

Parliamentary Assembly
Assemblée parlementaire

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COUNCIL OF EUROPE CONSEIL DE L'EUROPE

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Transparency of the work of the Committee of Ministers

Report
Committee on Rules of Procedure and Immunities
Rapporteur: Mr Čekuolis, Lithuania, Alliance of Liberals and Democrats for Europe

Summary

The report analyses the current rules, principles and practice concerning information to the Parliamentary Assembly on the activities of the Committee of Ministers. It welcomes the action taken by the Council of Europe and its organs and institutions to improve the transparency of the Council's work and ensure appropriate public access to documents.

The draft resolution included in the report contains five proposals for further enhancing transparency and publicity of the Committee of Ministers' work.

I. Draft recommendation

1. To enhance co-operation in Europe, the decisions of its institutions and organisations should be taken as openly as possible. This would allow the public, directly or through its elected representatives, to participate more fully and actively in this process. Furthermore, it would be a guarantee that institutions and organisations enjoy greater legitimacy and are more effective and accountable.

2. Transparency is also the cornerstone of a good working relationship between the organs of international organisations.

3. The work of members of international parliamentary assemblies would be facilitated if they were regularly and adequately informed of important issues before decisions were taken in the ministerial body of the relevant international organisation. Therefore, the Parliamentary Assembly calls for a spirit of openness and transparency at all levels of the Council of Europe. This also applies to the Assembly itself: in some cases, certain restricted documents could be more rapidly declassified and consideration could be given to the usefulness of publishing the results of the votes taken by the Assembly.

4. The Assembly welcomes the many initiatives which have been taken by the Council of Europe and its organs and institutions to improve the transparency of its work and ensure appropriate public access to documents. This is mainly the result of an information policy based on the principle that transparency is the rule and confidentiality the exception.

5. However, there are still possibilities to improve the situation. The Assembly refers in this context to the Warsaw Declaration, adopted at the Third Council of Europe Summit, which expresses the determination of the Heads of State and Government to enhance the transparency and efficiency of the Council of Europe.

6. The Assembly invites the Committee of Ministers to:

6.1. give it more advance information on the priorities for the budget and the intergovernmental work programme for the forthcoming year, including legal instruments to be prepared;

6.2. give more weight to the Assembly's statutory opinions and to regularly inform it on the action taken on these opinions; furthermore, the explanatory reports to Council of Europe Conventions should contain more information on the Assembly's contribution and the main proposals it has made;

6.3. consider giving information on countries blocking

6.3.1. the adoption of draft Council of Europe legal instruments;

6.3.2. decisions on action to be taken on Assembly recommendations, for example when more than nine months have lapsed after their adoption by the Assembly;

6.4. consider introducing an information procedure with the Assembly or its organs concerning activities relating to the supervision of the execution of judgments of the European Court of Human Rights, the monitoring of obligations and commitments of member states (new procedure of 13 July 2004) and similar sensitive matters. This could be achieved by regular meetings between the Bureau of the Ministers' Deputies and the ad hoc Committee of Chairpersons of Political Groups (of the Assembly's Bureau);

6.5. accelerate the preparation of country-by-country electronic registers of judgments of the European Court of Human Rights which have not yet been executed ("computerised status sheets"), to give Assembly members access to these registers and consider publishing an annual report on its activities with regard to supervision of the execution of the Court's judgments highlighting the most salient developments and problems in order to enhance transparency and publicity.

II. Explanatory memorandum by the rapporteur

A. INTRODUCTION

1. Recent events have shown that one of the main criticisms made by citizens vis-à-vis the European unification process is the lack of transparency and the "opacity" of the decision-making mechanisms in the European institutions. Even the best information and public relations policies will not bring Europe closer to the citizens unless governments and institutions manage to better explain their policies in the light of the European facts.

2. In the Council of Europe important action has been taken to improve openness at all levels. More documents are available through the Internet and there is a real declassification policy concerning documents relating to intergovernmental activities. The Committee of Ministers communicates all its working documents to the Parliamentary Assembly after their declassification.

3. In this connection it is to be noted that the Warsaw Declaration adopted at the Third Summit of the Council of Europe expresses the determination of the Heads of State and Government to enhance the transparency and efficiency of the Organisation. In the past the Assembly has on several occasions called for a spirit of openness and democratic transparency at all levels of the Council of Europe (e.g. Recommendation 1394 (1999) on Europe: a continental design) and in particular concerning the implementation of Assembly recommendations (e.g. Recommendation 1567 (2002) on parliamentary scrutiny of international institutions).

4. However, there are still some situations where more transparency could be achieved. A very recent example of lacking transparency has arisen in connection with the election of the Council of Europe Commissioner for Human Rights. Indeed, the list of the initially nine candidates has not been disclosed to the Assembly.

5. The present report has its origin in a motion for a recommendation tabled in December 2001 (Doc. 9297) which was referred to the Committee on Rules of Procedure and Immunities on 26 January 2004. It will first summarise the current rules and principles governing information of the Parliamentary Assembly of the Council of Europe on the Committee of Ministers' activities. Then it will evaluate how these provisions are applied in practice and where improvements are possible.

