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NATIONAL PARLIAMENTS AND THE COUNCIL OF EUROPE PROMOTING THE CORE VALUES OF DEMOCRACY, HUMAN RIGHTS AND RULE OF LAW

**Background document prepared by the Secretariat
upon the instructions of the President of the Parliamentary Assembly
of the Council of Europe**

I. Added value of the Council of Europe as guardian of the core values

The Council of Europe has made a significant contribution to the field of democracy, human rights and the rule of law in Europe and beyond. Mr Pourgourides, Rapporteur of a major PACE report on the *State of Human Rights in Europe* – as a contribution to a broader debate on the *State of human rights and democracy in Europe* held by the Parliamentary Assembly in April 2007 - has shown the crucial role the Council of Europe plays in promoting its core values. Mr Pourgourides stated that the unique achievements of the Council of Europe in the field are unparalleled by any other international organisation, whether regional or global. In particular, the Council of Europe has developed and consolidated European legal standards and set up monitoring mechanisms for the implementation thereof – some of which are independent. In addition to its activities of standard-setting and monitoring, the Council of Europe has been active in the area of cooperation and assistance programmes in the field of human rights, democracy and the rule of law, notably as regards constitutional and legislative expertise and capacity building and training, as well as in the area of awareness-raising activities in the legal and human rights fields. Further, the Council of Europe's work, which is also carried out in cooperation with other international bodies, such as the European Union, the OSCE, the United Nations (and its specialised agencies) and NGOs, is making an effective contribution to the continual improvement and consolidation of legal norms in Council of Europe member states. In this sense, as stated by Mr Pourgourides, "The Council of Europe human rights machinery has proved to be a fundamental element of European democratic stability as well as an essential element of European cooperation and integration".

II. The role of national parliaments in promoting the core values: exchange of "good practices"

Recognising the important role national parliaments can play in promoting the Council of Europe's core values in member States, the PACE [Resolution 1547 \(2007\)](#) on the *State of human rights and democracy in Europe*, calls on "all member states of the Council of Europe, *and in particular their respective parliamentary bodies*, to address all the issues raised in the reports and opinions underlying this resolution" (emphasis added) and points to a variety of specific measures that parliaments can carry out. Areas of possible enhanced cooperation between national parliaments and the Council of Europe in promoting core values of the Council of Europe on the basis of the principle of subsidiarity include the following concrete examples:

i) Promoting signature and ratification of core Council of Europe conventions

Parliaments could assist in promoting signature and ratification of core Council of Europe conventions within their national parliaments.

As of June 2006, the Assembly, on the basis of periodic reports prepared by its Monitoring Committee which are annexed to its Annual Progress Report, invites each year the authorities of states which are not subject to a monitoring procedure or involved in a post-monitoring dialogue to sign and/or ratify core Council of Europe conventions and in particular those providing for a monitoring mechanism. A special responsibility is placed on national parliaments to promote ratification (see PACE [Resolution 1515 \(2006\)](#) § 14 and PACE [Resolution 1548 \(2007\)](#) § 23).

For States which are subject to a monitoring procedure or involved in a post-monitoring dialogue, the question of signature and ratification of core Council of Europe conventions is dealt with in the context of the country-specific reports on the honouring of commitments and obligations as member States of the Organisation (see below v)).

Furthermore, it might be noted that a motion *For a greater commitment of member States concerning the efficiency and implementation of the Council of Europe Treaty Law* ([doc. 11425](#)) has recently been referred for report to the Committee on Legal Affairs and Human Rights. According to this motion, national parliaments would be invited “to ask their governments to report to them once during a legislature on their policy relating to the ratification of Council of Europe conventions, as is already the case in some member states” and “to ask their committees on foreign (European) affairs and legal and human rights affairs, where appropriate, to hold discussions on the human rights and legal activities of the Council of Europe and, in particular, the implementation of the respective legal instruments”.

ii) National implementation of core Council of Europe conventions without escape clauses

Parliaments could assist in ensuring, at the national level, that their Governments do not inappropriately make use of “escape clauses” or reservations, which could dilute the protection set out in the core Council of Europe conventions.

