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COMMITTEE ON THE HONOURING OF OBLIGATIONS AND COMMITMENTS BY MEMBER STATES

Rapporteur: Mr Guido de Marco (Malta, Group of the European People's Party)

Draft Report on the progress of the Assembly's monitoring process (April 1997 – April 1998)

I. **Preliminary Draft Resolution**

II. **Explanatory Memorandum**

I. Preliminary Draft Resolution

1. The Assembly recalls that, at the Second Summit of Heads of State and Government (October 1997), Council of Europe's Member States confirmed their determination to comply with the commitments and obligations which flow from the Organisation's fundamental principles: pluralist democracy, respect for human rights and the rule of law.

2. It reaffirms the *sui generis* character of its Committee on the honouring of obligations and commitments by Member States (Monitoring Committee), set up on 25 April 1997, according to Resolution 1115 (1997), in order to strengthen its mechanism of inquiry into the observance of these principles.

3. The Assembly endorses the guidelines developed by the Monitoring Committee for its work, notably:

i. a non-confrontational long-term approach based on the logic of persuasion with a view to solving specific problems in the "monitored" States;

ii. focus on the political character of parliamentary monitoring;

iii. full understanding of the geopolitical context and domestic concerns of the "monitored" States;

iv. the development of a confidential dialogue, focused on well-defined issues, with the Parliamentary Delegation of the State for which monitoring is initiated or envisaged.

4. It notes that the Monitoring Committee:

i. brought before the Assembly, at its September 1997 part-session, reports on the Czech Republic and on Lithuania: two Recommendations were adopted in which proposals for follow-up action aim at influencing

- the monitoring procedure of the Committee of Ministers, and
- the Organisation's intergovernmental work programme and the special programmes of co-operation and assistance for the countries of Central and Eastern Europe.

ii. forwarded to the Bureau, upon its request, a written opinion on the situation of the Muslim minority in Western Thrace, [in which it considered that it was not necessary to open a monitoring procedure concerning Greece];

iii. proposed and caused the opening by the Bureau of the Assembly, on 26 September 1997, of a monitoring procedure concerning Latvia, after preparation of a written reasoned application and in full co-operation with the Latvian parliamentary delegation.

iv. is currently carrying out monitoring of obligations and commitments for Albania, Bulgaria, Croatia, Latvia, Moldova, Russia, Slovakia, the former Yugoslav Republic of Macedonia, Turkey and Ukraine.

5. The Assembly insists on the necessity of efficient co-ordination of monitoring activities carried out by its various committees, including *ad hoc* committees of the Bureau, it being understood that:

i. under Resolution 1115 (1997), the Monitoring Committee is responsible for monitoring the whole range of obligations and commitments entered into by each "monitored" Member State ("country monitoring");

ii. under the Assembly's Rules of Procedure, other committees may deal with specific issues of short-term nature arisen in a "monitored" Member State;

6. The Assembly stresses the need for strengthening co-operation and dialogue with the Committee of Ministers as regards monitoring of obligations and commitments by Member States. In this context, the Assembly believes that:

i. Ministerial Replies to Assembly Recommendations on monitoring should be adopted as a matter of priority;

ii. the Committee of Ministers should reconsider its decision on absolute and unexceptional secrecy of its monitoring documents and envisage, for instance, confidential transmission of information to rapporteurs of the Monitoring Committee;

iii. monitoring should regularly be included in the agenda of the Joint Committee.

7. With a view to transparency, the Assembly decides that the written opinions on whether or not to open a monitoring procedure, prepared by the Monitoring Committee upon the request of the Bureau, will be appended to the Progress Report of the Bureau and the Standing Committee.

8. In the light of the first year's experience and given the political importance of monitoring, the Assembly considers necessary that every Member State be represented in the Monitoring Committee. The Bureau of the Assembly should take this principle into account for the reconstitution of the Committee in January 1999.

9. The Assembly urges all national Parliamentary Delegations to continue their constructive co-operation with the activities of the Monitoring Committee.

II. Explanatory Memorandum by Mr de Marco

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A. Introduction

1. The Committee came into existence and held its first meeting on 25 April 1997, in accordance with Resolution 1115 (1997). Its terms of reference are part of this text.

2. The creation of our Committee was meant to conclude a long process of reflection with a view to establishing an effective parliamentary monitoring procedure. This process started as early as in 1993 when the Parliamentary Assembly was the first body of the Council of Europe to set up a monitoring mechanism in the Council of Europe. The Assembly has never since stopped adapting and strengthening this mechanism. For a brief presentation of the various steps taken prior to the creation of our Committee - Order 488 (1993), Resolution 1031 (1994), Order 508 (1995) - cf. extracts from a memorandum prepared by the Office of the Clerk in Annex I.

3. Almost a year after it became operational, our Committee is called upon to present to the Assembly a "progress report" ("report on the general progress of monitoring procedures" according to Resolution 1115, paragraph 13). This is an occasion for the Committee to share with all members of the Assembly the acquired experience.

4. To start with, since our first meetings, we have elaborated on our special *mandate* and identified the *sui generis* character of our Committee, as established by Resolution 1115 (below, under B). We have then taken profit of a certain *margin of creativity*, which is allowed within the parameters set by Resolution 1115. We have thus been able to develop our own approach and personality, working methods and principles; to define the character and purpose of parliamentary monitoring; to establish our distinct role in relation to other Assembly committees and other Council of Europe monitoring mechanisms (below, under C). In less than a year, the Committee has marked *progress* in *all* monitoring procedures taken over from the previous monitoring system, *caused the opening* by the Bureau of the Assembly of a new procedure and *was consulted* by the Bureau on the opening of another procedure (below, under D). In the light of this experience, the Committee has had the occasion to reflect on certain problematic aspects of its mandatory Resolution and is ready to make a limited number of *proposals* to further improve the quality of its work (below, under E).

B. The mandate and *sui generis* character of the Monitoring Committee

B.1. Mandate

5. The Monitoring Committee was given a *special mandate* by Resolution 1115. It is responsible for verifying *both*:

- the fulfilment of *general obligations* assumed by *all* Member States under the Council of Europe Statute, the European Convention on Human Rights and other Council of Europe conventions,

  and

- the honouring of *specific commitments* entered into by the authorities of (*some*) Member States upon accession.

6. Specific *commitments* are listed in the Assembly's Opinion on the accession of the state concerned and often referred to in the Committee of Ministers' Resolution on accession. They can thus be easily identified.

7. As far as general *obligations* are concerned, the Preamble and Article 3 of the Statute constitute the general framework: respect for the principles of *pluralist democracy*, of *the rule of law* and of the enjoyment by all persons within the State's jurisdiction of *human rights and fundamental freedoms*. An indefinitely long list of areas may be considered as covered by these three main obligations (which, in any case, partly overlap and interact), and the Committee will have to specify them more precisely in the future.

8. In order to facilitate the work of the Committee and upon the request of some of its members, the Secretariat has prepared a *list of 21 areas which have been covered under monitoring procedure* in the past (cf. in Annex II). Although this list is *indicative*, it has proved to be a helpful point of reference.

B.2. Opening of a monitoring procedure[1]

9. It clearly emanates from the Committee's mandate that *all* Member States may be subject to the Assembly's monitoring process, since they all have assumed obligations. At the same time, a *special system for the opening of a monitoring procedure* is foreseen by Resolution 1115. It was introduced as a response to criticisms to the previous system that decisions for the opening of such a procedure – a politically sensitive matter - were taken too abruptly. Except in special circumstances, a monitoring procedure should not commence until six months after a Member State's accession to the Council of Europe.

10. According to the new system, *the Bureau of the Assembly* has the authority to open a monitoring procedure, but not *without consulting the Monitoring Committee*.[2] More specifically, the decision to open a monitoring procedure is taken by the Bureau on the basis of an application originating from

- the Monitoring Committee[3] and the other Assembly committees through a "reasoned written application" to the Bureau;
- not less than ten members of the Assembly (representing at least two national delegations and two political groups) through the tabling of a Motion for a Resolution or a Recommendation (which includes an application to open a monitoring procedure);
- the Bureau itself.

11. All applications (other than those made by the Monitoring Committee itself) are to be considered by the Monitoring Committee; when consulted by the Bureau on the opening of a monitoring procedure, the Committee appoints two co-rapporteurs to prepare a draft *written opinion* on whether a procedure should be opened and carries out the "*necessary investigations*" for this purpose.[4]

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[1] A scheme summarising the system for opening a monitoring procedure appears in Annex III.

[2] Of course, the Assembly itself and the Standing Committee (subject to ratification by the Assembly) can open a monitoring procedure.

[3] Cf. below, section D.3, where a case in which the Monitoring Committee made such a "reasoned written application" for the opening of a monitoring procedure is presented.

[4] Cf. below, section D.2, where a case in which the Monitoring Committee was consulted by the Bureau on whether a monitoring procedure should be opened is presented.

