



Provisional edition

## The progress of the Assembly's monitoring procedure (June 2010 – May 2011)

Resolution 1827 (2011)<sup>1</sup>

1. The Parliamentary Assembly acknowledges the work carried out by its Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) in accompanying the ten countries currently under monitoring (Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Republic of Moldova, Montenegro, Russian Federation, Serbia and Ukraine) and the four countries engaged in a post-monitoring dialogue (Bulgaria, Monaco, "the former Yugoslav Republic of Macedonia" and Turkey) in their efforts to ensure full respect for democracy, the rule of law and protection of human rights.
2. During the reporting period (June 2010 – May 2011), the committee has produced a full monitoring report on Georgia and assessments of the functioning of democratic institutions in Azerbaijan and Ukraine. The respective rapporteurs carried out visits to Armenia, Azerbaijan, Georgia, Republic of Moldova, Monaco, Montenegro, the Russian Federation, Serbia, Turkey and Ukraine, and submitted information notes on their findings to the committee for discussion.
3. Moreover, in accordance with the practice established since 2006, the committee has prepared a periodic report on the third (and final) group of 11 Council of Europe member states among those members which are not subject to a monitoring procedure *stricto sensu* or involved in a post-monitoring dialogue, based on the findings of other Council of Europe monitoring mechanisms, thus completing two full cycles of reports for each country in this category.
4. The Assembly is satisfied with the way that the committee has decided to pursue its work on the consequences of the war between Georgia and Russia. Furthermore, it notes the follow-up given by the committee to the Bureau of the Assembly's request for a written opinion on the motion for a resolution on the "Serious setbacks in the fields of the rule of law and human rights in Hungary".
5. During the reporting period, the committee has been engaged in the implementation of a number of procedural modifications regarding the term of office of co-rapporteurs on monitoring, and its composition following the adoption of Resolutions 1699 (2009) and 1710 (2010). In particular, it proceeded with an important renewal of rapporteurships, which resulted, *inter alia*, in an increased percentage of women (approximately 30%). While this should be considered only as a first step, the committee should nonetheless be commended for its efforts to comply with the Assembly's gender equality policy. This could serve as a good example for other parliamentary bodies, both in the Assembly and in those national parliaments with a low percentage of women.
6. Furthermore, in view of the forthcoming 15th anniversary of the establishment of the committee, and in the context of the ongoing debate on the reform of the Assembly, the committee has initiated a discussion on possible ways and means of rendering the monitoring procedure more effective, and of ensuring improved compliance of all its member states with their statutory obligations.

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<sup>1</sup> *Assembly debate* on 24 June 2011 (27th Sitting) (see Doc. 12634, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), rapporteur: Mr Marty). *Text adopted by the Assembly* on 24 June 2011 (27th Sitting).

7. The Assembly is concerned that the two-year deadline for the presentation of a report for each country under monitoring has not been systematically respected. In one case, the Russian Federation, a period of six years has elapsed since the last report was debated in the Assembly.

8. Furthermore, in some countries, quasi-permanent political crises have hindered the proper evaluation of the progress achieved: full monitoring reports had to be replaced on a number of occasions by reports on the functioning of democratic institutions, which were designed to enable the Assembly to react quickly to political developments of concern.

9. Free and fair elections constitute a precondition for democracy. Regrettably, in a number of countries under monitoring procedure, serious shortcomings of the electoral process continue to be observed. The legal framework in some countries still does not fully comply with Council of Europe standards, and insufficient political pluralism, unfair electoral campaigns, violation of the right to freedom of expression and assembly, as well as shortcomings during the registration of candidates or the vote, do not always provide for an inclusive political environment.

10. Electoral reform is under way in Armenia, Georgia and Montenegro. In Bosnia and Herzegovina there is an urgent need to remove ethnicity-based limitations on the right to stand for elections. The Albanian authorities have been invited by the Assembly to improve the legislative framework and enhance the capabilities of the electoral administration in a number of areas. Azerbaijan has not addressed all outstanding concerns expressed by the European Commission for Democracy through Law (Venice Commission) as regards its electoral code. The recent parliamentary elections held in November 2010 revealed that some of the conditions necessary for genuinely competitive elections were still lacking. In the Russian Federation, a number of amendments to the electoral code were adopted in 2009-2010. However, limited political pluralism and a restrictive political environment remain serious matters of concern and a number of issues, such as restrictions on party registrations or the high threshold, still need to be addressed. The inconsistencies in the legal framework for elections in Ukraine, and its manipulation by all contestants, underscore the need for a unified election code, as has been repeatedly recommended by the Assembly. In "the former Yugoslav Republic of Macedonia", the electoral code was amended in April 2011, with all opposition parties boycotting the vote on the amendments, only two months before the elections foreseen for June 2011. Electoral legislation must be further improved in the Republic of Moldova, in particular as regards the access to the electoral process of Moldovan citizens residing abroad and the introduction of electronic electoral register.

