

EUROPEAN UNION LAW. INTERNATIONAL LAW AND COMPARATIVE LAW

DOI <https://doi.org/10.30525/978-9934-26-074-2-72>

MONITORING PROCEDURE WITHIN THE COUNCIL OF EUROPE

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Monitoring the fulfillment of commitments by member states is one of the main types of powers exercised by the principal organs of the Council of Europe. The monitoring procedure plays an important role in ensuring the proper functioning of the legal framework of the organization. It is not enough just to conclude an international treaty, it is necessary that its provisions are fulfilled by the parties. Only under such conditions it will be really effective.

Since the founding of the Council of Europe in 1949, it has remained the chief overseer of human rights on the European continent. Not the least role in this process is played by the monitoring procedure carried out by the main institutions of the Council of Europe. Its main purpose is to monitor the compliance of member states of the Council of Europe with their obligations and the provisions of international treaties concluded within its framework. Such activity is quite important, as it helps countries to overcome inconsistencies and gaps in their legal systems, that has a positive impact on their level of respect for human rights in general.

As monitoring is carried out by various bodies of the Council of Europe, it provides an opportunity to comprehensively consider the problems that exist in the states and find ways to overcome them. Regardless of which body carries out the monitoring procedure, it examines, analyzes and evaluates the situation in each state in detail. This is done in order to have an objective understanding of what the state should do to improve the situation and fulfill its obligations. Pointing out a breach of a specific obligation or international treaty by the member state, the Council of Europe's bodies provide recommendations on possible ways to remedy the situation and fulfill state's obligations. Of course, the success of the monitoring procedure depends on the ability and willingness of the state to engage in dialogue and fulfill its obligations. But in most cases

states has a positive attitude to the advice provided by the Council of Europe and try to rectify the situation with the fulfilment of their commitments.

By joining the Council of Europe, states have undertaken a number of commitments that they have agreed to fulfill. This applies to the obligation to comply not only with the Statute of the Council of Europe and the European Convention on Human Rights, but also with other conventions to which they are parties. Within the Council of Europe, the main monitoring powers are vested in the Parliamentary Assembly and the Committee of Ministers. These powers are not enshrined in the Charter for any of the Council of Europe's bodies. It doesn't even mention them. This situation can be explained by the fact that monitoring of the implementation of member states' obligations was absent in the practice of the Council of Europe until 1993. Therefore, there are no relevant provisions in the Charter of the Council of Europe or in other documents of the initial period of the organization.

The monitoring procedure began to be applied only in the early 90's, as it was during this period that new states from Central and Eastern Europe began to join the organization. Due to the long existence of the communist regime in the countries, the level of democracy in them was very low. There was also a discrepancy between their legal systems and those in Western European countries. For these reasons, the Parliamentary Assembly was the first principal organ of the Council of Europe, that introduced a monitoring procedure. It was called upon to monitor the fulfillment of obligations not only by the new states, but also by those that had been members of the Council of Europe for a long time. In its Order № 488 of 1993, the Parliamentary Assembly instructed two of its committees (the Political Affairs Committee and the Committee on Legal Affairs and Human Rights) to monitor the honouring of commitments by the new member states of the Council of Europe [1]. Subsequently, the Parliamentary Assembly has made some additions to this procedure and in 1997 established a Committee on the honoring of obligations and commitments by member states of the Council of Europe (Monitoring Committee). Thus, the Parliamentary Assembly structure now has a special body that deals exclusively with monitoring issues.

Following the example of the Parliamentary Assembly, the Committee of Ministers launched its own monitoring procedure in 1994. This became possible after the adoption of the Declaration on compliance with commitments accepted by member states of the Council of Europe [2]. It should be noted that the activities of both organs in the field of monitoring are complementary. This is a unique feature of the Council of Europe, which, among other things, demonstrates the interaction of two key bodies of this organization – the representative and the executive [3, p. 98].