B. CURRENT STATUTORY PROVISIONS, RULES AND PRACTICE GOVERNING INFORMATION OF THE ASSEMBLY ON THE COMMITTEE OF MINISTERS' ACTIVITIES

6. The Council of Europe's Statute contains relatively few provisions concerning the relations and the transmission of information between the Assembly and the Committee of Ministers¹. This is mainly due to the fact that the integration into the Council of Europe of the Assembly as a statutory organ was a major international innovation. No precedent existed.

i. The "statutory report" of the Committee of Ministers to the Assembly and access to the documents of the Committee of Ministers in general

7. According to Article 19 of the Statute, on the occasion of each of the Parliamentary Assembly's part-sessions the Committee of Ministers submits a (Statutory) Report on its work to the Parliamentary Assembly. Since 2000/2001 this report exists in electronic form only. It is updated weekly. In 2001, the Committee of Ministers and the Assembly agreed to focus the statutory communication from the Chairperson of the Committee of Ministers on essentials. This presentation consists of:

¹ See for details the report of the Preparatory Committee for the establishment of the Council of Europe - 1949.

- a substantial written report of the Chairperson of the Committee of Ministers distributed before his oral statement in the Assembly and covering the intergovernmental activities since the previous Assembly part-session,

- a shorter oral statement by the Chairperson focussing on the latest news and developments.

8. For many years the "statutory report" was the main information source on the Committee of Ministers' work in particular and intergovernmental work in general. The reason was that Article 21.a. and b. of the Council of Europe's Statute stipulates that "unless the Committee decides otherwise, meetings of the Committee of Ministers shall be held in private [...]. The Committee shall determine what information shall be published regarding the conclusions and discussions of a meeting held in private." The Committee of Ministers interpreted these provisions in a relatively restricted manner during a long period.

9. The statutory report has in particular lost importance since the 90s, when the Committee of Ministers took several important decisions regarding transparency of the work and public access to Council of Europe documents and following important improvements of the Committee of Ministers' website:

- the agendas of the Deputies' meetings were declassified one week before the meeting date and made available to the public via the Committee of Ministers' public web site;

- the decisions taken by the Ministers' Deputies were no longer classified "restricted" unless the Committee explicitly decided otherwise in a specific case (principle of publicity of the results of the activities);

- the explanatory reports to Council of Europe legal instruments (conventions and recommendations of the Committee of Ministers) were made public at the same time as the legal instruments they accompany; these reports make conventions and recommendations easier to understand;

- "restricted" documents of the Ministers' Deputies were declassified systematically one year after their date of issue and then placed on the Committee of Ministers' public web site;

- draft Council of Europe legal instruments (draft conventions and draft recommendations to member States) are increasingly put on the Council of Europe's website and an interested public may let the Council know of its reactions to the draft; to give a recent example concerning legal instruments, during the preparation of the Convention against trafficking in human beings, the relevant intergovernmental expert committee received written comments from 134 NGOs and organised two hearings of NGOs.

10. The website of the Committee of Ministers contains, inter alia, comprehensive information for the general public on meeting schedules, texts adopted, rapporteurs and working groups of the Ministers' Deputies and on the supervision, by the Deputies, of the execution of judgments of the European Court of Human Rights.

11. After their adoption, the decisions taken by Ministers' Deputies are public and published on the Council's website. This shows that the Ministers' Deputies have opted for a dynamic interpretation of Article 21.b. of the Council of Europe's Statute. (See paragraph 8 above).

ii. Oral parliamentary questions to the Chair of the Committee of Ministers and to representatives of Governments of member States

12. Rule 58.2. of the Assembly's Rules of Procedure allows for questions from Representatives or their Substitutes to the Chair of the Committee of Ministers following the submission of the Statutory Report. Those questions are replied to orally.

13. Between June 2002 and June 2004, the Prime Minister (or the Head of State) of the country holding the chair of the Committee of Ministers has addressed the Assembly and replied to questions of members of the Parliamentary Assembly.

14. In addition to the Chairperson of the Committee of Ministers, other representatives of Governments of member States (see Article 27 of the Council's Statute) or their Heads of State and Government may address the Assembly and reply to questions of members.

iii. Written questions by Assembly members to the Committee of Ministers (or its Chair)

15. Furthermore, Assembly members have the possibility to submit to the Committee of Ministers or its Chair, written questions concerning matters within the responsibility of the Committee of Ministers or which have been included in the Parliamentary Assembly's order of business. According to Rule 58.1. of the Parliamentary Assembly Rules of Procedure, the Committee of Ministers replies in writing to those questions.

16. In Spring 2004 the Ministers' Deputies agreed on a new procedure for replying to Assembly members' written questions. If a consensus cannot be reached on a reply within a reasonable timeframe, the Chair of the Deputies should hold further consultations with the delegations concerned. If these consultations fail to find an agreed reply, the Chair of the Deputies will inform the President of the Assembly that the Deputies are unable to agree on a reply to the written question with a balanced and purely objective explanation of the reasons why it cannot do so.

17. It is to be noted in this connection, that on 26 January 2004 the Assembly's Bureau was informed that the Ministers' Deputies had reached no consensus on replies to five written questions tabled before December 2003. The Bureau considered this practice unacceptable and approved the President's proposal to address a letter to the Chairperson of the Ministers' Deputies, stating that the Assembly always expects to receive replies to written questions.

18. Furthermore, the rapporteur recalls that on 4 November 1994 the Deputies "noting that no binding decision on this subject exists in the Statute, agreed to adopt replies to the Parliamentary Assembly henceforth by the majority provided for in Art. 20d of the Statute, considering that every effort will be made to reach a consensus within a reasonable period of time". It results clearly from the document on which that decision was based (see also p. 5 of document CM/Misc (94) 46) that "replies" covers both recommendations of the Assembly and written questions of its members.