In its [opinion 263\(2007\)](#) on the *Draft Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*, the Assembly, basing itself on a report of the PACE Committee on Legal Affairs and Human Rights, made clear its objection to “escape clauses”, noting in particular that:

“...allowing reservations which might well, in certain cases, weaken the criminal protection of children at risk of sexual exploitation and abuse, the Assembly regrets that it was necessary, in order to attain sufficiently broad agreement among government representatives, to include such “escape clauses” in the draft. It recommends that the Committee of Ministers strike out these clauses. Failing that, it recommends that all member states accede to this convention without making any reservations, and calls on national parliaments to be vigilant in this respect.” (§ 4, emphasis added).

As stated in the PACE [Recommendation 1791 \(2007\)](#) on *the State of human rights and democracy in Europe*,

“More generally, the Assembly considers that, in many cases, the effectiveness of Council of Europe conventions [...] is considerably reduced not only by failure to ratify, but also by reservations or restrictive interpretative declarations made by member states at the time of signature or ratification, or by avoiding the acceptance of optional provisions. Consequently, the Assembly calls on the Committee of Ministers to encourage member states to sign and/or ratify all the Council of Europe’s main legal instruments [...] without reservations or restrictive interpretative declarations, and to withdraw those which have been made. The Assembly urges the Committee of Ministers to undertake a major review of this subject” (§ 15).

iii) Compatibility screening of legislation and draft legislation

In [Resolution 1547](#) on the *State of human rights and democracy in Europe*, the PACE calls on member states and Parliaments in particular to “give full effect, at national level, to the rights guaranteed by the [ECHR] and other international human rights instruments, thereby making human rights a reality for people everywhere in Europe” (§ 34.5). As further pointed out by the PACE in its working document on *the Effectiveness of the ECHR at national level*, national parliaments have a crucial role in assisting the better implementation of the European Convention on Human Rights (ECHR) so as to reduce the number of applications before the Strasbourg Court. As a result national parliamentary committees can and should engage in a systematic manner in “Strasbourg proofing” of their laws and draft legislation by taking into account in a proactive manner the European standards defined in the applicable conventions, in particular the ECHR.

iv) Initiating debates on statutory and conventional obligations as Council of Europe member states and promoting fulfilment of such obligations

Parliamentarians can assist by initiating debates within their national parliaments on their country’s record with regard to the fulfilment of their statutory and conventional obligations as member states of the Council of Europe. Moreover, they can play an active role in promoting compliance with recommendations made by the Council of Europe monitoring bodies, such as the Commissioner for Human Rights or other specific bodies (for instance the Group of States against Corruption (GRECO), the European Commission against Racism and Intolerance (ECRI), the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), etc.).

As of June 2006, the Assembly, on the basis of periodic reports containing summaries of the findings of Council of Europe bodies and institutions which are appended to the Monitoring Committee’s Annual Progress Report, invites each year the national parliaments of states which are not subject to a monitoring procedure or involved in a post-monitoring dialogue to:

“use these reports as the basis for a debate on their country’s record with regard to the fulfilment of their statutory and conventional obligations as member states of the Council of Europe” (see PACE [Resolution 1515 \(2006\)](#) § 13.1.1. and PACE [Resolution 1548 \(2007\)](#) § 22.1.1.).

On the basis of the same periodic reports and in the context of the same annual exercise, the Assembly also invites the national parliaments of the states concerned to promote execution of the judgments of the European Court of Human Rights (see also below under vii) and:

“compliance with recommendations made by the Commissioner of Human Rights and the other Council of Europe specific monitoring bodies, both by provoking and accelerating necessary legislative reforms and exercising their role of oversight of government action” (see PACE [Resolution 1515 \(2006\)](#) § 13.1.2. and PACE [Resolution 1548 \(2007\)](#) § 22.1.2.).

v) Promoting the honouring of accession commitments

Parliaments have a crucial role to play in promoting the honouring of specific commitments undertaken by member states when joining the Council of Europe either by initiating and accelerating the necessary legislative reforms or by exercising their role of oversight of government action.

The Assembly's monitoring procedure, as carried out by its Monitoring Committee, is based on an on-going dialogue and co-operation with the national parliaments of the states concerned. This is the special feature and added value of parliamentary monitoring in comparison to monitoring procedures of other Council of Europe bodies and institutions.

vi) Cooperation with the European Court of Human Rights (ECtHR)

Parliamentarians can assist in ensuring, at the national level, that the crucial work of the Court is assisted and supported at all stages by national parliaments.