12. The Committee's opinion should respond to the question of *whether or not there are sufficient grounds to justify the opening of a procedure* for the State concerned. The Bureau will then decide *in the light of the Committee's opinion.* Its decision will be *recorded* in the Progress Report of the Bureau and the Standing Committee.[5] The Assembly will either ratify or have the opportunity to query this decision when adopting the Progress Report.

13.1 When the Bureau decides to *open* a monitoring procedure (subject to ratification by the Assembly), the matter will be *referred for report* to the *Monitoring Committee*, which will appoint two co-rapporteurs. At the same time or at a later stage, the Bureau may decide to refer the matter for opinion to other committee(s) "when strictly necessary" (cf. paragraph 3 of the Committee's terms of reference).

13.2 When the Bureau decides *not to open* a monitoring procedure (subject to ratification by the Assembly) and the initial proposal originates from a *Motion* for Resolution or Recommendation, the Bureau may (according to Rule 15 of the Assembly's Rules of Procedure) decide:

- to refer the Motion *for report* to the appropriate Assembly committee (other than the Monitoring one);
- to forward it to one or more committees *for information*;
- that *no further action be taken.*

B.3. The *sui generis* character of the Monitoring Committee

14. The Committee's special mandate, including the system for opening a monitoring procedure, already indicates its *sui generis* character. Resolution 1115 further suggests this in different respects:

- the *composition* of the Committee:

  the members are proposed by the *Political Groups* – and not by the national delegations - and appointed by the *Bureau* (subject to ratification by the Assembly);
  there are *no alternates*;
  the Chairpersons of the Political Affairs Committee and of the Committee on Legal Affairs and Human Rights are *ex officio members* of the our Committee;

- the *rapporteurships*:

  two co-rapporteurs - ensuring a "political and regional balance" – are appointed in respect of each Member State for which a monitoring procedure is initiated (or for which the Committee must prepare an opinion on whether a procedure should be initiated);
  these two co-rapporteurs should *remain members* of the Committee, until the Assembly takes a decision on the relevant report (provided that they are members of the Assembly);

- the participation of *opposition* members from the States being monitored in relevant Committee debates (cf. paragraph 10 of Reolution 1115);

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[5] Cf. also below, under E.2, where a proposal is made for the publication of the whole Committee's opinion as an addendum to the Progress Report of the Bureau and the Standing Committee.

- the *"progress report"*:

  the very fact that the Committee must present once a year a general progress report is a unique feature;

- the Committee's *relations with other committees*:

  when a monitoring procedure is initiated, the Monitoring Committee is *necessarily* seized *for report*, since it is exclusively competent for carrying out such procedures; other Assembly committees *may* be seized *for opinion only when strictly necessary*: this procedure means that no committee is necessarily seized for opinion – as was the case under the previous monitoring system - but any committee may be asked to prepare one on an *ad hoc* basis;

- the Committee's *special relationship with the Bureau of the Assembly*:

  the members of the Committee are *appointed* by the Bureau;
  the *opening of a monitoring procedure* is the result of a close co-operation between the Bureau and the Committee;
  the Bureau itself has the *authority* over the *status* of the Committee's "memoranda and drafts" – in terms of whether or not they should remain confidential;

15. All these special features of the Monitoring Committee have enabled it to develop further its own approach and methodology.

C. The development of the Committee's new monitoring approach

C.1. A non-confrontational approach

16. Since its first meeting, the Committee has reflected on the character and purpose of parliamentary monitoring. It has adopted a *non-confrontational long-term approach*, in contrast to a sanction-orientated approach. Monitoring is primarily understood as a process aiming at finding *solutions to specific problems* rather than a process of confrontation. It is the *logic of persuasion* that should prevail in order to achieve the desired changes, and not the threat of sanctions. This should not be interpreted as weakness. If the Committee feels that the logic of persuasion is interpreted as weakness or lack of determination, it is vested with the power, under Resolution 1115, to propose *concrete action* - including *sanctions* - to the Assembly and, through it, also to the Committee of Ministers.

17. At the same time, the Committee has underlined the *political* nature of parliamentary monitoring and tends to avoid a purely legal approach. For instance, the question is not so much whether X or Z Convention has been ratified but, if ratified, how it is applied in practice. Moreover, the need for a better understanding of the *geopolitical context and domestic concerns* of the country being monitored has been realised.

18. In order to implement this non-confrontational approach, the Committee has developed specific working methods.

C.2. Working methods

(a) objective criteria for appointment of rapporteurs

19. The credibility of the whole monitoring exercise largely depends on the setting up of criteria for the appointment of rapporteurs which can guarantee the *efficiency and objectivity* of their work. Therefore, the first step the Committee took in developing its own working methods was to set up such criteria (within the parameters set by Resolution 1115). It has thus been decided that:

-no rapporteur should deal with more than one State at a time;
-no rapporteur should belong to a neighbouring State, or to one having a special relationship with the State being monitored;
-the two co-rapporteurs for each State should come from different countries and belong to different political groups, and their appointment should take into account regional and political balance as well as the other rapporteur appointments.

20. With a view to continuity, former rapporteurs for monitoring procedures under the previous system, to the extent they were members of the new Committee, have been authorised to continue their work for the Member State concerned.

(b) priority issues

21. As was said above, the mandate of the Committee, as defined by Resolution 1115, potentially covers *all* (specific) commitments and (general) obligations undertaken by Member States, without any thematic limitation. It was also said that an indicative list of 21 areas covered under monitoring procedure in the past had been prepared as a reference document.

22. The 21-point list itself and experience from the previous monitoring system have shown that it is unrealistic and often counterproductive for the credibility of the monitoring exercise to address, during a single visit of rapporteurs or in a single report, such a long list of issues. The Committee has thus decided to focus, in the first phase of its work, to *well-defined issues* (chosen from among the various commitments and obligations of the Member State concerned) in respect of which progress should be made as a matter of *priority*. Once progress has been achieved on these issues, other issues can be chosen by the rapporteurs and the Committee for the next phase of their work. Rapporteurs have thus prepared "*issues papers*" for each State being monitored and for the first phase of their work.

(c) confidential dialogue with the national Parliamentary Delegations concerned

23. Dialogue with the Parliamentary Delegation of the State for which a monitoring procedure is initiated or envisaged has been an important working tool of our Committee. This dialogue has been organised at different stages.

24. At a first stage, an *exchange of views* between the Committee and the national delegation concerned has been organised before taking any decision on further action. In each case, an invitation has been addressed to the Chairperson of the delegation inviting him/her to attend the meeting together with other members of the delegation representing not only the ruling party, but also the opposition (cf. also above, and paragraph 10 of Resolution 1115). The "issues papers" drawn up by the rapporteurs served as a basis for these exchanges of views. Focus on certain issues has improved the quality of the dialogue between the Committee and the national delegation concerned.

25. At a second stage, dialogue was pursued with the organisation of *rapporteurs' visits* to the country concerned. In all cases, rapporteurs met with representatives of State authorities, both in the government and in the Parliament, political parties, including the opposition, representatives of the judiciary, the media and of non-governmental organisations, ambassadors of Council of Europe Member

States, representatives of other international organisations etc. Depending on the "priority issues" on which rapporteurs were instructed by the Committee to focus, other meetings, on specific subjects, were organised in each case.

26. At a third stage, dialogue is advanced through the holding of an exchange of views with the national Parliamentary Delegation on the basis of a *preliminary draft report*, prepared by the rapporteurs on the basis of their visit. This text, after approval by the Committee, is transmitted to the national parliamentary delegation for (written) *comments* within three months at the latest. The comments of the delegation will be taken into account by the rapporteurs in order to finalise a draft report which – after adoption by the Committee – will eventually give rise to an official Assembly document, in the sense of Rule 47 of the Assembly's Rules of Procedure.[6]

27. Until the comments of the national parliamentary delegation concerned received, all relevant committee documents remain *confidential*. Confidentiality of the dialogue is considered to be essential for applying the non-confrontational, persuasion approach of the Committee. Committee documents can only be made public before the national delegation had had the chance to respond in writing, in exceptional circumstances, by decision of the Bureau of the Assembly.

(d) in camera meetings of the Committee

28. To promote *confidential relations among parliamentarians* – including with members of the Parliamentary Delegations of the States being monitored – the Committee has decided, already at its second meeting, to meet, as a rule, *in camera*, that is without the presence of representatives of governments. At the same time, the Committee has developed the practice to allow for *exceptions* to this rule and authorise the presence of the Permanent Representative from the State concerned during discussions of reports which have reached *a final stage*, provided that the Chairman of the Parliamentary delegation concerned agrees.

C.3. Relations with other Assembly committees

29. The key-word to describe our relations with other Assembly committees has so far been and should continue to be *complementarity:* while *our* committee is *the* Committee responsible for monitoring the whole range of obligations and commitments entered into by Member States (*"country monitoring"*), there are *specific issues* arisen in a "monitored" Member State which may well fall within the responsibility of *other* committees.[7]

30. It certainly was not the Assembly's intention in setting up the new Committee under Resolution 1115 (1997) to create for it a monopoly of dealing with every single issue which may arise in a Member State. This would mean an unacceptable interference with the traditional competence of other committees. At the same time, the Monitoring Committee would risk to see the quality of its work seriously affected by a heavy workload and loss of the sense of priorities. Our Committee should, instead, preserve its *special role* and remain faithful to the *long-term non-confrontational* approach it has so far developed. Such an approach cannot be reconciled with work on specific items of limited or short-term importance.

