

AS/Mon/Inf(2017)03rev

26 April 2017

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

The monitoring procedure of the Parliamentary Assembly

I. History

The Parliamentary Assembly was undoubtedly the precursor in the follow-up of obligations and commitments entered into by Member States upon their accession to the Council of Europe. In 1993, the Parliamentary Assembly instructed in its Order No. 488 its Political Affairs Committee and Committee on Legal Affairs and Human Rights "to monitor closely the honouring of commitments entered into by the authorities of new member States and to report to the Bureau at regular six-monthly intervals until all undertakings have been honoured". Also, in its Order No. 485 (1993), the Assembly instructed its Committee on Legal Affairs and Human Rights "to report to it when problems arise on the situation of human rights in member States, including their compliance with judgments by the European Court of Human Rights".

In Resolution 1031 (1994), the Assembly observed "that all member States of the Council of Europe are required to respect their obligations under the Statute, the ECHR and all other Conventions to which they are parties. In addition to these obligations, the authorities of certain States which have become members since the adoption in May 1989 of Resolution 917 (1989) on a special guest status with the Parliamentary Assembly freely entered into specific commitments on issues related to the basic principles of the Council of Europe during the examination of their request for membership by the Assembly. The main commitments concerned are explicitly referred to in the relevant opinions adopted by the Assembly." In the same Resolution the Assembly warned that "persistent failure to honour commitments freely entered into will have consequences [...]. For this purpose, the Assembly could use the relevant provisions of the Council of Europe's Statute and of its own Rules of Procedure".

The Assembly has since then extended and strengthened its monitoring procedure. In April 1995, by Order No. 508 (1995)¹ on the honouring of obligations and commitments by member States of the Council of Europe, the Assembly instructed its Committee on Legal Affairs and Human Rights (for report) and its Political Affairs Committee (for opinion) to continue monitoring closely the honouring of obligations and commitments in all member States concerned, and to report directly to the Assembly.²

The above-described procedure under Order No. 508 (1995) was replaced as of 25 April 1997 by a new monitoring mechanism which is implemented by the Assembly Committee on the honouring of obligations and commitments by member States of the Council of Europe (Monitoring Committee), especially set up on that occasion. This procedure was instituted by Resolution 1115 (1997), adopted by the Assembly on 29 January 1997 and was modified by Resolutions 1431 (2005), 1515 (2006), 1698 (2009), 1710 (2010), 1936 (2013) and 2018 (2014).

¹ Text adopted by the Assembly on 26 April 1995. This order superseded Order No. 488 (1993) and Resolution 1031 (1994).

² In 1997, the Assembly closed the monitoring procedure as regards Estonia (see Resolution 1117 and Recommendation 1313) and Romania (see Resolution 1123 and Recommendation 1326) in accordance with Order No. 508 (1995).

II. Operation

Monitoring procedure of the new member States

“The Monitoring Committee is responsible for verifying the fulfilment of obligations assumed by member States under the terms of the Statute of the Council of Europe, the European Convention on Human Rights and all other Council of Europe Conventions to which they are parties, as well as the honouring of commitments entered into by the authorities of member States upon accession to the Council of Europe” (paragraph 5 of Resolution 1115 (1997) as modified by Resolutions 1431 (2005), 1515 (2006), 1698 (2009), 1710 (2010), 1936 (2013) and 2018 (2014)). Normally the monitoring procedure begins six months after the accession of a country to the Council of Europe.

Monitoring country reports are made in respect of each country separately. Two co-rapporteurs are appointed for a maximum duration of five years in respect of each member State, ensuring a strict political and regional balance. The code of conduct for co-rapporteurs, approved by the Monitoring Committee in 2001 (see Doc. 9198, Appendix H), and Resolution 1799 (2011) on the code of conduct for rapporteurs of the Parliamentary Assembly are aimed at preventing conflicts of interest and set out the rules which apply to rapporteurs of the Assembly such as, inter alia, the principle of neutrality, impartiality and objectivity, the obligation of discretion, the undertaking of availability, etc. A report includes a draft resolution in which specific proposals are made for the improvement of the situation in the country under consideration, and possibly a draft recommendation for the attention of the Committee of Ministers. The Monitoring Committee is required to submit to the Assembly at least once every three years a report on each country being monitored (country report, see paragraph 14 of Resolution 1115). Parliamentary debates on monitoring are thus held in public. However, the monitoring procedure at the committee stage remains confidential. Since 1997, the Committee has presented a large number of reports concerning different countries (see <http://assembly.coe.int>).