19. In May and June 2005 the adoption of replies by the Ministers' Deputies to written questions by Assembly members again gave rise to problems. These questions (Nos. 455, 463, 466, 467) all dealt with bilateral issues, namely with Armenia and Azerbaijan. The matter was raised at the Joint Committee meeting on 6 October 2005.

20. In this connection it should be borne in mind that in 5 ½ years more than 600 Assembly members tabled only 95 written questions, which makes up a yearly average of under 20 questions. Out of the 19 written questions put in 2004 and the 15 written questions asked so far in 2005 respectively 5 and 7 questions raised difficult bilateral matters. The rapporteur considers that efforts could be made by both the Ministers' Deputies and the Assembly to solve the problem. At Assembly level greater attention could be given to the conditions for the admissibility of written questions. According to Rule 58.1. of the Assembly's Rules of Procedure they must bear on matters within the competence of the Committee of Ministers. Efforts could be made by members to avoid repetitive questions. Sometimes it may also be possible to table a written question for reply by the Chairman of the Committee of Ministers only. At Committee of Ministers' level every effort should be made to reach a consensus on replies to written questions. They could also, if unavoidable, vote on them. The rapporteur underlines that the right to ask questions is indispensable for members of parliament.

iv. The Joint Committee

21. Governed by Statutory Resolution (51) 30 as well as Rule 55 of the Parliamentary Assembly's Rules of Procedure, the Joint Committee is a co-ordinating body consisting of representatives of both statutory organs of the Council of Europe. The Joint Committee is chaired by the President of the Assembly who prepares the draft agenda. It discusses topical political matters of a common interest for the Parliamentary Assembly and the Committee of Ministers and other major issues which are on the agenda of both organs. According to Rule 55.1. of the Assembly's Rules of Procedure, the Joint Committee may set up mixed working parties.

22. In the last years the Joint Committee has met at the level of Permanent Representatives once during each Assembly part-session and on the occasion of the ministerial session of the Committee of Ministers held in November each year.

23. As it was agreed in 2003 that there would no longer be, in principle, a November ministerial session of the Committee of Ministers, it follows that Joint Committee meetings will not be held at ministerial level in November either. Instead there will be informal contacts between representatives of both organs at the annual May ministerial sessions. It is hoped that these contacts be as substantive as possible.

24. Due to the Third Council of Europe Summit in May 2005, a ministerial session will exceptionally take place in November 2005 in Strasbourg.

C. INFORMATION ON FOLLOW-UP GIVEN TO TEXTS ADOPTED BY THE PARLIAMENTARY ASSEMBLY

25. Of the three existing categories of texts adopted by the Assembly, only recommendations and (statutory) opinions are addressed to the Committee of Ministers. Whereas the Ministers' Deputies reply to recommendations, this is generally not the case for opinions, with the exception of budgetary opinions. In order for Assembly members to be aware of the reaction of the Ministers' Deputies to the relevant texts adopted by the Assembly, information and transparency are most important.

i. Assembly recommendations and Committee of Ministers' replies

26. The main instrument of the Assembly for provoking action and the adoption of political positions by the Committee of Ministers (Ministers' Deputies) is the vote of recommendations. The Committee of Ministers has committed itself to replying to all Assembly recommendations within a time-limit of six months. Experience has shown that in the past, and particularly before the 1990s, it was sometimes difficult for the Deputies to agree on replies. This had the practical result that in those - relatively rare - cases, the Chairperson of the Ministers' Deputies informed the President of the Assembly in writing of the impossibility of adopting a reply¹.

27. As was already indicated above (see paragraph 18) since November 1994 the Committee of Ministers may adopt replies to Assembly recommendations by a two-thirds majority.

28. Another problem for the Ministers' Deputies is the respect of the six-month rule for the adoption of replies to Assembly recommendations.

29. Once a year the Ministers' Deputies review action taken on Assembly recommendations. The relevant document is forwarded to the Assembly. For the first time, at the end of 2004, it was published in the form of an official Assembly document (Doc. 10370). This facilitates information for Assembly members.

¹ See for such cases in the more remote past pp. 20 to 27 of Doc. 4366 on action taken on Assembly recommendations.

ii. Statutory opinions of the Assembly to the Committee of Ministers

30. According to Article 23 of the Council of Europe's Statute, the Assembly may make recommendations (i.e. adopt "statutory opinions") upon any matter referred to it by the Committee of Ministers with a request for its opinion. Since 1949 the Assembly has adopted almost 260 such opinions. They cover a wide variety of subjects¹ but deal mainly with the Council of Europe's legal instruments, requests for membership of the Council of Europe and the adoption of the budget of the Organisation. The Committee of Ministers seldom replies to the Assembly on action taken on such opinions. However, the Chairperson of the Ministers' Deputies sometimes informs by letter the President of the Parliamentary Assembly on the Deputies' reactions to proposals by the Assembly on draft legal instruments of the Council of Europe.

31. In the reply to Recommendation 1361 (1998) on modification of the procedure for adoption of Council of Europe conventions in 1999 (Doc. 8388), the Committee of Ministers agreed to consult the Parliamentary Assembly in future on all draft treaties (except those of an exclusive technical nature which may not require such a consultation). The Assembly frequently includes in its opinions proposals for modification of the drafts. More details are to be found in section (D) of this report.

D. EVALUATION

i. Follow-up to Assembly recommendations

32. The Committee of Ministers has made an effort to send the Assembly quicker and more substantial replies to its recommendations². Moreover, the above-mentioned publication of an annual review of action taken by the Ministers' Deputies on recommendations increases transparency.

