COUNCIL OF EUROPE
CONSEIL DE L'EUROPE
Parliamentary Assembly
Assemblée parlementaire

Council of Europe / Conseil de l'Europe
F-67075 Strasbourg cedex (France)
Tél :+33/ 3 88 41 20 00
Fax : +33 / 3 88 41 27 76
Email : pace@coe.fr
http://stars.coe.fr/

Confidential

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Committee on the honouring of obligations and commitments by member States of the Council of Europe

Draft minutes
of the meeting held in Paris on 12 January 1999

Mr Sole Tura, acting Chairman, opened the meeting at 10.15 am and welcomed the participants.

1. AGENDA

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The draft agenda was adopted.

2. MINUTES

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The draft minutes of the meeting held in The Hague on 26 November 1998 were approved.

3. TURKEY
co-rapporteurs : MM. Bársony and Schwimmer

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Mr Schwimmer thanked the Turkish authorities and the parliamentary delegation for their co-operation and hospitality during the fact-finding visits, and for their observations on the draft information report. Whilst the co-rapporteurs had been encouraged by the first oral comments, which had been critical but not negative, they were, however, disappointed by the sometimes excessively aggressive style of the written observations. The co-rapporteurs had also been misunderstood in some cases. The expression « Kurdish minority » had not been invented by the rapporteurs, but had been quoted in a reference to the title of Order N° 545 (1998). In respect of the Turkish Constitution, the Assembly was concerned that some provisions left room for conceptions of relationship of the State to the individual which are not compatible with the Council of Europe's Statute and the European Convention on Human Rights. The co-rapporteurs had suggested that the

advice on this might be sought from the most competent and independent institution in this field, i.e. the Venice Commission, and they were ready to explain their suggestion in the concluding remarks of the draft report.

Mr Barsony observed that the draft report was based on facts and was therefore bound to satisfy neither side. It was not fair to reproach the co-rapporteurs that they had consulted only the Bar Association in Diyarbakir, whilst in reality they had met representatives of many other Human Rights organisations, lastly in November 1998 during a conference on human rights in Istanbul. To present a full report on all aspects of the complex Turkish society, 1000 pages would be needed. What the co-rapporteurs had tried to achieve was to point out the problems which Turkey is facing in the honouring of its obligations and commitments as a member State. He himself had been acting as a rapporteur on Turkey for four years and had felt accepted by his Turkish friends ; the allegations of partiality were therefore disappointing.

Mr Dinçer thanked the co-rapporteurs for their work; their draft report showed also positive results for democracy, human rights and individual freedoms. The new Turkish government should be given a chance to continue these efforts and to send positive signals before the draft report would be debated.

Mrs Aytaman was grateful to the rapporteurs for having taken account of the observations made by the Turkish authorities and political parties. The new government, even if it would only be in office for some months, would carry out the improvements which had been prepared on the main items by the preceding coalition, such as the banking laws which would be presented to Parliament shortly. If the co-rapporteurs had found the tone of some observations somewhat aggressive, this might be explained by some of their concluding remarks eg on the Constitution, which gave the impression that there was no willingness in Turkey to improve its Constitution, whilst in reality it had been amended three times over the last years. Moreover, Turkey did not need the advice of the Venice Commission on any constitutional reform.

Mr Atkinson observed that all countries subject to a monitoring procedure would benefit from the opinion of independent constitutional experts. He considered that the draft report should also refer to the Loizidou case, where the deadline for implementation of the judgement of the European Court of Human Rights had expired in October last.

Mr Christodoulides considered that the conclusions of the co-rapporteurs on the situation of the Turkish citizens of Kurdish origin should be complemented with contributions from these citizens themselves. Referring to the concluding remarks of the rapporteurs, he said that these citizens should be given also civil and linguistic rights, with the ultimate aim of administrative autonomy.

Mr Jaskiernia wondered whether the Venice Commission should not be asked to pronounce itself on the apparently different possibilities to interpret Articles 8, 9 and 10 of the European Convention on Human Rights. In respect of the refused access to the Ankara Central Prison, he recalled that the Human Rights sub-committee had had a similar experience and that in each case at least a timely explanation could have been given. As for the concluding remarks of the co-rapporteurs, he thought that even for an information report these conclusions were too general for the authorities to take action and for the Committee to verify.