31. Currently, other Assembly Committees do indeed work on specific issues arisen in Member States which are linked to on-going monitoring procedures, such as: the return of refugees and displaced persons to Croatia, the events of Gostivar in the former Yugoslav Republic of Macedonia, the conflict between the government and the constitutional court in Albania, the new Russian law on religion, the trial

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[6] Cf. also paragraph 6 of the Committee's terms of reference.

[7] With regard to the Political Affairs Committee and the Committee on Legal Affairs and Human Rights, complementarity is furthermore advanced by the fact that their Chairmen are *ex officio* members of our Committee.

of the Russian environmentalist Alexander Nikitin in St. Petersbourg. Moreover, a Political Group Leaders visit to Albania took place in November 1997 (cf. Doc. 7978 Add. II) and a Tri-Parliamentary Mission to Albania (including the President of the Assembly and delegations from the OSCE Parliamentary Assembly and the European Parliament), in which the Monitoring Committee's rapporteurs also participated, was organised in January 1998 (cf. Doc. 7978 Add. IV).

32. In order to ensure *complementarity and efficiency* and to *avoid hindering the long-term dialogue* between the Monitoring Committee and the authorities of the monitored States, it is necessary that *full exchange of information* be developed between the Monitoring Committee and other Assembly committees, when dealing with issues linked to on-going monitoring procedures. Furthermore, a certain degree of *co-ordination* would also be desirable, for instance as regards dates for rapporteurs' visits or the organisation of joint visits.

C.4. Relations with the Committee of Ministers

(a) parliamentary monitoring as distinct from the intergovernmental monitoring

33. Resolution 1115 opts for a *country-by-country* monitoring approach. On the one hand, all Member States may be subject to the Assembly's monitoring process, but *not* simultaneously and automatically. On the other hand, once a monitoring procedure is opened, the Monitoring Committee may verify the respect of *all* commitments undertaken and obligations assumed by the State being monitored.

34. The monitoring system established by the Committee of Ministers – on the basis of a declaration adopted on 10 November 1994 - opts for a *theme-by-theme approach:* different themes, amongst the various commitments accepted by Member States, are chosen on which *all* 40 of them are *simultaneously* being monitored. The themes so far chosen by the Committee of Ministers for this purpose have been: freedom of expression and of information, the functioning and protection of democratic institutions, including matters relating to political parties and free elections, and (for 1998) the functioning of the judicial system and local democracy.

35. The *difference* in approaches makes co-ordination between the Assembly's monitoring procedure and that of the Committee of Ministers practically impossible. On the contrary, *co-operation* between the two actors of monitoring could and *should* be advanced, especially since the *political objective* of both systems is *identical*: to ensure compliance by Member States with their commitments to democracy, human rights and the rule of law. Moreover, the two approaches, although different, may partly *overlap*. For instance, when our Committee is monitoring a Member State, freedom of expression in that Member State is one of the main areas we are looking at. Access to the relevant information of the Committee of Ministers could thus be very useful.

36. So far, co-operation has been impeded by the *absolute and unexceptional secrecy* surrounding both meetings and documents of the Committee of Ministers related to monitoring. Contrary to parliamentary monitoring which eventually leads to a public Assembly debate and the publication of relevant texts, no public monitoring documents and no public debates emanate from the inter-governmental monitoring. Moreover, there are no exceptions – such as those we have established – to the rule that meetings of the Committee of Ministers on monitoring are held *in camera.*

37. Members of the Monitoring Committee have often raised this problem. More recently, the issue was discussed in the framework of the Joint Committee meeting, held on 29 January 1998, with monitoring as the main item on its agenda, in which rapporteurs of the Monitoring Committee and me as Chairman participated. We have urged the Committee of Ministers to reconsider its decision on secrecy and envisage, for instance, confidential transmission of information to the rapporteur concerned. Moreover, proposals have been made to organise further *Joint Committee meetings* devoted to monitoring issues, for instance once every year.

(b) ***Assembly Recommendations on monitoring as a means to promote dialogue with the Committee of Ministers and the supervisory function of the Monitoring Committee over follow-up action***

38. The natural and statutory interaction of any Assembly Committee with the Committee of Ministers is through *Recommendations*.

39. As regards our Committee in particular, when preparing our first two Assembly debates on the monitoring of the Czech Republic and Lithuania for the September 1997 part-session[8], we have decided, upon the proposal of the four co-rapporteurs concerned, that a *Draft Recommendation* was a more appropriate form for the Committee's conclusions than a Draft Resolution. Our choice has been mainly dictated by the wish to promote *dialogue* with the Committee of Ministers since any Assembly Recommendation requires a *Reply* by the Committee of Ministers.

40. More specifically, our Committee has structured the two Draft Recommendations - which on this point, were adopted unchanged by the Assembly - in such a way as to influence:

- the *monitoring procedure of the Committee of Ministers*, by pointing out issues which should be addressed under this procedure for the States concerned, and

- the Organisation's *intergovernmental work programme* and the *special programmes of co-operation and assistance* for these States, by making proposals on priority areas, allocation of resources and otherwise follow-up action.

41. It is disappointing that the Committee of Ministers has so far *not* replied to either of these two Recommendations adopted on 22 September 1997, that is 5 months ago. It has neither replied to the Recommendation on Romania's monitoring, adopted on 24 April 1997, that is 10 months ago, under the previous monitoring system. This delay has so far been the weakest part of our dialogue with the Committee of Ministers. During the last Joint Committee meeting, we have stressed the need that the Committee of Ministers adopt Replies to Recommendations on monitoring *as a matter of priority*, if there is any political will to further strengthen relations between the two bodies.

42. The transmission of a Ministerial Reply to Assembly Recommendations on monitoring is essential to allow our Committee to exercise its *supervisory function* over the follow-up given to these texts. In fact, as every Assembly committee, the Monitoring Committee is *responsible for looking into action taken on Recommendations which it has brought before the Assembly* (cf. Rule 44). As soon as a Reply is given to Recommendations emanating from our Committee, we will inscribe the item on the agenda for its next meeting and look into the matter. The Committee may be fully satisfied on the Committee of Ministers' reply *or* decide that further inquiry on measures taken is necessary (former rapporteurs could then be mobilised). In case the Recommendations in question formally declare the "closure" of a monitoring procedure – as was the case with the Recommendations on Romania, the Czech Republic and Lithuania – such a follow-up action, common to all Assembly committees, does *not* imply the opening of a new monitoring procedure.

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[8] Cf. below, under D.1.

D. Current state of procedures

43. Upon its creation - 25 April 1997 - the Committee took over from the Committee on Legal Affairs and Human Rights 11 procedures opened under the previous monitoring system of Order 508 (1995). These procedures concerned: *Albania, Bulgaria, the Czech Republic, Croatia, Lithuania, Moldova, Russia, Slovakia, the former Yugoslav Republic of Macedonia, Turkey and Ukraine* (for details, cf. Annex IV). They were at a more or less advanced stage. According to Resolution 1115, the new Committee was not meant to restart the procedure from zero in respect for each of these Member States but to continue work.

D.1. The first two Recommendations originated from the new Committee: the Czech Republic and Lithuania

44. In the case of the *Czech Republic and Lithuania* – procedures opened in 1995 - the Committee on Legal Affairs and Human Rights had transmitted to the national Parliamentary Delegation concerned for comments a second "introductory memorandum" (following a second visit of the rapporteurs), in April 1997 – just before the new committee was set up. The *comments* of the Czech and Lithuanian delegation thereupon were sent to our Committee in June 1997.

45. Applying the agreed principles and working methods (cf. above, under C, 2), the Monitoring Committee organised immediately, during the June part-session, an *exchange of views* with the Czech and the Lithuanian Parliamentary Delegations on the basis of "*issues papers*" drawn up by the (new) rapporteurs. In the case of Lithuania, one of the two co-rapporteurs had also been rapporteur under the previous system and in this capacity had visited Lithuania in April 1997. Therefore, the Committee considered that a new visit to the country was not indispensable. For the Czech Republic, since both co-rapporteurs were new, a new visit was organised for late August 1997.

46. The Committee adopted a Draft Recommendation for both Lithuania and the Czech Republic at its meeting on 3 September 1997. Thus, these two procedures, in view mainly of their advanced stage at the moment the Monitoring Committee took over and the absence of particular controversy, led to the first Assembly debates on texts submitted by the new Committee in September 1997.

47. The reasons for which the Committee preferred to present a Draft Recommendation rather than Resolution were given above (under C.4, *b*). The two texts followed a similar structure. The main issues addressed under monitoring procedure were listed and the current position on each of them was given. An overall assessment followed which was positive in both cases. Follow-up action was recommended, firstly, on the part of the Assembly and its committees, and, secondly, by the Committee of Ministers under its own monitoring procedure or its intergovernmental activities.

