(1997\)](#) (modified) on the “Setting up of an Assembly committee on the honouring of obligations and commitments by member States of the Council of Europe (Monitoring Committee)”. In particular it welcomes the committee’s work in accompanying the 11 countries under a monitoring procedure *sensu stricto* (Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, the Republic of Moldova, Poland, the Russian Federation, Serbia, Turkey and Ukraine) and the 3 countries engaged in a post-monitoring dialogue (Bulgaria, Montenegro and North Macedonia) in their efforts to fully comply with the obligations and commitments they entered into upon accession to the Council of Europe, as well as the periodic monitoring of the membership obligations of all other member States, which is currently being carried out in respect of France, Hungary, Malta, the Netherlands, Romania and San Marino.

2. The Assembly is mindful of the continued impact of the Covid-19 pandemic on the monitoring process as well as the work of the Sub-Committee on Conflicts between Council of Europe Member States. It expresses its satisfaction that, by adapting their working methods the activities of monitoring rapporteurs remained uninterrupted throughout the whole reporting period as illustrated by numerous statements, a number of reports and information notes. It also welcomes that, despite the continuing travel restrictions, several fact-finding visits have taken place, including to Armenia, Georgia, Malta, the Republic of Moldova, the Russian Federation and Ukraine. The Assembly fully endorses the Monitoring Committee’s position that in person contacts are a necessary condition for a meaningful political dialogue and the preparation of reports must include a visit to the country concerned.

3. The Assembly notes the Committee’s continuous attention to the developments concerning the Nagorno-Karabakh conflict, and its readiness to actively contribute to the establishment of political dialogue between the parties concerned at parliamentary level.

4. The Assembly welcomes the positive developments and progress made during the reporting period in the countries under a full monitoring procedure or engaged in a post-monitoring dialogue, expresses its concern about some negative developments and remaining shortcomings and urges all these countries to step up their efforts to fully honour their membership obligations and accession commitments to the Council of Europe. In particular, In particular:

4.1. with respect to Albania: the Assembly welcomes the organisation of elections on 25 April 2021 and the return of the opposition to the work of the parliament, which should contribute to resolving the systemic political crisis that has plagued the country. It calls on all political forces to refrain from actions and discourse that increase tensions in the political environment. While welcoming the ongoing efforts to strengthen the independence of the judiciary and fight widespread corruption, the Assembly is concerned about the attempts by the authorities to increase their control over the media and flow of information that could negatively affect the media environment in the country;

4.2. with respect to Armenia: referring to Resolution XXX on the functioning of democratic institutions in Armenia that has been presented to the Assembly for debate during the January 2022 part-session, the Assembly welcomes the fact that Armenia has successfully emerged from the serious political crisis triggered by the outcome of the Nagorno-Karabakh conflict by organising early elections in June 2021, carried out in a democratic manner, notwithstanding the highly polarised environment. The Assembly also welcomes the pursuit of reforms and co-operation with the Council of Europe. At the same time it deplores, however, the political climate in which the June 2021 elections took place, which were characterised by intense polarisation and marred by increasingly inflammatory rhetoric among key contestants. The Assembly calls on all political stakeholders to observe democratic standards in political debate and continue the reforms;

4.3. with respect to Azerbaijan: the Assembly welcomes the authorities’ declared will to conduct a dialogue but regrets that no progress has been made with regard to the outstanding concerns in the area of pluralism and the rule of law. It deplores the lack of independence of the judiciary as illustrated by a long-standing pattern of repression of political opponents and government’s critics and confirmed by the judgements of the European Court of Human Rights. It also denounces the restrictions on basic freedoms including freedom of expression, assembly and association and calls on the authorities to undertake urgent measures with a view to improving this highly unsatisfactory situation;

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<sup>2</sup> Draft resolution adopted by the committee on December 14, 2021

4.4. with respect to Bosnia and Herzegovina: the Assembly regrets that no tangible progress has been made by the Bosnian authorities in the execution of the Sejdić and Finci judgments for 12 years. It deplores the inability of the various political forces in Bosnia and Herzegovina to reach an agreement that would allow this to happen, in contrast to what they achieved for the holding of municipal elections. It condemns the maintenance of the current electoral system, which constitutes a clear violation by Bosnia and Herzegovina of its obligations as a member state. It calls on the Bosnian authorities to comply with these judgments before the next parliamentary elections are held in October 2022;

4.5. with respect to Georgia: the Assembly expresses its concern about the deeply polarised political climate in the country that contributed to the breakdown of the 19 April 2021 political agreement mediated by the European Union. It calls upon all political forces, majority and opposition, to commit themselves, and engage in a constructive dialogue with each other to implement the different reforms foreseen in this agreement, which are closely related to its Council of Europe membership obligations. In this respect, it welcomed the adoption of the electoral reforms that were agreed between the ruling majority and opposition as part of this agreement. Georgia has made considerable progress over the years with its reform of the judiciary with a view to strengthen its independence. However, the functioning of the High Council of Justice remains a point of concern. In that context the Assembly deeply regrets that the authorities have continued to appoint Supreme Court Judges on the basis of a clearly deficient appointment process that in several aspects does not comply with international norms and standards, despite repeated calls by the international community to the contrary;

4.6. with respect to the Republic of Moldova: the Assembly commends the peaceful political transition and the organisation of early parliamentary elections in July 2021 resulting in greater political stability and better gender-balanced representation in parliament. It welcomes the determination of the Moldovan authorities to reform the judiciary and the prosecution office, strengthen their independence, fight corruption, enhance transparency and address the roots of "state capture" in the interests of the population. It also welcomes the adoption of the constitutional amendments on the judiciary, based on a large political consensus as well as the ratification of the Istanbul Convention to prevent and combat violence against women, including domestic violence. The Assembly encourages the Moldovan authorities to continue their reforms that should involve the opposition and civil society representatives and ensure respect of the rule of law, in line with Council of Europe standards. It encourages the Moldovan authorities to continue their close co-operation with the Council of Europe, in particular its Venice Commission, and calls on the Moldovan authorities to implement its recommendations;

4.7. with respect to Poland: the Assembly welcomes the appointment of a new Ombudsperson with the support of both the ruling majority and oppositions. However, it deeply regrets that the situation with regard to the respect of the rule of law and independence of the judiciary have continued to deteriorate over the last year. It underscores that the European Court of Human Rights in its judgments in the cases *Xero Flor w Polsce sp. Z o.o. vs Poland* (4907/18) and *Reczkowicz vs Poland* (43447/19) established that certain benches of the Polish Constitutional Tribunal, as well as the Disciplinary Chamber of the Supreme Court of Poland could not be considered as a "tribunal established by law" within the meaning of the European Convention. In this respect it is deeply concerned about the recent judgment of the Polish Constitutional Tribunal that Article 6 (1) of the European Convention on Human Rights is not compatible with the Polish Constitution if applied to the Constitutional Tribunal or used to give the Court in Strasbourg the right to assess the legality of the process of electing judges to the Constitutional Tribunal, which is a direct and unacceptable challenge to the supremacy of the European Convention on Human Rights and the fundamental values of the Council of Europe;

4.8. with respect to the Russian Federation: important outstanding concerns include the plight of civil society and implementation of restrictive laws, in particular the Law on Foreign Agents and the Law on Undesirable organisations. It deplores the ongoing procedure aimed at the liquidation of "Memorial", a well known and respected human rights organisation. With regard to the parliamentary elections which took place on 17-20 September 2021, it notes some concerns identified by the Election Assessment Mission of its Bureau with regard to the electoral legal framework, candidate registration and deregistration by the Central Electoral Commission, (allegedly depriving some 9 million Russian citizens of their passive voting rights), of pressure on state employees to vote on Friday and the safekeeping of ballots overnight; unequal campaigning conditions, in particular media coverage, allegations of misuse of state and administrative resources and impact of the foreign agent legislation. The Assembly recalls its position regarding the illegal annexation of Crimea, confirmed most recently in [Resolution 2363 \(2021\)](#) and regrets that no progress has been made concerning its earlier recommendations with regard to Eastern Ukraine, Crimea, and the occupied Georgian regions of South Ossetia and Abkhazia and the

presence of Russian troops in the Transnistrian region of the Republic of Moldova. The Assembly calls on the Russian authorities to address the concerns with regard to democracy, rule of law and human rights;

4.9. with respect to Serbia: the Assembly welcomes the adoption of the constitutional amendments to de-politicise the judiciary with a view to strengthening its independence. It notes with satisfaction that most of the Venice Commission recommendations were taken into consideration but remains concerned about the risk of politisation of the High Prosecutorial Council. It calls on the Serbian authorities to comply with Council of Europe standards when organising the constitutional referendum of 16 January 2022 and adopting the legislation required to implement these amendments. It welcomes the resumption of the Inter-Party Dialogue to improve election conditions but urge all stakeholders to achieve and commit to tangible measures, based on a broad consensus, that will lead to fair, inclusive, and competitive elections. It also encourages the Serbian authorities to accelerate their reforms with a view to strengthening the independence of the judiciary, media freedom, fight against corruption and independent institutions, which provide for indispensable checks and balances in a democratic society;

4.10. with respect to Turkey: the Assembly calls on the Turkish authorities to fully implement [Resolution 2376 \(2021\)](#) on the functioning of democratic institutions and in particular to put an end to the judicial harassment of opposition and dissenting voices, to improve freedom of expression and media, to restore the independence of the judicial system and to revise the legislation on elections and political parties well ahead of the next elections, in line with the standards of the Council of Europe and in co-operation with monitoring mechanisms, including the Venice Commission. While welcoming the decision of the Constitutional Court to re-instate the political rights of MP Ömer Faruk Gergerlioğlu who was unlawfully stripped of his immunity and deprived of his parliamentary mandate, the Assembly deplores that one third of the parliamentarians, overwhelmingly from opposition parties, remain subject to procedures seeking to lift their immunity. It also remains extremely concerned about the attempt to close the Peoples' Democratic Party (HDP), the continued crackdown on its members and more generally the political violence targeting opposition politicians, which put political pluralism and the functioning of democratic institutions at risk. The Assembly deplores the presidential decision to withdraw from the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). The Assembly urges the Turkish authorities to uphold women's rights and protect them efficiently from violence, and to remain committed to the principles enshrined in the Istanbul Convention. The Assembly strongly urges the Turkish authorities to implement the European Court of Human Rights rulings and to immediately release philanthropist Mr Kavala and former HDP leader Mr Demirtaş. It calls on the Turkish authorities to act promptly after the Committee of Ministers adopted, on 2 December 2021, interim resolutions on these cases, and formally notified Turkey of the Committee of Ministers' intention to refer the *Kavala v. Turkey* case to the European Court of Human Rights, in line with proceedings provided for under Article 46.4 of the European Convention on Human Rights;

4.11. with respect to Ukraine: the Assembly welcomes the continuing efforts of the Ukrainian authorities to reform the judiciary with a view to ensuring its independence and impartial administration of justice. It welcomes the reboot of the High Qualifications Commission of Judges and High Council of Justice which are essential to a successful reform of the judiciary and to address the widespread corruption. It expresses its concerns about the efforts to delay and undermine these reforms which should be implemented as a matter of urgency. The Assembly calls for the reform, without delay, of the Kyiv District Administrative Court (KDAC whose rulings against government decisions have been questioned and are widely seen as attempts to undermine the authority's reform and anti-corruption efforts). The Assembly welcomes that, following reforms, the five-tiered institutional structure to fight corruption is starting to achieve tangible results. The Assembly recommends that the authorities increase the number of judges on the High Anti-Corruption Court. It considers that the appointment processes for currently vacant leadership positions in the anti-corruption institutions, as well as those that soon will be vacant, will be a litmus test for the authorities' political will to tackle corruption at all levels in Ukrainian society. The Assembly takes note of the efforts of the authorities to tackle the undue influence of oligarchs in Ukraine. It urges the authorities to address all concerns and recommendations of the Venice Commission in its opinion on the so-called anti-oligarch law, in order to ensure that it complies with European standards and norms. The Assembly welcomes the improved cooperation of the authorities in the framework of the Council of Europe Platform to promote the protection of journalism and safety of journalists. It urges the authorities to ensure that all cases of violence against journalists are fully and transparently investigated to avoid any sense of impunity in this respect;

4.12. with respect to Bulgaria: the Assembly is aware that a major political crisis triggered by corruption scandals, a lack of respect for the rule of law and ensuing street demonstrations in 2020, as well as

three parliamentary elections and one presidential election which took place in the country during the reporting period had an inevitable impact on the pace of addressing the remaining outstanding concerns as defined in [Resolution 2296 \(2019\)](#), namely high-level corruption, transparency in media ownership, human rights of minorities, hate speech and violence against women. At the same time, the Assembly welcomes the smooth organisation of the elections and expresses confidence that the ongoing talks among the parties will allow for replacing the interim government by a stable coalition government which will continue the meaningful dialogue and progress towards Bulgaria's full compliance with its commitments and obligations;

4.13. with respect to Montenegro: the Assembly welcomes the constructive cooperation between the authorities and the Venice Commission on the consideration of the amendments to the Law on State Prosecution and the draft Law on the Prosecutor's office for organised crime and corruption. The Assembly notes, however, that the renewal of all the members of the Prosecutors' Council and the appointment of the five new lay members by the Parliament by a simple majority constitute a risk for the independence of the Council. It therefore calls on the Montenegrin Parliament to ensure that the five new lay members of the Prosecutors' Council are appointed on the basis of their competence and perceived as politically neutral. The Assembly is concerned about an increase in the polarisation of the Montenegrin political scene over issues of national identity in a country that has so far managed to largely limit such tensions. It calls on the various political formations and leaders not to accentuate this polarisation, but rather to help reduce its intensity;

4.14. with respect to North Macedonia: the Assembly welcomes the adoption of ambitious reform packages to reform the judiciary and fight corruption and notably encourages the authorities to implement the 2021 GRECO recommendations to tackle corruption within the top executive functions and within the law enforcement forces, especially the police. It congratulates the authorities for the conduct of the census and encourages them to ensure the publication of its results in a transparent and open manner and further promote stable inter-ethnic relationship. The Assembly also urges the authorities to address the remaining serious shortcomings of the prison system and the alarming situation in the Idrizovo Prison highlighted by the CPT in its May and July 2021 reports despite some recent improvements. It regrets that the adoption of the Negotiating Framework by the European Council of the European Union has been blocked by Bulgaria, thus delaying the opening of the EU accession negotiations, which has triggered disillusion and political instability in the country.