33. More or less regularly Assembly Committees (e.g. Committee on the Environment, Agriculture and Local and Regional Affairs and Committee on Legal Affairs and Human Rights), when examining the replies of the Ministers' Deputies to recommendations based on their reports, consider that some of these replies are not fully satisfactory. In such cases it would be useful for the future work of Committees and Assembly members concerned to know which member states have through their representative in the Committee of Ministers adopted a positive or a negative attitude. Moreover, such knowledge would allow members to take action to remove existing obstacles at national level.

34. To obtain such information from the Committee of Ministers is a longstanding request of the Assembly (see for example Recommendation 177 (1958) and Written Question No. 61, Doc. 964 (1959) by Mr Toncic). The Assembly then considered that the main effect of secrecy was to enable the Committee of Ministers and the governments represented therein to evade responsibility, whether to the Assembly or to the national parliaments (see Document 763, paragraph 14). More recently, the Assembly's concern was mentioned in Recommendation 1567 (2002) on parliamentary scrutiny of international organisations. In paragraph 2 (v) of that text, the Assembly invited the Committee of Ministers "to improve the transparency of the implementation of Assembly recommendations". The idea underlying this request was somewhat remodelled for the purposes of the draft motion (Doc. 9297) on which this report is based. The motion proposes that for each recommendation not followed within six months after its adoption by concrete and tangible action, the Assembly asks the Committee of Ministers to make public the names of the member states opposing their implementation.

¹ See for instance Opinion No. 247 (2003) on public ethics at local level and model initiatives package and Opinion No. 246 (2003) on relations between the Council of Europe and NGOs.

² By January 2005 only one text adopted by the Assembly in 2003 (Recommendation 1638 on sustainable development of mountain regions) had not yet received a reply. On 1 September 2005 the Committee of Ministers had not given a reply to three Assembly recommendations adopted in 2004 (Recommendation 1640 on the activities of the Council of Europe Commissioner for Human Rights and Recommendations 1682 and 1688 dealing with education and culture matters)

35. One may question if it would be useful to resubmit this proposal to the Ministers Deputies, who in the past have always rejected it or replied in an evasive manner. Inter alia, they considered that members had the possibility to ask in their national parliament what attitude their government had taken on a specific recommendation. Following the above-mentioned Recommendation 1567 (2002), the Ministers' Deputies sent to the Assembly a reply which mainly referred to the time-limits for answers to Assembly texts. However, the Deputies also mentioned the strengthening of dialogue and communication and confirmed their openness to additional specific proposals for improvements. Furthermore, it is to be noted that a Panel of Eminent Persons set up by the OSCE in a report on "Common purpose: towards a more effective OSCE" proposed that countries blocking decisions in the OSCE should be identified instead of remaining anonymous as at present.

36. In these circumstances the rapporteur suggests to resubmit the initial proposal to the Committee of Ministers in the draft recommendation although slightly adapted to the changed situation.

37. It may be recalled that in the past exchanges of views with the Committee of Ministers on the follow-up to specific Assembly recommendations were held in the Standing Committee and in the Joint Committee. In appropriate cases this practice could be reintroduced.

38. Furthermore, the document including the annual review by the Ministers' Deputies of action taken on Assembly recommendations contains useful information, which could be analysed by the Assembly committees concerned. If this was considered appropriate, a global evaluation could be done at the level of the Assembly's Bureau.

39. In addition, it would always be possible for the Assembly to increase its action in national parliaments in order to gain their support for its recommendations.

ii. Committee of Ministers' follow-up to Assembly opinions

40. As indicated above, the Committee of Ministers has only rarely sent the Assembly written replies to its opinions. Until some years ago, the Assembly regularly received very detailed replies to its opinions on the budget of the Council of Europe and on the Assembly's budgetary appropriations. The Ministers' Deputies presently take note of the budgetary opinions and agree to bear them in mind in the framework of their discussion on priorities for the next financial year.

41. In the field of the Organisation's standard-setting activities, the Assembly's most important tasks are either to present to the Committee of Ministers its own draft for a convention in an appendix to a recommendation or to give an opinion on a draft convention prepared for the Committee of Ministers by an intergovernmental expert committee. In this way the Assembly makes a significant direct contribution to law at pan-European level. It should be recalled that more than 35% of the Council's conventions and agreements stem from Assembly texts. In addition, about 160 of the almost 760 recommendations of the Committee of Ministers to the member states adopted between 1949 and July 2005 were inspired by proposals from the Assembly.

42. The Parliamentary Assembly submitted opinions on 24 of the 26 conventions adopted by the Committee of Ministers in the period from January 1999 to May 2005. The Assembly proposed numerous modifications to 20 conventions. The Committee of Ministers accepted Assembly amendments for 10 of these Conventions and adapted their text accordingly (see the appendix to his report) However, some of these changes were of a "cosmetic" nature and had no effect on the substance of the convention. In other cases the Committee of Ministers only partially accepted the amendments proposed by the Assembly for a particular convention. Between 1990 and 1998 the Assembly was consulted on eight further conventions and adopted amendments in five cases which were partially accepted.

43. In April 2004 the Assembly adopted Opinion No. 251 on draft Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention. This opinion contained eleven proposals for amending the text of the Protocol. Very few were accepted by the Committee of Ministers. The Assembly regretted in particular that its proposal that the list of candidates for the post of judge should contain at least one person of each sex was not accepted.

