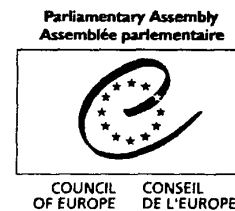


Parliamentary Assembly
Assemblée parlementaire



For debate in the Standing Committee — see Rule 15 of the Rules of Procedure

Doc. 10407
20 January 2005

Initiation of a monitoring procedure and post-monitoring dialogue

Report
Committee on Rules of Procedure and Immunities
Rapporteur: Mr Andreas Gross, Switzerland, Socialist Group

Summary

The report contains various proposals to clarify and update the provisions concerning the initiation (or reopening) of a monitoring procedure at Assembly level. It also indicates the procedure to be followed when an application to reopen a monitoring procedure is submitted with respect to a state engaged in a post-monitoring dialogue.

I. Draft resolution

1. The Parliamentary Assembly recalls that its Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) was set up in April 1997 by Resolution 1115 (1997), which includes an appendix.

2. It notes that in its last report on the progress of the Assembly's monitoring procedure (Doc. 10250) the Monitoring Committee underlined the weaknesses of this procedure, set up more than seven years ago and which needed to be thoroughly clarified and updated in many respects.

3. The main difficulties are currently related to the initiation of a monitoring procedure and to requests for the reopening of a monitoring procedure with regard to countries involved in the post-monitoring dialogue.

4. Consequently, the Assembly decides:

i. to replace paragraph 2 in the appendix to Resolution 1115 (1997) by the following text:

"An application to initiate or reopen a monitoring procedure may originate from:

- i. the general committees of the Assembly by reasoned written application to the Bureau;
- ii. the Monitoring Committee by a written opinion prepared by two co-rapporteurs containing a draft decision to open a monitoring procedure;
- iii. not less than ten members of the Assembly representing at least five national delegations and two political groups, through the tabling of a motion for a resolution or recommendation;
- iv. the Bureau of the Assembly.

In case the application aims at reopening a monitoring procedure in respect of a country involved in the post-monitoring dialogue, the written opinion will be prepared by the Chairperson or, if appropriate, a Vice-Chairperson of the Monitoring Committee.";

ii. to replace paragraph 3 in the appendix to Resolution 1115 (1997) by the following text:

"Applications shall be considered by the Monitoring Committee. Two co-rapporteurs, or in the case of a country involved in a post-monitoring dialogue, the Chairperson, or if appropriate, a Vice-Chairperson of the Monitoring Committee, shall carry out the necessary investigations and prepare a written opinion containing a draft decision proposing:

- the opening (or reopening) of a monitoring procedure and instructing the Monitoring Committee to carry out this procedure,
- not to open (or not to reopen) such a procedure.

In the light of the Monitoring Committee's written opinion, the Bureau shall express itself on whether to open (or reopen) a monitoring procedure.

Subsequently:

- if both the Monitoring Committee and the Bureau agree to open (reopen) the monitoring procedure or take divergent positions, the written opinion shall be transformed into a report containing a draft resolution and the Bureau shall include this item in the agenda and order of business of the next Assembly part-session for debate and adoption of the draft resolution. A representative of the Bureau may speak in its name in this debate. The draft resolution may propose the committee(s) to which the matter could possibly be referred to for an opinion by the Assembly.

- in case both the Monitoring Committee and the Bureau consider that there is no need to open or to reopen a monitoring procedure, such decision should be recorded in the Progress Report of the Bureau and the Standing Committee. The Assembly's confirmation by a vote in connection with the discussion of the Progress Report of the Bureau and the Standing Committee shall be required. However, during that discussion the Assembly may decide by a majority vote following a request by at least ten members, that a debate be held during the next part-session on the written opinion of the Monitoring Committee which then shall be transformed into a report containing a draft resolution.

The Monitoring Committee may also be instructed to carry out a monitoring procedure by a decision pursuant to a text adopted by the Assembly or the Standing Committee".

5. The new provisions shall enter into force upon their adoption.

II. Explanatory memorandum by the rapporteur

A. INTRODUCTION

1. On 25 November 2003 the Standing Committee referred to the Committee on Rules of Procedure and Immunities the motion for a resolution on initiating a monitoring procedure (Doc. 9971 and Reference No. 2896) for report.