5. With regard to the countries that are currently subject to the procedure for the periodic review of membership obligations to the Council of Europe, the Assembly:

5.1. with respect to Hungary: the Assembly recalls its previous concerns included in [Resolution 2203 \(2018\)](#). In this respect, it welcomes the repeal of the 2017 Law on the transparency of organisations receiving support from abroad (so-called "Lex Soros") on 22 April 2021 and some progress noted by MONEYVAL on its legislation on politically exposed persons. The Assembly is however concerned about the functioning of the country's democratic institutions. It calls on the authorities to strengthen the self-governance of the judicial system, guarantee its independence more effectively, restore journalistic and media freedoms, implement GRECO recommendations to resolutely fight corruption, revise and/or implement its legislation and constitution in line with the recommendations made by the Venice Commission in its Opinions of 2011, July 2021 and October 2021. The Assembly is also concerned about the swift adoption, in December 2020, of constitutional amendments and a legal package under the state of emergency. This includes an electoral reform requiring political parties to nominate candidates in 70% of the constituencies at the next parliamentary elections; the main effect of this reform, as said by the Venice Commission, would be in favour of the incumbents, and thereby aggravating the level of political polarisation. The Assembly therefore calls on the Hungarian authorities to improve the functioning of democratic institutions, ensuring their pluralism and guaranteeing the necessary check and balances;

5.2. with respect to Malta: the Assembly welcomes the reforms implemented by the authorities to address the shortcomings and recommendations noted by Assembly in its Resolution on "Daphne Caruana Galizia's assassination and the rule of law in Malta and beyond: ensuring that the whole truth emerges" as well as the Venice Commission in its opinion on the "Constitutional arrangements and separation of powers and the independence of the judiciary and law enforcement". However it considers that additional systemic reforms are necessary to fully address the Venice Commission's recommendations and in particular a profound reform of the Maltese parliament is necessary to establish a full-time parliament that can ensure proper parliamentary oversight over the executive;

5.3. with respect to Romania: the Assembly is aware of a number of concerns including some aspects of the functioning of democratic institutions such as the independence and efficiency of the judiciary, the fight against corruption, pluralism of the media, discrimination of minorities and a number of other issues raised in the report by the Council of Europe Commissioner for Human Rights and ECRI, in particular racism, violence against women, rights of LGBT and detention conditions. The Assembly is aware of the political crisis which began on 1 September 2021 as a result of economic difficulties and the handling of the pandemic. This ended on 25 November 2021 with the establishment of a new Government. The Assembly is confident that the new authorities will conduct a meaningful political dialogue and address the concerns without delay.

6. The Assembly reiterates its support for the efforts of the Committee to ensure the monitoring of membership obligations of all member States and is aware of the impact this has on the workload of the Committee. It encourages the Committee to continue to regularly select member States, for this type of monitoring, on substantive grounds, according to its internal working methods and within the limits of its resources. It recognises that the specific conditions and working methods implied by the parliamentary monitoring procedure for the preparation of these reports means that the 2-year reference, in accordance with Article 26 of the Rules of Procedure, is insufficient for the preparation of periodic monitoring reports. This is because of the preparation of the report by the two co-rapporteurs, the 6-week period for the authorities to provide comments on the preliminary draft report before it is adopted in the Committee, and due to the practice not to debate reports on a country during election periods or when it chairs the Committee of Ministers of the Council of Europe. The Assembly therefore invites the Committee on Rules of Procedure, Immunities and Institutional Affairs to consider possible ways of extending the 2-year reference period for these reports.

7. The Assembly recognises that the work of the monitoring rapporteurs is time consuming and requires considerable availability and flexibility. It takes note of the problems encountered by the Committee with regard to the availability of rapporteurs as well as candidates for rapporteur positions. It considers that this needs to be addressed in a structural and systemic manner. It therefore invites the Committee to explore the advantages of changing the current single five-year term limit for rapporteurs for a country under a full monitoring procedure or engaged in a post-monitoring dialogue to three, three-year terms which would allow both the possibility of recall as well as the retention of available and well performing rapporteurs for a given country. In the meanwhile, the Assembly invites the political groups to make availability to carry out the work of rapporteurs' an important criteria when appointing members to the Committee and to make more frequent recourse to the circulation of rapporteur positions among the groups to alleviate some of the shortages of rapporteurs for vacant positions.

8. The Assembly takes note that currently only 8 out of 39 rapporteurs are women and only 20 out of 82 members in the Committee are women. The Assembly underscores the need for a more balanced gender representation in the nominations by the groups both for Committee membership as well as rapporteur positions.

## **PROVISIONAL VERSION**

### **B. Explanatory memorandum by Mr Michael Aastrup Jensen, rapporteur**

#### **1. Introduction**

1. The Parliamentary Assembly's monitoring procedure stems from [Resolution 1115 \(1997\)](#) on the setting up of an Assembly Committee on the honouring of obligations and commitments by member States of the Council of Europe (Monitoring Committee) (as modified by [Resolution 1431\(2005\)](#), [Resolution 1515 \(2006\)](#), [Resolution 1698 \(2009\)](#), [Resolution 1710 \(2010\)](#), [Resolution 1936 \(2013\)](#), [Resolution 2018 \(2014\)](#), [Resolution 2261 \(2019\)](#), [Resolution 2325 \(2020\)](#) and [Resolution 2357 \(2021\)](#)). [Resolution 1115 \(1997\)](#) defines the mandate of the Monitoring Committee and stipulates that "it shall be responsible for verifying the fulfilment of the obligations assumed by the member States under the terms of the Council of Europe statute, the European Convention of Human Rights and all other Council of Europe conventions to which they are parties, as well as the honouring of the commitments entered into by the authorities of member States upon their accession to the Council of Europe".

2. In accordance with Paragraph 14 of [Resolution 1115 \(1997\)](#) as amended, the Monitoring Committee is obliged to report to the Assembly, on a yearly basis, on the general progress of the monitoring procedures. In line with established practice, the Committee has entrusted me, as its Chairperson, with the task of being the rapporteur on the Committee's activities for the period from January to December 2021.

3. In line with its mandate, the Monitoring Committee follows all Council of Europe member States with regard to the honouring of their membership obligations, and if relevant, specific accession commitments. Currently, 11 countries are subject to a full monitoring procedure (Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Republic of Moldova, Poland, Russian Federation, Serbia, Turkey and Ukraine) and 3 countries are engaged in a post-monitoring dialogue (Bulgaria, Montenegro and North Macedonia). 6 countries (France, Hungary, Malta, Netherlands, Romania and San Marino) are subject to a periodic review report on the honouring of obligations. The Monitoring Committee also runs a Sub-Committee on Conflicts between Council of Europe Member States in line with Rule 49 of the Assembly's Rules of Procedure.

4. In accordance with the Committee's practice, the country-specific comments have been prepared whenever possible on the basis of rapporteurs' statements and the discussions in the Monitoring Committee and findings of other Council of Europe monitoring mechanisms. All of them have been shared with respective rapporteurs before being published and I have tried to integrate their comments if any, as far as possible.

#### **2. Overview of the Committee's activities**

##### *2.1. General comments*

5. Although the sanitary situation in Europe created by the Covid-19 pandemic has improved to a certain extent over the reporting period, the monitoring activities continued to be considerably hindered. In particular, travel restrictions remained a challenge for the organisation of rapporteurs' visits. I would like to recall the Committee's position that direct political dialogue cannot be replaced by online meetings and the information visit is a necessary condition for the preparation of each report.

6. Despite difficulties and changing travelling constraints imposed by different Council of Europe member States including destination countries as well as rapporteurs' countries, a number of visits (including to Armenia, Georgia, Malta, the Republic of Moldova, the Russian Federation and Ukraine) could take place using sometimes short periods of relative sanitary improvement, while other visits had to be cancelled due to the worsening sanitary conditions.

7. It should be stressed however, that online contacts between respective rapporteurs and different stakeholders in the countries under their responsibility became a common working method following the practice put gradually in place in the previous year and well established since then. Almost all rapporteurs held virtual exchanges of views, some of them on many occasions. While, as mentioned above, these online meetings were not conducted in the framework of political dialogue with the authorities, but involved civil society, journalists or lawyers, they nevertheless enabled rapporteurs to keep abreast with developments and receive first hand information.

8. At the initiative of some rapporteurs, in the framework of Committee meetings, held in hybrid mode, a number of hearings and exchanges of views were organised including on Armenia, Hungary, Georgia, Malta,

Montenegro, Romania, Russian Federation, Turkey and Serbia. In particular, the Committee held exchanges of views with Mr Nicholaas Bel, representative of the European Commission on the rule of law situation in Hungary, Romania and Malta and Mr Nils Muižnieks, Director for Europe, Amnesty International on the recent reports of Amnesty International on Hungary and Turkey, as well as on general trends with regard to human rights protection in Europe. In addition the Committee organised an exchange of views with Mr Roger Torrent i Ramió, Speaker of the Parliament of Catalonia, and Mr Antonio Gutiérrez Limones (Spain, SOC), Chairperson of the Spanish Delegation to PACE on developments in Catalonia.

9. Over the reference period, the Committee met in hybrid mode during each parliamentary session and four times outside the parliamentary sessions. Regrettably, the meeting scheduled to be held in Copenhagen in December at the invitation of the Danish Parliament had to be replaced by the meeting in Paris due to the worsening sanitary situation in Europe and travel restrictions to Denmark imposed on citizens of some countries including six Council of Europe member States.

10. As a result of these challenges and a specific monitoring procedure for the preparation of reports, only three country monitoring reports could be submitted to the Assembly during the reporting period: Challenge, on substantive grounds, of the still unratified credentials of the parliamentary delegation of the Russian Federation, The Post-monitoring dialogue with Montenegro, and The functioning of democratic institutions in Turkey.

11. The report on The functioning of democratic institutions in Armenia is scheduled for adoption by the Committee on 14 December 2021 and the debate on the First Part-session of the Assembly in 2022.

12. The preliminary draft periodic review report on Hungary was approved by the Committee and sent to the Hungarian authorities for comments.

13. At the same time, the Committee considered and declassified Information Notes on Albania, Georgia, the Republic of Moldova and Ukraine.

14. The rapporteurs on Armenia, Azerbaijan, Georgia, Republic of Moldova, Montenegro, Poland, Russian Federation, Serbia, Turkey and Ukraine made statements with regard to developments in the countries under their responsibility.

15. The situation in the Nagorno-Karabakh region was closely followed by the Committee during the reporting period. The Committee held an exchange of views with Mr Peter Svedberg, Swedish Ministry for Foreign Affairs, Task Force for the Swedish Chairmanship of the OSCE on the implementation of the Trilateral Statement in particular with regard to the issue of prisoners of war and the Committee made a statement on the subject. The rapporteurs for Armenia and Azerbaijan made a number of joint statements in reaction to the developments.

16. As in previous years the outstanding co-operation with the Venice Commission continued over the reporting period. Exchanges of views were organised with: Mr Michael Frenco, member of the Venice Commission, on the Commission's recent opinions on Georgia, Mr Martin Kuijer, substitute member of the Venice Commission on the opinions adopted on Serbia and with Ms Simona Granata-Menghini, Secretary to the Venice Commission on the opinions on the Republic of Moldova. The Committee requested opinions on the constitutional and legal framework governing the functioning of democratic institutions in Serbia as well as on the legislative and constitutional package adopted by the Hungarian parliament in December 2020.

17. In its ongoing efforts to improve its working methods, efficiency and impact, the Committee reflected on the election of the Chairperson of the Sub-Committee on Conflicts between Council of Europe Member States and agreed on the criteria to be applied during this procedure.

18. Regrettably, as in previous years the Committee again experienced great fluctuations among its rapporteurs. New rapporteurs were appointed for the following countries: Azerbaijan, Bosnia and Herzegovina, Malta, Republic of Moldova, Montenegro, Romania and for three newly selected periodic review reports: France, the Netherlands and San Marino. At the time of drafting of the current report (7 December 2021), the rapporteurships for Albania and Hungary remained vacant. The specific appointment procedure for monitoring rapporteurs sometimes results in long periods of vacancies which clearly has a detrimental impact on the Committee's work. I will develop this issue in chapter 4 of the present report.

## 2.2. Countries under a full monitoring procedure

### 2.2. 1. Albania

19. Due to the Covid-19 situation no fact-finding visits to Albania could take place in 2021. However, the rapporteurs continued their monitoring work online with a special focus on electoral issues and the situation of the Media. An exchange of views on electoral reform was organised by the Committee and an information note was published. Mr Peter Eide (Norway, UEL), who left the Assembly was not replaced as co-rapporteur for Albania at the time of drafting this report.

20. Parliamentary elections took place on 25 March 2021. They took place on the basis of the far-reaching electoral reforms and introduction of a new open-list proportional elections system with regional constituencies agreed upon between the ruling party and the opposition in 2020 with a view to addressing the systemic political crisis in the country.