44. In connection with the Assembly's consultation on Protocol No. 14 a recurrent problem arose: the absence of any written rule concerning the time available for the Assembly to give an opinion on a draft legal instrument of the Council of Europe. In its Opinion No. 251 (2004) the Assembly urged the Committee of Ministers to submit requests for opinions on draft treaties to the Assembly at least three months before the meeting of the Committee of Ministers at which the text is to be examined and to take account of this three-month period in the deadlines assigned to the Steering Committees responsible for their preparation.

45. In January 2005 the Assembly adopted (statutory) opinions on three new draft conventions:

- action against trafficking in human beings;
- laundering, the financing of terrorism, search, seizure and confiscation of the proceeds from crime;
- prevention of terrorism.

It must be regretted that in these three cases the Assembly disposed of little time to prepare the opinions.

46. All three opinions contained long lists of amendments. On 18 March 2005 the Standing Committee held a debate on the draft Council of Europe Convention on action against trafficking in human beings and adopted Recommendation 1695 (2005). It appears from this text (see paragraph 3) that "unfortunately, two thirds of the amendments proposed by the Assembly were rejected by CAHTEH (intergovernmental ad hoc Committee on action against trafficking in human beings) mostly at the initiative of the European Commission, which was negotiating on behalf of 22 (of the 25) member States of the European Community".

47. In cases where the Assembly presents a number of amendments of a substantive nature to a draft Council of Europe treaty, it would be appropriate that the Ministers' Deputies have the possibility to consult the expert committee that prepared the draft of these amendments. This should also be borne in mind for the terms of reference and the deadlines assigned to the expert committee, as well as for the general time-frame for the elaboration and adoption of the treaty. Furthermore, it would be useful if, in the light of the expert committee's position, the Ministers' Deputies informed the Assembly, preferably by a formal reply, why they had not accepted the different proposals made in the Assembly's statutory opinion. There are already some precedents. In the case of the Convention on Human Rights and Biomedicine the Chairperson of the Ministers' Deputies informed the President of the Assembly by letter of the reasons why some Assembly amendments had not been taken into account. It is also to be recalled that for the European Social Charter of 1961, the preparation of which lasted for more than 10 years, the Assembly prepared a report and adopted a resolution detailing the proposals accepted by the Committee of Ministers and analysing the final result (Resolution 218 (1962)). This precedent and the Assembly's initiatives taken in connection with the elaboration of the Convention on Action against Trafficking in Human Beings should be taken into account for the preparation of future major Council of Europe treaties.

48. In addition, together with a request from the Ministers' Deputies to the Assembly for a statutory opinion, the latter should always receive the necessary documentation ("*travaux préparatoires*"). Recent examples of close involvement of the Assembly at all stages of the preparation of draft Council of Europe conventions were:

- the Convention on Human Rights and Biomedicine;
- Protocol No. 14 to the European Convention on Human Rights (see paragraphs 41 and 42 above);
- the Convention on Action against Trafficking in Human Beings.

However, as was already mentioned in the latter two cases, the Assembly was not satisfied with the final versions of the texts of these treaties.

49. The rapporteur recalls in this connection that the report of the Committee of Wise Persons to the Committee of Ministers on "Building greater Europe without dividing lines" (November 1998) proposed that when there are major points of disagreement between the two statutory organs on a draft protocol or convention, a working party of the Joint Committee should be set up to try to find a solution (paragraph 48 of the report).

50. It is important that the Assembly's voice as a statutory organ be better heard in connection with the treaty-making activity of the Council of Europe. This would correspond more closely to the concept of the shared responsibility of the Committee of Ministers and the Parliamentary Assembly to the Council of Europe, which was developed in 2001 and approved by the Joint Committee (see Doc. AS/CM/Mix/Working Group (2001) 1).

51. The Rapporteur should also like to propose that the explanatory memoranda to Council of Europe legal instruments should give more information on the work of the Assembly and its proposals. It is disappointing when the explanatory reports to major Council of Europe treaties (such as the Convention on Action against Trafficking in Human Beings) describe the important contribution of the Assembly in relatively few lines.

52. Most Council of Europe conventions contain provisions for a simplified amendment procedure of their contents. If a Contracting Party initiates such a procedure, the Assembly should be informed thereof.

53. It is hard to understand why the three new Council of Europe conventions mentioned in paragraph 43 above do not indicate in their preambles that the Assembly has expressed its views on these drafts in statutory opinions N° 253, 254 and 255 respectively, as was the case for Protocol No.14 to the European Convention on Human Rights.

54. Finally, the Rapporteur should like to mention that the Council of the European Union meetings on legislation adopted by co-decision with the European Parliament are open to the public in the initial and the final phase of the proceedings. In adopting the text of draft conventions and protocols, the Committee of Ministers of the Council of Europe fulfils at least quasi-legislative functions. The Committee of Ministers could therefore be invited to give more information on the positions taken and observations made by its members when considering or adopting legal instruments.

E. LIMITED INFORMATION FLOW CONCERNING THE BUDGET, MONITORING MATTERS, THE EXAMINATION OF JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS AND OTHER QUESTIONS

55. There are three fields where the information flow between the Committee of Ministers and the Parliamentary Assembly is, despite progress made, still somewhat limited.¹ They are related to budgetary and monitoring matters as well as to the supervisory function of the Committee of Ministers concerning the execution of judgments of the European Court of Human Rights (ECtHR). Admittedly these areas require a greater degree of confidentiality than others.