Mrs Gelderblom-Lankhout asked whether the 30 radio and TV stations mentioned in paragraph 33 were run by Turkish citizens of Kurdish origin. Referring to a Council of Europe report on Serbian public broadcasting, she suggested that the co-rapporteurs ask for a similar study on the Turkish media. Finally, now that the monitoring procedure was gradually developing from

merely reporting facts and figures into a process of guidance and assistance, she wondered whether the concluding remarks of the co-rapporteurs should not be elaborated.

Mr Marmazov asked why the draft report had not mentioned the fact that Turkey had not yet signed and ratified Protocol N° 6 to the European Convention on Human Rights.

Mr Gross saw a certain discrepancy between the acknowledgement that Turkey is a democracy (para 6) and the conclusion that Turkey should move in the direction of a modern democracy (para 26). If the Turkish National Security Council was so influential, in their concluding remarks the co-rapporteurs might refer to the insufficiency of civilian control over military activity.

Mrs Aytaman observed that the National Security Council had been set up in accordance with the Constitution and that the Turkish Parliament was fully informed of its activities.

Mr Dinçer pointed out that apart from Kurdish, 23 other languages were spoken in Turkey which had all their own broadcasting stations. The stations broadcasting in Kurdish were organised by the Kurds themselves.

In reply to several remarks made, Mr Bársony said that if the Court's judgement in the Loizidou case would not be executed, the Committee of Ministers should take action in accordance with the Statute; he saw no ground to recommend such action in the present *information* report. Furthermore, the concluding remarks had been formulated in accordance with the profile of this report, as conclusions of general information at this stage available, and the co-rapporteurs saw no reason to elaborate on them, unless the Committee would decide otherwise. As for the NSC, the co-rapporteurs had spoken with some of the civilian members, including the Minister of Foreign Affairs. According to the Constitution the NSC had only a consultative role and similar consultative bodies could be found elsewhere Europe. The different concept in Turkey of freedom of expression was rooted in the Constitution; in Turkey the State, not the individual, was the highest entity and any attack of the individual against the State was considered to be a crime. This concept had also consequences for the respect of other rights and fundamental freedoms, such as the right to constitute trade unions and the right of civil servants to strike. The co-rapporteurs had understanding for the fact that access to the Ankara Security Prison had been denied for personal security reasons; they regretted, however, that they had not been informed beforehand. Finally, the co-rapporteurs had obtained without difficulty a newspaper in Kurdish, with interviews with the leader of the PKK and with the president of the Kurdish parliament abroad. These newspapers could be seized, but so could any Turkish newspaper; in Turkey freedom of expression might be restricted but not on a discriminatory basis.

Mr Schwimmer confirmed that the co-rapporteurs had collected information from representatives of the Turkish citizens of Kurdish origin, not only in Ankara and Istanbul but also in Diyarbakir. However, to send them the draft report for their observations would be against the rules of the monitoring procedure. In their draft report, the co-rapporteurs had not only recommended respect for the cultural rights of these citizens, but had also insisted that they should be given the opportunities and material resources to sustain their natural language and cultural traditions in accordance with the Framework Convention on Protection of National Minorities and the European Charter for Regional or Minority Languages; the draft report referred also explicitly to Recommendation 1377 (1998) which invites Turkey to enable these citizens to exercise their political rights. As for Article 8 of Turkey's Prevention of Terrorism Act, it was clear that every country had the right to combat terrorism and to prohibit terrorist propaganda without violating the right on freedom of expression. The problem was situated in the different interpretation of the expression "prohibited propaganda". Finally, it should be born in mind that the present report had been made to inform the Assembly of the current situation in the honouring of obligations and

commitments by Turkey and – by virtue of Order N° 545 – in the situation of the Turkish citizens of Kurdish origin. The co-rapporteurs had concluded this information report with some remarks of a general nature, which, at this stage, did not require further elaboration or deadlines. Nevertheless, the co-rapporteurs could accept to reword their concluding remarks.