21. An International Election Observation Mission (IEOM) of which the Assembly was a member observed these elections. The IEOM concluded that they were well organised and characterised by a lively and inclusive campaign. The new legal framework was adequate for the organisation of democratic elections and ensured respect for fundamental freedoms. Regrettably, international observers also noted widespread abuse of administrative resources by the authorities and allegations of pervasive vote buying. For the sake of trust in the election process, and normalisation of the political climate, it is important that any allegations of electoral misconducts are fully and transparently investigated.

22. As said, these elections were the culmination of the electoral reform process and based on a legal framework for the elections that had the consensus of all parties and therefore should be a point of departure for a normalisation of the relations between parties and a less tense and polarised political climate. It was therefore to be welcomed that the opposition members had announced that they would exercise their mandates in the new parliament when it met in its new composition in September 2021. At the same time, it would be important to ensure that the rights of the opposition and their role in the governance of the country were respected by the ruling majority.

23. Regrettably, the polarisation in the political environment has not diminished. On 4 May 2021 the ruling majority in the outgoing parliament started impeachment proceedings against President Meta for “committing actions against the Albanian Constitution” in the context of the 25 April 2021 elections. These impeachment proceedings were decried by the opposition and President Meta. On 9 June 2021 the outgoing Albanian parliament voted 107 against 7 to impeach President Meta. The opposition criticised the parliament for pushing through this decision before the new parliament, in which the opposition MPs were absent, is constituted. In line with the Albanian Constitution, the Constitutional Court will have to decide within 3 months on the legality of the decision to impeach the President. If it sides with the parliament President Meta will be removed from his office.

24. Freedom of the media in Albania continued to be a point of concern in 2021. The co-rapporteurs continued to closely follow the process of the elaboration of the amendments to the Albanian law on the Audio-visual Media Service (anti-defamation package) which caused controversy in 2020. The Monitoring Committee has requested an opinion from the Venice Commission on the final draft of these amendments as soon as they are tabled for adoption in the parliament. On 28 September 2021 the authorities announced the establishment of a Media Information Agency. This was decried by civil society and media organisations who felt that this agency – in conjunction with the so-called antidefamation package - was a means for the authorities to control the media and flow of public information in the country.

### 2.2. 2. Armenia

25. Since the outbreak of military hostilities between Armenia and Azerbaijan on 27 September 2020 and in the wake of the Trilateral Statement of 9-10 November 2021, the Monitoring Committee has closely followed the conflict and its impact on the functioning of democratic institutions and the protection of human rights in both countries. This can be illustrated by the regular joint statements of the four respective co-rapporteurs as well as by the Committee's statement on 24 April 2021 in which it expressed its conviction that the national parliaments of both countries could and should play an important role in the urgently needed confidence-building measures, the reconciliation process and the resumption of concrete peace negotiations between the parties.

26. The Committee held several hearings and exchanges of views with representatives of both countries as well as with independent experts.

27. In February 2021, following the dismissal of a high-ranking officer of the armed forces, the Armenian General Staff of the Armed Forces issued two successive statements calling for the resignation of the Prime Minister. These statements were interpreted as an attempted coup by the parliamentary majority and as a public statement by some opposition parties, including Bright Armenia, despite the constitutional obligation of neutrality of the armed forces. Extremely concerned by these developments, the co-rapporteurs, Ms Boriána Åberg (Sweden, EPP/CD) and Mr Kimmo Kiljunen (Finland, SOC), issued a statement<sup>3</sup> in which they found, *inter alia*, that the initial statement "by the office of the General Staff of the Armed Forces, calling for the resignation of a democratically elected government, to be unacceptable". They called on "all political forces and state actors to fully respect democratic principles and the Constitution of Armenia, and to take all necessary steps to immediately de-escalate the current situation". Recognising that Armenia was going through a very difficult phase in its recent history, they said that it needed more than ever calm, restraint, wisdom and unwavering support from all parties concerned to uphold democratic principles in order to resolve the political crisis it was facing. Eventually, the Chief of Staff was removed from office which he challenged in the administrative court, and Prime Minister Pashinyan organised fairly massive rallies in support of the government.

28. The Armenian authorities sought to overcome the political crisis following the defeat in the Nagorno-Karabakh conflict by holding early parliamentary elections on 20 June 2021, in response to the wishes of the parliamentary and extra-parliamentary opposition and the suggestion of some constitutional institutions. However the government did only resign when elections were called and then remained in office as care taker government until the elections were held, in line with legal provisions.

29. On 13 April 2021 the co-rapporteurs held discussions with Armenian experts on the political situation and the electoral challenges of these early elections. They took note of the urgent joint opinion of the Venice Commission and the OSCE/ODIHR on the legislative package of 1 April amending the electoral legislation. This opinion which was generally positive, stated in particular that the package was to be "broadly welcomed as it addressed the majority of recommendations raised in previous Venice Commission and ODIHR opinions, (...), as well as in the final reports of the ODIHR election observation missions".<sup>4</sup> They also insisted that the Chairman of the *ad hoc* Committee of the Bureau of the Assembly responsible for observing the early elections of 20 June 2021 be heard by the Monitoring Committee at its September meeting. Mr George Katrougalos presented the findings of the observation mission to the Monitoring Committee, which stated that "Armenia's early parliamentary elections were competitive and well-managed within a short time frame. However, they were characterised by intense polarisation and marred by increasingly inflammatory language from key contestants, as well as by the sidelining of women throughout the campaign".<sup>5</sup>

30. Finally, the co-rapporteurs visited Armenia from 3 to 5 November 2021. They also submitted their report on The functioning of democratic institutions in Armenia to the Monitoring Committee at its December meeting. This report should be debated during the January part-session of the Assembly.

### 2.2.3. Azerbaijan

31. The last report on the functioning of democratic institutions in Azerbaijan was debated in the Assembly in 2017 and the last visit took place in July 2019. An information note was subsequently presented to the Committee and declassified.

32. Since the outbreak of military hostilities between Armenia and Azerbaijan on 27 September 2020 and in the wake of the Trilateral Statement of 9-10 November 2021, the work of the Monitoring Committee focused on the conflict and its impact on the functioning of democratic institutions and the protection of human rights in both countries. This is illustrated by regular joint statements made by four respective co-rapporteurs as well as by the Committee's statement of 24 April 2021 in which it expressed its conviction that the national parliaments of both countries could and should play an important role in the urgently-needed confidence-building measures, the reconciliation process and the resumption of concrete peace negotiations between the parties.

33. The Committee has held several hearings and exchanges of views with representatives of both countries as well as independent experts.

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<sup>3</sup> Statement by the co-rapporteurs (26.02.2021).

<sup>4</sup> CDL-AD(2021)025, paragraph 12.

<sup>5</sup> Doc. 15352, Appendix 3 to the report by Mr George Katrougalos (Greece, UEL) of the *ad hoc* Committee of the Bureau of the Assembly on the observation of the early parliamentary elections in Armenia (20 June 2021).

34. At the same time it should be noted that the outstanding concerns as outlined in the Committee's last report and information note have not yet been addressed.

35. In particular, the lack of independence of the justice, illustrated by a long-standing pattern of repression of the government's opponents, is a major problem in Azerbaijan. Arbitrary arrests and detentions of government critics as confirmed by the judgements of the European Court of Human Rights and the 'structural problem' of misuse of administrative detention, described by the Committee of Ministers, persist. Lawyers continue to be harassed and reports of torture and other ill-treatment of government critics in detention remain widespread.

36. Basic freedoms including freedom of expression, assembly and association are severely restricted, which has a disastrous impact on the whole democratic process including pluralism, the rule of law and respect for human rights.

37. Corruption remains a big problem as illustrated, *inter alia*, by the Addendum to the second compliance report on corruption prevention in respect of members of parliament, judges and prosecutors published by GRECO in May 2021, and reports released under the name of Pandora Papers on 3 October 2021 by the International Consortium of Investigative Journalists which carried the accusations against President Aliyev's family.

#### 2.2.4. *Bosnia and Herzegovina*

38. In 2020, the co-rapporteurs were able to welcome a positive development: the holding of municipal elections in Bosnia and Herzegovina and in particular the elections in Mostar, the first to be held since 2008. In 2021 they were unfortunately not able to do so.

39. During its meeting on 7-9 June 2021, the Committee of Ministers examined the implementation of the group of *Sejdić* and *Finci* judgments of the European Court of Human Rights. In December 2009 the Court found in these judgments that persons who were not affiliated with the constituent peoples in Bosnia and Herzegovina or who failed to meet a combination of the requirements of ethnic origin and place of residence were discriminated against in their right to stand for election to the House of Peoples and the Presidency of Bosnia and Herzegovina. The Committee of Ministers urged the Bosnian authorities to ensure that a draft proposal for amendments to the Constitution and the electoral law was drawn up so that the next parliamentary elections scheduled for 2022 were held in conditions that comply with the European Convention on Human Rights. For the first time in 11 years the Committee of Ministers has explicitly set a deadline of 1 September 2021<sup>6</sup> for the submission of this draft.

40. During the June 2021 part-session, the co-rapporteur Tiny Kox spoke with the Hungarian Permanent Representative to the Council of Europe, who was then chairing the Committee of Ministers, and then with the members of the Bosnian delegation present in Strasbourg. He stressed in particular the importance of this decision and its political significance.

41. Noting the lack of tangible progress in the implementation of the judgments, in particular the fact that the inter-institutional working group for the preparation of amendments to the electoral legislation, despite being set up by the Bosnian authorities, had not met since 23 July, the Committee of Ministers, in a new decision of 16 September 2021<sup>7</sup>, gave Bosnia and Herzegovina a further deadline to present a draft amendment to its electoral framework until its December meeting. It indicated that if no progress was made by then, it would consider a draft interim resolution. As regards the execution of judgments, the "interim resolution" is the last step before the Committee of Ministers decides to have recourse to Article 46.4. of the Convention, i.e. to ask the Court to find that a state party to the Convention is refusing to comply with one of its judgments which has become final.

42. Beyond the respect of its treaty obligations, it is also important that the Bosnian authorities take the necessary measures to avoid that, after the parliamentary elections scheduled for October 2022, the Parliamentary Assembly of Bosnia and Herzegovina cannot present a delegation to our Assembly for more than one year, as was the case after the 2018 elections throughout 2019.

<sup>6</sup> [CM/Del/Dec\(2021\)1406/H46-7.](#)

<sup>7</sup> [CM/Del/Dec\(2021\)1411/H46-8.](#)

### 2.2.5. Georgia

43. The Rapporteurs visited Georgia twice in 2021, from 1 to 3 June 2021 and from 8 to 10 December 2021. On 13 September 2021, the Committee declassified an information note prepared by the rapporteurs on the basis of their findings during the June visit. The rapporteurs intend to present a report on the Honouring of obligations and commitments by Georgia during the April 2022 part-session of the Assembly.

44. The tense and polarised political climate in Georgia, which is undermining the democratic consolidation of the Country continued to be a main point of concern during 2021.

45. The political crisis that followed the 2020 parliamentary elections and the opposition parties' refusal to take up their seats in the new parliament was tentatively resolved on 19 April 2021, when the ruling majority and most opposition parties signed a political agreement brokered by the European Council President Charles Michel. Regrettably the largest opposition party, the UNM and the European Georgia party refused to sign this agreement.

46. The agreement mediated by President Michel covered many areas such as electoral reforms, judicial reforms and addressed perceived politicised justice and power sharing mechanisms in the new parliament. Two key components of the 19 April agreement were the pardon for two personalities, Nika Melia, the prominent UNM leader and Giorgi Rurua, founder and shareholder of Mtavari Arkhi TV– who were considered political prisoners by the opposition – and the organisation of snap parliamentary elections in 2022 if Georgian Dream obtained fewer than 43% of the votes in the October 2021 local elections. The latter turned the local elections into a *de facto* plebiscite on the ruling majority and led to an extremely polarised election environment. The rapporteurs called on all stakeholders to reduce the tensions in the political environment and not to overlook the relevance of the October local elections for the strengthening of local government and democracy.

47. Regrettably, the 19 April agreement did not end the considerable polarisation in the political environment in Georgia or lead to a renewed sense of constructive co-operation between the opposition and ruling majority inside the parliament. In a regrettable development, on 28 July 2021, the 19 April agreement broke down when Georgian Dream announced that they withdrew from the agreement as it had in its view exhausted itself and was still not supported by the main opposition parties, including the largest opposition faction led by the UNM.

48. Despite the tense political environment, the electoral reforms that were agreed upon as part of the 19 April agreement were decided upon in an inclusive process between the opposition and ruling majority. This resulted, inter alia, in a new more pluralist election administration. The electoral reforms also included new provisions for the drawing up of results protocols and handling of elections complaints.

49. Local elections took place on 2 October 2021 with a second round on 30 October for those races for mayors and majoritarian city council members where none of the candidates had obtained the required majority in the first round. The International Elections Observation Mission of which the Congress of Local and Regional Authorities of the Council of Europe was a part, concluded after the first round that these elections had been *“competitive and well run, but marred by allegations of pressure on voters, vote-buying and an unlevel playing field”*<sup>8</sup>. The new legal framework had overall been adequate for the organisation of democratic elections but was overly complex and had tended to over-regulate many aspects of the election process. The election administration which had managed the elections efficiently, was more pluralist as a result of its new composition, but the national political debate had overshadowed local issues, resulting in an increasingly aggressive rhetoric with cases of violence and physical confrontation. Regrettably, *“significant imbalance in resources, insufficient oversight of campaign finances and an undue advantage of incumbency”* had resulted in an unequal playing field in favour of the incumbent authorities, and persistent allegations of vote buying and pressure on voters were reported.