(i) Budgetary matters including the programme of intergovernmental activities

56. When the relevant Council of Europe services prepare - initially "restricted" - documents on budgetary priorities or the draft budget of the Organisation for the next year and on future intergovernmental activities, including priorities, these are only sent to the Committee of Ministers and not simultaneously to the Assembly. Often, the latter receives them when the Ministers' Deputies have already taken their decision. The Assembly has in the past adopted its opinion on the budget of the Council of Europe before the draft budget,

¹ Resolution 1391 (2004) also underlined the need that henceforth any notifications made in virtue of Article 15 of the European Convention on Human Rights should be sent by the Secretary General to the Assembly.

prepared by the Secretary General of the Council of Europe, became available. Only once the Assembly had debated its own budgetary appropriations for the coming financial year did a dialogue take place between representatives of the Committee of Ministers and of the Assembly. While this is to be welcomed, it would be even better if, before adopting the statutory opinion on its budgetary appropriations for the next year, the Assembly received relevant information from the Ministers' Deputies. The rapporteur welcomes that these matters were advocated in the report by the Committee on Economic Affairs and Development on the budgetary powers of the Assembly (Doc. 10720) and also in the report on the institutional balance at the Council of Europe by Mr Holovaty.

57. When in the past the Council of Europe experienced particular budgetary problems and the matter was discussed by Assembly organs, members often regretted the lack of relevant information (see, e.g., Bureau meeting of 27 June 2003). They only received the information required at a later stage. It should also be noted that the Assembly was not informed at an early stage when the Ministers' Deputies discussed revisions to the method of calculating the scale of member states' contributions to the Council of Europe budget.

58. Although the enlargement of the Council of Europe is reaching its end, the rapporteur wishes to recall that in the past the Assembly has never been informed - before the decision by the Ministers' Deputies - either of the financial contribution new member states would have to pay or of their contribution to the working capital fund.

59. The rapporteur is surprised that there is little information flow or dialogue between the Ministers' Deputies and the Assembly before the Council of Europe's Intergovernmental Work Programme for the coming year is adopted by the Deputies and in relation to the results achieved. Furthermore, it would be useful to have such a dialogue on the new Council of Europe legal instruments to be adopted in the forthcoming year. Both the President of the Assembly and the Committee on Economic Affairs and Development have in recent months underlined the need for improving the oversight of the Council of Europe intergovernmental activities. The Assembly is well placed to monitor the activities programme from a political angle.

(ii) Monitoring procedure of the Committee of Ministers

60. An important part of the documents relating to the monitoring procedure of the Committee of Ministers is not yet declassified for the Assembly. During the Assembly sitting on 26 January 2005 one member voiced criticism that the findings of the intergovernmental monitoring procedure on freedom of expression had not been transmitted to the Assembly. It is to be welcomed however, that informal contacts or exchanges of views take place between the Chairpersons of the Ministers' Deputies, the Deputies' competent Rapporteur group (GR-EDS) and the Assembly's Monitoring Committee. Furthermore, during the *in camera* meeting of the Ministers' Deputies on 21 October 2004 devoted to monitoring questions (freedom of expression and information), an Assembly representative was present and made a statement.

61. The rapporteur hopes that the new thematic monitoring procedure agreed by the Ministers' Deputies on 1 July 2004 will be more transparent.

(iii) Information related to the supervision by the Committee of Ministers of the execution of judgments of the European Court of Human Rights

62. Because of the sensitive nature of these activities, the relevant meetings of the Ministers' Deputies are not open to Assembly members. Furthermore, the official version of the order of business of the Deputies' human rights meetings (with annotations) is not public. However, it is to be welcomed that a special public version of the order of business is put on the website some days after the respective meeting of the Deputies and that advance information on the agenda of the forthcoming human rights meetings is also available on the Net.

63. Despite some progress made, no electronic register is yet available of pending cases on a country-by-country basis ("computerised status sheets"). This would be most useful, as the Assembly has increased its political action relating to judgments of the Court which have not yet been executed at national level. The rapporteur proposes that the computerised status sheets be made accessible to Assembly members.

64. The circulation of execution of judgment (and monitoring) documents of the Committee of Ministers requires a decision by the Ministers' Deputies. After such decisions are taken, lists with the titles of the documents concerned could be forwarded to the Assembly. Furthermore, the website of the Committee of Ministers could show lists of "recent declassifications" of restricted documents. This would improve visibility. The Committee on Rules of Procedure and Immunities on 12 September 2005 also agreed that the Committee of Ministers should consider publishing an annual report on its activities with regard to supervision of the execution of the Court's judgments highlighting the most salient developments and problems in order to enhance transparency and publicity. It is recalled that this proposal has initially been made at the high-level Seminar on Reform of the European Human Rights System held in Oslo on 18 October 2004 (see paragraph 23 of the Seminar's conclusions).

(iv) Other matters

65. The Rapporteur has also noted that whereas the Ministers' Deputies and the Assembly had an ongoing dialogue – also through the Joint Committee - on the preparation of the Third Summit of the Council of Europe, no major documents of the Deputies were made available to the Assembly before the Summit. This was subject of criticism at the Joint Committee's meetings on 27 January and 28 April 2005.

66. During the April meeting of the Joint Committee the President of the Assembly deplored that the Committee of Ministers had made none of its restricted documents available for the discussion of various agenda items. He therefore proposed to create, as in the past, a series of confidential documents for the Joint Committee.

67. The rapporteur should also like to mention a good example of information exchange and co-operation between the Committee of Ministers and the Assembly on a political matter. In 2004 representatives of both organs had very close contacts at all stages of the preparation of a draft for a resolution of the General Assembly of the United Nations on co-operation between the UN and the Council of Europe.