The Committee approved the report thus amended.

4. MOLDOVA

co-rapporteurs : Mr Columberg and Mrs Durrieu

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Mrs Durrieu presented the preliminary draft report and underlined that the situation in Transnistria raised issues of integrity and sovereignty for Moldova since the region was not under the control of the central authorities and Russian troops were still present. Russia should respect the 1990 Treaty on Conventional Armed Forces in Europe, the 1994 Agreement on the withdrawal of its troops from the territory of Moldova and the 1996 Opinion of the Assembly on Russia's request for membership. She added, supported by Mr Dumitrescu, that the odd 40,000 tons of military material of the 14th Army threatened the security of the whole region. There was an enormous traffic of arms and in 1998, more than 40 crimes in Moldova had been committed with weapons coming from that stock. Weapons originating from the 14th Army were also used in Abkhazia, Kosovo and elsewhere. Moreover, the Moldovan government could not be held responsible for violations of the European Convention on Human Rights on the territory of Transnistria which thus *de facto* escaped control of the European Court of Human Rights. A specific human rights issue concerned the detention of Mr Ilie Ilascu, member of the Moldovan parliament, arrested in 1992 in Transnistria, sentenced to death in 1993 and imprisoned since. During her meeting with Mr Ilascu on 5 December 1998, he had spoken freely and, for the first time during his detention, in the Moldovan (Romanian) language. He had not seen his physician for a year and his lawyer since the trial. He considered himself to be a political prisoner and not a terrorist. His trial and sentence by the Transnistrian "Supreme Court" was not recognised by the Moldovan authorities and could not be recognised by the Council of Europe either. He was examining the possibility of seizing the European Court of Human Rights.

Mr Columberg, co-rapporteur, noted that the non-ratification of the withdrawal agreement by the Russian Duma led in practice to the creation of a parallel army in Transnistria. The Committee should discuss this issue with the participation of all parties concerned. He presented other issues in the report concerning the political and economic situation, the legal, judicial and penitentiary systems, the protection of human rights and local self-government. Given the relative political stability in the country, Moldovan authorities should now be able to advance more rapidly towards the honouring of their commitments to the Council of Europe. He asked the committee to transmit the draft report to the Moldovan authorities for comments within three months.

On questions raised by Mr Gjellerod, Jansson and Jaskiernia, Mrs Durrieu answered that Moldova acceded to the Council of Europe in its integrity within the internationally recognised frontiers, but there was a *de facto* secession. It was not the role of the Council of Europe to make proposals on a possible future status of Transnistria but Moldova's integrity had to be preserved so neither independence nor a confederation were plausible solutions for this region. The Transnistrian leaders, for their part, had made no clear proposals. A form of self-government, similar to that granted to the Gagauzian region, could be acceptable for the Moldovan side, but not for the Transnistrian leaders. In a memorandum on normalisation of relations in 1997 the two parties had agreed on the formation of a "common state", but each party gave different interpretations to this term. She was not aware of action by the Council of Europe's Committee of Ministers. She agreed with Mr Glotov that Moldova depended economically on Russia, but disagreed with his

observations that the 14th Army had ceased to exist. Some 2,600 soldiers remained, together with an enormous amount of weapons. As to the problems of the Russian minority he invoked, they were not as serious as in certain member states of the Council of Europe. In conclusion, she proposed that no reference would be made in the draft report on a possible exchange of views with the participation of representatives of Transnistria. It was for the Moldovan delegation to propose inviting them if they wished to do so.

Mr Bársony contested that the term "self-determination" could be used for Transnistria. Its leader, Mr Smirnov, was not born in that region but was a Russian citizen who had only arrived in the middle of the eighties. The region was in reality governed by a gang of smugglers and the situation was not comparable to that in Northern Cyprus, or Nagorno-Karabakh.

Mr Glotov stressed that there was a Russian contingent responsible for the material of the 14th Army. This was the only reason why soldiers of this Army had remained there, as General Lebed had also suggested in 1995 in a meeting with the Committee on Relations with European Non-Member States. The Russian President was making every possible effort to stop smuggling in the secessionist region, but private enterprises were involved. The Monitoring Committee should have an exchange of views with representatives from Moldova and Transnistria in Strasbourg, in which the Russian delegation could also participate.