48. An interesting debate took place in the Assembly. There was almost consensus among the various speakers on the positive basic assessment and the issues proposed by the Committee for follow-up action.

49. As regards the follow-up to be given to the procedure, the texts as finally adopted by the Assembly followed a compromise solution: the concrete monitoring procedure, opened in 1995 under the previous monitoring system regulated by Order 508 (1995), is considered as closed. Nevertheless, if, in the future, "further clarification or enhanced co-operation should seem desirable", the Assembly would pursue its dialogue with the Czech or/and Lithuanian authorities "with a view to reopening monitoring procedure in accordance with its Resolution 1115".[9]

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[9] Cf. Recommendations Nos. 1338 (1997) and 1339 (1997) on the obligations and commitments by the Czech Republic and Lithuania, respectively.

50. The texts adopted left unchanged the proposals of the Committee as regards follow-up action to the Committee of Ministers.

51. For the Czech Republic, three issues are picked up for which follow-up action is recommended to the Committee of Ministers:

(i) *the question of implementation of the Czech citizenship law in accordance with Council of Europe standards*, notably in regard to citizens of the former Czechoslovak Federal Republic: it should be addressed under the monitoring procedure of the Committee of Ministers;

(ii) *problems of racism and intolerance*: the Committee of Ministers should ensure the necessary allocation of resources to the European Commission on Racism and Intolerance so that proposals on the situation in the Czech Republic, included in a report the Commission had transmitted to the Czech authorities in June 1997, could be effectively implemented;

(iii) *the absence of a law on civil service* (pending the adoption of which the lustration law was expected to remain in force): since the European Committee on Legal Co-operation was preparing a European code on rights and duties of public officials, following Assembly Recommendation 1322 (1997) on the civil service in an enlarged Europe, the Recommendation on the monitoring of the Czech Republic should also be taken into account in this context.

52. In the case of *Lithuania*, proposals for follow-up action to the Committee of Ministers concern:

(i) *the question of the implementation of Lithuania's new law on prevention of organised crime*, having regard to Lithuania's commitment to the protection of human rights: it should be addressed under the monitoring procedure of the Committee of Ministers;

(ii) the Committee of Ministers' *co-operation and assistance programmes*, including the joint programme with the Commission of the European Communities: priority areas (reforms of local government, of police training and of prison administration) determined within the frame of these programmes should be maintained and the level of resources allocated to these programmes should be sustained.

53. As was said above, the Committee is still waiting for the Committee of Ministers's Replies to the Recommendations it brought before the Assembly and their follow-up.

D.2. Consultation on the opening of a monitoring procedure: the situation of minority rights in Western Thrace (Greece)

54. As was said above (under B, 2), the Committee has a special consultative function as regards the opening of a monitoring procedure: the Bureau takes the final decision on the opening of a monitoring procedure, but only after consulting the Monitoring Committee which presents to it a "written opinion" on the matter.

55. Such a "consultation procedure" – not to be confused with a proper "monitoring procedure" - was initiated by the Bureau of the Assembly on the occasion of a Motion for an Order on the situation of the Muslim minority in Western Thrace (Greece). The motion itself did *not* contain a "reasoned written application" for the opening of a monitoring procedure - in the terms of Resolution 1115 - but only a request for authorisation for a fact-finding visit to the region by the Committee on Legal Affairs and Human Rights. Nevertheless, the Bureau can always decide for itself to open a monitoring procedure, after consulting the Monitoring Committee. Given the nature of the allegations contained in the motion (mainly allegations of discrimination against the Muslim minority), the Bureau decided that such a consultation of the Monitoring Committee on whether or not a monitoring procedure should be opened

was appropriate. For this purpose, it referred the Motion for an Order to our Committee on 18 March 1997 (reference ratified by the Standing Committee the following day).

56. The Committee appointed two co-rapporteurs "for inquiry" and decided that their "written opinion" should state whether or not there were sufficient grounds to justify the opening of a monitoring procedure. Following an exchange of views with the Greek Parliamentary Delegation on 22 June 1997 - on the basis of a written report by one co-rapporteur and an oral statement by the other - the Committee "authorised the co-rapporteurs to visit the region" in order to verify the situation on the spot and finalise a draft "written opinion" for the Bureau.

57. The co-rapporteurs visited Western Thrace and Athens from 5 to 8 October 1997. One of the main issues raised in the Motion for an Order referred to the Committee, which the rapporteurs had to look into during their discussions, concerned Article 19 of the Greek Nationality Code. This provision was criticised as discriminatory vis-à-vis persons of non-Greek ethnic origin.

58. Following a first reading of a draft opinion, drawn up by the co-rapporteurs, on 5 November 1997, the item was again inscribed on the Committee's agenda for its meeting of 29 January 1998. Six days before the meeting, on 23 January 1998, the Greek government (Council of Ministers) unanimously decided to repeal Article 19 of the Nationality Code and submit a bill for this purpose to the Parliament for approval.

59. The Committee adopted its opinion on 29 January 1998 and transmitted it to the Bureau which should now take the final decision on whether or not a monitoring procedure should be opened for Greece. Pending the Bureau's decision, there can be no analysis of the contents of the Committee's opinion or of its conclusions. Nevertheless, what can already be noted with interest is the undoubted link – among, of course, other factors and circumstances - between this most welcome decision of the Greek government and the "consultation procedure" which at the same time was going on within our Committee. This experience, which can be described as an exercise in parliamentary diplomacy, showed that democratic changes in a country can be promoted through *constructive dialogue* between the state authorities and our Committee, even *without or before* the opening of a proper monitoring procedure.

D.3. Opening of a new monitoring procedure: Latvia

60. It has been shown above (under B, 2) that one of the ways that a monitoring procedure may be initiated according to Resolution 1115 is a decision of the Bureau on the basis of a "written reasoned application" by the Monitoring Committee. In this case, the Monitoring Committee, since it is at the origin of the request, does not need to prepare an opinion on the matter. Resolution 1115 gives no further details on procedure to be followed before the Committee submits a "reasoned written application" to the Bureau for the opening of a new monitoring procedure.

61. Already at the Committee's first meeting – on 25 April 1997 - the question whether a monitoring procedure should be opened for Latvia was raised. No such procedure had been initiated under the previous monitoring system of Order 508. During the Committee's second meeting, on 16 May 1997, the Committee was confronted with the proposal that two rapporteurs be immediately appointed to prepare a "written reasoned application" to the Bureau. Realising the existing *lacuna* in Resolution 1115, the Committee, upon my proposal, developed its own practice. It noted that, since it was competent for verifying the fulfilment of obligations and commitments by all Member States, *any* of its members could propose to check whether or not one or more obligations and/or commitments by a Member State had been honoured. But such a proposal should be *"reasoned"* for the matter to be put on the Committee's agenda for decision at its next meeting, in the sense that a minimum number of reasons why the matter needed to be discussed by the Committee had to be given (as is indeed the case for any proposal to inscribe an item on the Committee's agenda).

62. A "reasoned proposal" to open a monitoring procedure for Latvia was duly submitted by Mr Bindig in a letter of 30 May 1997. One of the main commitments that had not been honoured by Latvia by that date was the ratification of the European Convention of Human Rights (ECHR). The issue was put on the Committee's agenda for its meeting on 22 June 1997.

63. Interestingly enough, some days after Mr Bindig sent his proposal, on 4 June 1997, the Latvian parliament ratified the ECHR and the instruments of ratification were expected to reach the Council of Europe in the coming weeks. When meeting on 22 June 1997, the Committee considered Mr Bindig's proposal and held an exchange of views with the Chairman of the Latvian delegation. It was generally felt that some survey was necessary before the Committee could submit a "reasoned written application" to the Bureau for the opening of any monitoring procedure. Once again, the Committee had to improvise: by analogy to the consultation procedure applied when the Bureau requests an opinion from the Monitoring Committee on the opening of a procedure, the Committee decided to appoint two co-rapporteurs "for inquiry" into the proposal of Mr Bindig. Upon completion of their inquiry, the Committee should decide whether or not to make a "reasoned written application" to the Bureau of the Assembly to open procedure for Latvia.

64. The co-rapporteurs considered that a visit to Latvia or a structured exchange of views with the Latvian Parliamentary Delegation was not necessary in order to reach a conclusion, in particular since ample information was informally given to them by the Chairman of this delegation. On the basis of several written documents, they prepared a note and advised the Committee to make a reasoned written application to the Bureau to open procedure by means of transmission of their note. The Committee adopted the position of the rapporteurs and transmitted to the Bureau its "written reasoned application" to open a procedure for Latvia on 22 September 1997. On 26 September 1997, the Bureau granted the request and opened procedure for Latvia. The rapporteurs for inquiry were appointed rapporteurs for the procedure on 29 January 1998. Their visit to Latvia is planned for June 1998.

