

Confidential

***Policy Implications Arising from  
123<sup>rd</sup> Session of Committee of Ministers<sup>1</sup> in Strasbourg on 17 May 2013***

(Sources: (CM(2013)OJ; CM/PV(2013)123 prov.; CM/PV(2013)123 Addendum 2 prov. and SG/Inf(2013)15)

**General Remarks**

Eleven member states were represented at the Session on a ministerial level. Eighteen member states sent deputy ministers / state secretaries (the EU was represented by the Minister of State for European Affairs of Ireland). More importantly, several of the biggest European states (Russian Federation, Germany, Turkey, France, United Kingdom and Ukraine) were not represented at all at a political level – a fact which in recent years is without precedence. The focus on one concrete topic - the reform of monitoring mechanisms - allowed for a substantial debate which led to the adoption of a corresponding decision.

**New Monitoring Report**

Most speakers supported explicitly the Secretary General's proposals concerning monitoring mechanisms (more than 20 delegations). At the same time, they put forward additional ideas and proposals. Romania recalled its suggestion from 2010 to establish an early warning capacity of the Council of Europe by using the results of the monitoring mechanisms. Thus, the Council of Europe could assume a role in detecting tensions and potential difficulties that could occur at state, regional or European-wide level and react rapidly in order to prevent an escalation of problems. In Romania's view, the Organisation should adopt a wider approach by shifting the philosophy behind monitoring towards a partnership between the Organisation and member states. Poland stressed the need to harmonise the working methods of monitoring mechanisms and to make full use of intergovernmental committees as a tool for increasing the follow-up and impact of monitoring findings. It was reasoned that these committees should be involved in identifying solutions to common problems and serve as a platform for targeted good practice sharing.

References to "monitoring fatigue" were frequent. It is interesting to observe that there were neither new particular mechanisms proposed nor any widening of the scope of those existing. On the contrary, some delegations insisted that monitoring mechanisms should not be broadened (Czech Republic, Serbia and Slovenia). Some went further by requesting that no new reporting nor monitoring mechanisms should be created (Serbia, Slovenia and Liechtenstein). Ireland requested that additional burdens on national administrations should not be imposed. Monaco proposed that in the cases of "micro-states" a single bi- or tri-annual joint visit by a delegation composed of representatives of monitoring bodies would be preferable to a multitude of visits.

The Commissioner for Human Rights suggested a more intense follow-up to the findings of monitoring bodies through meetings of all those concerned on the steps to be taken to improve the situation. For Ukraine, the scheme of planning and carrying out monitoring visits and further actions would need to be properly ordered and structured. It proposed that the final conclusions following monitoring visits should only be produced on the basis of a consensus among all member states and in full compliance with the Statute of the Council of Europe.

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<sup>1</sup> This present document analyses the positions of national delegations expressed at the ministerial meeting. Thirty-three delegations presented them orally and the positions of twelve national delegations have been added to the minutes of the meeting. It also takes note of the positions presented by a representative of the European Union and by presidents of the European Court of Human Rights and the Parliamentary Assembly, the Council of Europe Commissioner for Human Rights and the President of the Conference of INGOs.

Some time was given by delegations to the monitoring carried out by the Parliamentary Assembly, which was mainly on a critical note (Hungary and Ukraine). Hungary's delegate, in particular, expressed disapproval of the recent decision of the Assembly's Monitoring Committee. Hungary, therefore, suggested that the politicisation of monitoring should be avoided. It was stressed that specific shortcomings in a country should only be established if the findings were in contradiction with legal norms and identical solutions had also been criticized elsewhere. It was furthermore argued that when national human rights and rule of law questions were involved, it should only be on the basis of their conformity with legal standards, and not political standards. The President of the Assembly indicated that a reflection had been initiated on the Assembly's monitoring procedure with the aim of ensuring that it remains an efficient and appropriate tool of political dialogue based on the Council of Europe's thematic, independent and impartial monitoring mechanisms.

Several delegations raised questions on how the new and comprehensive report by the Secretary General should be prepared and discussed. Belgium suggested that the debate on the Secretary General's report should be interactive, whereby states could present their respective viewpoints while also noting the Council of Europe's existing good practice and offers of assistance. The Czech Republic inquired about who would be responsible for the identification of the most serious issues in each country and also about which sources of information would be considered to be reliable. Ukraine also raised the issues of the possible response of the Committee of Ministers to the report as well as the practical implications for member states.