Procedures common to all member States

Until 1997, the opening of monitoring procedure for new member States required a reasoned written request addressed to the Bureau. Since the inauguration of the Committee, all the opinions on accession stipulate that the States concerned are obliged to co-operate fully with the application of Resolution 1115 (1997) setting up the Committee and the monitoring procedure, thus putting it into operation automatically. However, it should be recalled that all member States could become subject to a monitoring procedure.

Thus, according to paragraph 3 of the Committee’s mandate:

“An application to initiate a monitoring procedure may originate from:

- i. the general committees of the Assembly by reasoned written application to the Bureau;*
- ii. the Monitoring Committee by a written opinion prepared by two co-rapporteurs containing a draft decision to open a monitoring procedure;*
- iii. not less than 20 members of the Assembly representing at least six national delegations and two political groups, through the tabling of a motion for a resolution or recommendation;*
- iv. the Bureau of the Assembly.”*

Since the inauguration of the Committee in April 1997, applications for opening a monitoring procedure have been tabled regarding Greece in 1997, Latvia in 1997, Austria in 2000, Liechtenstein in 2003, the United Kingdom in 2006, Italy in 2006, Hungary in 2011, and France in 2013; finally a monitoring procedure was only undertaken regarding Latvia.

Possible sanctions adopted and obligation to co-operate

According to paragraph 13 of Resolution 1115, the Assembly *“may penalise persistent failure to honour obligations and commitments accepted, and lack of co-operation in its monitoring process, by adopting a resolution and/or a recommendation, by the non-ratification of the credentials of a national parliamentary delegation at the beginning of its next ordinary session or by the annulment of ratified credentials in the course of the same ordinary session in accordance with Rule 6 (now Rules 6 to 9) of the Rules of Procedure. Should the member state continue not to respect its commitments, the Assembly may address a recommendation to the Committee of Ministers requesting it to take the appropriate action in accordance with Articles 7 and 8 of the Statute of the Council of Europe”*:

“Article 7: Any Member of the Council of Europe may withdraw by formally notifying the Secretary General of its intention to do so. Such withdrawal shall take effect at the end of the financial year in which it is notified, if the notification is given during the first nine months of that financial year. If the notification is given in the last three months of the financial year, it shall take effect at the end of the next financial year.

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

Also the Rules of Procedure of the Assembly explicitly refer to the "*persistent failure to honour obligations and commitments and [to the] lack of co-operation with the Assembly's monitoring procedure*" as "*substantial grounds*" for which the unratified credentials of a national delegation may be challenged (Rule 8.). Moreover, the unratified credentials may be challenged by a report of the Monitoring Committee.

Post-monitoring dialogue

Since 1997, when closing a monitoring procedure, the Parliamentary Assembly decided to pursue dialogue with the national authorities on certain issues mentioned in the resolutions adopted, allowing itself the choice of re-opening a procedure if further clarification or enhanced co-operation seemed desirable. The Assembly thus instructed its Monitoring Committee to carry out a post-monitoring dialogue with all the States concerned.³ Normally, the post-monitoring dialogue commences one year after the closing of the monitoring procedure (see appendix). Until 2009, the Chairperson or a Vice-Chairperson of the Committee undertook the post-monitoring dialogue. Since 2010, following the same criteria as for the appointment of monitoring co-rapporteurs, the Committee nominated only one rapporteur for each country subject to post-monitoring dialogue. However, since Resolution 218 (2014) was adopted, the Committee now appoints two co-rapporteurs for each member State engaged in the post-monitoring dialogue. The Committee should present a report on each country under post-monitoring dialogue at least once every three years.

Following the report on the functioning of democratic institutions in Turkey presented by the Monitoring Committee, the Assembly adopted Resolution 2156 on 25 April 2017 and decided to reopen the monitoring procedure in respect of Turkey.

Functioning of democratic institutions in Council of Europe member states

Article 7 of the terms of reference of the Monitoring Committee stipulates that the “Monitoring Committee shall examine questions concerning the functioning of democratic institutions in Council of Europe member states, taking account of their statutory and convention-based obligations, in accordance with Rule 26 of the Rules of Procedure. Paragraph 11 of Resolution 1115 (1997) shall apply accordingly.”

Within this framework, on 27 May 2016 the Bureau of the Assembly made the Monitoring Committee responsible for preparing a report on the functioning of democratic institutions in Poland. This report is being drawn up.