65. The procedure our Committee followed in the case of Latvia has set a *precedent* that should be followed also for future proposals for opening of a monitoring procedure emanating from members of the Committee. It could be concluded that the Committee has filled the vacuum left in Resolution 1115 in this respect in a satisfactory way ensuring that initiatives of such a sensitive political nature are dealt with *seriously* and are *well-prepared*. Moreover, the *co-operation* that had been shown on behalf of the Lavian Parliamentary Delegation and the lack of any real controversy shows that the new non-confrontational approach adopted by the Committee is being understood. Finally, as in the case of Greece, it would be difficult not to link the decision of the Latvian Parliament to ratify the ECHR with the discussion which had started just some weeks earlier on this matter in our Committee.

D.4. Progress in respect of other procedures

66. It was said above that two procedures inherited from the previous monitoring system led to Assembly debates in the September 1997 part-session. Progress has been marked in respect to *all* remaining 9 procedures: *Albania, Bulgaria, Croatia, Moldova, Russia, Slovakia, the former Yugoslav Republic of Macedonia, Turkey and Ukraine.* In application of its working methods and principles, the Committee proceeded to an exchange of views with all the national Parliamentary Delegations concerned – with the exception of the Albanian delegation – on the basis of "issues papers" drawn up by the rapporteurs. Rapporteurs' visits have been organised to all 9 countries:

Albania:	11-12 September 1997 and 22-23 January 1998
Bulgaria:	18-22 December 1997
Croatia:	9-12 October 1997
Moldova:	15-18 October 1997
Russia:	10-13 November 1997
Slovakia:	scheduled for Spring 1998
The former Yugoslav Republic of Macedonia:	6-8 November 1997
Turkey:	23-26 November 1997
Ukraine:	8-10 December 1997

67. During their visits to the countries they monitor, the co-rapporteurs have examined the progress made in: the ratification of Council of Europe conventions, the legislative reform, the respect of human rights – notably the conditions in prisons, freedom of media, freedom of consience – respect for minority rights, the separation of powers, local self-government etc.

68. In the cases of Bulgaria, Russia and Ukraine, the Committee, following an exchange of views with the Parliamentary Delegation concerned, adopted and transmitted to these delegations a preliminary draft report at the end of January 1998. Comments by the delegations on these texts are expected within three months at the latest – except in the case of Ukraine for which a longer deadline was given (ie. end of May 1998) in view of the forthcoming parliamentary elections. In the case of Turkey, a memorandum on the rapporteurs' visit was considered by the Committee on 15 January 1998. Outline draft reports and summary analyses of compliance with commitments were drawn up by the co-rapporteurs for the remaining countries: Croatia, the former Yugoslav Republic of Macedonia and Moldova. Moreover, the Committee's rapporteurs for Moldova and Ukraine will participate, as members of the Bureau's *ad hoc* committee, in the international observation of parliamentary elections in Moldova and Ukraine scheduled for 22 and 29 March 1998 respectively.

69. All the above-mentioned texts prepared by the Committee should remain confidential, until comments have been received by the Parliamentary Delegation concerned (unless the Bureau decides otherwise, cf. also above, under C, 2, c). Therefore no analysis of their contents is possible at this stage. It can, nevertheless, be noted that, confronted with a heavy workload - including "inherited" procedures, a consultation procedure and inquiry into a proposal for the opening of a new procedure - the Committee has reached progress in all cases.

E. Proposals for improvement

70. Resolution 1115, including the Committee's terms of reference, contains undoubtedly several shortcomings and often lacks clarity, as has been shown above. This is often the result of long discussions, which preceded the drafting of this text, the effort to reach compromise solutions and the adoption of numerous amendments during the Assembly debate which often disrupted the internal logic of the proposed text.

71. Nevertheless, as explained above, the Committee has succeeded in developing its own practice and working methods which, to a large extent, have covered the *lacunae* inherent in Resolution 1115 or clarified ambiguous provisions. All these developments were "allowed" by a reasonable interpretation and application of Resolution 1115. And there should be no reason in re-opening a discussion on what has been acquired in practice.

72. At this stage, a limited number of improvements, calling for an Assembly decision, is proposed.

E.1. Composition of the Committee

73. As was said above, nominations for the 65 seats of our Committee are drawn by the Political Groups – and not the national parliamentary delegations as for all other Assembly committees. They are addressed to the President of the Assembly who submits them to the Bureau. Members are appointed by the Bureau of the Assembly (subject to ratification by the Assembly) on the basis of their *group membership* (by applying the apportionment ratio based on the so-called "D'Hondt principle"). Membership of national delegations is irrelevant. Resolution 1115 simply requires that the Bureau of the Assembly, when drawing the final list of members "shall aim at ensuring a *regional balance*" (cf. Resolution 1115, paragraph 8).

74. Nominations by the Political Groups had been considered more appropriate in view of the specific nature of the new Committee. The creation of the new Committee was also seen as an occasion to "try something new". It could be said that the "experiment" has proved to be successful, with one reservation.

75. Successful, since a politically balanced Monitoring Committee, reflecting the distribution of political forces in a similar way as within the Plenary, corresponds to the more politically sensitive approach developed by the Committee. Unfortunate incidents such as the one that happened during the last part-session, when our Committee could not be constituted on the first day of the session because some political groups had not made their nominations in time, should not put into question the principle – they simply call for more caution in future.

76. But a serious weakness that the application of the current system has revealed in practice is the fact that some countries were *not at all* represented in our Committee either last or this year or for two consecutive years. A monitoring procedure is ongoing for two of these "absentees". More specifically, in 1997, *seven* Member States were not represented in our Committee: Albania, Andorra, Cyprus, Iceland, Moldova, San Marino, Slovenia. Following appointments this year, *six* states are not represented in our Committee: Albania, Andorra, Iceland, Ireland, Moldova and San Marino. Of these countries, monitoring procedures are going on for *Albania and Moldova* (not represented for two consecutive years).

77. Representation of *all* Member States in the Committee is all the more important since:

(i) a number of "monitored" countries cannot currently participate in the Committee's debates concerning their situation;

(ii) *in practice*, issues concerning the monitoring procedure for *one* Member State often arise during discussion on the monitoring procedure of *another* state (for instance, issues linked to Moldova's monitoring have often been raised during discussions on Russia's monitoring); hence, *ad hoc* invitations to delegations of not represented Member States when the situation in these states is on the agenda of the Committee's meeting (cf. paragraph 10 of Resolution 1115) do *not* solve the problem, while having also *financial implications*;

(iii) as regards Member States for which no monitoring procedure is initiated, *at any moment*, any member of the Committee may raise an issue concerning a not represented Member State including a proposal to open monitoring procedure for that state;

(iv) finally, it is incompatible with the *political importance* attributed to the monitoring exercise that some Member States are not represented in our Committee, especially when States neighbouring or otherwise linked to them are being monitored (for instance, in the course of 1997, Slovenian or Cypriot parliamentarians may have wished to participate in our discussions concerning other States from the former Yugoslavia or Turkey, respectively).

78. A requirement that all Member States be represented in our Committee would have been too strict, if the number of members of the Committee had been fixed to 40 as initially proposed by the Committee on Rules of Procedure, since, in that case, it would mean one member per country. This was probably also the reason why the original version spoke merely about "regional balance" (cf. Resolution 1115, paragraph 8). But, following amendments, the number of members for our Committee has been increased to 65 (plus two *ex officio* members). There seems to be thus no reason why not all Member States should not be represented in our Committee. Nominations should continue to be drawn by the Political Groups, and not the national delegations, as Resolution 1115 provides (cf. paragraphs 7 and 8). But, when drawing up the final list of members of the Committee, the Bureau should ensure – not just a "regional balance" – but that all Member States be represented in the Committee.

E.2. Transparency of "consultation procedures"

79. It has been shown above that the "consultation procedure" of Resolution 1115 is virtually identical to the monitoring procedure itself: exchange of views with the national delegation concerned, visit to the country, preparation of a written text. In the precedent concerning Greece, it has moreover been noted that, at least partly as a result of the dialogue between the Committee and the State authorities, a significant legislative amendment with considerable policy implications has been decided by the government.

80. According to Resolution 1115, the Committee completes its work, as far as "consultation procedures" are concerned, when transmitting its written opinion to the Bureau. Up until that moment all the previous procedure is confidential and the Committee's work, including achieved results, risks never to become public.

81. According to Resolution 1115, the "negative decision of the Bureau needs to be confirmed by the Assembly". But, according to the Rules of Procedure of the Assembly, any decision of the Bureau must be eventually ratified by the Assembly, hence also a positive decision of the Bureau to open a monitoring procedure. Resolution 1115 gives no explanation on "how" the Assembly will be seized in order to be able to "confirm" or not the Bureau's decision.

82. The most natural way of doing so is to record the Bureau's decision in its Progress Report[10] and, at the same time, *append to it the Monitoring Committee's opinion on the matter*. The Assembly may thus judge the merits of the case before deciding whether or not the Bureau's decision to open or not a monitoring procedure should be ratified. This is even more important when the Bureau's decision differs from the Monitoring Committee's opinion.