2. The signatories of this motion considered in particular that when the Bureau of the Assembly on the basis of a written opinion of the Monitoring Committee, agrees on the opening of a monitoring procedure in respect of a member state, this matter should not be referred (after simple ratification by the Assembly) directly to the Monitoring Committee but should first be debated by the Assembly which should vote on a draft text whether a monitoring procedure should be initiated.

3. This report is an up-dated and completed version of the documents submitted to the committee meetings in April and June 2004. Furthermore, it contains a new section which deals with the procedure to be followed when an application to reopen a monitoring procedure is submitted with respect to a state still engaged in a post-monitoring dialogue (see Resolution 1412 of 23 November 2004).

B. CURRENT PROVISIONS CONCERNING THE OPENING OF A MONITORING PROCEDURE

4. Under the appendix to Resolution 1115 (1997), (p. 130 of the booklet *Rules of Procedure*, 2002 edition), a monitoring procedure can be initiated following a request from

- the general committees of the Assembly and from the Monitoring Committee by reasoned written application to the Bureau

- not less than ten members of the Assembly representing at least five national delegations and two political groups, through the tabling of a motion for a resolution or recommendation

- the Bureau of the Assembly.

5. Applications other than those from the Monitoring Committee itself are considered by that Committee which, after the appointment of two co-rapporteurs and after carrying out the necessary investigations, will prepare a written opinion for the Bureau. In the light of the Monitoring Committee's opinion the Bureau takes a decision on whether to initiate a monitoring procedure. In the affirmative, it will refer the matter, subject to ratification by the Assembly, to the Monitoring Committee for report.

A negative decision by the Bureau needs to be confirmed by the Assembly.

6. It is to be noted that under the current provisions, the Monitoring Committee may also be instructed to carry out a monitoring procedure by a decision pursuant to a text adopted by the Assembly or the Standing Committee. Moreover, in addition to the Monitoring Committee the matter may be referred to other Assembly's committees for opinion (appendix to Resolution 1115 (1997), paragraph 3).

C. PROPOSALS FOR A CHANGE OF THE MONITORING COMMITTEE'S PROCEDURE

a. The proposals and their merits

7. Currently the Assembly is only involved in the initiation of a monitoring procedure insofar as it has to ratify or confirm a Bureau decision to open or not to open such a procedure. These Bureau decisions are not the subject of a specific report but included in the Progress Report of the Bureau and the Standing Committee. During the January 2004 part-session the Assembly voted on the Bureau's decision not to open a monitoring procedure in respect of Liechtenstein and in April 2004 the Assembly took note of the Bureau's decision not to reopen a monitoring procedure as regards Latvia.

8. The proposal in the above-mentioned motion for a resolution (Doc. 9971) would make the initiation of a monitoring procedure more transparent as the Assembly would be asked to vote a draft resolution on the basis of a report. At the same time it would lead to an additional Assembly plenary debate on monitoring a specific country, namely on the usefulness of opening a monitoring procedure.

9. In these circumstances the Rapporteur had submitted to the meeting of the Committee on Rules of Procedure and Immunities held on 23 June 2004 two variants:

- Variant A is the proposal contained in the motion for a resolution (Doc. 9971) together with its procedural consequences;

- Variant B proposing in addition some simplifications of the procedure. The main features of this variant (see AS/Pro (2004) 10 revised par. 17 to 19) were: The report which the Monitoring Committee would prepare on the opening of a Monitoring procedure, including a draft resolution, would not be presented first to the Bureau and then to the Assembly but only to the Assembly. Also in case the Monitoring Committee proposes not to open a monitoring procedure the report (including a draft resolution) would be submitted to the plenary.

After a vote the Committee expressed itself in favour of variant A.

b. Procedural consequences of the proposals contained in the motion for a resolution (Doc. 9971)

10. The motion proposes in particular that if the Bureau opts for initiating a monitoring procedure it will include this in the Assembly's agenda and order of business with a report for debate. According to the motion, following discussion, the Assembly will vote on the text(s) contained in the report and, in particular, will determine whether a monitoring procedure should be initiated. This would require a change to paragraph 2 of the Appendix to Resolution 1115 (1997).

11. The committee considers that the Monitoring Committee's current practice to prepare a written opinion on applications to open (reopen) a monitoring procedure should be maintained. As in the past, two co-rapporteurs would prepare it.