50. The polarisation of the political environment worsened or deteriorated? during the second round of the elections. As a result of this polarisation, and continued and consistent abuse of administrative resources, local observers reported that the outcome in some of the races in the second round where the margins between the two candidates had been small could have been affected. The authorities should fully and transparently investigate all allegations on electoral misconduct and take all measure needed to ensure that the public would trust in the fairness of the election system. This is especially important in the context of the low public trust in the judiciary, which could have an impact on the trust in the election complaints resolution mechanisms which depend on the court system.

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<sup>8</sup> Press release OSCE/ODIHR (3 October 2021).

51. The strengthening of the independence of the judiciary and the impartial and efficient administration of justice have remained key points of attention for the Monitoring procedure with regard to Georgia. A key obstacle for the independence of the judiciary has continued to be the High Council of Justice and its functioning. As a result of deficiencies in its working methods, and a lack of transparency with regard to its decision making, the HCJ is in effect functioning as a corporative body where a small number of key judge-members, who mostly decide on the basis of corporatist self-interest, are able to control or influence the work of the HCJ and the justice system as a whole.

52. The functioning of the High Council of Justice has been especially problematic with regard to the appointment of Supreme Court Judges. Following constitutional reform in the Georgia Supreme Court, judges are now appointed for life and the minimum number of supreme court judges was increased to 28. In 2019 the Georgian parliament appointed 14 new Supreme Court Judges in a very controversial and politicised appointment process that undermined public trust in this institution. Following widespread criticism on the appointment process the ruling majority agreed not to fill the remainder of the vacancies until after the 2020 parliamentary elections and on the basis of an amended legal framework. The Venice Commission concerns and recommendations for the legal framework for the appointment of Supreme Court Judges were only fully addressed in April 2021, following several rounds of amendments. Regrettably, despite several calls from the international community to the contrary, a new selection process that had in the meanwhile been started was not cancelled but allowed to continue. On 17 June 2021, the High Council of Justice presented a list of nine candidates for Supreme Court Judges. This was decried by Georgian Civil Society Organisations, as well as by members of the international community for being in contradiction to both 19 April agreement and Venice Commission recommendations. Nevertheless, on 12 July 2021, the Georgian parliament appointed 6 of the 9 High Council of Justice candidates to the Supreme Court of Georgia. On 24 August 2021, the OSCE/ODIHR published its fourth monitoring report on the nomination and appointment process of the Supreme Court Judges, in which it concluded that the selection process had been characterised by “*variations in conditions, lapses in decorum, internal divisions on the HCJ and serious conflicts of interest*”<sup>9</sup>. Regrettably, despite the criticism and concerns expressed by inter alia the international community on the appointment process, and contrary to what had been agreed on 19 April, on 1 December 2021 the Georgian parliament appointed another four Supreme Court judges.

53. The appointment of these Supreme Court Judges against repeated recommendations of the international community and domestic stakeholders and on the basis of a clearly deficient appointment process - that in several aspects did not comply with international norms and standards process - is regrettable and further undermines the public trust in the independence and impartiality of the Supreme Court and the judiciary as such.

#### 2.2.6. Republic of Moldova

54. The year 2021 was marked by early parliamentary elections held in July 2021, which drastically changed the political landscape in the Republic of Moldova. In November 2020, Ms Maia Sandu, from the Party Action and Solidarity (PAS), was elected President of the Republic of Moldova. However her party lacked a parliament majority to implement the reforms promised, in particular in the field of the judiciary and the fight against corruption. PAS and the Party of the Socialists (PSRM) - which at that time, had the largest political faction in parliament – disagreed over the timing of the early parliamentary elections, which resulted in a power struggle between the presidential administration and the parliament and a serious political and constitutional crisis from December 2020 to April 2021. After two failed attempts to nominate a Prime Minister and a Constitutional Court ruling of 15 April 2021 stating that the dissolution of Parliament was justified, the parliament decided to remove the President of Constitutional Court in clear breach of the rule of law and European standards.<sup>10</sup> The Constitutional Court eventually declared this decision as unconstitutional on 24 April 2021, which opened the way for the organisation of early elections. This crisis was described in detail by PACE rapporteurs Mr Pierre-Alain Fridez (Switzerland, SOC) and Ms Inese Lībiņa-Egnere (Latvia, EPP/CD) in their information note.<sup>11</sup>

55. The Parliamentary Assembly observed the early elections of 11 July 2021, which were deemed as “competitive and well run despite the inadequate handling of election disputes and campaign finance issues”.<sup>12</sup> The early elections resulted in a victory of the Party Action and Solidarity, which won 52% of the votes, and 63 seats in parliament (out of 101), thus enjoying a large majority. Two other parties entered parliament, namely the bloc of Socialists and Communists (32 seats) and Ihan Shor’s Party (6 seats). The Monitoring Committee

<sup>9</sup> OSCE final report (23.08.2021).

<sup>10</sup> See the [statement](#) issued by the President of the Venice Commission Gianni Buquicchio on the constitutional crisis in the Republic of Moldova, 23 April 2021.

<sup>11</sup> [AS/Mon \(2021\) 08 REV](#).

<sup>12</sup> [Statement](#) by the joint observation mission (12.07.2021) and [Doc. 15356](#) on the observation of the early parliamentary elections in the Republic of Moldova.

closely followed the political developments and held exchanges of views with the Moldovan delegation and the representatives of the Venice Commission on 9 May and 13 September 2021.

56. The rapporteurs visited Chisinau and Tiraspol from 12-15 October 2021<sup>13</sup>. They welcomed the determination of the Moldovan authorities to reform the judiciary to strengthen its independence and to fight corruption, creating a momentum for change aimed at addressing the concerns of the population and continuing co-operation with the Council of Europe, notably with its High Level Working Group on Justice Reform and its Venice Commission, which in December 2021 is due to issue, two opinions (on the amendments to the law on the prosecutor's office and on the draft law on certain measures relating to the selection of candidates for administrative positions in the self-governing bodies of judges and prosecutors). The rapporteurs acknowledged that the ruling authorities, though enjoying a large majority in parliament, were facing a huge challenge, with no ready-made solution, to address the roots of "state capture" that had prevailed in the country so far. They also welcomed the adoption of the constitutional amendments to depoliticise the judiciary as agreed by all political parties, while calling on the Moldovan authorities to ensure that the reforms undertaken - however urgent and necessary - respected the principles of the rule of law (with proper involvement of opposition parties and representatives of civil society), improved transparency in the financing of political parties, restored confidence in the state bodies and built sustainable institutions based on European standards. The rapporteurs also congratulated the Republic of Moldova on the ratification of the Istanbul Convention and progress made on women's participation in public life.<sup>14</sup> In December 2021 the Venice Commission is due to adopt an Amicus curiae brief on the ratification of the Istanbul Convention at the request of the Constitutional Court, after the Socialists challenged the ratification law.

57. Finally, the co-rapporteurs, who visited Tiraspol, noted the readiness of the *de facto* authorities to engage in a dialogue with the PACE Sub-Committee on Conflicts between Council of Europe Member States, on the protection of human rights in the context of the Transnistrian settlement process.<sup>15</sup> The rapporteurs will submit an information note to the Monitoring Committee on 14 December 2021.

### 2.2.7. Poland

58. No fact-finding visits by the Rapporteurs could take place in 2021. On 3 February 2021 the Committee organised an exchange of views on the ongoing developments in Poland on the basis of a series of online meetings between the rapporteurs and the delegation of Poland to the Parliamentary Assembly, Civil Society Organisations, as well as the outgoing Ombudsperson and his staff.

59. Regrettably the situation with regard to the rule of law and the independence of the judiciary has continued to deteriorate in 2021. No progress has been made with regard to addressing the recommendations and concerns in Assembly [Resolution 2316 \(2020\)](#).

60. The European Commission has initiated a number of cases against Poland before the European Court of Justice for violating European rules and principles with regard to the rule of law and independence of the judiciary. These cases focused on the functioning and lack of independence of the new Disciplinary Chamber that was established during the reform of the Supreme Court and on the reformed National Council of the Judiciary (better known by its Polish abbreviation KRS).

61. The KRS, according to the Polish constitution, is the "autonomous self-governing body of the judiciary established to safeguard the independence of the judiciary". Following its reform all the members of the KRS are now appointed by the SEJM, which can also nominate the candidates for KRS positions. As a result of these reforms the KRS consists of political appointees and can no longer be considered an independent judicial institution. The reform of the Supreme Court established two new chambers: the disciplinary chamber and the extraordinary appeals chamber. The members of these two chambers are nominated by the KRS and appointed by the President of Poland.. Given the lack of independence of the KRS the independence of these two chambers is widely questioned. This was confirmed in the judgements of both the CJEU and the ECHR.

62. On 15 July 2015 the CJEU reached its judgment in the infringement proceedings brought by the European Commission in case-791/19 and found that the disciplinary regime for judges in Poland is not compatible with EU law. Faced with considerable financial sanctions the Polish authorities announced on 7 August 2021 that they would disband the Disciplinary Chamber, but reportedly did not give a clear timeline for its dissolution.

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<sup>13</sup> AS/MON (2021) 13.

<sup>14</sup> [Statement](#) by the co-rapporteurs (15.10.2021).

<sup>15</sup> [Statement](#) by the co-rapporteurs (20.10.2021).

63. On 6 October 2021 in a ruling in case C-487/19, the CJEU found that “*transfers without consent of a judge from one court to another or between two divisions of the same court are liable to undermine the principles of the removability of judges and judicial independence*”. In addition it ruled that the appointment of the judge on the Disciplinary Chamber that had dismissed the appeal against the transfer had taken “*place in clear disregard of the fundamental procedural rules for the appointment of judges to the Supreme Court*” and that the conditions in which the Supreme Court judge was appointed had created “*reasonable doubts*” as to “*the imperviousness of that judge to external factors and as to his neutrality* “. According to the Polish Prime Minister this ruling was “*an attempt to hit at the very heart of the social and legal system*”, that could affect “*hundreds of thousands*” of judgments by Polish courts.

64. In response to a request of the Polish Prime Minister about the Constitutionality of the Treaty of the European Union (TEU), the Constitutional Court of Poland ruled that certain provisions of the TEU were inconsistent with the Polish Constitution. This direct challenge to the supremacy of European law sparked a political crisis between Warsaw and Brussels, with some circles fearing this could lead to a “PolExit”.

65. In [Resolution 2316 \(2020\)](#), the Assembly expressed its concern that the judicial reforms in Poland and their violation of European rule of law norms and standards, would undermine the legitimacy of the Polish judicial system and could lead to an influx of complaints with the ECtHR, substantially increasing its workload. In this context the Assembly in particular expressed its concern regarding the legitimacy of the Constitutional Court and its rulings following the Constitutional crisis that erupted in 2015. These concerns were validated on 7 May 2021 when the ECHR in the case *Xero Flor w Polsce sp. Z o.o. vs Poland* (4907/18) ruled that the 2015 election of judges to the Constitutional Court had been irregular, rendering the bench on which these judges participated unlawful (not a tribunal established by law).

66. On 22 July 2021 the ECHR reached its judgement in the case *Reczkovicz vs Poland* (43447/19) in which it ruled unanimously that in the disciplinary proceeding against the complainant there had been a violation of art 6 §1 of the convention as “*the procedure for appointing judges [on the disciplinary chamber] had been unduly influenced by the legislative and executive powers. That amounted to a fundamental irregularity that adversely affected the whole process and compromised the legitimacy of the Disciplinary Chamber of the Supreme Court, which had examined the applicant’s case. The Disciplinary Chamber was not therefore a “tribunal established by law” within the meaning of the European Convention.*”

67. Regrettably, instead of complying with these judgments the authorities, in the same way as for the CJEU decisions, have questioned their validity. On 29 July 2021, the Minister of Justice requested the Polish Constitutional Tribunal to examine the constitutionality, under the Polish Constitution, of article 6 of the ECHR. On 24 November 2021, the Polish Constitutional Tribunal ruled that Article 6 (1) of the European Convention on Human Rights (the right to a fair trial by an independent tribunal) is not compatible with the Polish Constitution if applied to the Constitutional Tribunal or used to give the Court in Strasbourg the right to assess the legality of the process of electing judges to the Constitutional Tribunal. This ruling, which was condemned by the rapporteurs for Poland is a direct and unacceptable challenge to the supremacy of the European Convention on Human Rights and the fundamental values of the Council of Europe.

68. The deep political and social polarisation in Poland, which permeates many aspects of the Polish society, remains a point of concern. However, in a welcome development the ruling majority and opposition in the SEJM and Senate managed to overcome the stalemate with regard to the appointment of a new Ombudsperson to replace Mr Adam Bodnar, whose term had ended. On 8 July 2021 a compromise was reached and Professor Marcin Wiącek was appointed as the new Ombudsperson with wide support of both the opposition and ruling party.

### 2.2.8. Russian Federation

69. The last report on the honouring of obligations and commitments by the Russian Federation dates back to 2021. Since the return of the Russian Federation to the Parliamentary Assembly in June 2019, the Monitoring Committee has submitted three reports on the challenge of its still unratified credentials and were debated in the Assembly in June 2019, January 2020 and January 2021.

70. In the latter, 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 the crackdown on civil society, extra-parliamentary opposition and critical journalists. It referred to restrictions imposed by the Russian authorities on basic freedoms including freedom of assembly, freedom of expression and freedom of association. It called for an immediate release of Mr Navalny and a meaningful investigation in cooperation with the Organisation for the Prohibition of Chemical Weapons.