83. Such a solution constitutes the only reasonable interpretation of Resolution 1115 (especially since the Bureau can in any case decide to declassify "memoranda and drafts" of the Monitoring

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[10] Cf. the recording of the Bureau's decision to open a monitoring procedure for Latvia in the Progress Report of the Bureau of the Assembly and the Standing Committee (23 September 1997-26 Janbuary 1998), Doc. 7978, paragraph 44, p. 10.

Committee) and guarantees transparency of "consultation procedures". The work done by the Monitoring Committee becomes public, including the achieved results, and the Assembly members have a realistic opportunity to be acquainted with the subject before voting on whether or not they ratify the Bureau's decision when adopting the Progress Report.

E.3. Interim information reports

84. Paragraph 6 of the Committee's terms of reference provides that the "[Monitoring] Committee's conclusions should contain a summary of its position and give rise to an official Assembly document including a draft resolution and/or recommendation as appropriate (see Rule 47)". The explanatory memorandum seems to suggest that "publicity of supervision" is the "raison d'être" of this provision.

85. The Assembly has already adopted two Recommendations emanating from our Committee. They both concerned procedures initiated a long time ago, most of the problems had in the meantime been solved and thus both files were "mature" enough to give rise to an Assembly text.

86. Paragraph 6 of our terms of reference seems indeed to imply that, for our Committee to bring about a debate, some kind of "conclusions" must be drawn in respect of the monitoring procedure in question (a certain degree of "maturity" must have been reached), such as has been the case with the debates on the Czech Republic and Lithuania. But, as far as more "recent" or more complicated procedures are concerned, that is cases where many problems are still open, it would be difficult, if not impossible, for the rapporteurs and eventually the Committee to present any "conclusions" in the form of a draft resolution or recommendation. This is even more so, given the long term approach adopted by the committee (see above) based on an on-going dialogue with the Parliamentary Delegation concerned. At the same time, the Assembly has "instructed" the Committee to report to it "at least once every two years on each country being monitored". It cannot thus be argued that the Assembly intended to leave the Monitoring Committee free to take all the time it may need and report to it only when "conclusions" could be drawn. Finally, apart from any problems of interpretation of Resolution 1115, it is more than desirable for our Committee, especially for the sake of efficiency, to be able to come to the Assembly *as often as possible*, allowing a public debate to take place and rendering its documents public, even before any "conclusions" can be drawn in respect of a Member State.

87. Rule 47 itself - to which paragraph 6 of our terms of reference refers - offers the solution which reconciles the concern for *publicity* with the *long-term approach* of our Committee. Paragraph 5 of Rule 47 provides that any Assembly committee "may submit information reports on which the Assembly shall not be called upon to vote". Such information reports will give rise to a *public debate* within the Assembly, ensuring the "*publicity of supervision*", but, by definition, they do *not* contain a draft resolution or recommendation in which any kind of "conclusions" are to be registered (including the conclusion suggested in paragraph 7 of our terms of reference) .[11] When it deems it necessary, our Committee should have recourse to information reports as an interim solution, before a monitoring procedure is "mature" enough to give rise to a draft resolution or recommendation containing conclusions and proposals for follow-up action.

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[11] Such an information report has recently been debated in the Standing Committee, on 5 November 1997, on the Second Summit of Heads of State and Government of the Council of Europet.

F. Conclusions

88. After a year of operation, *has the Monitoring Committee proved its worth?*

89. We sincerely think that the answer is : *YES*. For a number of reasons. They have to do with *progress* in the Assembly's monitoring process for a number of Member States, achieved *results*, but also with changes in *style and approach*.

90. In terms of *progress and achieved results* by the Monitoring Committee:

90.1 Five months after it came into existence, in September 1997, it led *two Assembly debates* on *the Czech Republic and Lithuania*. Two Recommendations were adopted - for which Replies are expected from the Committee of Ministers – including proposals for follow-up action aiming at influencing: the monitoring procedure of the Committee of Ministers and the Organisation's intergovernmental work and the special programmes of co-operation and assistance for the countries of Central and Eastern Europe.

90.2 It transmitted to the Bureau of the Assembly, upon its request, *a written opinion* on whether a monitoring procedure should be opened for *Greece* as regards the situation of the Muslim Minority in Western Thrace ("consultation procedure"). In the course of the preparation of the Committee's opinion, and – at least partly – as a result of the dialogue between the Committee and the Greek authorities, *a significant legislative amendment* with considerable policy implications was decided by the government: the abolition of Article 19 of the Greek Nationality Code, criticised as discriminatory vis-à-vis the non-ethnic Greeks.

90.3 It took the initiative and caused the opening by the Bureau of the Assembly of *a new monitoring procedure* for *Latvia*, after preparation of a "written reasoned application" and in full co-operation with the Latvian Parliamentary Delegation. Again *results* have been achieved even before the opening of the procedure was proposed by the Committee: during discussions on this matter, Latvia ratified the European Convention on Human Rights.

90.4 It is currently advancing work on *Albania, Bulgaria, Croatia, Latvia, Moldova, Russia, Slovakia, the former Yugoslav Republic of Macedonia, Turkey and Ukraine*: it held an exchange of views with the Parliamentary Delegations of these States – with the exception of Albania – and organised rapporteurs' visits to all of them. Three preliminary draft reports have been transmitted for comments to the Parliamentary Delegations of Bulgaria, Russia and Ukraine. A memorandum on the rapporteurs' visit to Turkey was approved. Its rapporteurs for Albania took part in a tri-parliamentary mission to the country for which a report of the *ad hoc* Committee of the Bureau was discussed in the January part-session of the Assembly. Outline draft reports and summary analyses of compliance with commitments have been drawn by the rapporteurs for the remaining countries.

91. But probably *changes in style* have been even more important than progress in respect to specific procedures:

91.1 It managed to change the Assembly's monitoring approach: the *logic of persuasion* prevailed over confrontation. It revealed the *political nature* of *parliamentary* monitoring – as distinct to intergovernmental monitoring and purely legal monitoring - and showed a better understanding of the *geopolitical context and domestic concerns* of the country being monitored.

91.2 It developed *clear and objective working methods*: it mainly developed a *confidential dialogue,* focused on *well-defined issues, with the Parliamentary Delegation* of the State for which monitoring is initiated or envisaged.

91.3 It ensured *complementarity with other Assembly committees*: the Monitoring Committee is *the* committee responsible for "country monitoring", but other Assembly committees have continued working on *specific issues* arisen in a monitored Member State. There is still room for improvement as regards *coordination* between the Monitoring Committee and other committees when dealing with issues linked to monitoring procedures.

91.4 It has initiated a *dialogue with the Committee of Ministers* on monitoring by recommending specific follow-up action in the two Recommendations it has brought before the Assembly. It remains responsible for looking into the action taken by the intergovernmental body in this respect. The Committee of Ministers has not replied to these two Recommendations yet. Otherwise co-operation between the two bodies responsible for monitoring has so far been impeded by difference in approaches and mainly the absolute and unexceptional secrecy surrounding the work of the Committee of Ministers related to monitoring. The Committee of Ministers is called upon to reconsider its decision on secrecy and envisage, for instance, confidential transmission of information to the rapporteurs concerned. The first exchange of views between representatives of the Monitoring Committee and the Committee of Ministers in the Joint Committee of January 1998 has been successful. Monitoring should be regularly – for instance, at least once a year - on the agenda of the Joint Committee.

92. In the light of acquired experience, the Monitoring Committee has formulated the *proposals for improvement* contained in this report (cf. Chapter E, above). They concern its *composition* (in order to ensure that all Member States be represented in the Committee), *transparency of "consultation procedures"* and the possibility of presenting to the Assembly *interim information reports*, when it deems it necessary, for procedures not "mature" enough to give rise to a draft resolution or recommendation.

93. In future, we have to consider how to enable our Committee to react to urgent situations, calling for immediate attention and reaction. This may require overcoming current procedural constraints.

94. At any event, the success of monitoring clearly depends on *collective action* and *constructive cooperation* with both Parliamentary Delegations and governments of Member States.

ANNEX I

Strasbourg, 28 April 1997 AS/Mon (1997) 01 Rev.

DEVELOPMENTS OF THE MONITORING SYSTEM OF THE PARLIAMENTARY ASSEMBLY

MEMORANDUM PREPARED BY THE OFFICE OF THE CLERK

[Extracts]

I. **Introduction**

II. **The first monitoring mechanism: Order No. 488 (1993) and Resolution No. 1031 (1994)**

III. **Consolidating the procedure: Order No. 508 (1995)**

IV. **Implementation of Order No. 508 (1995): Assembly debates on Albania and Estonia in January 1997 and on Romania in April 1997**

I. Introduction

1. The Parliamentary Assembly was the first body of the Council of Europe to establish in 1993 an effective monitoring procedure.