Mr Kelam said that the monitoring of Moldova and Russia were interrelated. Moldova could not be held responsible for the situation in Transnistria, including Mr Ilascu's imprisonment.

Mr Columberg considered that the neighbouring countries, Russia and Ukraine, had a major responsibility in respect of Transnistria. The separatist leader, Mr Smirnov, could not exist without Russia's protection. In reality Mr Smirnov wanted Transnistria to become an independent state with its own army, currency etc, a solution which could not be accepted by Chisinau. Withdrawal of the soldiers without their material would be dangerous; withdrawal or destruction *in situ* of some weapons should come first. To the question by Mr Davis why Russia had not yet withdrawn these weapons, Mr Columberg replied that although Ukraine had authorised transit through its territory, such operation was said to be too expensive. The issue of Transnistria should be raised in future discussions between the Chairman of the committee and the Chairman of the Ministers' Deputies.

On a proposal supported by MM Bársony, Stolea and Domljan, it was agreed not to invite representatives from Transnistria for an exchange of views in Strasbourg. Instead, the preliminary draft report should envisage the possibility of such an exchange with parliamentarians from Moldova, Russia, Ukraine and Romania.

The preliminary draft report was slightly amended and consequently approved unanimously for transmission to the Moldovan parliamentary delegation for comments within three months.

5. CROATIA

co-rapporteurs : Mr Jaskiernia and Mrs Stoyanova

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The Chairman recalled that the comments of the Croatian delegation on a preliminary draft report had been received on 6 July 1998. After their fact-finding visit to Croatia on 10-13 November 1998, Mr Jaskiernia and Mrs Stoyanova had produced a revised edition of the draft which was now in the files. By letter of 5 January, Mr Obuljen, Chairman of the Croatian delegation, had informed the Clerk that six opposition parties were boycotting the work of the parliamentary committees and delegations and would not attend the meeting. He had therefore proposed that the discussion on the draft report on Croatia be postponed.

Mr Domljan explained that negotiations between the ruling party and the opposition were progressing . It was not excluded that the opposition would attend the January 1999 part-session of the Assembly and the next meeting of the committee.

Mr Jaskiernia considered that, under the terms of Resolution 1115 (1997), participation of a representative of the opposition of a given state was not a *sine qua non* condition for the discussion on that country to take place. Since the opposition had been invited, their absence would therefore not justify the postponement of the discussion. In any event, during the visit of the rapporteurs, opposition representatives had taken part in the relevant meetings and their views had been reflected in the report.

Following interventions by MM Schwimmer, Gjellerod, Domljan and the Head of Service, Mr Sorinas, it was agreed to postpone the examination of the draft report to the next meeting. The Chairman was asked to renew the invitation to the Croatian parliamentary delegation for one member representing the opposition to take part, without the right to vote, in the relevant debate. It was further agreed that this debate would be held at the next meeting, whether or not representatives of the opposition would be present.

6. ALBANIA

co-rapporteurs : Mr Sole Tura and ...

Mr Bindig reported on the referendum held in Albania on 22 November 1998 on the draft Constitution and which had been observed by an ad hoc committee set up by the Bureau. Nothwithstanding obstruction by the opposition, the referendum had been acceptable, democratic and fair. The ad hoc committee would present a report to the Bureau.

Mr Schwimmer said that a boycott belonged to the democratic rights and that the use of this instrument could not be qualified as obstruction.

The committee took note.

7. LITHUANIA

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The Chairman drew attention to a letter in the files, sent by Mr Glotov and proposing that the monitoring procedure concerning Lithuania be reopened in the light of treatment of political prisoners. Since the letter contained a "reasoned proposal", the item had been put on the agenda in accordance with the procedure followed in 1997 in respect of Latvia. As was done then, the committee could appoint two co-rapporteurs to give an opinion on whether or not the committee should propose the reopening of the monitoring procedure. It should be noted, however, that Mr Gross, rapporteur of the Committee on Legal Affairs and Human Rights on the rights of national minorities in Lithuania, had already carried out a fact-finding visit to Lithuania on 18-20 May 1998 and visited some of the prisoners listed in Mr Glotov's letter.