71. The co-rapporteurs made two public statements in January 2021: calling for Navalny's release and urging the Russian authorities to withdraw the designation of the Council of Europe Schools of Political Studies Association as an "undesirable organisation". Until the time of drafting of this report, none of these demands has been addressed: Alexey Navalny remains in prison despite the ECtHR decision, and the CoE Association has not been removed from the list of "undesirable organisations" and has had to terminate its activities.

72. In March 2021 the Venice Commission adopted its Interim Opinion on Constitutional amendments and the procedure for their adoption as requested by the Monitoring Committee in May 2020 in which it identified some serious flaws in the amendments and the procedure of their adoption. It concluded that the changes went far beyond what is appropriate under the principle of separation of powers, even in presidential regimes.

73. The co-rapporteurs visited Moscow from 28 to 30 June 2021 despite the very difficult sanitary situation. Before meeting the officials they held a series of meetings with prominent Russian NGOs and with the leader of Yabloko, the extra-parliamentary opposition party, and heard their concerns. Some laws, in particular the law on foreign agents, the law on undesirable organisations and the law on extremism and their restrictive implementation are of particular concern. The Parliamentary Assembly has on many occasions criticised these laws and called for their repeal. However, instead of being repealed, they have been amended over the years in order to become more restrictive. The package of most recent amendments to the law on foreign agents was adopted in December 2020 and was criticised by the Venice Commission's Opinion published on 6 July 2021. The law on undesirable organisations was amended in June 2021. As of July 2021, Russia had labelled 76 organisations and 20 media outlets or individual persons as "foreign agents", and many others, including the Council of Europe Schools for Political Leaders Association or German student exchange organisations have been put on the list of undesirable organisations. The rapporteurs raised these questions at their meetings in the Ministry of Justice, in the Prosecutor General's Office, in the Supreme Court as well as in the Duma and the Federation Council. They stressed that all their interlocutors were open for a dialogue. They also agreed with the Russian parliamentarians to elaborate a Roadmap which would define the rapporteurs' expectations in terms of concrete changes to the legislation and which would serve as a basis for further dialogue on fulfilling commitments and obligations.

74. Regrettably, on 12 November 2021, the Russian Prosecutor General's Office filed a request with the Supreme Court to dissolve the well known human rights organisation "Memorial" on the basis of the alleged violation of the Law on foreign agents. The liquidation of Memorial would mean a further blow to Russian civil society. Despite calls from the international community, including the Secretary General of the Council of Europe and the Council of Europe Commissioner for Human Rights, the procedure has not been stopped.

75. The major developments in the Russian Federation in 2021 were the parliamentary elections which took place over 3 days from 17 to 20 September 2021. 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. In the absence of a fully-fledged International Election Observation Mission, it was not in a position to conduct an election observation but it visited a number of polling stations. Building upon the information collected within the framework of the remote pre-electoral meetings, the findings of the Venice Commission and the in situ meetings with political stakeholders, the Central Electoral Commission and domestic observers and civil society organisations, it identified some concerns with regard to the electoral legal framework, candidate registration (some well-known members of opposition parties were denied registration and the Mission was informed about initiated and ongoing criminal proceedings and criminal sentences against a number of opposition figures which effectively prevented them from running in the elections), deregistration by the CEC of a number of candidates on the basis of information received from the authorities, without any judicial decision (allegedly depriving some 9 million Russian citizens of their passive voting rights), allegations of pressure on state employees to vote on Friday and the security of ballots overnight; unequal campaigning conditions, in particular media coverage, allegations of misuse of state and administrative resources, impact of the foreign agent legislation. The delegation appreciated the good cooperation with the authorities and the generally smooth voting process on the election dates. It recalled the Assembly's position regarding the illegal annexation of Crimea, confirmed most recently in Resolution 2363(2021) and it referred to the Venice Commission's opinion on "The Compliance with Council of Europe and other international standards of the inclusion of a not internationally recognised territory into a nationwide constituency for parliamentary elections" which points out that "the organisation of elections in the annexed territory does not and cannot remedy the annexation".

76. Unfortunately, no progress has been made with regard to implementing the requests of the international community with regard to Eastern Ukraine, Crimea, and the occupied Georgian regions of South Ossetia, Abkhazia and the presence of Russian troops in the Transnistrian region of the Republic of Moldova. The

recent concentration of large numbers of Russian military troops along the border with Ukraine undermines the security and stability in the wider region and is of serious concern.

### 2.2.9. Serbia

77. PACE rapporteurs Mr Piero Fassino (Italy, SOC) and Mr Ian Liddell-Grainger (United Kingdom, EC/DA) mainly focused their work on the inter-party dialogue, and the constitutional revision in the field of the judiciary during the year. The Committee debated the “Democratic challenges in Serbia after the June 2020 elections” on 3 February 2021 in the presence of Mr Ivica Dačić, Speaker of the parliament (and Chairperson of the Serbian delegation to PACE). The Committee was informed about the complex process of constitutional revision (which would eventually have to be approved by a referendum) and the functioning of democratic institutions following the July 2020 parliamentary elections, which had resulted in a one-party majority in the National Assembly and the absence of a viable parliamentary opposition. In this unprecedented context, the Monitoring Committee decided, in February 2021, to seek the opinion of the Venice Commission on “The constitutional and legal framework governing the functioning of democratic institutions in Serbia” and in November 2021 invited the Venice Commission to prepare a comprehensive opinion on it, taking into account its October 2021 opinion on the constitutional amendments and constitutional reform.

78. The constitutional revision was finally launched on 7 June 2021 with an initial vote by the parliament, which was welcomed by the rapporteurs in their statement<sup>16</sup>, recalling that the Parliamentary Assembly had made a long-lasting call on the Serbian authorities to bring the 2006 constitution into line with Council of Europe standards, following in particular the recommendations issued by the Venice Commission in 2007 on the [constitution](#) and in 2018 on the current [draft constitutional amendments](#) aimed at de-politicising the judiciary. They also called on the Serbian authorities to update the legal framework for the organisation of the referendum, taking into account Council of Europe standards.

79. In this respect, following the close co-operation established with the authorities and at their request, in September 2021 the Venice Commission adopted an urgent opinion on the draft law on referendum and people’s initiatives<sup>17</sup>, as well as an opinion on “the draft Constitutional Amendments on the Judiciary and draft Constitutional Law for the Implementation of the Constitutional Amendments”.<sup>18</sup> In this matter, the Venice Commission deemed the process of public consultations for these draft amendments as “sufficiently inclusive and transparent”, but stressed that there was a strong need to adopt an inclusive approach, in order to reach as broad a legitimacy for the constitutional reform as possible among all institutional actors and all political forces in Serbia”. In November 2021 at the request of the Serbian authorities on 8 and 26 October, the Venice Commission issued two additional urgent opinions on the revised versions of these draft laws.

80. The Inter-Party Dialogue continued in 2021. It had been initiated in 2019 with a view to upgrade improving the election conditions. However, the discussions had so far not brought the expected improvements and trust in the election environment and did not prevent several opposition parties from boycotting the July 2020 elections. As opposition parties disagreed on the negotiation format the Inter-party Dialogue was organised in two “tracks”: the discussions with the mediation by current and former MEPs resulted in the publication of “16 measures to improve the conduct of the electoral process” on 18 September 2021, while the discussions organised by the Speaker of the parliament resulted in the signing of an agreement between two ruling and seven opposition parties on 29 October which tackled the election process, the submission of election lists, the control of voter lists and financing of campaigns and media.

81. Finally, on 19 November 2021 the rapporteurs issued a [statement](#) urging the Serbian authorities to take strong measures against glorification of war criminals. the former Václav Havel Prize winner the “Youth Initiative for Human Rights” was previously banned from demonstrating and removing a mural of Ratko Mladic, convicted for war crimes and crimes against humanity, illegally installed in Belgrade. The rapporteurs stressed that the authorities’ failure to act against the glorification of war criminals undermined regional co-operation and hindered the process of European integration to which Serbia aspires.

### 2.2.10. Turkey

82. Developments in Turkey remained of concern and further undermined democracy, the rule of law and human rights. PACE rapporteurs Mr Thomas Hammarberg (Sweden, SOC) and Mr John Howell (United Kingdom, EC/DA) followed them closely, in particular the situation of opposition MPs: they welcomed the return

<sup>16</sup> [Statement](#) by the co-rapporteurs (14.06.2021).

<sup>17</sup> [CDL-AD\(2021\)033](#).

<sup>18</sup> [CDL-AD\(2021\)032](#).

to parliament of Mr Enis Berberoğlu<sup>19</sup> in February but deplored, in March, the stripping of MP Ömer Faruk Gergerlioğlu's immunity and mandate, his conviction and detention,<sup>20</sup> which was eventually overturned by the Constitutional Court in July, a decision welcomed by the rapporteurs.<sup>21</sup>

83. As a follow-up to the 2020 PACE Resolution on the crackdown on political opposition and civil dissent, on 15 April 2021 the Committee discussed recent developments with respect to the rights of the opposition and decided to support the proposal of the leaders of the five political groups to hold an urgent procedure debate on the functioning of democratic institutions in Turkey – the third debate under urgent procedure on Turkey held by the Assembly since 2020.

84. Concerns raised by the Committee in this debate included procedures seeking to lift the parliamentary immunity of a third of the parliamentarians (overwhelmingly from opposition parties), the attempt to close the Peoples' Democratic Party (HDP) and ban 451 HDP politicians from political life, the continued crackdown on its members and more generally the political violence targeting opposition politicians (including, at a later stage, the murder of young HDP activist Ms Deniz Poyraz at the party premises in Izmir on 17 June 2021) which put political pluralism and the functioning of democratic institutions at risk. In its [Resolution 2376 \(2021\)](#) of 22 April 2021, the Assembly called on the Turkish authorities to reverse these worrying trends, seize the opportunity of implementing the Human Rights Action Plan released on 2 March 2021 to take meaningful steps and revise the legislation on elections and political parties, put an end to the judicial harassment of opposition and dissenting voices, improve freedom of expression and media and restore the independence of the judiciary, in line with Council of Europe standards. The Committee later followed with concern the judicial procedure aimed at closing the HDP being instructed by the Constitutional Court, as well as other worrying developments, notably in the field of the justice system, and regretted that the Human Rights Action plan failed to address some of the most outstanding issues of concern, such as the separation of powers.

85. Further deficiencies were also identified by GRECO. In its April 2021 report it urged the Turkish authorities to give new impetus to their legislative efforts towards increased transparency of political financing, including in connection with elections. The Venice Commission for its part concluded, in its July 2021 opinion<sup>22</sup>, that the Turkish legislation to combat terrorism and its funding – which pursued a legitimate goal - comprised provisions that applied to all associations, irrespective of their goals and records of activities, and had led to “far reaching consequences for basic human rights, in particular the right to freedom of association and expression and the right to a fair trial”.

86. The presidential decision of 20 March 2021 to withdraw from the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence ([CETS No.210](#), the Istanbul Convention) – which became effective in July 2021 – sparked considerable reactions, including from the Presidents of the Parliamentary Assembly and the Committee of Ministers<sup>23</sup>, as this regrettable step backwards had been made without any parliamentary debate, prompting the Assembly to ask for an opinion from the Venice Commission on the modalities of denunciation of conventions in democratic societies. It was all the more deplorable as the Turkish parliament had been the first one to ratify this landmark legal instrument in Europe.

87. On 19 October 2021, echoing several PACE resolutions dealing with freedom of expression issues, PACE [Resolution 1577 \(2007\)](#) on decriminalisation of defamation and the 2016 Venice Commission [opinion](#), the European Court of Human Rights issued for the first time a ruling concerning Article 299 of the Criminal Code (“insult to the President”): in the case *Vedat Şorli v. Turkey* - a chamber [ruling](#) not yet final – the Court found that convicting the applicant to a prison sentence (the execution of which was suspended) on account of two posts shared on his Facebook account was a violation of his right to freedom of expression.

88. Finally, the Assembly reiterated its call for the immediate release of former HDP leader Mr Selahattin Demirtaş<sup>24</sup> and philanthropists Osman Kavala, unlawfully detained since respectively 2016 and 2017, and for the implementation of the final judgments of the European Court of Human Rights which found, in both cases, a violation of article 18 of the European Convention on Human Rights, as these convictions were pursuing an ulterior purpose: Mr Demirtaş's detention sought to stifle pluralism and limit freedom of political debate, while Mr Kavala's detention aimed at silencing him and deterring other human rights defenders. At its meeting of 30 November – 2 December 2021, the Committee of Ministers adopted two interim resolutions, strongly urging

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<sup>19</sup> [Statement](#) by the co-rapporteurs (12.02.2021).

<sup>20</sup> [Statement](#) by the co-rapporteurs (18.03.2021).

<sup>21</sup> [Statement](#) by the co-rapporteurs (07.07.2021).

<sup>22</sup> [CDL-AD\(2021\)023cor-e.](#)

<sup>23</sup> [Statement](#) by the Council of Europe leaders (21.03.2021).

<sup>24</sup> The co-rapporteurs had previously issued a [statement](#) on 30 December 2020 : ‘Selahattin Demirtaş must be released now’: rapporteurs urge the Turkish authorities to implement the Court's final judgment.

the Turkish authorities to ensure the immediate release of former HDP leader Selahattin Demirtaş<sup>25</sup>, and served a formal notice to the Turkish authorities signaling the Committee of Ministers' intention to refer the *Kavala v. Turkey* case to the European Court of Human Rights (ie to launch an infringement procedure), in line with proceedings provided for under Article 46.4 of the European Convention on Human Rights.<sup>26</sup>

### 2.2.11. Ukraine

89. The rapporteurs for Ukraine made a fact finding visit to Kyiv from 5 to 7 July 2021. On 16 November 2021, the Committee declassified an information note prepared by the rapporteurs on the basis of their findings of this visit.