2. The Assembly wished that the Council of Europe could rapidly welcome the "new democracies" despite their difficulties in advancing from a totalitarian regime to that of a pluralist democracy respecting human rights and the rule of law.

3. It is for this reason that the Assembly introduced the practice of asking States, during the examination of their requests for membership, to undertake specific commitments on issues related to the basic principles of the Council of Europe. These commitments are explicitly referred to in the Assembly Opinion on the accession of the State concerned.

II. The first monitoring mechanism: Order No. 488 (1993) and Resolution No. 1031 (1994)

4. In order to ensure the respect of these commitments, the Assembly established a procedure by adopting, in June 1993, Order No. 488 (known as the "Halonen Order") "on the honouring of commitments entered into by new member states". Through this Order it instructed its Political Affairs Committee and its Committee on Legal Affairs and Human Rights, on an equal footing, "to monitor closely the honouring of commitments entered into by the authorities of the new member states and to report to the Assembly's Bureau at regular six monthly intervals until all undertakings have been honoured." As regards possible consequences of non-compliance, Order No. 488 stipulated that "the honouring of these commitments is a condition for full participation of parliamentary delegations of new member states in its work".

5. For the purpose of defining the scope of application of this Order, the Assembly, less than a year later, adopted Resolution 1031 (1994) "on the honouring of commitments entered into by the member states when joining the Council of Europe." The reference to "new" member states was replaced by a reference to states "which had become members since the adoption in May 1989 of Resolution 917 (1989) on a special guest status with the Parliamentary Assembly". Moreover, in the first paragraph of the resolution, it was specified that *all* member states of the Council of Europe were required to respect their obligations under the Council of Europe Statute, the European Convention on Human Rights (ECHR) and all other conventions to which they were parties.

6. The Resolution also underlined that the monitoring procedure should be regarded as "a stimulus and guidance for the consolidation of democracy" in these states and as a means to assist them to comply with the commitments they had voluntarily undertaken to be able to adhere to the Organisation.

7. In case of failure to honour commitments, Resolution 1031 provided for recourse to the relevant provisions of the Council of Europe Statute and the Assembly Rules of Procedure.

III. Consolidating the procedure: Order No. 508 (1995)

8. Implementation of Order 488 in practice revealed the need to further strengthen the Assembly's monitoring system, given also the declaration on compliance with commitments accepted by member states, adopted by the Committee of Ministers on 10 November 1994. Thus, a new text was adopted in April 1995, Order No. 508, which superseded Order 488, and introduced the following main novelties:

. The simple transmission of reports to the Bureau of the Assembly which could only decide to render them public was replaced by the possibility to hold an Assembly debate on the honouring of obligations and commitments by the state concerned on the basis of a draft resolution/recommendation in which proposals for the improvement of the situation in this state would be made. Thus the Assembly's monitoring procedure became transparent and more influential by allowing for a public debate.

. Given problems of co-ordination and timing between the two competent committees so far operating on an equal footing, it was decided to give the leading role to the Committee on Legal Affairs and Human Rights while the Political Affairs Committee - leading on accession - was to be seized for opinion. The Committee on Relations with European Non-Member Countries would also be seized for opinion with regard to member states which had previously enjoyed special guest status. The leading committee would decide whether to open a monitoring procedure vis-à-vis a member state, according to normal committee procedure.

. Last but not least, the distinction between "old" and "new" member states - already softened following the adoption of Resolution 1031 (1994) - was now clearly abolished: *all* member states were made subject to the Assembly's monitoring procedure.

9. The sanctions for persistent failure to honour commitments were enumerated in a more explicit way: non-ratification of the credentials of a national parliamentary delegation; a recommendation to the Committee of Ministers requesting it to take the appropriate action under Article 8 of the Council of Europe's Statute.

IV. Implementation of Order No. 508 (1995): Assembly debates on Albania and Estonia in January 1997 and on Roumania in April 1997

10. Under Order 508, the Committee on Legal Affairs and Human Rights opened monitoring procedures in respect of a significant number of member states.

11. The first step in this monitoring procedure was the visit of the state concerned by the rapporteur of the leading committee, in preference together with the rapporteurs of the other committees concerned. Following the visit, an introductory memorandum was drafted and transmitted to the authorities of the state concerned for comments within three months. The practice was gradually established that, pending these comments, the introductory memorandum should remain confidential. Only after consideration of the comments of the state authorities the introductory memorandum was made public, together with the comments thereon, and a report on the honouring of the obligations and commitments entered into by the member state prepared for an Assembly debate.

12. So far, three monitoring procedures have led to an Assembly debate: the procedures concerning Albania and Estonia, debated during the January 1997 part-session, which could be considered as "pilot-cases", and most recently the procedure on Roumania, debated on 24 April 1997.

13. As regards *Albania*, the situation in this country has been closely followed by the Assembly: a first visit by the rapporteurs to the country took place in January 1996; an urgent procedure debate on the parliamentary elections in Albania was held in June 1966; a visit of an *ad hoc* committee of the Bureau - of which the three rapporteurs were also members - was organised in Tirana at the end of August 1996; the local elections in Albania, in October 1996, were observed and co-ordinated by an *ad hoc* committee of the Bureau, including the rapporteurs on Albania's monitoring, together with a delegation from the CLRAE (Congrès des Pouvoirs locaux et régionaux de l'Europe).

14. In its Resolution 1114 (1997) on the honouring of obligations and commitments by Albania, the Assembly, after noting the considerable progress achieved, resolved to go on monitoring Albania's compliance with its obligations and commitments and insisted that the remaining commitments

should be complied with within the agreed time frame. Concrete action was requested by the Albanian authorities. Moreover, the Assembly called upon the Albanian government and the opposition parties to end the political crisis in the country and proposed a number of specific measures for this purpose.

15. The Assembly's report on *Estonia* was also the final product of a long process: two reports drawn up under Order 488, following respective visits of the rapporteurs, were published in 1994 and 1995. A further visit under Order 508 was organised in February 1996.

16. Resolution 1117 (1997) on the honouring of obligations and commitments by Estonia noted the considerable progress achieved by this state and enlisted the main positive developments towards compliance. At the same time, it enumerated some problematic areas in relation to which the Estonian authorities were urged to implement concrete measures. The Assembly, considering that the most important obligations and commitments had been honoured by Estonia, decided to close the monitoring procedure opened in May 1995 under Order 508, while resolving to continue to follow certain specified problems.

17. Finally, the report on *Romania* was the result of two visits by the rapporteurs to the country in 1995 and 1997, a memorandum drawn up in 1996 and comments thereupon of the authorities.

18. In its Resolution 1123 (1997) on the honouring of obligations and commitments by Romania, the Assembly observed the considerable progress towards the fulfilment of the obligations and commitments of this state and set out the most recent positive developments. It further set out the problems that had still to be solved and earnestly requested Romania to fulfil certain conditions in response. The Assembly, considering that Romania had honoured its most important obligations and commitments, decided to close the monitoring procedure under Order 508 (1995). At the same time, the Assembly made it clear that it could decide to reopen the procedure, in accordance with Resolution 1115 (1997), should the conditions not be fulfilled within a year or if it considered that Romania was not honouring its obligations and commitments as a Council of Europe member state.

19. In all three cases of Albania, Estonia and Romania, the Assembly also adopted a recommendation in which it listed the measures that the Committee of Ministers should take in order to help these two member states to comply with their obligations and commitments.[12] Thus the Assembly aims not only at offering a "stimulus and guidance" to the member states concerned, but also at helping them through requests addressed to the Committee of Ministers for continuing assistance (financial aid, expertise etc.).

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12 Recommendations Nos. 1312 (1997), 1313 (1997), 1326 (1997) on the honouring of obligations commitments by Albania, Estonia and Romania, respectively.

ANNEX II

Strasbourg 12 June 1997 AS/Mon (1997) 13

AREAS WHICH HAVE BEEN COVERED UNDER MONITORING PROCEDURE[13]

Indicative List[14]

Memorandum prepared by the Office of the Clerk on the instructions of the Chairman

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13 sources: Statute of the Council of Europe
European Convention on Human Rights
Other Council of Europe Conventions to which a Member State is a party

14 This list does not necessarily cover the specific commitments undertaken by Member States upon their accession to the Council of Europe.