Annual progress report and periodic review reports of countries not under the monitoring procedure *stricto sensu* or engaged in a post-monitoring dialogue

The Monitoring Committee reports once a year to the Assembly on general progress of the monitoring procedures by submitting its progress report (see paragraph 14 of Resolution 1115). Since 1998, the Committee presented 18 progress reports.⁴

In addition, in order to ensure compliance with the obligations entered into by member States which are not subject to specific monitoring procedures, the Committee carries out periodic overviews of groups of

³ See the progress report of the Bureau of the Assembly (Doc. 8689) adopted by the Assembly on 3 April 2000.

⁴ See Doc. 8057, Resolution 1155 (1998) and Recommendation 1366 (1998); Doc. 8359; Doc. 8734; Doc. 9198, Resolution 1260 and Recommendation 1536 (2001); Doc. 9651; Doc. 10250 and Resolution 1412 (2004); Doc. 10541; Doc. 10960 + Addendum and Resolution 1515 (2006); Doc. 11214 + Addendum and Resolution 1548 (2007); Doc. 11628 + Addendum, Resolution 1619 (2008) and Recommendation 1841 (2008); Doc. 11941 + Addendum and Resolution 1676 (2009); Doc. 12275 + Addendum and Resolution 1747 (2010); Doc. 12634 + Addendum and Resolution 1827 (2011); Doc. 12954 and Resolution 1895 (2012) ; Doc. 13304 and Resolution 1953 (2013); Doc. 13595 and Resolution 2018 (2014); Doc. 13868 Part 1, Part 2, Part 3, Part 4, Part 5 and Resolution 2078 (2015); Doc. 14213 Part 1, Part 2, Part 3, Part 4, Part 5, Part 6, Part 7 and Resolution 2149 (2017).

countries, on a country-by-country basis, in accordance with its internal working methods. Furthermore, as a complementary measure to the country-by-country approach, the Committee may also carry out issue-based, cross-country monitoring in close co-operation with the relevant Assembly committees, in accordance with its internal working methods (see paragraph 21.4 of Resolution 2018 (2014) or paragraphs 8 and 9 of the terms of reference of the Monitoring Committee).

State of procedures

To date:

- ten States are subject to monitoring procedure: Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, the Republic of Moldova, the Russian Federation, Serbia, Turkey and Ukraine;
- three States are subject to post-monitoring dialogue: Bulgaria, Montenegro and “the former Yugoslav Republic of Macedonia”.

Appendix

Closure of the monitoring procedure

Following reports presented by the Monitoring Committee, the Assembly closed the monitoring procedure:

- in 1997 on the Czech Republic (Recommendation 1338) and on Lithuania (Recommendation 1339);
- in 1999 on the Slovak Republic (Resolution 1196 and Recommendation 1419);
- in 2000 on Bulgaria (Resolution 1211 and Recommendation 1442), on “the former Yugoslav Republic of Macedonia” (Resolution 1213 and Recommendation 1453) and on Croatia (Resolution 1223 and Recommendation 1473);
- in 2001 on Latvia (Resolution 1236 and Recommendation 1490);
- in 2004 on Turkey (Resolution 1380 and Recommendation 1662);
- in 2009 on Monaco (Resolution 1690);
- in 2015 on Montenegro (Resolution 2030).

Setting up a post-monitoring dialogue

The Monitoring Committee started post-monitoring dialogue:

- in 2000 with Estonia, Lithuania, Romania, the Slovak Republic and the Czech Republic;
- in 2001 with Bulgaria, Croatia and “the former Yugoslav Republic of Macedonia”;
- in 2002 with Latvia;
- in 2005 with Turkey;
- in 2010 with Monaco;
- in 2015 with Montenegro

Closure of the post-monitoring dialogue

The Monitoring Committee, having been satisfied, recommended to the Bureau of the Assembly to close the post-monitoring dialogue:

- in January 2001 with Estonia;
- in January 2002 with Lithuania;
- in May 2002 with Romania;
- in September 2003 with Croatia;
- in October 2004 with the Czech Republic;
- in December 2005 with the Slovak Republic and Latvia.

In April 2015, following the report presented by the Monitoring Committee, the Assembly ended the post-monitoring dialogue with Monaco (Resolution 2052).

Reopening of the monitoring procedure

In April 2017, following the report presented by the Monitoring Committee, the Assembly decided to reopen the monitoring procedure in respect of Turkey (Resolution 2156).