Mr Gross said that the Russian delegation was concerned that Russian prisoners were treated worse than others. He had found no evidence of this. The conditions in Lithuanian prisons were not satisfactory but there was no difference of treatment on an ethnic basis. At any event, the facts mentioned in Mr Glotov's letter could not justify the reopening of the monitoring procedure. A more general study on the penitentiary system in the Baltic states, Russia and Ukraine should be conducted.

Mr Glotov suggested that the cases raised in his letter deserved a preliminary examination as was done for instance for Greece. If the Monitoring Committee would not find it appropraite to appoint co-rapporteurs for such preliminary examination, the Committee on Legal Affairs and Human Rights should be seized.

Mr Kuzmickas said that Mr Glotov had not been informed correctly: the persons listed in his letter were not political prisoners.

Mr Dagys added that any action taken by the Monitoring Committee could be seen as an interference with the administration of justice in Lithuania.

The Chairman and Mr Schimmmer proposed that Mr Glotov's letter be transmitted to the Committee on Legal Affairs and Human Rights for information.

Mr Marmazov objected that the Monitoring Committee itself should react to Mr Glotov's letter and recalled Mrs Durrieu's meeting with Mr Ilascu in Moldova.

MM Sinka, Bársony, Domljan and Jaskiernia proposed that no follow up be given to Mr Glotov's letter since it concerned individual cases for which the European Court of Human Rights could be seized.

Mr Glotov said that he was ready to seize directly the Committee on Legal Affairs and Human Rights.

Following a vote, it was agreed that the cases mentioned in Mr Glotov's letter did not justify the appointment of two co-rapporteurs to present an opinion to the committee on whether or not the reopening of a monitoring procedure for Lithuania should be proposed to the Bureau.

8. MEETING WITH THE CHAIRMAN OF THE MINISTERS' DEPUTIES

The Chairman informed the committee of the informal discussions which the committee's bureau had held the previous evening together with Mr Kelam, co-rapporteur of the committee on Ukraine, and Mrs Wohlwend, rapporteur of the Committee on Legal Affairs and Human Rights on the death penalty, with the Chairman of the Ministers' Deputies, Mr Perényi, Ambassador of Hungary, and Mr Kupchyshyn, Ambassador of Ukraine, on the monitoring procedures of the Parliamentary Assembly and the Committee of Ministers and on Ukraine's honouring of its obligations and commitments.

9. PLANNING OF FORTHCOMING ASSEMBLY DEBATES

Postponed.

10. OTHER BUSINESS

a. The committee authorised its co-rapporteurs on Bulgaria (Mr Atkinson and Mr Gjellerod) to carry out a fact-finding visit to Bulgaria from 7 to 10 February 1999.

b. The committee took note of a letter from Mr Cox, Chairman of the Social, Health and Family Affairs Committee, concerning the social issues in the monitoring procedure and asked its Chairman to discuss this with Mr Cox.

c. The committee agreed to invite Mr Espersen, Commissioner on Democratic Institutions and Human Rights of the Council of the Baltic Sea States, to an exchange of views during the next part-session of the Assembly.

d. The Chairman encouraged members to participate in the Assembly debate « Building Greater Europe without dividing lines » (opinion on the report by the Committee of Wise Persons) to be held on 26 January 1999.

11. NEXT MEETING

It was decided to hold the next meeting during the next part-session of the Assembly (25-29 January 1999) in Strasbourg.