68. Some other international parliamentary institutions have developed a confidential information procedure with the ministerial organ. Such a procedure would certainly be useful within the Council of Europe as well. The Committee on Rules of Procedure and Immunities proposes that such information be exchanged at meetings of the Bureau of the Deputies and the Presidential Committee of the Assembly (Bureau ad hoc Committee of Chairpersons of Political Groups).

F. FINAL REMARKS

69. On 5 October 2005 the Committee on Rules of Procedure and Immunities adopted the draft resolution contained in this report and agreed to present the report to the Standing Committee in Bucharest on 25 November 2005.

70. The committee noted that possibilities for improving information on their work exist not only at the level of the Committee of Ministers but also for the Assembly. A motion for a resolution on voting in the Assembly (Doc. 10603) has already been tabled. This and other questions related to the organisation of the work of the Assembly and its committees are currently under discussion in the Bureau of the Assembly.

COUNCIL OF EUROPE CONVENTIONS AND AGREEMENTS OPENED FOR SIGNATURE SINCE 1994 ON WHICH THE ASSEMBLY HAS ADOPTED A STATUTORY OPINION TO THE COMMITTEE OF MINISTERS¹

| No. European Treaty Series | Title of the Convention or Agreement | Date of opening for signature | Amendments to the text of the Treaty proposed by the Assembly and reference of Assembly opinions | Follow-up by the Committee of Ministers to the amendments proposed by the Assembly ² |
|----------------------------|--|-------------------------------|--|---|
| 155 | Protocol No. 11 to the Convention for the protection of Human Rights and fundamental freedoms | 11.05.1994 | YES (10) Opinion No. 178 (1994) | Five of the amendments made were accepted <i>in toto</i> and one in part |
| 158 | Second Protocol to the European Social Charter providing for a system of collective complaints | 09.11.1995 | NO Opinion No. 167 (1993) | — |
| 160 | European Convention on the exercise of children's rights | 25.01.1996 | YES (7) Opinion No. 186 (1995) | One of the amendments was accepted |
| 163 | Revised European Social Charter | 03.05.1996 | NO Opinion No. 185 (1995) | — |
| 164 | Convention for the Protection of Human Rights and the Dignity of Human Beings with regard to the Application of Biology and Medicine | 04.04.1997 | YES Opinion No. 184 (1995) Opinion No. 198 (1996) | Five of the sixteen amendments made in Opinion No. 184 were accepted <i>in toto</i> and one in part. Opinion No. 198 contained ten amendments on the revised draft convention of which three were accepted (see Doc. 7720) |
| 166 | European Convention on Nationality | 06.11.1997 | YES (11) Opinion No. 200 (1997) | Two amendments were accepted <i>in toto</i> and one in part |
| 168 | Additional Protocol to the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, on the Prohibition of Cloning Human Beings | 12.01.1998 | NO Opinion No. 202 (1997) | — |
| 172 | Protection of the Environment through Criminal Law | 04.11.1998 | YES (17) Opinion No. 204 (1998) | No amendment was accepted |

¹ Before 1999 the Assembly was not systematically consulted by the Committee of Ministers with respect to draft Council of Europe Conventions and Agreements. In April 1999 the Committee of Ministers decided to consult the Assembly in future on all draft treaties, except those of an exclusively technical nature which may not require such consultation. The influence of the Assembly opinions on final texts of Council of Europe Conventions is analysed in particular in a doctoral thesis of Beat Habegger (St Gall, 2005) and in his article on "Die Mitwirkung der Parlamentarischen Versammlung an den Konventionen des Europarats in "30 Jahre EMRK Beitritt des Schweiz: Erfahrungen und Perspektiven, Bern, 2005, pp. 43-57.

² Evaluation by the rapporteur.

| No. European Treaty Series | Title of the Convention or Agreement | Date of opening for signature | Amendments to the text of the Treaty proposed by the Assembly and reference of Assembly opinions | Follow-up by the Committee of Ministers to the amendments proposed by the Assembly |
|----------------------------|--|-------------------------------|--|--|
| 173 | Criminal Law Convention on Corruption | 27.01.1999 | YES (6) Opinion No. 207 (1998) | Two amendments were accepted (of which one partially) |
| 174 | Civil Law Convention on Corruption | 04.11.1999 | YES (5) Opinion No. 213 (1999) | None of the amendments was accepted |
| 175 | European Convention on the Promotion of a Transnational Long-Term Voluntary Service for Young People | 11.05.2000 | YES (1) Opinion No. 215 (2000) | Amendment accepted |
| 176 | European Landscape Convention | 20.10.2000 | YES (2) Opinion No. 220 (2000) | The two amendments were partially accepted |
| 177 | Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms | 04.11.2000 | YES (3) Opinion No. 216 (2000) | One of the amendments was accepted |
| 178 | European Convention on the Legal Protection of Services based on, or consisting of, Conditional Access | 24.01.2001 | No statutory opinion adopted by the Assembly | — |
| 179 | Additional Protocol to the European Agreement on the Transmission of Applications for Legal Aid | 04.10.2001 | No statutory opinion adopted by the Assembly | — |
| 180 | Convention on Information and Legal Co-operation concerning "Information Society Services" | 04.10.2001 | NO Opinion No. 228 (2001) | — |
| 181 | Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, regarding supervisory authorities and transborder data flows | 08.11.2001 | YES (4) Opinion No. 217 (2000) | None of the amendments were accepted |
| 182 | Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters | 08.11.2001 | YES (3) Opinion No. 231 (2001) | None of the amendments were accepted |