11. Shortcomings in the electoral process have as an immediate consequence weak presence or even absence of any real opposition in the parliament, and, as a result, the lack of parliamentary dialogue with the opposition. Regrettably, in a number of countries under monitoring procedure, parliamentary representation is monopolised by a limited number of political forces. Furthermore, the absence of a parliamentary opposition is often accompanied by a restrictive climate for the activities of the extra-parliamentary opposition, including violations of basic freedoms, such as freedom of assembly, freedom of expression or free press.

12. In Armenia, Azerbaijan and the Russian Federation, some important opposition forces remain outside parliament, and no political dialogue with extra-parliamentary opposition has been initiated. In Georgia, efforts made by the authorities have resulted in the establishment of a dialogue between the government and a significant part of the opposition. In Albania, the ruling party and the opposition's inability to co-operate, following the parliamentary elections of June 2009, triggered an ongoing crisis and led to the tragic events of January 2011. In Bosnia and Herzegovina, the inability of the main political parties to reach a consensus triggered a serious, political crisis, with no government formed at state level since the October 2010 elections. In the Republic of Moldova the lack of consensus between the opposition and the majority coalition has led to an institutional deadlock over the election by parliament of the President of the country.

13. On the other hand, the abuse by opposition parties of boycott strategies, for example in Albania, or their refusal to participate in elections, does not foster the democratic process.

14. The inability of some parliaments to serve as a platform for political dialogue is directly linked to another persisting concern in some countries under a monitoring procedure, namely constitutional problems which are often at the same time the origin and the result of the lack of the representativity of elected bodies. The main symptoms of these problems are the weakness of parliament vis-à-vis executive authorities, the lack of independence of the judiciary and, more generally, an unsatisfactory system of checks and balances.

15. Parliamentary oversight over the activities of the executive and the strengthening of the capacity of parliament are still needed in Armenia, Azerbaijan, Republic of Moldova, Montenegro, the Russian Federation, Serbia and Ukraine.

16. As regards the honouring of statutory obligations by the countries which are not subject to the monitoring procedure *stricto sensu*, the Assembly refers to the findings of relevant (selected) Council of Europe monitoring mechanisms. Regrettably, despite repeated calls, at the end of the second cycle of periodic reports, a number of important treaties have not been signed or ratified by the countries from this group. As a result, they are not subject to any monitoring mechanisms in some core areas.

17. Furthermore, in certain countries from this group, the monitoring mechanisms of the core conventions have given rise to some specific concerns. For example, as regards the effective implementation of judgments of the European Court of Human Rights, worrying delays have arisen in Greece, Italy, Poland and Romania. In some cases, they reveal major structural problems which lead to repetitive violations of the European Convention on Human Rights.

18. The Assembly consequently urges:

18.1. with respect to elections and political pluralism:

18.1.1. the Parliament of Albania to introduce an improved legislative framework for the electoral process and enhance the capabilities of the electoral administration as regards the electoral register, for the regulation of media coverage and funding of campaigns, the rules of transparency relating to media ownership, the composition of electoral commissions and lists of candidates;

18.1.2. the Parliament of Armenia to pursue the process aimed at the implementation of comprehensive electoral reform, with a view to ensuring fair and equal conditions for all candidates and increasing public confidence in the electoral process, including the appeals and complaints procedure, in time for the May 2012 elections;

18.1.3. the Parliament of Azerbaijan to revise the electoral code as amended in 2010, with a view to addressing the outstanding recommendations from the Venice Commission and the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR), in particular those relating to the composition of the election commissions, candidate eligibility and the complaints and appeals process;

18.1.4. the Parliament of Bosnia and Herzegovina to revise the Constitution and electoral legislation with a view to eliminating ethnicity-based limitations on the right to stand for office in order to comply with the standards of the European Convention on Human Rights;

18.1.5. the Parliament of Georgia to pursue its efforts to introduce a new election code based on a consensus among the different political forces in time for the next parliamentary elections;

18.1.6. the Parliament of the Republic of Moldova to further improve its electoral legislation with regard to the access to the electoral process of Moldovan citizens residing abroad and the development and introduction of an electronic electoral register;

18.1.7. the Parliament of Montenegro to pursue its work with a view to harmonising the legislation governing parliamentary elections with the new Constitution;

18.1.8. the Parliament of the Russian Federation to address outstanding concerns with regard to the electoral legislation including the elimination of restrictive provisions for party and candidate registration, and to further lower the threshold to enter parliament;

18.1.9. the Parliament of Ukraine to adopt, without further delay, a unified election code in accordance with the political commitment undertaken by the authorities, and the President to enact it;

18.2. with respect to parliamentary co-operation with the opposition:

18.2.1. the main opposition party in Albania (Socialist Party) to terminate its boycott of the work of the parliament and enter into a constructive political dialogue with other political forces;

18.2.2. the Armenian and Georgian authorities and the respective opposition forces to pursue political dialogue with the opposition;