LIST OF PARTICIPANTS

Members present :

Mr	SOLE TURA, Vice-Chair	Spain
Ms	GELDERBLOM-LANKHOUT, Vice-Chair	Netherlands
MM.	GLOTOV, Vice-Chair	Russia
	ATKINSON	United Kingdom
Ms	AYTAMAN	Turkey
MM.	BARSONY	Hungary[1]
	BINDIG	Germany
	BRUNETTI	Italy
	CHRISTODOULIDES	Cyprus
	COLUMBERG	Switzerland
	DAGYS	Lithuania
	DAVIS	United Kingdom
	DINÇER	Turkey
	DOMLJAN	Croatia
	DUMITRESCU	Romania
Ms	DURRIEU	France
Mr	ELTZ	Croatia
Ms	FLEETWOOD	Sweden
MM	GJELLEROD	Denmark
	GROSS	Switzerland
	JANSSON	Finland
	JASKIERNIA	Poland
	KELAM	Estonia
	KIRATLIOGLU	Turkey
	KUZMICKAS	Lithuania
	MARMAZOV	Ukraine
	MOTA AMARAL	Portugal
	PAHOR	Slovenia
	RAMIREZ PERY	Spain
Lord	RUSSELL-JOHNSTON	United Kingdom
MM.	SCHWIMMER	Austria
	SINKA	Latvia
	SMORAWINSKI	Poland
	STEOLEA	Romania
Ms	STOYANOVA	Bulgaria
Ms	WOHLWEND	Liechtenstein

Also present :

Mr	KIELY	Ireland

Office of the Clerk of the Assembly :

Mr Sorinas, Head of Department

*Secretariat of the Committee :*Mr Ausems, Mr Dufour, Ms Chatzivassiliou, Ms Wurtz

[1] In his capacity as Chair of the Political Affairs Committee.

LIST OF DECISIONS

The Committee on the honouring of obligations and commitments by Member States, meeting in Paris on 12 January 1999 with Mr Sole Tura in the Chair :

Turkey (co-rapporteurs : Mr Bársony, Hungary, Soc, and Mr Schwimmer, Austria, EPP) : unanimously approved an information report (debate in the Assembly on 25 January 1999) ;

Moldova (co-rapporteurs : Mrs Durrieu, France, Soc, and Mr Columberg, Switzerland, EPP) : unanimously approved a preliminary draft report with a view to its transmission to the Moldovan Delegation for comments within three months ;

Croatia (co-rapporteurs : Mr Jaskiernia, Poland, Soc, and Mrs Stoyanova, Bulgaria, EPP) : regretted the absence of parliamentarians representing the Croatian opposition and decided, upon on a written request by the Chairman of the Croatian parliamentary delegation, to examine the draft report at its next meeting ;

Albania (co-rapporteurs : Mr Sole Tura, Spain, Soc, and ...) : heard a statement by Mr Bindig on the referendum on the constitution held on 22 November 1998 and its results ;

Lithuania : was informed of a letter from Mr Glotov on the respect of human rights in Lithuania and decided that the cases concerned did not justify the appointment of two co-rapporteurs to present an opinion to the committee ;

was informed by the Chairman of the informal discussions which the committee's bureau held the previous evening together with Mr Kelam, co-rapporteur of the committee on Ukraine, and Mrs Wohlwend, rapporteur of the Committee on Legal Affairs and Human Rights on the death penalty, with the Chairman of the Ministers' Deputies, Mr Perényi, Ambassador of Hungary, and Mr Kupchyshyn, Ambassador of Ukraine, on the monitoring procedures of the Parliamentary Assembly and the Committee of Ministers and on Ukraine's honouring of its obligations and commitments ;

authorised its co-rapporteurs on *Bulgaria (Mr Atkinson, United Kingdom, EDG, and Mr Gjellerod, Denmark, Soc)* to carry out a fact-finding visit to Bulgaria from 7 to 10 February 1999 ;

encouraged its members to participate in the Assembly debate « Building Greater Europe without dividing lines » (opinion on the report by the Committee of Wise Persons) to be held on 26 January 1999 ;

took note of a letter from Mr Cox, Chairman of the Social, Health and Family Affairs Committee, concerning the social issues in the monitoring procedure and asked its Chairman to discuss this with Mr Cox ;

agreed to invite Mr Espersen, Commissioner on Democratic Institutions and Human Rights of the Council of the Baltic Sea States, to an exchange of views during the next part-session of the Assembly ;

decided to hold its next meeting during the next part-session of the Assembly (25-29 January 1999) in Strasbourg.