90. The reform of the judiciary and the fight against the widespread corruption in Ukraine remain key priorities for the country. With respect to the judiciary, the functioning of the High Council of Justice (HCJ) and the Supreme Court of Ukraine (SC) are seen as major obstacles to the independence and impartiality of the judiciary. The reform of the HCJ, particularly addressing the widespread questions with regard to the integrity of some of its members is an essential precondition for the successful reform of the judiciary with a view to ensuring its independence and impartiality, as well as to address the widespread corruption within the judiciary.

91. On 13 July 2021, the Verkhovna Rada, adopted two laws to reboot the High Qualifications Commission of Judges (HQCJ) and the HCJ. The adoption of these laws, that inter alia established an Ethics Council, was hailed by the international community and domestic stakeholders as a decisive step forward in the reform of the judiciary. The Ethics Council is composed of 3 national members as well as 3 members proposed by the international partners of Ukraine. It is responsible for vetting the integrity of candidates for the HCJ, and the current members of the HCJ. It is hoped that the relaunch of the HQCJ would result in the many vacant judicial posts being filled soon as this large number of vacancies was undermining the efficient administration of justice in Ukraine. The Venice Commission has recommended that the Ukrainian authorities should adopt one holistic reform of the judiciary, instead of a series of individual laws addressing various aspects of the judiciary, that are not always well synchronised. That said, the Venice Commission recognises the importance of the subject and underscored that "the issue of integrity and ethics of the HCJ should be addressed as a matter of urgency".

92. A part of the judiciary that has yet to be reformed is the Kyiv District Administrative Court (KDAC). This Court is of special importance as it hears appeals against decisions of state and local authorities, including all cases concerning the Central Election Commission (CEC), the Cabinet of Ministers and Ministries, the National Bank, the National Agency on Corruption Prevention (NACP) and the National Anti-Corruption Bureau (NABU). Many of its rulings against government decisions have been questioned and are widely seen as attempts to undermine the authority's reform and anti-corruption efforts.

93. The fight against the widespread corruption in Ukraine continues to be a stated priority of the authorities. The five-tiered institutional structure to fight corruption is now in place and functioning, slowly achieving tangible results. This in turn has increased the attempts to undermine the institutions and policies that have been put into place to fight corruption. A number of key positions in these institutions have become vacant or will be vacant soon. Their succession will be a litmus test for the authorities political will to tackle corruption at all levels in Ukrainian society.

94. In a welcome development the requirement that anti-corruption activists and leadership of civil society organisations active in the field of fighting corruption submit an electronic asset declaration, about which the Assembly had previously expressed its concern, was declared unconstitutional and has been withdrawn.

95. The High Anti-Corruption Court (HACC) is fully functional since September 2019 and is widely considered to be effective and achieving tangible results. It has already taken up more than 200 high profile cases and in 33 cases a verdict has already been reached, leading to 181 convictions. However, with the current caseload the Court would soon be saturated and the number of judges on the Court need to be urgently increased

96. In June 2021 President Zelensky tabled the so-called anti-oligarch law that would prohibit oligarchs from financing political parties and taking part in privatisations, as well as requiring them to submit an annual assets declaration. In addition, senior officials, including the President and members of the government would be required to declare any contacts with these oligarchs. Some aspects of the draft law have raised questions, in

<sup>25</sup> "Implementing ECHR judgments: Council of Europe ministers again strongly urge Turkey to ensure the immediate release of Selahattin Demirtaş", Press release (Ref. DC 225(2021)), 3 December 2021.

<sup>26</sup> Implementing ECHR judgments: Council of Europe ministers serve formal notice on Turkey in the *Kavala* case, Press release (Ref. DC 224(2021)) related documents, 3 December 2021.

particular the fact that a person declared an oligarch, would be considerably limited in their rights, by a decision of the President in consultation with the National Security and Defence Council. The President would have very broad discretion in this respect and his decision could not be appealed before the Court. On 6 September 2021, the Verkhovna Rada Human Rights Commissioner (Ombudsperson), raised concerns about the constitutionality of the law and urged the Verkhovna Rada to ask for a Venice Commission opinion before adopting the law in its final reading. In response, on 13 September 2021, the then Speaker of the Verkhovna Rada, Mr Dmytro Razumkov, sent the draft law to the Venice Commission for opinion. On 23 September, following a failed assassination attempt on an aide to President Zelensky the day before, the Verkhovna Rada adopted the law in a final reading without waiting for the Venice Commission's opinion. The Verkhovna Rada was urged to address any concerns and recommendations raised in the forthcoming opinion of the Venice Commission on this law.

97. Media is a sensitive issue in Ukraine and is closely linked to the ongoing information war with the Russian Federation in the context of its aggression in Eastern Ukraine and illegal annexation of Crimea. This is compounded by shortcomings in the legal framework for the media, especially with regard to how to address misinformation, fake news and propaganda in the context of this information war. A law on sanctions has been adopted. On the basis of this law a number of television channels that were used for misinformation and propaganda for the Russian Federation were closed by the National Security and Defence Council. This most prominently concerned 3 stations owned by the controversial Ukrainian oligarch and Opposition Bloc leader Viktor Medvedchuk. While the closure of these channels is widely considered by the Ukrainian population to be warranted, questions remain about the legal means used to do so, in particular the lack of oversight by the Courts over these decisions. On 15 July and 26 August Mr Medvedchuk filed complaints with the European Court of Human Rights against the legal actions taken against him by the Ukrainian authorities, including the closure of his television stations.

98. While co-operation with the authorities in the framework of the Council of Europe Platform to promote the protection of journalism and safety of journalists has considerably improved - with 96% of the alerts responded to and resolved - violence against journalists continues to be recorded, especially against those investigating corruption at local and regional level, and against journalist that are seen as agents of the Russian authorities and their interests. Attacks are seldomly effectively or transparently investigated, leading to a sense of impunity for such crimes.

99. The interrelated issues of minorities and of the protection of the state language and status of minority languages in Ukraine is complex and sensitive, especially in the context of the illegal annexation of Crimea by the Russian Federation and the ongoing conflict in Eastern Ukraine. On 1 July 2021 the Verkhovna Rada adopted in a special session a law on indigenous people in Ukraine. This law, which is mostly aimed at the minority situation in Crimea, according to the Minister of Culture strictly adheres to the United Nations General Assembly (UNGA) definition of an indigenous minority, which is an ethnic minority that does not have a kinstate. According to this definition most ethnicities in Ukraine, including ethnic Ukrainians and ethnic Russians, are not considered as indigenous people of Ukraine, which raised some concerns among some of Ukraine's neighbours.

100. On 23 August 2021, Ukraine held the inaugural summit of the Crimea Platform, which was organised in a *"a consultative and coordination format with the aim of peacefully ending the Russian Federation's temporary occupation of the Autonomous Republic of Crimea and the city of Sevastopol and to restore control of Ukraine over this territory in full accordance with international law"*. The summit had a wide and high-level participation, including by the Secretary General of the Council of Europe and the President of the European Council and was widely considered to be a success by the participants.

### 2.3. Post-monitoring dialogue

#### 2.3.1. Bulgaria

101. The last post-monitoring report was debated in the Assembly in June 2019. The Assembly resolved on that occasion not to terminate the post-monitoring dialogue and invited the rapporteurs to assess, over 2020, the progress made in five specific areas of concern including high-level corruption, transparency in media ownership, human rights of minorities, hate speech and violence against women. The pandemic crisis has prevented the rapporteurs from going to Bulgaria (a visit scheduled for the beginning of April 2020 had to be cancelled at the last moment) and made it impossible to prepare a report as planned.

102. Since July 2020, Bulgaria has been confronted with a major political crisis triggered by corruption scandals, a lack of respect for the rule of law and ensuing street demonstrations. After attempts by the ruling majority to appease the crisis by reorganising the government and calling elections for a Grand National

Assembly with a view to revising the Constitution, on 14 January 2021 the parliamentary elections were called by President Rumen Radev for 4 April 2021. They were observed jointly by the OSCE/ODIHR, the OSCE PA and the PACE. The observers concluded that the elections were competitive and efficiently run despite the difficult circumstances caused by the Covid-19 pandemic, and fundamental freedoms were respected. The voting day in the polling stations observed was assessed as transparent and well organised. The turnout was 50,6% and six parties and coalitions passed the 4% threshold. The Citizens for European Development of Bulgaria (GERB) won 75 seats (25.8% of the votes) and the Bulgarian Socialist Party (the second force in the previous parliament) got 43 seats (14,7%). The major surprise was created by a newly established party named There is such a people (ITN) which won 51 seats (17,4%), and two new coalitions, Democratic Bulgaria Coalition (DB)-27 seats (9,3%) and Coalition Stand up! Get out! (IMV) – 14 seats (4,6%). Their results well illustrated voters' wish for change.

103. The elected parties failed to form a new government. Therefore, on 11 May 2021, President Radev signed a decree to dissolve the National Assembly with effect from 12 May and to hold parliamentary elections on 11 July 2021. He appointed a caretaker government.

104. The early parliamentary elections on 11 July were again observed by joint observer missions. They concluded that they were competitive and fundamental freedoms were generally respected. The voting process in polling stations was well organised. The election campaign at the national level predominantly focused on fighting corruption, post-pandemic economic recovery, judicial reform and unemployment. It was dominated by mutual accusations over corruption and wrongdoings between provisional government officials and GERB representatives. Voter turnout was 42,1%. Again, six parties and coalitions passed the 4% threshold: There is such a people (ITN) – 65 seats (24,08%); Citizens for European Development of Bulgaria (GERB) – 63 seats (23.51%) Bulgarian Socialist Party (BSP) – 36 seats (13,39%); Democratic Bulgaria coalition (DB) – 34 seats (12,64%); Movement for Rights and Freedoms (MRF) – 29 seats (10,71%); Coalition Stand Up! Get out!" (IMV) –13 seats (5,01%).

105. Yet again the parties were unable to form a government and new anticipated parliamentary elections (the third parliamentary elections in 2021) were called for on 14 November 2021 – the day of presidential elections.

106. According to the PACE observation mission, the presidential and early parliamentary elections held on 14 November were competitive and fundamental freedoms were respected. In a runoff incumbent President Ruman Radev gathered 66.72% of the vote, and a new anti-corruption party, We continue the change (PP) won 67 seats (25,32%) falling short of a parliamentary majority (121 seats are needed). GERB-SDS led by Mr Borisov won 59 seats (22,44%), National turnout in the parliamentary and first presidential round fell to 33% which is a matter of concern. On 6 December, the PP's leader, Kiril Petkov announced that a coalition government with three other parties could be established soon putting an end to a political deadlock.

### 2.3.2. Montenegro

107. In April 2021, on the basis of the report prepared by the co-rapporteurs, the Assembly adopted [Resolution 2374 \(2021\)](#) on post-monitoring dialogue with Montenegro. Following their proposal, it considered that in the four areas it had identified as "priorities" in its [Resolution 2030 \(2015\)](#), namely the independence of the judiciary, trust in the electoral process, the situation of the media and the fight against corruption, progress had not been sufficiently tangible to bring the dialogue to an end.

108. This process is therefore continuing and it is in this context that the co-rapporteurs have actively monitored the developments concerning the amendment of the Law on State Prosecution Service and the Law on State Prosecution for Organised Crime and Corruption. In May, in an interview with the leading Montenegrin daily newspaper, *Vijesti*, they explained in detail the various recommendations made by the Venice Commission at the request of the Montenegrin authorities on the different draft texts<sup>27</sup>. They also held two meetings with the Speaker of Parliament and, in addition, with the Chairperson of the Montenegrin delegation, prior to the final adoption of the Law on State Prosecution Service. Finally, they expressed their position on the amendments passed by parliament in a statement issued the day after their promulgation, on 7 June 2021.<sup>28</sup> In this statement, they congratulated the Montenegrin authorities for the real improvements observed throughout the legislative process, particularly in terms of inclusive consultations. They also welcomed substantive progress, in particular the renunciation of the *de facto* abolition of the Special Prosecutor's Office and the introduction of a proposal for the nomination by NGOs of a candidate for the Prosecutors' Council, the central governance body of the prosecution service in Montenegro. However, they drew the attention of the

<sup>27</sup> [CDL-AD\(2021\)012](#) and [CDL-AD\(2021\)030](#).

<sup>28</sup> [Statement](#) by the co-rapporteurs (07.06.2021).

Montenegrin authorities to the incompleteness of the progress made with regard to the new composition of the Prosecutors' Council. In particular, they pointed out that the renewal of all members of the Prosecutors' Council and the appointment of the five new lay members by the Parliament by a simple majority constituted a risk for the independence of the Council,<sup>29</sup> as noted by the Venice Commission. They invited our Montenegrin colleagues to ensure that the new lay members of the Council of Prosecutors were appointed on the basis of their expertise and were perceived as politically neutral. Since the entry into force of the amendments to the Law on State Prosecution Service, the four members from the prosecutor's corps have been appointed by their peers and the Minister of Justice also appointed one member in August. The appointment of the five lay members was delayed, *inter alia*, by the issue of the cabinet reshuffle following the incidents in the former royal capital, Cetinje.