In PACE [Resolution 1571 \(2007\)](#) on the *Council of Europe member states' duty to co-operate with the European Court of Human Rights*, the Assembly, basing itself on a report of the PACE Committee on Legal Affairs and Human Rights and relying on the subsidiary nature of the ECtHR, reiterates the need for cooperation by national authorities:

"The Court requires the co-operation of all states parties at all stages of procedure and even before a procedure is formally opened. In view of the subsidiary nature of the Court's intervention, and its lack of investigatory resources in the countries concerned, national authorities have a positive obligation to co-operate with the Court as regards the establishment of facts" (§ 2, emphasis added).

It also notes the national parliaments' role in supporting the work of the ECtHR, inviting:

"...national parliaments to include all aspects of states' duty to co-operate with the Court in their work aimed at supervising the compliance of governments with obligations under the Convention, and to hold the executive or other authorities accountable for any violations" (§ 20, emphasis added).

vii) National implementation of ECtHR judgments

The fact that the ECtHR is based on the principle of subsidiarity bestows an important responsibility on member states to implement ECtHR judgments, and national Parliaments can assist in concrete ways. Firstly, they can play an important role in raising the awareness of the competent national authorities to the importance of the implementation of ECtHR judgments. In [Resolution 1547](#) on the *State of Human Rights and Democracy in Europe*, the PACE calls in particular on national parliaments to "fully implement the judgments of the European Court of Human Rights within the legal order of all member states" (§34.6.; see also PACE [Resolution 1515 \(2006\)](#) § 13.1.2 and PACE [Resolution 1548 \(2007\)](#) § 22.1.2.).

Further, national parliaments can assist in the efforts at the national level, as set out in the PACE [Recommendation 1764 \(2006\)](#) on *the Implementation of judgments of the European Court of Human Rights*, including through the improvement, and where necessary, the establishment of "domestic mechanisms and procedures so as to secure timely and effective implementation of the Court's judgments through coordinated action of all national actors concerned and with the necessary support at the highest political level" (§ 1.4).

In its reply of 2 April 2007 to Recommendation 1764, the Committee of Ministers emphasised the importance of national parliaments in the process, noting that:

"Parliaments bear a two-fold responsibility in this respect: they should establish appropriate procedures to ensure rapid adoption of legislative changes required by judgments and exercise parliamentary oversight of the implementation process conducted by other national authorities. In this context, the Committee welcomes the Assembly's call to national parliaments to introduce, where necessary, specific mechanisms and procedures for effective parliamentary oversight of the implementation of the Court's judgments and encourages it to take further measures to that effect."

viii) National investigations into alleged human rights violations committed on the territories of member states

Since the Council of Europe does not have powers of investigation *per se*, national parliaments are best placed to investigate themselves, through parliamentary committees of inquiry, or to facilitate the judicial investigation into human rights violations that have allegedly taken place on their territories.

In its [Resolution 1562 \(2007\)](#) on *Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report*, the PACE calls upon national parliaments and judicial authorities of Council of Europe member states to initiate investigations into the secret services' wrongful acts committed on their territory with regard to secret detentions and unlawful transfers of detainees (§ 18.3.1).

Following the recommendation by the Committee on Legal Affairs and Human Rights concerning *the Request for an investigation to clarify the allegedly suspicious death of former President Trajkovski of "the former Yugoslav Republic of Macedonia"*, the Bureau of the Assembly invited the delegation of "the former Yugoslav Republic of Macedonia" to propose to the parliament of "the former Yugoslav Republic of Macedonia" the setting up of a committee of inquiry into the death of former President Trajkovski. While the Rapporteur, Mr Gross (Switzerland/SOC) notes in his memorandum to the Bureau that his own involvement could prove useful to some extent, he equally points out that *"the technical nature of such an inquiry and the lack of investigatory powers would make it impossible for a rapporteur of the Parliamentary Assembly to perform such an inquiry instead of the competent national authorities."* In the spirit of subsidiarity, a rapporteur can only stimulate and assist a national investigation, by opening doors, suggesting the performance of particular investigative measures, and generally discouraging any cover-up." (§ 44, emphasis added).

Numerous other PACE recommendations have called for national parliaments to elucidate the circumstances surrounding violations of the ECHR in Council of Europe member states.