| No. European Treaty Series | Title of the Convention or Agreement | Date of opening for signature | Amendments to the text of the Treaty proposed by the Assembly and reference of Assembly opinions | Follow-up by the Committee of Ministers to the amendments proposed by the Assembly |
|----------------------------|---|-------------------------------|--|--|
| 183 | European Convention for the Protection of the Audiovisual Heritage | 08.11.2001 | NO Opinion No. 230 (2001) | — |
| 184 | Protocol to the European Convention on the protection of the Audiovisual Heritage, on the Protection of Television Productions | 08.11.2001 | NO Opinion No. 230 (2001) | — |
| 185 | Convention on Cybercrime | 23.11.2001 | YES (23) Opinion No. 226 (2001) | Eight amendments were accepted |
| 186 | Additional Protocol to the Convention on Human Rights and Biomedicine concerning Transplantation of Organs and Tissues of Human Origin | 24.01.2002 | YES (11) Opinion No. 227 (2001) | Three of the amendments were accepted |
| 187 | Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances | 03.05.2002 | YES (1) Opinion No. 233 (2002) | The amendment proposed was not accepted |
| 188 | Additional Protocol to the Anti-Doping Convention | 12. 09.2002 | NO Opinion No. 238 (2002) | — |
| 189 | Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems | 28.01.2003 | YES (6) Opinion No. 240 (2002) | None of the amendments were accepted |
| 190 | Protocol amending the European Convention on the Suppression of Terrorism | 15.05.2003 | YES (2) Opinion No. 242 (2003) | None of the amendments were accepted |
| 191 | Additional Protocol to the Criminal Law Convention on Corruption | 15.05.2003 | YES (1) Opinion No. 241 (2002) | The amendment proposed was not accepted |
| 192 | Convention on Contact concerning Children | 15.05.2003 | YES (3) Opinion No. 235 (2002) | None of the amendments were accepted |

| No. European Treaty Series | Title of the Convention or Agreement | Date of opening for signature | Amendments to the text of the Treaty proposed by the Assembly and reference of Assembly opinions | Follow-up by the Committee of Ministers to the amendments proposed by the Assembly |
|----------------------------|--|-------------------------------|--|--|
| 193 | Revised European Convention for the Protection of Animals during International Transport | 06.11.2003 | NO Opinion No. 245 (2003) | — |
| 194 | Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention | 13.05.2004 | YES (9) Opinion No. 251 (2004) | Two amendments were partially accepted |
| 195 | Additional Protocol to the Convention on Human Rights and Biomedicine, concerning Biomedical Research | 25.01.2005 | NO Opinion No. 252 (2004) | — |
| 196 | Council of Europe Convention on the Prevention of Terrorism | 16.05.2005 | YES (29) Opinion No. 255 (2005) | Eleven amendments were accepted <i>in toto</i> and one partially |
| 197 | Council of Europe Convention on Action against Trafficking in Human Beings | 16.05.2005 | YES (26) Opinion No. 254 (2005) | One third of the amendments were accepted (see para. 3 of Rec. 1695 (2005)) |
| 198 | Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism | 16.05.2005 | YES (28) Opinion No. 253 (2005) | Three amendments were accepted |
| 199 | Council of Europe Convention on the Value of Cultural Heritage for Society | 27.10.2005 | NO The competent Assembly committee expressed its position by a letter of 4.10.2005 - see also para. 15 of Rec. 1712 (2005) | — |

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

Reference to committee: Doc. 9297 and Reference N° 2915 of 26 January 2004

Draft resolution unanimously adopted on 5 October 2005

Members of the committee: Mr Andreas Gross, (Chairperson), Mr Andrea **Manzella**, Mrs Ganka Samoilovska-Cvetanova (Vice-Chairpersons), Mr Sándor Albert, Mr Gulumhuseyn Alibeyli, Mr Alexander Arabadjiev, Mr Birgir Ármannsson, Mr Ioannis **Bougas**, Mrs Anne Brasseur, Mr Aslan **Cebeci**, Mr Jonas **Čekuolis**, Mr Manlio Collavini, Mrs Helen D'Amato, Mrs Krystyna Doktorowicz, Mr Miljenko Dorić, Mr Vangjel Dule, Mr Mats **Einarsson**, Mr Adolfo Fernandez Aguilar, Mr Herbert Frankenhauser, Mr Tihomir Gligorić, Mr John **Greenway**, Mrs Arlette Grosskost, Mr Gerd Höfer, Mr Serhiy Holovaty, Mr Tomáš Jirsa, Mr Armand Jung, Mr Erik Jurgens (alternate: Mrs **Bemelmans-Vidéc**), Mr Tibor Kékesi, Mrs Mojca Kucler-Dolinar, Mr Markku Laukkanen, Mr Alan Meale, Mrs Ana **Mendonça**, Mr Per Erik Monsen, Mr Jakob-Axel Nielsen, Mr Alexey Ostrovsky, Mr Christos Pourgourides, Mrs Valentina Radulović Šćepanović, Mr Armen Rustamyan, Mr Peter **Schieder**, Mr Yuri Sharandin, Mr Christophe Spiliotis-Saquet, Mrs Rodica Mihaela Stănoiu, Mr Victor Stepaniuc, Mr Karim **Van Overmeire**, Mr G.V. Wright.

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

Secretaries of the committee: Mr Mario Heinrich, Ms Linda Nylund.