12. In case an application to initiate a monitoring procedure is originating from the Monitoring Committee itself it should be presented in the form of a draft opinion containing a draft decision.

13. The motion included in Doc. 9971 does not propose the holding of an Assembly debate if the Bureau opts against the opening of a monitoring procedure. According to the motion only the Assembly's confirmation (possibly by a vote in connection with the discussion of the Progress Report of the Bureau) will be required.

The rapporteur considers that such a solution does not differentiate sufficiently among the various situations which may arise:

a. If the Monitoring Committee and the Bureau consider that there is no need to open a monitoring procedure, the rapporteur agrees with the proposal contained in the motion. However, during the discussion of the Progress Report at least ten members of the Assembly should have the possibility of requesting that a specific debate be held on the written opinion of the Monitoring Committee. If the Assembly agrees with the request, the debate should be held during the next part-session, and the written opinion of the Monitoring Committee should be transformed into a report containing a draft resolution.

b. If both the Monitoring Committee and the Bureau agree that a monitoring procedure should be opened, or take divergent positions, the Monitoring Committee's written opinion and draft decision should be transformed into a report containing a draft resolution and should be included as separate item on the Assembly's agenda and order of business. This would be justified by the importance of the opening of a monitoring procedure for the country concerned.

14. Such a solution would also require changes to the wording of paragraph 3 of the Appendix to Resolution 1115 (1997). The Bureau would no longer take a decision on whether to open a monitoring procedure, but would take position on it. A representative appointed by the Bureau could be given a speaking right in the debate on the report of the Monitoring Committee.

15. Consequently, the Appendix to Resolution 1115 (1997) should be amended as follows:

- paragraph 2 of the Appendix

"An application to initiate a monitoring procedure may originate from:

- i. the general committees of the Assembly by reasoned written application to the Bureau;
- ii. the Monitoring Committee by a written opinion prepared by two co-rapporteurs containing a draft decision to open a monitoring procedure;
- iii. not less than ten members of the Assembly representing at least five national delegations and two political groups, through the tabling of a motion for a resolution or recommendation;
- iv. the Bureau of the Assembly."

- paragraph 3 of the Appendix

"Applications shall be considered by the Monitoring Committee. Two co-rapporteurs, or in the case of a country involved in a post-monitoring dialogue, the Chairperson, or if appropriate, a Vice-Chairperson of the Monitoring Committee shall carry out the necessary investigations and prepare a written opinion containing a draft decision proposing:

- the opening of a monitoring procedure and instructing the Monitoring Committee to carry out this procedure
- not to open such a procedure.

In the light of the Monitoring Committee's written opinion, the Bureau shall express itself on whether to open a monitoring procedure.

Subsequently:

- if both the Monitoring Committee and the Bureau agree to open (reopen) a monitoring procedure or take divergent positions, the written opinion shall be transformed into a report containing a draft resolution and the Bureau shall include this item in the agenda and order of business of the next Assembly part-session for debate and adoption of the draft resolution. A representative of the Bureau may speak in its name in this debate. The draft resolution may also propose the committee(s) to which the matter could possibly be referred to for an opinion ;
- in case both the Monitoring Committee and the Bureau consider that there is no need to open (or reopen) a monitoring procedure, such decision should be recorded in the Progress Report of the Bureau and the Standing Committee. The Assembly's confirmation by a vote in connection with the discussion of the Progress Report of the Bureau and the Standing Committee shall be required. However, during that discussion, the Assembly may decide at a majority vote following a request by at least ten members that a debate be held during the next part-session on the written opinion of the Monitoring Committee which then shall be transformed into a report containing a draft resolution.

The Monitoring Committee may also be instructed to carry out a monitoring procedure by a decision pursuant to a text adopted by the Assembly or the Standing Committee."

16. As the description of this procedure is included in the appendix to Assembly Resolution 1115 (1997), it can only be modified by the adoption of a new resolution.