A. Pluralist Democracy

1. separation of powers

2. elections
(constitutional/electoral law; access to media; assessment of whether free, general, secret and fair)

3. political parties
(status; conditions for setting up/registration; fiscal rules/party finances)

4. parliament
(pluralist composition; minority representation; control over the executive; immunities; rights and duties of the opposition)

5. special powers in emergency situations (use and control)

6. local and regional self-government

B. Rule of Law and Human Rights

7. relationship between domestic law and international human rights treaties

8. effectiveness of constitutional/legal guarantees for human rights

9. judicial system
(independence of the judiciary; access to justice; criminal justice; role and status of public prosecutors; status of attorneys and autonomy of the bar)

10. police training

11. prison conditions and prison administration

12. respect for private and family life

13. property rights (restitution, fair compensation)

14. freedom of conscience and of worship

15. freedom of expression/independence of the media

16. freedom of association

17. freedom of movement and of assembly

18. equality between men and women

19. minorities
(non-discrimination; citizenship legislation; status of and education in minority languages)

20. policies to combat racism, antisemitism, xenophobia

C. Other

21. settlement of international and internal disputes by peaceful means

ANNEX III

OPENING OF A MONITORING PROCEDURE

Schematic Representation

PROPOSAL	MODALITIES	CONSULTATION	DECISION
			PA or AS/Perm
AS/Bur	---> ---> --->	AS/Mon ---> --->	--->
10 or more PA members*	Motion for a resolution/recommendation ---> AS/Bur --->	AS/Mon ---> --->	--->
AS/Committee(s)	reasoned written application ---> ---> ---> AS/Bur --->	AS/Mon ---> --->	--->
AS/Mon	reasoned written application ---> ---> ---> AS/Bur --->	---> ---> --->	--->

*** representing at least two national delegations and two political groups**

Abbreviations:

PA:	*Parliamentary Assembly*
AS/Perm:	*Standing Committee*
AS/Bur:	*Bureau of the Assembly*
AS/Committee(s)	*any Assembly Committee(s) other than the Monitoring Committee*
AS/Mon:	*Monitoring Committee*

ANNEX IV

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STATE OF PROCEDURES

A. PROCEDURES UNDER WAY

B. PROCEDURES HAVING LED TO ASSEMBLY DEBATES IN 1997

C. CONSULTATION ON THE OPENING OF A PROCEDURE

N.B. The Committee came into existence and held its first meeting on 25 April 1997. It took over 11 procedures from the previous system under Order No. 508. The Bureau of the Assembly authorised the opening of a new procedure on 26 September 1997. It has held 12 exchanges of views with national parliamentary delegations. Ten visits of rapporteurs have been organised. Three preliminary draft reports have been transmitted to the chairmanships of the national parliamentary delegations concerned for comment. Reports are being developed on other visits. A written opinion has been transmitted to the Bureau of the Assembly in response to a consultation on the opening of a procedure. Two procedures were the subject of reports to the Assembly at the autumn 1997 part-session.

A. PROCEDURES UNDER WAY[15]

1. Albania

Accession	*13 July 1995*		
	Assembly Opinion No. 189		*29 June 1995*
	CM Resolution (95) 8		*10 July 1995*
Other references	*Res. 1114 on obligations and commitments*		*29 January1997*
	Rec. 1312 on obligations and commitments		*29 January 1997*
	Rec. 1316 on the state of emergency		*19 March 1997*
	Rec. 1328 on the state of emergency		*24 April 1997*
	Res. 1133 on the situation in Albania		*24 September 1997*
	Doc. 7991, Ref. No. 2248		*30 January 1998*
Rapporteurs	Mr van der Linden	Netherlands	EPP/CD
	Mr Sole Tura	Spain	SOC
Visits of rapporteurs	*11-12 September 1997*		
	22-23 January 1998[2]		

2. Bulgaria

Accession	*7 May 1992*		
	Assembly Opinion No. 161		*5 May 1992*
	CM Resolution (92) 8		*5 May 1992*
Rapporteurs	Mr Atkinson	United Kingdom	EDG
	Mr Gjellerod	Denmark	SOC
Exchange of views with Parliamentary Delegation			5 November 1997
Visit of rapporteurs			18-22 December 1997
Transmission of preliminary draft report			30 January 1998

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[1] With the exception of Latvia (procedure opened under Resolution 1115), procedures have been taken over from the previous system under Order 508 (cf. Resolution 1115, paragraph 14). With the exception hitherto of Albania, the Committee has held an exchange of views with each parliamentary delegation, on the basis of an "issues paper", in order to shape and focus the programme of the rapporteurs' visit to the country.

[2] As part of a tri-parliamentary mission, including the President of the Assembly and delegations from the OSCE Assembly and the European Parliament, cf. Addendum IV to the Progress Report, Doc. 7978, Add.IV)

3. Croatia

Accession	*6 November 1996*			
	Assembly Opinion No. 195			*24 April 1996*
	CM Resolution (96) 31			*2 July 1996*
Rapporteurs	Mr Jansson	Finland	LDR	
	Mr Figel	Slovakia	EPP/CD	
Exchange of views with Parliamentary Delegation				24 June 1997
Visit of rapporteurs and chairman				9-12 October 1997
Summary analysis of compliance with commitments:				29 January 1998

4. Latvia

Accession	*10 February 1995*		
	Assembly Opinion No. 183		*31 January 1995*
	CM Resolution (95) 3		*6 February 1995*
Proposal to open	letter of Mr Bindig		30 May 1997
Rapporteurs for inquiry	Mr Davis	United Kingdom	SOC
	Mr Németh	Hungary	LDR
Approval by the Committee of a "reasoned written application"[3]			22 September 1997
Decision by the Bureau of the Assembly to open a procedure			26 September 1997
Visit of rapporteurs:	*planned for June 1998*		

5. Moldova

Accession	*13 July 1995*		
	Assembly Opinion No. 188		*27 June 1995*
	CM Resolution (95) 7		*10 July 1995*
Rapporteurs	Mr Columberg	Switzerland	EPP/CD
	Mrs Durrieu	France	SOC
Exchange of views with Parliamentary Delegation			23 September 1997
Visit of rapporteurs			15-18 October 1997
Summary analysis of compliance with commitments:			29 January 1998

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[3] Cf. paragraph 9 of Resolution 1115 (1997)

6. Russia

Accession	*28 February 1996*		
	Assembly Opinion No. 193		*25 January 1996*
	CM Resolution (96) 2		*8 February 1996*
Rapporteurs	Mr Bindig	Germany	SOC
	Mr Muehlemann	Switzerland	LDR
Exchange of views with Parliamentary Delegation			25 June 1997
Visit of rapporteurs			10-13 November 1997
Transmission of preliminary draft report			30 January 1998

7. Slovakia

Accession	*30 June 1993*		
	Assembly Opinion No. 175		*29 June 1993*
	CM Resolution (93) 33		*30 June 1993*
Rapporteurs	Mr Leoni	Italy	SOC
	Mr Lesein	France	LDR
Exchange of views with Parliamentary Delegation			5 November 1997
Visit of rapporteurs			*planned for spring 1998*

8. The former Yugoslav Republic of Macedonia

Accession	*9 November 1995*		
	Assembly Opinion No. 191		*27 September 1995*
	CM Resolution (95) 23		*19 October 1995*
Rapporteurs	Mr Berceanu	Romania	SOC
	Mrs Gelderblom-Lankhout	Netherlands	LDR
Exchange of views with Parliamentary Delegation			23 September 1997
Visit of rapporteurs			6-8 November 1997
Summary analysis of compliance with commitments			29 January 1998

9. Turkey

Accession	*13 April 1950*		
References	*Rec. 1298 (1996) on respect of commitments to constitutional and legislative reforms* *Rec. 1266 (1995) & CM Reply [Doc. 7334] of 22 June 1995* *Res. 1041 (1994) on the dissolution of the Party for Democracy (DEP)*		
Rapporteurs	Mr Barsony	Hungary	SOC
	Mr Schwimmer	Austria	EPP/CD
Exchange of views with Parliamentary Delegation			25 September 1997
Visit of rapporteurs			23-26 November 1997
Memorandum on visit			15 January 1998

10. Ukraine

Accession	*9 November 1995*		
	Assembly Opinion No.190		*26 September 1995*
	CM Resolution (95) 22		*19 October 1995*
Rapporteurs	Mr Kelam	Estonia	EPP/CD
	Ms Severinsen	Denmark	LDR
Exchange of views with Parliamentary Delegation			25 September 1997
Visit of rapporteurs			8-10 December 1997
Transmission of preliminary draft report			29 January 1998

B. PROCEDURES HAVING LED TO ASSEMBLY DEBATES IN 1997[4]

11.	**Estonia**	Res.1117 (1997)	30 January 1997
	under Order 508	Rec.1313 (1997)	30 January 1997
	CM Reply[5]		9 April 1997
12.	**Romania**	Res.1123 (1997)	24 April 1997
	under Order 508	Rec.1326 (1997)	24 April 1997

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[4] For Albania, cf. above section A.1
[5] Doc. 7799

13.	**Czech Republic**		
	Rec.1338 (1997) *under Resolution 1115*		22 September 1997
14.	**Lithuania** *under Resolution 1115*	Rec.1339 (1997)	22 September 1997

C. CONSULTATION ON THE OPENING OF A PROCEDURE

15. Greece: situation of the Muslim minority in Western Thrace

Bureau's referral of Motion for an Order[6]			18 March 1997
Rapporteurs for inquiry	Mrs Err Mr Glotov	Luxembourg Russia	SOC UEL
Exchange of views with Parliamentary Delegation			22 June 1997
Visit of rapporteurs			5-8 October 1997
Transmission of a written opinion to the Bureau of the Assembly			20 January 1998

[6] Doc. 7759