
1366th meeting, 5 February 2020

1.7 Complementary procedure between the Committee of Ministers and the Parliamentary Assembly in response to a serious violation by a member State of its statutory obligations

Appendix to CM/Del/Dec(2020)1366/1.7

Appendix

PRACTICAL MODALITIES FOR A COMPLEMENTARY PROCEDURE BETWEEN THE COMMITTEE OF MINISTERS AND THE PARLIAMENTARY ASSEMBLY IN RESPONSE TO A SERIOUS VIOLATION BY A MEMBER STATE OF ITS STATUTORY OBLIGATIONS

A. Basic principles

The primary aim is to bring a member State, through constructive dialogue and co-operation, to comply with the obligations and principles of the Organisation, hence as far as possible to avoid imposing sanctions.

This procedure, of an exceptional nature, is complementary to existing rules and regulations, building upon the 1994 Declaration, and its implementation will not require any changes to the Statute. It will not affect existing procedures and mandates arising from statutory or conventional control mechanisms.

Underlying requirements are the conformity with existing roles and mandates of the two statutory organs, as well as the Secretary General, as enshrined in the Statute of the Council of Europe, and the entitlement of all member States to participate on an equal basis in the two statutory organs, as long as Articles 7, 8 or 9 of the Statute have not been applied.

The procedure will address only the most serious violations of fundamental principles and values enshrined in the Statute of the Council of Europe.

The procedure can be initiated by either the Committee of Ministers, the Parliamentary Assembly or the Secretary General, and all three parties participate in it.

The procedure will include a number of concrete and well-defined steps, with a strict timeframe fixed for each step by common agreement of the three parties.

It is a primary responsibility of any member State having violated the statutory obligations to take steps towards resolving the situation.

The procedure may ultimately lead to a decision to act under Article 8 of the Statute, which in all aspects lies with the Committee of Ministers. The procedure does not preclude the direct implementation by the Committee of Ministers of Article 8, as provided in the Statute.

The procedure will be:

- credible: it must be a useful tool, that can be implemented in practice, and that is seen as a relevant and credible response to the crisis that attempts are being made to resolve.

- predictable: the various steps of the procedure need to be sufficiently predictable and clear to allow the Committee of Ministers, the Parliamentary Assembly and the Secretary General to follow *concrete and well-defined steps*, as stipulated in the decision adopted at the Helsinki Ministerial Session. This is also of particular importance for the member State concerned and will help make the procedure more efficient.
- reactive: the procedure needs to provide enough time for dialogue with the member State concerned on all necessary issues, with due regard to the need to react quickly to events, and to avoid inconclusive or indeterminate discussions.
- reversible: it will be important to develop a well-defined exit-strategy, that also foresees how the procedure can be paused or terminated at each step of the procedure, if the member State concerned takes appropriate steps to rectify the situation.

B. The steps of the complementary procedure

In the event of a new, emerging and most severe crisis facing the Organisation, irrespective of the procedure, it is expected that the Committee of Ministers, the Parliamentary Assembly and the Secretary General will take immediate steps to meet and discuss in an effort to address the situation, with the participation of the member State concerned in all stages of the process.

I) The procedure is initiated

The complementary procedure can be initiated by either the Committee of Ministers, the Parliamentary Assembly or the Secretary General.

A decision by the Committee of Ministers to initiate the procedure, as proposed by a member State or a group of member States, will require a two-thirds majority according to Article 20d of the Statute of the Council of Europe. If the Assembly, in accordance with its internal Rules of Procedure,¹ or the Secretary General, initiates the procedure, the issue will be immediately placed on the agenda of the following regular CM-meeting (alternatively an extraordinary CM-meeting will be held).

Immediately after any of the parties has initiated the procedure, a meeting by the Chair of the Committee of Ministers, the President of the Parliamentary Assembly and the Secretary General will take place, followed by a joint high-level mission to the member State in question to discuss the concerns that led to the initiation of the procedure and to seek clarification of the situation. They will thereafter report back on the outcome of the mission to the two statutory organs. On the basis of the outcome of the mission, the Committee of Ministers, having consulted the Assembly and the Secretary General, will decide, by a two-thirds majority according to Article 20d, on moving to the second step of the procedure.

Indicative timeframe: n+ 4 weeks (Note: All suggested timeframes should have a certain degree of flexibility).

II) Adoption and implementation of the joint road map

a) Adoption of the road map

Upon proposals by the Committee of Ministers and the Parliamentary Assembly, and after consultations with the member State concerned, the Secretary General will develop a road map, co-ordinating the various proposed measures. The road map will contain concrete actions, with strict timeframes, which the member State concerned should take, and it will list initiatives and activities proposed and planned by the Committee of Ministers, the Parliamentary Assembly and the Secretary General respectively.

Following the submission by the Secretary General, the Parliamentary Assembly and, finally, the Committee of Ministers will examine and adopt the road map, according to their respective rules of procedure.

Indicative timeframe: n+ 12 weeks (Note: All suggested timeframes should have a certain degree of flexibility).

¹ To be agreed by the Assembly, as referred to in the report of the Committee on Political Affairs and Democracy, adopted on 9 December 2019.

b) Implementation of the road map

After the adoption of the road map, the procedure will continue with the implementation of the road map.

The implementation of the road map will be conducted in close co-operation with the member State concerned and will be co-ordinated by the Secretary General.

The aim will be to engage with the member State concerned in a constructive and co-operative dialogue to help remedy the situation.

In the course of the implementation of the road map the three parties may agree to make joint public statements.

Regular dialogue will take place with the member State concerned within the Committee of Ministers, as well as between the Committee of Ministers, the Parliamentary Assembly and the Secretary General in a format to be defined in the road map.

If the situation were to be remedied, or positive progress made, the Committee of Ministers may decide, by a two-thirds majority according to Article 20d, to pause or terminate the procedure without undue delay.

At the initiative of the Secretary General, the Assembly or the Committee of Ministers, the road map could be regularly reviewed and revised as necessary.

Indicative timeframe: n+ 12 months (Note: All suggested timeframes should have a certain degree of flexibility. The details will be agreed in the road map on a case-by-case basis).

III) **Possible decision on the suspension of a member State's right of representation in the Committee of Ministers and/or the Parliamentary Assembly, or to request a member State to withdraw**

If the Committee of Ministers through a decision, by a two-thirds majority according to Article 20d, after consultations with the Parliamentary Assembly and the Secretary General, concludes that there has been no improvement of the situation, and a serious violation of Article 3 by the member State concerned continues to exist, a move to the third and final stage of the process could be agreed in that decision.

A Committee of Ministers'-decision based on Article 8 of the Statute would follow.²

Should the member State concerned eventually remedy the situation and bring it into compliance with the Statute, the Committee of Ministers may, after consultations with the Parliamentary Assembly and the Secretary General, revoke its decision under Article 8. In case of exclusion, the State concerned will have to reapply for membership.

² Article 8 of the Statute: 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.