D. APPLICATION TO REOPEN A MONITORING PROCEDURE WITH RESPECT TO A STATE STILL ENGAGED IN A POST-MONITORING DIALOGUE

a. General

17. On 23 November 2004 the Standing Committee adopted an amendment to the draft resolution contained in the report on the progress of the Assembly's monitoring procedure covering the period from November 2002 to April 2004, worded as follows (See Resolution 1412 (2004):

"The Assembly instructs its Committee on Rules of Procedure and Immunities to examine, in the framework of the elaboration of its report on the opening of a monitoring procedure, the procedure to be followed when an application to reopen a monitoring procedure is submitted with respect to a State still engaged in a post-monitoring dialogue."

b. Procedure to be followed in that case

18. The post-monitoring dialogue is not a part of the monitoring procedure regulated by Resolution 1115 (1997) but a distinct process carried out by the Monitoring Committee on behalf of the Assembly (see document AS/Bur (2000) 18). The dialogue between the Monitoring Committee and the authorities of a given country is an exchange of information on further substantial progress made by that country in the efforts to implement the recommendations which the Assembly made when concluding the monitoring procedure. Its modalities were fixed in document AS/Bur (2000) 18 of which the Assembly took note on 3 April 2000. The Monitoring Committee finalized the details of the post-monitoring dialogue on 19 December 2000 (see Appendix VII to Doc. 9198 of which the Assembly took note on 26 September 2001). The committee also approved a code of conduct for co-rapporteurs on the honouring of obligations and commitments of member States (see Appendix VIII to Doc. 9198).

19. The Monitoring Committee and the Bureau of the Assembly already have agreed, that a request to reopen a monitoring procedure is admissible also when a post-monitoring dialogue is still ongoing with the same country (see synopsis of the Bureau meeting on 6 April 2004).

20. The parallelism between the post-monitoring dialogue and the examination of a request to reopen a monitoring procedure with respect to the same country may give rise to certain practical problems.

21. When such a request is made, the authorities of the country concerned will already have made contacts with the chairperson of the Monitoring Committee and have discussed with him/her specific questions and possible answers. If, for the purpose of examining a parallel request to reopen a monitoring procedure two additional representatives of the Monitoring Committee (i.e. the co-rapporteurs) contact the same authorities of the countries on related matters, this could give the impression of a lack of coordination at Assembly level. It could also weaken the position of the Chairperson of the Monitoring Committee. Furthermore, risks would be created for diverging evaluations with negative political and legal consequences (See Doc. 10250).

22. It is therefore proposed, that the request should be examined by the Chairperson of the Monitoring Committee, or, if appropriate, by one of the Vice-Chairpersons of that committee. They are the guarantors of both stability and authority with respect to the Monitoring Committee. It is understood that the Chairperson (or Vice-Chairpersons) would consult with the last co-rapporteurs on the monitoring of a specific member State, as long as they still are Assembly members.

23. Another question is what should happen once the examination of the request is finished. The rapporteur considers that the proposals made above in paragraphs 13 (a), (b) and 15 should apply. If both the Monitoring Committee and the Bureau of the Assembly agree that a monitoring procedure should not be reopened, the matter should be presented to the Assembly by means of the Progress Report. The Assembly's confirmation by a vote shall be required. The post-monitoring dialogue would continue. However, at least ten members of the Assembly may request that a debate in plenary be held on the written opinion of the Monitoring Committee (for the details see paragraph 13 (a) above).

24. If both the Monitoring Committee and the Bureau agree that a monitoring procedure be reopened, or take divergent positions, the Monitoring Committee's written opinion, after having been transformed into a draft report containing a draft resolution should be debated in Plenary, because of the importance of such a procedure for the respective country. In case the Assembly confirms the reopening of a monitoring procedure, the post-monitoring dialogue would end automatically. The subjects dealt with beforehand in connection with this dialogue would be included in the monitoring procedure. Should the Assembly oppose the reopening of the monitoring procedure, the post-monitoring dialogue would continue.

F. Final remarks

- 25. The Assembly is invited to examine the draft resolution contained in this report.
- 26. The proposed new provisions should enter into force upon their adoption.

APPENDIX

Appendix to Resolution 1115 (1997)¹

Terms of reference of the Assembly Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

Recalling the basic values which are the Council of Europe's *raison d'être*, particularly pluralist parliamentary democracy, which is a political, legal and cultural system based on respect of human rights, the rule of law and everyone's right to take part in public life, and which entails the active commitment of each individual and their government to values such as equality, social integration, tolerance and respect for diversity,