The EU informed the Session that it had begun a discussion on a more effective mechanism to safeguard fundamental values in member states, while pointing out that there was no intention that any such mechanism would duplicate what the Council of Europe has already been providing. Some EU members (for example, Netherlands and Germany) underlined the importance of avoiding duplication. Germany proposed that the Council of Europe should both actively participate in the discussions and contribute to the shaping of the new political rule of law instrument that was proposed inside EU.

### **Challenges to European Values**

The ministerial Session provided an opportunity to discuss the threats and challenges to the values, standards and norms of the Council of Europe. Several member states voiced their concerns. Sweden contended that Europe now finds itself at a crossroads of values. For some states (for example, Norway and Netherlands), the fundamental issue lies in the relationship between the majority and the minority (in different dimensions). A number of member states underlined that the crisis is exacerbating democracy deficits and discrimination in Europe (Netherlands, Sweden, Poland, Italy, Spain, Finland, Belgium and Norway). Several states (for example, Norway and Sweden) mentioned the discrimination against Roma as a pressing issue. It was pointed out that extremist and xenophobic parties constitute a real and urgent threat to democratic and human rights. Concerns were voiced about discrimination against the LGBT minority (for example, bans on peaceful demonstrations). Several delegations referred to the need to address the challenges of organised crime, corruption, discrimination against vulnerable groups, racism, intolerance and hate speech (for example, Serbia, Turkey and Romania). Turkey observed that threats of terrorism and various forms of extremism, including racism, xenophobia and Islamophobia, continue to seriously threaten European society.

Some delegations underlined the need to focus on improving the functioning of judiciary. Sweden urged the need to especially ensure a fair, independent and predictable judiciary across Europe. It also pointed out the deficits of political freedoms (freedom of association, speech, the existence of political prisoners, etc.) in some Council of Europe countries.

Whereas several delegations saw the relevance of the Council of Europe in addressing these challenges, no concrete proposals were made for any particular action.

### **Regional Issues**

Latvia raised the problem of violations of Council of Europe principles in zones of frozen conflict where member states do not exercise their authority and cannot uphold their responsibilities. Lithuania considered that dialogue should help the Council of Europe to bring its monitoring mechanisms to the zones of frozen conflict.

Georgia suggested that the item – The Council of Europe and the Conflict in Georgia - should remain on the political agenda and that regular consolidated reports by the Secretary General on the issue should be continued. Moldova judged that a new political impetus was necessary for conflict settlement processes in the Transnistrian conflict, which was currently facing a number of difficulties. Croatia advocated for not omitting the non-member states (Belarus and Kosovo<sup>i</sup>) from the sight of the Organisation. Croatia also supported greater Council of Europe involvement in Kosovo, which could contribute to strengthen standards there. Serbia referred to the normalisation of relations between Belgrade and Pristina and mentioned that the Council of Europe should maintain its status-neutral engagement in Kosovo. The President of the Parliamentary Assembly urged successive CM chairs to join him in efforts to solve the frozen conflicts, in particular, the Nagorno-Karabakh conflict.

### **Effectiveness of the ECtHR**

Several states highlighted the role of the ECtHR in addressing the European challenges. Portugal insisted on the concept of the shared responsibility of member states and on the Court for the respect of rights and freedoms guaranteed by the ECHR. It pointed out that this concept requires a perfect execution of Court judgments and the adoption of national measures to avoid that repetitive applications continue to overwhelm the Court. The same position was supported by the Commissioner for Human Rights.

Furthermore, several delegations welcomed the fact that the Court has managed to further reduce its backlog.

Poland stressed the need to further streamline the supervision of the execution of judgments. It proposed to convene a high-level conference on this topic not later than the 2014 Ministerial Session. It referred to its proposal of “Special Secondment Procedure for Repetitive Cases”.

The Commissioner offered to assist the Court in ensuring that its judgments are effectively executed. He stressed that a greater priority should be given to the supervision of the execution of the pilot judgments.

Several delegations welcomed the elaboration of the draft agreement on EU accession to the ECHR.

### **Policy towards Neighbouring Regions**

Active policy towards neighbouring regions was supported by many participants (for example, Italy, Spain, Romania, Slovenia, Portugal and Malta). Turkey (and also Slovenia) observed that the Council of Europe must recognise its assets and increase its capacity to have an audience beyond Europe. Turkey welcomed that the Council of Europe has achieved timely and well-suited action as regards developments in North Africa and the Middle East. It underlined that it should maintain this impetus and further develop relations with these countries. Nevertheless, Slovakia inquired whether the Council of Europe had the necessary and sufficient resources to institutionalise co-operation with countries from neighbouring regions. Romania informed the Session about its initiative for an intercultural workshop (together with the Venice Commission and ODIHR) to be held next October on political parties for the countries of North Africa.