18.2.3. the Azerbaijani and Russian authorities to establish a genuine dialogue with the opposition, including extra-parliamentary opposition;

18.2.4. the political forces of Bosnia and Herzegovina and of the Republic of Moldova to engage in a constructive dialogue with a view to overcoming the political and institutional crises in both countries;

18.3. with respect to the constitutional framework:

18.3.1. the Parliaments of Azerbaijan, the Russian Federation and Ukraine to review their constitution with a view to strengthening the role of parliamentary oversight over the activities of the executive;

18.3.2. the Parliaments of Armenia and Georgia to pursue their efforts with a view to carrying out constitutional changes;

18.3.3. while recalling the special responsibility of the international community and notably of the High Representative, the Parliament of Bosnia and Herzegovina to pursue its efforts with a view to carrying out constitutional changes;

18.3.4. while recalling the opinions of the Venice Commission, the Parliament of the Republic of Moldova to continue its efforts in order to unlock the institutional crisis linked to the non-election of the President of the Republic and to avoid repeated early parliamentary elections;

18.4. with respect to the capacities of the parliament:

18.4.1. the Parliaments of the Republic of Moldova, Montenegro and Serbia to increase their resources and strengthen their administrative capacities;

18.5. with respect to the honouring of obligations by the states which are not subject to the monitoring procedure *stricto sensu*:

18.5.1. Andorra, Belgium, Estonia, Greece, Ireland, Latvia, Lithuania, Portugal and San Marino to sign and ratify, and France, Italy, Iceland and Malta to ratify the European Charter for Regional or Minority Languages (ETS No. 148);

18.5.2. Andorra and France to sign and ratify, and Belgium, Greece, Iceland and Luxembourg to ratify the Framework Convention for the Protection of National Minorities (ETS No. 157);

18.5.3. the Czech Republic and Liechtenstein to sign and ratify, and Estonia, Finland, Germany, Greece, Hungary, Iceland, Ireland, Lithuania and Switzerland to ratify the Convention on Action against Trafficking in Human Beings (CETS No. 197);

18.5.4. Denmark, France, Lithuania, Malta, Poland, Sweden, Switzerland and the United Kingdom to sign and ratify, and Austria, Belgium, the Czech Republic, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Norway, Portugal, the Slovak Republic and Slovenia to ratify Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 177) concerning the fight against discrimination;

18.5.5. Switzerland to ratify Protocol No. 1 to the Convention for the Protection of Human Right and Fundamental Freedoms (ETS No. 9) adding the right to peaceful enjoyment of property, the right to education and the right to free elections by secret ballot to fundamental rights protected by the Convention;

18.5.6. Liechtenstein and Switzerland to sign and ratify, and Austria, the Czech Republic, Denmark, Germany, Greece, Iceland, Latvia, Luxembourg, Poland, San Marino, Spain and the United Kingdom to ratify the European Social Charter (revised) (ETS No. 163);

18.5.7. Andorra, Estonia, Germany, Iceland, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Poland, Romania, San Marino, Spain, Switzerland, and the United Kingdom to sign and ratify, and Austria, the Czech Republic, Denmark, Hungary, the Slovak Republic and Slovenia to ratify the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (ETS No. 158);

18.5.8. Liechtenstein, Portugal, San Marino and Switzerland to sign and ratify, and Andorra, Denmark, Germany, Iceland, Ireland, Italy, and Luxembourg to ratify the Civil Law Convention on Corruption (ETS No. 174);

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

18.5.10. Andorra, the Czech Republic, Denmark, Estonia, Germany, Ireland, Liechtenstein, Lithuania, Norway and Switzerland to sign and ratify, and Austria, Finland, France, Iceland, Italy, and Sweden to ratify the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198);

18.5.11. the national Parliaments of Romania, Greece, Italy and Poland to promote the progress in the implementation of judgments of the European Court of Human Rights, and to initiate legislative changes aimed at eliminating structural problems leading to repetitive violations of the European Convention on Human Rights;

18.5.12. the national parliaments of all the member states not subject to the monitoring procedure *stricto sensu* to use periodic reports as the basis for a debate on their country's state of honouring of obligations as members of the Council of Europe and to promote compliance with recommendations made by specific Council of Europe monitoring bodies.

19. The Assembly stresses the importance it attaches to the full independence of rapporteurs on monitoring of obligations and commitments in accomplishing their work and calls on the authorities of all countries concerned to refrain from any pressure to influence their judgment.

20. The Assembly reiterates its dedication to gender equality as one of the preconditions for developing democracies, and encourages the rapporteurs to take this aspect into account in a more comprehensive way in the countries under monitoring procedure.

21. The Assembly commends the remarkable work carried out by the Council of Europe monitoring mechanisms, and the *acquis* they have established over the years.

22. The Assembly resolves to pursue a more general reflection on ways to enhance the efficiency and the impact of the Assembly monitoring procedures with regard to all Council of Europe member states.