The competence of the Committee of Ministers and the competence of the Parliamentary Assembly in the sphere of monitoring do not contradict each

other. This is due to certain differences in the manner of conducting the monitoring. Thus, the Parliamentary Assembly focuses on scrutinizing each state's compliance with its commitments. While the Committee of Ministers usually monitors country by a separately chosen topic for all states simultaneously. Consequently, it can choose any topic and monitor the existence of mechanisms to ensure the implementation of treaty obligations and the level of their effectiveness in the states (for example, freedom of expression and information, freedom of assembly, protection and access to social rights of vulnerable groups).

At the same time, the Committee of Ministers may carry out the monitoring procedure of certain States. It has previously been applied to Azerbaijan, Bosnia and Herzegovina, Armenia, Georgia, Moldova, the Russian Federation, Serbia, Ukraine and Montenegro. For example, in 2001, the Committee of Ministers set up a Monitoring Group (the Ago Group) to monitor Azerbaijan and Armenia. At this time, immediately after the accession of these countries to the Council of Europe in 2000, the Parliamentary Assembly began its monitoring procedure. If we carefully analyze the reports of the Ago Group of the Committee of Ministers [4] and the reports of the Parliamentary Assembly Monitoring Committee [5], we can see that they focus on almost the same issues. And here the right question immediately arises: isn't this a duplication of powers? The answer is likely to be positive. Indeed, it is not clear why the two statutory organs of the Council of Europe simultaneously monitored the commitments taken by states at the time of their joining the organization. From our point of view, such a situation is unacceptable and must be resolved. A special working group should be created within the Joint Committee, which will make consultations with the relevant structures of both bodies to delineate the powers of each of them in this area.

At the same time, it should be emphasized that the Committee of Ministers is more focused on monitoring the implementation of treaties that have been adopted within the Council of Europe and on thematic monitoring. Due to the existing steering committees in its structure, it copes well with this work. The main monitoring activity of the Parliamentary Assembly is the supervision of the fulfillment of commitments, which states undertook at the time of joining the organization.

Thus, the monitoring procedure plays an important role in ensuring that states fulfill their obligations, as well as the conventional norms of the Council of Europe. It contributes to the observance of the legal standards on which a true European democracy must be built. The recommendations, which were made during the monitoring process provide an opportunity to understand and correct the shortcomings in the national legal system, which contributes to a common understanding of the conventional heritage of the Council of Europe.

References:

1. Order 488 (1993) Honouring of commitments entered into by new member states URL: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=13691&lang=en> (Last accessed: 19.04.2021).
2. Declaration on compliance with commitments accepted by members states of the Council of Europe (Adopted by the Committee of Ministers on 10 November 1994 at its 95th Session) URL: <https://wcd.coe.int/ViewDoc.jsp?id=525835&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383> (Last accessed: 19.04.2021).
3. Hnatovskyy M. M. Yevropeyskyy pravovyy prostir. Kontseptsiya ta suchasni problemy: monohrafiya. Kyivskyy natsionalnyy universytet imeni Tarasa Shevchenka, Instytut mizhnarodnykh vidnosyn. Kyiv: Promeni, 2005. 224 p.
4. CM(2006)100 final, Monitoring Group (GT-SUIVIAGO) – 7th Progress report (Adopted at the 971st meeting of the Ministers’ Deputies on 12 July 2006) URL: <https://wcd.coe.int/ViewDoc.jsp?id=1017441&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383> (Last accessed: 19.04.2021).
5. AS/Mon(2008)10 rev, Honouring of obligations and commitments by Azerbaijan, 18 March 2008 URL: http://www.assembly.coe.int/CommitteeDocs/2008/20080318_amondoc10r.pdf (Last accessed: 19.04.2021).

DOI <https://doi.org/10.30525/978-9934-26-074-2-73>

**IMMUNITET PAŃSTWA –
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W związku z aktywnymi procesami współpracy gospodarczej, politycznej i kulturalnej znacznie rozszerzył się zakres udziału państw zarówno w stosunkach prawa prywatnego, jak i publicznego, skomplikowanych