1. The committee is responsible for seeking to ensure:
 - i. the fulfilment of the obligations assumed by the member states under the terms of the Council of Europe Statute, the European Convention on Human Rights and all other conventions concluded within the Organisation to which they are parties;
 - ii. the honouring of the commitments entered into by the authorities of member states on their accession to the Council of Europe.
2. An application to initiate a monitoring procedure may originate from:
 - i. the general committees of the Assembly and from the Monitoring Committee by reasoned written application to the Bureau;
 - ii. not less than ten members of the Assembly representing at least five national delegations and two political groups, through the tabling of a motion for a resolution or recommendation;
 - iii. the Bureau of the Assembly.
3. Applications (other than those made by the Monitoring Committee itself) are to be considered by the Monitoring Committee which, after the appointment of two co-rapporteurs and after carrying out the necessary investigations, will prepare a written opinion for the Bureau. In the light of the committee's opinion, the Bureau will take a decision on whether to initiate a monitoring procedure and if that is the case will refer the matter, subject to ratification by the Assembly, to the Monitoring Committee for report. At the same time, or subsequently, the Bureau will decide, subject to ratification by the Assembly, and when strictly necessary, on the committee(s) to which the matter may possibly be referred to for an opinion. A negative decision by the Bureau needs to be confirmed by the Assembly. The Monitoring Committee may also be instructed to carry out a monitoring procedure by a decision pursuant to a text adopted by the Assembly or the Standing Committee.
4. Except in special circumstances, a monitoring procedure should not commence until six months after a member state's accession to the Council of Europe.
5. In accordance with Rule 46, the Monitoring Committee may set up sub-committees on the monitoring of specific obligations and commitments of member states or groups of member states.
6. The 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).
7. The committee will state in its reports whether the monitoring procedure in respect of a given country is to be considered completed.
8. Memoranda and drafts by the Monitoring Committee, unless the Bureau decides otherwise, will be treated as confidential until the competent authorities of the country concerned have had reasonable time (up to three months) to submit their comments and until these have been discussed in the Monitoring Committee.
9. The Monitoring Committee may establish contacts with the subsidiary bodies of the Committee of Ministers which are competent to monitor member states' obligations and commitments, the European Commission for Democracy through Law (Venice Commission), and the relevant international institutions.

¹ Assembly debate on 29 January 1997 (5th Sitting) (see Doc. 7722, report by the Committee on Rules of Procedure, rapporteur: Mrs Lentz-Cornette). Text adopted by the Assembly on 29 January 1997 (5th Sitting).

Doc. 10406

Committee responsible for the report: Committee on Rules of Procedure and Immunities

Reference to committee: Doc. 9971, Reference N° 2896 of 25 November 2003 and Resolution 1412 (2004)

Draft resolution unanimously adopted on 10 December 2004

Members of the committee : Mr Serhiy **Holovaty**, (Chairperson), Mr Göran **Magnusson**, Mr Andrea **Manzella**, Mrs Ganka Samoilovska-Cvetanova, (Vice-Chairpersons), Mr Zekeriya **Akçam**, Mr Sándor Albert, Mr Gulumhuseyn Alibeyli, Mr Jozef Bernik, Mr Peter **Bottomley**, Mr Ioannis **Bougas**, Mrs Anne **Brasseur**, Mr Manlio **Collavini**, Mrs Helene D'Amato, Mrs Krystyna Doktorowicz, Mr Miljenko Dorić, Mr Vangjel Dule, Mr Herbert Frankenhauser, Mrs Lene **Garsdal**, Mr Tihomir Gligorić, Mrs Arlette Grosskost, Mr Harald Himmer, Mr Gerd Höfer, Mr Armand Jung, Mr Erik Jurgens, Mr František Kroupa, Mr Markku **Laukkanen**, Mr Theo **Maissen**, Mr Per Erik Monsen (alternate: Mr Martin **Engeset**), Mrs Nóra Nagy, Mr Ionel Olteanu, Mr Alexey Ostrovsky, Mr Julio **Padilla Carballada**, Mr Ivan Pavlov, Mr Paulo Pereira Coelho, Mrs Sólveig Pétursdóttir, Mr Christos **Pourgourides**, Mrs Valentina Radulović Šćepanovic, Mr Armen **Rustamyan**, Mr Yuri Sharandin, Mr Gintaras Šileikis, Mr Victor Stepaniuc, Mr Karim **van Overmeire**, Mr Rudolf **Vis**, Mr G.V. Wright.

NB: The names of those members present at the meeting are printed in bold.

Secretary of the committee: Mr Mario Heinrich.