109. On 5 September violent but limited clashes took place between the police and groups claiming to be "patriotic", publicly supported by the Democratic Party of Socialists of Montenegro (PDS), on the occasion of the enthronement of the new Metropolitan for Montenegro and the Littoral of the Serbian Orthodox Church (SOE). Opponents of the enthronement claimed that it was a provocation by the SOE, whose patriarchate is located in Belgrade, as Cetinje symbolises the historical efforts of Montenegrins to create their own identity, distinct from a Serbian one. Following the violence, the action of the Minister of the Interior, a member of the United Action for Reform (UAR) party, was criticised and, on this occasion, the Democratic Front (DF), the largest component of the current majority, reiterated its demand for a ministerial reshuffle in order to put an end to the government of experts imposed by the Prime Minister in December 2020 and to have its leaders appointed to ministerial posts. This request was, for the first time, supported by the second largest party, the Democrats (DCG). On 21 October the Prime Minister outlined the principles that would guide the upcoming cabinet reshuffle and stressed the importance for the three current majority parties, FD, DCG and URA, to respect the terms of the government agreement signed by their representatives in September 2020. This agreement guaranteed in particular that Montenegro would continue to recognise Kosovo's<sup>30</sup> independence, that the Montenegrin national symbols and anthem would be preserved, and that Montenegro would respect its international commitments, in particular its NATO membership and its pro-European orientation. As the Prime Minister had referred to the appointment of the five lay members of the Prosecutors' Council as a priority item on the parliamentary agenda, apparently even before the vote on the cabinet reshuffle, it was important to recall that this appointment should not be subject to any "political" distribution among the different components of the parliamentary majority, but should be based on their competences, as the co-rapporteurs and the Venice Commission have indicated.

### 2.3.3. North Macedonia

110. After the July 2020 early parliamentary elections and the appointment of a new delegation to the PACE, PACE rapporteurs Ms Christoffersen (Norway, SOC)<sup>31</sup> and Mr Csenger-Zalàn (Hungary, EPP/CD) followed the implementation of [Resolution 2304 \(2019\)](#) on the Post-monitoring dialogue with North Macedonia and the developments in the country which has remained polarised along political and ethnic lines.

111. The domestic agenda remained dominated by the lack of progress of EU accession negotiations despite their opening in March 2020, after the signing of the 2018 Prespa Agreement which solved the name issue with Greece. Since then, the adoption of the Negotiating Framework by the EU Council has been blocked by Bulgaria, despite the signing of a bilateral Friendship Treaty in 2017. This issue was central in Deputy Prime Minister for European Affairs of North Macedonia Mr Dimitrov's address to the Parliamentary Assembly on 30 September 2021.

112. In the meantime, the Government adopted, on 10 March 2021, the "Europe at Home" Agenda based on the commitments arising from the 2004 EU Stabilization and Association Agreement and EC recommendations, which also aimed at implementing the recommendations of, *inter alia*, the Council of Europe, the Venice Commission and GRECO when dealing with election reforms, fighting against corruption and organised crime and issues concerning human rights, the judiciary, media, public administration, etc.

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<sup>29</sup> The new Council of Prosecutors has 11 members: its President, the Prosecutor General, four prosecutors appointed by their peers, five lay members appointed simultaneously by Parliament by a simple majority and one member appointed by the Minister of Justice.

<sup>30</sup> All references to Kosovo, whether to the territory, institutions or population shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo

<sup>31</sup> In view of the exceptional conditions linked to the pandemic crisis that prevented the organisation of a fact-finding visit to the country, the Bureau decided, on 18 March 2021, to extend the mandate of co-rapporteur Ms Christoffersen until 25 December 2021.

113. In March 2021 the Government also adopted, “Action Plan 21” to fight corruption. GRECO issued, a month later, its compliance report (Fifth evaluation round)<sup>32</sup>: it welcomed the adoption of a new Code of Ethics for top executive functions, but the fact that its implementation was left in the hands of a Deputy Prime Minister was however not compatible with GRECO’s practice. The new Code of Ethics for the police force and the external supervision of the police force were positive developments; the operational independence of the police needed however to be brought into line with the Council of Europe’s standards for democratic policing and its depoliticisation ensured in law and in practice.

114. In addition, the many allegations of physical ill-treatment of criminal suspects by police officers highlighted by the CPT in May 2021<sup>33</sup> need to be urgently addressed by the authorities. The CPT was also highly critical of the persistent failure of the authorities to address certain fundamental shortcomings of the prison system, including poor quality of healthcare provided to inmates, high levels of inter-prisoner violence, squalid material conditions and endemic corruption of staff. Measures adopted since then by the authorities (for example closure of some problematic wings notably at Idrizovo Prison) should be noted here.

115. The Parliamentary Assembly had been very concerned by the storming of the parliament on 27 April 2017, which had severely injured dozens of MPs, parliament officials and journalists and caused much damage to the building). On 27 July 2021, a first-instance court in Skopje convicted the organisers of this storming, including the former Speaker of the parliament Mr Veljanoski and the former ministers of transport and communications and of education and science, to a 6-year prison sentence each and placed them under house arrest.

116. A positive development was the census carried out in September 2021, which was long awaited by PACE (the last one was conducted in 2001). This census happened 20 years after the signing of the 2001 Ohrid Framework Agreement, which had ended a civil conflict. In 2002 this Agreement enabled the adoption of sweeping constitutional changes empowering ethnic communities in local and national politics, the public sector and education in areas where they make up more than 20 % of the population, based on the results of the census.

117. Finally, there were meaningful political developments in the autumn while the country remains polarised: at the local elections held on 17 and 31 October 2021, the opposition party VMRO-DPMNE won 42 out of the 81 mayoral seats in the country, including the capital Skopje. As a result, Prime Minister Mr Zaev (whose party SDSM enjoys a tight majority in parliament) announced that he would tender his resignation, prompting the Albanian BESA party to join the opposition. However, a no-confidence motion tabled by the opposition was not put to the vote due to lack of quorum (one of the BESA MPs having changed his mind after the Prime Minister renounced his resignation). Given these unexpected political developments, the rapporteurs had to postpone their visit to North Macedonia in December 2021.

#### 2.4. Periodic reviews

118. Since 2015 the Monitoring Committee has been preparing, , regular periodic reviews on all Council of Europe Member States not under a full monitoring procedure or engaged in a post-monitoring dialogue, in line with the new methodology adopted by the Assembly in 2018.<sup>34</sup>

119. In 2021 the Committee focused on the preparation of the periodic review reports on Hungary, Malta and Romania which had started with the appointment of PACE rapporteurs in May 2020 and the validation of the scope of their reports by the Committee in December 2020. In March 2021, the Committee organised an exchange of view with Mr Nicolaas Bel, Deputy Head of the Justice Policy and Rule of Law Unit in the European Commission’s Directorate-General for Justice and Consumers to discuss the newly launched “EC rule of law reports”, with a particular focus on Hungary, Malta and Romania.

<sup>32</sup> Compliance report on Preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies (Fifth Evaluation Round) [GrecoRC5\(2021\)2](#), adopted by GRECO at its 87th Plenary Meeting (Strasbourg, 22-25 March 2021) and published on 27 April 2021.

<sup>33</sup> [CPT/Inf \(2021\)8](#), Report to the authorities of North Macedonia on the visit to North Macedonia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 2 to 10 December 2019, published on 11 May 2021 and the Government’s response [CPT/Inf \(2021\)9](#).

<sup>34</sup> See PACE [Resolution 2261 \(2019\)](#), para. 14 referring to the committee’s decision “to change the format of periodic reviews with a view to submitting them for debate independently from the committee’s progress report, accompanied by specific resolutions for each country, and replacing the current method of selection based on alphabetical order by a selection on substantive grounds, while maintaining the objective of producing, over time, periodic reviews on all member States.”

### 2.4.1. Hungary

120. Concerning Hungary, the rapporteurs Mr George Papandreou (Greece, SOC) and Mr František Kopřiva (Czech Republic, ALDE) and the Committee had a series of meetings with the delegation and media organisations and civil society representatives. The Commissioner for Human Rights Dunja Mijatović had raised several issues in relation to the adoption of a legislative and constitutional package by the Hungarian Parliament in December 2020 and its compliance with Council of Europe standards. The Committee therefore requested, in February 2021, an opinion of the Venice Commission on this package. The Venice Commission adopted one opinion on the constitutional amendments<sup>35</sup> in July 2021 and three opinions in October 2021 on amendments covering the judiciary<sup>36</sup>, national human rights structures<sup>37</sup> and the electoral legislation.<sup>38</sup> The Committee noted that the electoral reform now required political parties to nominate candidates in 70% of the constituencies at the next parliamentary elections. The Venice Commission said the main effect of this reform, would be in favour of the incumbents, and would aggravate the level of political polarisation. As a general remark, the Venice Commission also regretted that the constitutional and legal package was adopted during a state of emergency, apparently without public consultation, in a swift procedure that was not in line with the Venice Commission recommendations and guidelines, and reiterated the concerns expressed in its 2011 opinions regarding the adoption of cardinal laws. The Committee was also informed of persistent deficiencies with respect to the independence of the judicial system, journalistic and media freedoms and fight against corruption. At the same time, the Committee welcomed the repeal of the 2017 Law on the transparency of organisations receiving support from abroad (so-called “Lex Soros”) on 22 April 2021 (which had been widely criticised, including on PACE Resolution [Resolution 2203 \(2018\)](#)) and some progress noted by MONEYVAL on its legislation on politically exposed persons.

121. The rapporteurs completed their draft preliminary report focusing on the functioning of democratic institutions, in particular on good governance issues, the independence of the judiciary and media situation. It was submitted to the Monitoring Committee on 13 September 2021 and sent to the Hungarian authorities for comments (within six weeks). However, a series of events impacted the finalisation of the report (i.e. the Hungarian Chairmanship of the Council of Europe Committee of Ministers from May to November 2021, delayed submission of the comments of the Hungarian authorities to the preliminary draft report, resignation of one rapporteur on 16 November, appointment of a new one in December and upcoming parliamentary elections scheduled in April 2022). Further to the request of the Monitoring Committee the PACE Bureau approved an extension of the reference of the motion until October 2022, which would allow the rapporteurs to visit the country and finalise the report after the 2022 parliamentary elections.

### 2.4.2. Malta

122. The co-rapporteurs made a fact finding visit to Malta from 25 to 27 October 2021. In addition, they held an exchange of views with Mr Pieter Omtzigt, rapporteur for “Daphne Caruana Galizia’s assassination and the rule of law in Malta and beyond: ensuring that the whole truth emerges” on the findings in his report with regard to the system of checks and balances and justice system in Malta.

123. Malta has made a number of welcome reforms to address the shortcomings and recommendations of the Venice Commission in their opinion on the “Constitutional arrangements and separation of powers and the independence of the judiciary and law enforcement”. If fully and consistently implemented, these reforms could mark an important step forward in bringing Malta’s democratic and rule of law institutions fully in line with European norms and standards. However, additional systemic reforms are necessary to fully address the Venice Commission’s recommendations and in particular a profound reform of the Maltese parliament is necessary to ensure a proper parliamentary oversight over the executive. A full-time parliament should be established with sufficient autonomous capacity to fulfil its legislative and oversight functions. The practice of members of parliament MPs holding secondary jobs and functions in state institutions and agencies that they are supposed to oversee - with the inherent risks of conflict of interest and corruption – should be reconsidered. A list of MPs’ positions and functions that are incompatible with the position of MP should be established by law. In addition, the wide-spread use of so-called ‘persons of trust’ in the Maltese civil service, which amounts to a system of political patronage with the evident risks of conflict of interest and corruption, remains an issue of concern. The use of “persons of trust” should be limited to a small number of clearly and legally defined and regulated positions.

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<sup>35</sup> [CDL-AD\(2021\)029](#).

<sup>36</sup> [CDL-AD\(2021\)036](#).

<sup>37</sup> [CDL-AD\(2021\)034](#).

<sup>38</sup> [CDL-AD\(2021\)039](#).

124. As noted by the Independent Public Inquiry into the murder of Daphne Caruana Galizia, that was established following calls by the PACE, Malta has a culture of impunity and of tolerance for corruption and conflict of interest, which cannot be addressed by legislative changes only, but requires a change of attitude and behaviour on the part of all concerned. In this respect the rapporteurs expressed their concern about the deeply-rooted political and social polarisation, which permeates nearly all aspects of Maltese society, and endangers the functioning of its democratic institutions. This is an issue that should be addressed as a matter of priority by the Maltese authorities.

125. Malta is a frontline state with regard to irregular migration and refugees. The number of refugees and irregular migrants reaching Maltese shores is extremely high in comparison to the country's small size and population. As a result, these issues can therefore only be resolved with the solidarity and assistance of other EU member States. At the same time, conditions in the reception and detention centres for irregular migrants and refugees remain an issue of concern, despite efforts of the Maltese authorities.

#### *2.4.3. Romania*

126. Concerning Romania, the preparation of the report was delayed by the electoral campaign and the legislative elections held in Romania on 6 December 2020, the sanitary restrictions on travel which prevented the co-rapporteurs from visiting the country in the first half of 2021, and then electoral campaigns in their own countries, followed by their resignation from rapporteurship as they were not re-elected in their respective parliaments, and, last but not least, by the political crisis in Romania which began on 1 September 2021.

127. The crisis was the result of economic difficulties and controversies over the handling of the pandemic. It was triggered by disagreements over the so-called Anghel Saligny investment programme designed to develop Romanian settlements supported by one of the major coalition partners, Prime Minister Cîtu's National Liberal Party but criticised by the other, USR Plus whose ministers boycotted the government sittings. Following the dismissal of the Minister of Justice, resignation of other USR Plus ministers, a complaint to the Constitutional Court and two motions of no confidence, the Cîtu Government was dissolved on 5 October 2021.

128. Two consecutive Prime Ministers nominated by President Klaus Iohannis failed to form a government. On 25 November, a new coalition Government led by Nicolae Ciuca won the Parliament's support

129. The previous rapporteurs had identified a number of areas of concern with regard to the functioning of democratic institutions including the independence and efficiency of the judiciary, the fight against corruption, pluralism of the media, discrimination of minorities and a number of other issues raised in the report by the Council of Europe's Commissioner for Human Rights and ECRI, in particular racism, violence against women, rights of LGBT and, detention conditions.