Portugal does not see the neighbourhood policy within the context of possible membership, but as a process of building closer relationships and trust to anchor the democratic security of Europe in a wider space of common legal standards and also, in the long run, human rights. It underlined that this policy did not yet encompass a clear focus for the long-term. Portugal supported the Parliamentary Assembly and the on-going reflection on a possible new formal status enabling a more structured and long-term relationship with the Council of Europe. Portugal and Italy underlined the role of a reinvigorated North-South Centre in the field of neighbourhood policy.

Malta referred to struggles in the Council of Europe’s southern neighbourhood and specific problems, for example, ‘boat’ people, human traffickers, etc., and called for a European sense of solidarity and for a collective effort.

### **Co-operation with the EU**

The representative of the European Union (EU) stressed the “strategic importance” of relations between the two organisations and observed that the variety of joint actions reflected the quality of the partnership. New challenges to

societies required that the Council of Europe and the EU work together in an ever more transparent, structured and therefore effective manner. The EU has begun to tackle this task by identifying key priorities in a limited number of geographic and thematic areas for co-operation with the Council of Europe over the next two years.

Portugal welcomed that political dialogue had intensified at the highest level of EU and Council of Europe representatives and those contacts which had been established between the new EU Special Representative for Human Rights and Council of Europe representatives. Portugal also welcomed discussions on the identification of focus areas and new modalities for Joint EU-Council of Europe Programmes.

Lithuania stated that during the Lithuanian presidency of the EU Council, it stood ready to forge even stronger bonds between the EU and the Council of Europe. It hoped that the EU Vilnius Eastern Partnership Summit in November 2013 would add impetus to co-operation of EU - Council of Europe for the benefit of all countries in the region.

Germany considered that the EU and the Council of Europe should respect the division of labour agreed, in principle, in 2007 so that structural and programmatic overlapping and duplication should be reduced.

### **Role of the Council of Europe and its Reform**

Several delegations made general comments on the functions and roles of the Council of Europe and what it should do to consolidate its position in the European institutional architecture. There were several statements in support of the reform process. The dominant view was that the Council of Europe should concentrate on its three main pillars – human rights, democracy and the rule of law. For example, Belgium underlined that the Council of Europe has no other choice than to concentrate on its core activities. Germany raised the question of how the Council of Europe could further consolidate the Europe of human rights, democracy and rule of law that it had created. For Germany, the reform of the Council of Europe must be continued and should be irreversible. As the Council of Europe has already elaborated more than 2,000 treaties, attention must rather be given to assuring respect of agreed legal standards in member states.

Yet, some states (for example, Malta) expressed concerns, underlining that often in the eyes of the wider public, the positive image of the Council of Europe is overshadowed by its perception of being an external control body operating through the ECtHR and its monitoring mechanisms (like an external audit agency). However, as observed by France - despite its deficiencies - the “Europe of 47” is a model.

The United Kingdom drew attention to the problem of overlapping mandates of international organisations. It stressed the importance of reaffirming the Council of Europe as the reference point in matters of democracy, human rights and the rule of law in Europe, as defender and promoter of democratic security and as an organisation which is capable of driving changes at national level.

Several delegations highlighted the importance of the activities of the Council of Europe in a spectrum which was broader than the core pillars. Turkey observed that the Council of Europe’s expertise and its wide range of activities offer the most effective means of addressing the major problems which Europe is facing today. Some delegations (Luxembourg, Malta and San Marino) referred to activities other than those relating to the “triad”, namely, to education for democratic citizenship, youth and culture and intercultural dialogue. Italy, while acknowledging the impact of austerity policies on the Council of Europe, encouraged more reliance on extra-budgetary resources.

Slovenia noted that given the numerous challenges, it is necessary to start thinking about substantive preparations for the next Council of Europe Summit in order to provide new guidelines for the Organisation.

### **Conclusions**

The absence at political level of several of the biggest Council of Europe member states - representing more than half of the population of Europe - sends a signal to decision- and opinion-making circles which (even albeit unintentionally) may undermine efforts to increase the political relevance of the Organisation.

One can only hope that the new format for reporting on the state of human rights, democracy and the rule of law will help to focus the ministerial discussion on the political issues of the challenges to the European values, as well as to encourage ministerial representation. It is encouraging that several countries (Sweden, Norway, Italy and others) already perceive the need to exchange views at ministerial sessions on such systemic problems. Discussing “household” or “procedural” issues will probably never attract greater representation and will hardly make it to the news. The undisputed value of the last Session lies in the decisions adopted and the constructive spirit of the discussions as well as the general recognition of the value of the Council of Europe and its reform process.

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