130. The Monitoring Committee appointed new co-rapporteurs last September. Unfortunately they had to cancel their planned visit to the country at the end of November due to the considerable deterioration of the sanitary situation in Romania.

131. Given that the Committee has agreed that a physical visit is a necessary condition for the preparation of the report and taking into account a lengthy procedure (which requires time for the relevant authorities to send their comments), the Committee decided to ask the Bureau for the extension of the deadline for the preparation of the report by 6 months until October 2022. The Bureau extended the reference until October 2022.

132. I raise a more general question of references for periodic review reports limited to two years in chapter 4 of the present report.

#### *2.5. Sub-Committee on Conflicts between Council of Europe Member States*

133. Following the discussions on future activities as well as a written procedure on the basis of the proposals prepared by its Chair, the sub-committee agreed on the workplan which focused on the Transnistrian conflict settlement, the Cyprus settlement process, and the conflict between Armenia and Azerbaijan/Nagorno-Karabakh conflict. The workplan was endorsed by the Committee.

134. In the framework of the discussion on its future activities, the sub-committee agreed on the interpretation of its working methods with a view to increasing the efficiency of its work, on the basis of a non-paper which I had prepared in my capacity as Chair of the Committee.

## 2.6. The conflict in Nagorno-Karabakh

135. On 11 January 2021 at the proposal of the Russian Federation, Prime Minister Pashinyan and Presidents Putin and Aliyev signed a new Trilateral Statement, following the statement of 9-10 November 2020, which put an end to hostilities in Nagorno-Karabakh. This second statement was aimed at implementing paragraph 9 of the 9-10 November statement on the unblocking of all economic and transport links in the region. To this end, it provided for the establishment of a Tripartite Working Group headed by the Deputy Prime Ministers of the Republic of Armenia, the Russian Federation and the Republic of Azerbaijan, which was tasked with drawing up a list of the main areas of work stemming from paragraph 9 of the 9 November 2020 statement, setting rail and road communications as priorities. The Working Group has effectively started its work and has met eight times, the last time on 20 October 2021.

136. On 12 May 2021, Azerbaijani troops penetrated 3.5 kilometres into Armenian territory in two locations, one in the Syunik province and the other in the Gegharkunik province. The Azerbaijani government pointed to the lack of clear border demarcation in this area and the fact that, according to some maps dating from the Soviet era, the localities concerned were located on Azerbaijani territory. At the time of printing the report, Azerbaijani troops had not withdrawn from these localities. Despite Russian mediation and the Russian Federation's call for the acceleration of border delimitation and demarcation operations, the border areas between Armenia and Azerbaijan are now subject to incursions, capture of military personnel<sup>39</sup> etc. On 22 October 2021, at the discussions of the Valdai Club, a Russian think tank, in Sochi, President Putin said that "the most important thing to do now is to finally settle the situation at the border" and that in order to do so, the General Staff of the Russian army had "the maps that show where the border between the Soviet republics [of Armenia and Azerbaijan] was in the Soviet period".<sup>40</sup>

137. On 22 April, the Monitoring Committee issued a [statement](#) on the conflict in Nagorno-Karabakh. It recalled, inter alia, that it had closely followed both the conflict and developments since the Trilateral Statement of 9 and 10 November 2020 and that the co-rapporteurs for Armenia and Azerbaijan had made regular joint statements on developments. It welcomed the progress made towards the implementation of the Trilateral Statement, but expressed concern about reports that not all persons detained in the context of the conflict had been exchanged. It further considered that both sides should strengthen their cooperation and communication in clearing areas that needed to be demined in order to ensure the safety of civilians. It also recalled that paragraph 8 of the Trilateral Statement clearly referred to the exchange of all detained persons, without distinction as to the status of these people assigned by one of the parties. It called on Azerbaijan to ensure that all Armenian detainees are released and handed over to the Armenian authorities without delay, drawing attention to the concerns expressed by the European Court of Human Rights regarding the 188 Armenians allegedly captured by Azerbaijan. Furthermore, it considered that the establishment of an independent international mission responsible for investigating the conflict and allegations of human rights and humanitarian law violations during the recent hostilities was essential to create an environment that is conducive to reconciliation and the establishment of genuine peace. It stated that cultural heritage was important to all parties to the conflict and that the urgent implementation of the necessary mechanisms for its protection and renovation was a priority. The Committee therefore charged its Sub-Committee on Conflicts between Council of Europe Member States to explore in more detail concrete mechanisms for resolving these two issues.

138. Finally, the Committee called on both parties to constructively engage with the relevant international institutions, in particular the OSCE Minsk Group, with a view to fully implementing the Trilateral Statement, and to start the peace negotiations.

139. On 27 September 2021 the Assembly adopted [Resolution 2391 \(2021\)](#) and [Recommendation 2209 \(2021\)](#) on the "Humanitarian consequences of the conflict between Armenia and Azerbaijan / Nagorno-Karabakh conflict", the content of which fully supports the positions expressed by the Monitoring Committee on 22 April 2021.

## 4. Some thoughts on how to improve the Monitoring Committee's working methods for greater efficiency and impact

140. The Monitoring Committee and its rapporteurs have continued their activities in 2021 despite challenges and restrictions resulting from the Covid-19 pandemic which are particularly harmful for this Committee. Indeed, the Monitoring rapporteurs rely, in the framework of political dialogue foreseen by the monitoring

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<sup>39</sup> OSCE Minsk Group Co-Chairmen's [statement](#) of 28 May 2021, noting, inter alia, the detention of six Armenian soldiers on 27 May.

<sup>40</sup> Valdai Club, [transcript of the plenary session of the 18<sup>th</sup> annual meeting](#), 22 October 2021.

procedure, to a much larger extent on direct contacts than rapporteurs from other Committees. While video conferences with the participation of different stakeholders have become a useful tool for gathering information, they cannot replace in-person meetings. It is a well established practice in the Committee that Monitoring reports cannot be prepared without a fact-finding visit in the country concerned.

141. This brings me to a more general issue of the preparation of Monitoring reports. In accordance with the Rules of Procedure, the Monitoring Committee has a permanent mandate to deal with the countries under monitoring procedure *strictu sensu* as well as countries engaged in the post-monitoring dialogue. The preparation of a report on such a country does not require a special reference from the Bureau. The Committee's terms of reference oblige it to present country reports with a certain frequency which unfortunately cannot always be respected.

142. The situation is different when it comes to periodic review reports (in their current format) as foreseen by the mandate of the Committee revised in 2018. Let me recall that according to the revised rules, the Committee is seized, in accordance with Rule 26, to prepare regular periodic reviews on all Council of Europe member States that are not under a full monitoring procedure or engaged in a post-monitoring dialogue. The order and frequency of these reports is decided upon by the Committee in accordance with its internal working methods based on substantive grounds, with the objective of producing over time, periodic review reports on all member States. The Committee is currently preparing periodic review reports on six member States (France, Hungary, Malta, Netherlands, Romania and San Marino).

143. Rule 26 of the Rules of Procedure stipulates that references to Committees are valid for two years. This means that periodic monitoring reports should be prepared and adopted by the Monitoring Committee within two years from the date of reference by the Bureau, as is the case for reports in all other Assembly Committees.

144. This requirement has already proved its inadequacy for the unique monitoring procedure for the preparation of reports over the last three years of its implementation.

145. While all other Assembly Committees may have no difficulty in meeting a strict deadline, it has to be stressed that the monitoring procedure for the preparation of reports is much more cumbersome, if I may use this expression.

146. Firstly, the appointment of rapporteurs is different from the procedure applied in other Committees and directly involves the political groups which submit their candidates in accordance with the distribution agreed among them. Unfortunately, it is common that nomination by the groups are delayed for a number of reasons and some posts remain vacant for a long time. This is illustrated by the current situation as reported in section 2.1 of the current report. At the moment of drafting as many as 2 positions remain vacant and it is by no means an exceptional situation. Needless to stress that such a situation is harmful for the preparation of a report but also for the monitoring process as a whole.

147. The Monitoring Committee is the only Committee which appoints two co-rapporteurs for each report. While this is fully justified by the need for political balance and impartiality, even if, at the same time, it may contribute to – sometimes considerable - delays in the preparation of reports as internal commitments or elections in respective co-rapporteurs' countries sometimes exclude joint activities such as visits over long periods of time. In addition, the resignation of one co-rapporteur, for example due to non-re-election, can considerably affect the preparation of reports.

148. Secondly, the monitoring procedure for the preparation of reports provides for several stages which are not foreseen in other Committees. A draft report approved by the Committee is transmitted to the authorities of the country concerned for comments; the authorities have six weeks to provide them and only following the consideration of the comments can the Committee approve a final version of report and adopt a draft resolution. The whole process takes much more time than procedures in other Committees.

149. Thirdly, and most importantly, political dialogue, indispensable and crucial for the progress in the framework of the monitoring procedure, can only be conducted when there are reliable interlocutors for the country concerned.

150. Last but not least, we cannot forget that the rules introducing periodic monitoring reports in their new format have imposed a considerable new work load on the secretariat of the Committee which has not been increased. There are limits to the number of missions or hearings which can be organised in a limited period of time by a limited number of staff members and we should remain realistic.

151. In this overall context, restrictions on travel related to the pandemic, is another - albeit hopefully temporary - argument in favour of the extension of validity of references for periodic monitoring reports in the Monitoring Committee.

152. As demonstrated by our past experience over the last three years, it is difficult, and often impossible, to prepare a periodic monitoring report applying all the above mentioned criteria in the short period of two years. The Committee was already forced to request the extension of the reference for Hungary and Romania for various reasons that are beyond its responsibility. The Bureau has agreed to this reasoning and extended the reference. However, it is more than likely that the same difficulties will appear during the preparation of next periodic monitoring reports.

153. For that reason I propose to change the relevant rules with a view to extending the validity of references regarding periodic monitoring reports to up to three/four years.

154. I would also like to come back to the question of appointment of rapporteurs. The work of monitoring rapporteurs is time consuming and requires a considerable availability – and flexibility in that respect - of the rapporteurs for a country, irrespective of whether that country is under a full monitoring procedure or under periodic review. Regrettably, as during previous years, the availability of suitable candidates for vacant rapporteurs' positions, and their subsequent availability to execute their demanding tasks, continued to be a point of concern for the Committee. This was compounded by relatively high turnover of rapporteurs during the reference period in addition to limitations caused by the Covid-19 pandemic which caused delays in the preparation of a number of reports.

155. As I mentioned above, the question of the availability of rapporteurs has become more pertinent due to the increase in the number of reports as a result of the strengthening of the procedure for the periodic review of the honouring of membership obligations by all member States. As a consequence, there are currently 39 rapporteur positions in the Committee. At the same time, it should be emphasised that the increase of rapporteurs' positions allows for a better circulation of rapporteurs' positions among the political groups, which has been a long standing wish of the Committee members. In this respect it should be considered that a more frequent recourse to the circulation of rapporteur positions among the groups could help to alleviate some of the shortages of rapporteurs for vacant positions.

156. For all the reasons mentioned in this section, it will be important to address the issue of the availability of rapporteurs in a systemic and systematic manner. I will make some suggestions for further consideration by the Committee that should guide an indepth discussion on this issue in the Committee. However, the role of the political groups in addressing this issue needs to be underscored and they should be invited to make the availability for rapporteurs' positions a key criterion in the selection of their representatives in the Committee.

157. In relation to the previous point I should also raise the issue of gender representativity. Currently 8 out of 39 rapporteurs are women and 20 out of 82 members in the Committee are women<sup>41</sup>. This clearly underscores the need for a more balanced gender representation in the nominations by the groups both for Committee membership as well as rapporteur positions.

158. It has been suggested to reduce the overall number of rapporteurs' positions by appointing only one rapporteur for the periodic review reports. However, after careful consideration I have decided against this.

<sup>41</sup> Gender representativity in the Monitoring Committee.

	COMPOSITION		RAPPORTEURS		FULL MONITORING REPORTS		POST-MONITORING DIALOGUE REPORTS		PERIODIC REVIEW REPORTS	
	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women
PPE/DC	16	9	8	4	3	3	3	0	2	1
SOC	17	7	10	3	7	1	1	1	2	1
ALDE	10	4	6	1	2	0	1	0	3	1
EC/DA	13	0	4	0	4	0	0	0	0	0
UEL	6	0	3	0	1	0	0	0	2	0
<b>TOTAL</b>	<b>62</b>	<b>20</b>	<b>31</b>	<b>8</b>	<b>17</b>	<b>4</b>	<b>5</b>	<b>1</b>	<b>9</b>	<b>3</b>

The principle of appointing two rapporteurs from two different political groups has been a key mechanism to ensuring the impartiality and objectivity of the monitoring reports and in turn their acceptance by the countries concerned. In addition, it would go against the efforts of the Committee to harmonise the monitoring and periodic review procedures.

159. On several occasions the Committee has been confronted with the situation where it had to replace active and committed rapporteurs for a given country under a full monitoring procedure or post-monitoring dialogue, solely for the fact that their single five-year term had ended. At the same time, it would be desirable if the Committee had more opportunities to replace rapporteurs that structurally do not have the time available to execute their rapporteur tasks. The issue of the terms of appointment for rapporteurs for countries under a full monitoring procedure or engaged in a post-monitoring dialogue should be revisited and the possibility of appointing rapporteurs for multiple, but shorter terms should be considered. Instead of a single five-year term, the possibility of 3 three-year terms or 2 four-year terms could be considered. This would allow both the possibility of recall as well as the retention of available and well performing rapporteurs for a given country. In addition this would allow for the reduction of the period before a member can be re-appointed for the same country.