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Foreword

On 6 May 2003, the Minister for Development Cooperation asked the Advisory In April 2004, the Chairperson of the Dutch delegation to the Parliamentary Assembly of the Council of Europe asked the Minister of Foreign Affairs to request the Advisory Council on International Affairs (AIV) to produce an additional advisory report on the role and position of the Parliamentary Assembly (PA) of the Council of Europe and similar assemblies in Europe, to supplement the advisory report published in 2003, 'The Council of Europe: less can be more'.¹

This request was mainly prompted by the observation made by the Senate in November 2003 and by the Dutch delegation to the PA in the meeting with members of the AIV on 16 March 2004 that the advisory report said too little about the PA. During consultations between the Minister of Foreign Affairs and the House of Representatives on 20 April 2004, this issue arose again and the Minister promised to comply with the request. The request for advice of 30 April 2004 (see annexe I) explicitly excludes advice concerning the role and position of similar assemblies and focuses on the role, position and functions of the PA.

The present advisory report starts with a discussion of the main points of the earlier report and refers to its observations concerning the PA. Section II examines the PA's current activities and task perception (its tasks as it understands them). Section III, finally, contains several conclusions and recommendations.

The report was prepared by a specially appointed subcommittee comprising members from every section of the AIV. The members of the subcommittee were Dr A. Bloed of the AIV's Peace and Security Committee (CVV), Mr T. ETTY, Prof. C. Flinterman, Prof. W.J.M. van Genugten (subcommittee chair) and Ms C. Hak, all members of the AIV's Human Rights Committee (CMR), Prof. P.J.G. Kapteyn and Mr H.C. Posthumus Meyjes of the AIV's European Integration Committee (CEI) and Ms E.M.A. Schmitz of the AIV. Prof. J.E. Goldschmidt (CMR) was mainly involved as a corresponding member. In addition, the subcommittee held a detailed discussion with the members of the Dutch delegation to the Parliamentary Assembly of the Council of Europe and was able to draw on the knowledge and experience of various civil service liaison officers, in particular Mr J. Douma of the Central Europe Division of the Ministry of Foreign Affairs' Western and Central Europe Department (DWM/ME). The AIV is grateful to all the persons it consulted for their input. The secretariat was headed by Mr T.D.J. Oostenbrink (CMR), assisted by Ms S. Everts and Ms M.E. van Weelden (trainees).

The AIV adopted this report on 21 February 2005.

1 AIV, 'The Council of Europe: less can be more', advisory report No. 33, The Hague, October 2003.

I Introduction

In its earlier advisory report on the Council of Europe, the AIV started by analysing the Council's original and modified goals, how it presently sees its tasks and current problems relating to its functioning. It then defended the view that the Council of Europe, and thus the PA as an organ of the Council, should concentrate on its core tasks in order to face the future with confidence. The AIV identified the following core tasks:

- (a) promotion of democracy (including assistance to 'new' member states);
- (b) promotion of the rule of law;
- (c) protection of human rights and protection against violations of the rights of individuals;
- (d) protection of minority rights; and
- (e) preservation and promotion of cultural values and diversity in the member states.²

In the rest of the report, the AIV focused on the intended consequences of this concentration on core tasks. It did so largely in an exploratory manner, in the knowledge that too radical an approach would occasionally have led to overly simplistic conclusions regarding core and non-core tasks. The AIV believes that a leaner Council should be achieved systematically and cautiously, in order to ensure that it ultimately functions even better than it does at present. Furthermore, as the AIV noted in its earlier report, the focus on the Council's core tasks should not be interpreted as 'crippling the organisation' but as an attempt to highlight and safeguard 'its huge importance and the large amount of good work that is now being done'.³

In this context, the AIV briefly discussed several of the Council's institutions, including the PA, regarding which it noted as follows:

The Parliamentary Assembly (PA) is the parliamentary body of the Council of Europe and performs many different functions. One of its main powers is to elect the Secretary General (SG) and his deputy, the Commissioner for Human Rights and the judges at the European Court of Human Rights. It also gives the work of the Council of Europe a degree of democratic legitimacy, and is the driving force behind many of the Council's standard-setting and monitoring activities. Other activities include the debates in which the standards to be met by new member states are drawn up, and the follow-up to such debates, as well as the numerous discussions on developments in the field of human rights and the rights of national minorities and persons belonging to them.

In this connection, the PA can make use of various instruments: recommendations to the Committee of Ministers (CM) on matters that fall within the competence of governments; resolutions on matters which the PA is itself competent to act on; opinions on such matters as the admission of new member states and draft treaties; and orders, which usually contain instructions to one or more of the PA's committees. The continued existence of the PA is not in question, but at the same time it is clear that the PA

² Ibid., p. 13.

³ Ibid., p. 23.

too must reflect on the way it functions and focus on core tasks. It is important to ensure that PA members do not allow the agenda to be excessively determined by national interests and by personal hobbies and lobbies, and that the Council's range of tasks does not continue to expand as a result of this, despite the existing 'filtering system' for resolutions. Increasingly, the discussions within the PA and the resulting resolutions will have to help fulfil the aforementioned core tasks. The AIV also feels that the report by the Committee of Wise Persons, which appeared in 1998 and has still not produced enough specific results, should also play a part here.⁴

The Dutch members of the PA, who otherwise warmly welcomed the AIV's advisory report,⁵ considered this section too short and consequently asked the government for a supplementary report.

In its supplementary request for advice, the government asked the AIV to give its opinion on the role, position and tasks of the PA within the Council of Europe, while indicating that, as far as it was concerned, the AIV did not need to carry out a comparative analysis of the 'differences between the mandates of the parliamentary assemblies of the Council of Europe, the European Union, the Western European Union (WEU) and the Organisation for Security and Cooperation in Europe (OSCE)'. Furthermore, in its request the government expressed the question in the following terms, which the AIV will of course adopt for reasons of consistency: how can the PA help the Council 'carry out the tasks related to its core activities in a more coherent and effective manner'?

This clarifies the context of the supplementary report, but also places the AIV in a somewhat awkward position. In this particular case, the AIV was asked for advice by – and is therefore providing advice to – the government. However, in a democratic order based on a careful system of checks and balances, it is not appropriate to tell parliamentarians by way of the government how they should do their work. This is true in general, but even more so regarding aspects of internal organisation. In this case, the AIV would therefore have preferred that one of the two Houses of the States General had asked it for advice, which is within their statutory powers. In light of the above, the AIV has couched its advice on the 'role, position and functions' of the PA in the form of a suggestion to the government to ask the PA, through the Dutch parliamentary delegation to the Council of Europe, to contribute by means of self-regulation to the Council's transformation into an organisation that truly – and more so than at present – concentrates on its core tasks and functions. The further development of the PA's role in all this will have to come from within, particularly since the functioning of the PA, in its capacity as an integral part of the Council's structure, cannot be separated from the overall functioning of this organisation. In the AIV's view, the political groups operating within the PA (and their chairs) have an important role to play here.

4 Ibid., p. 19. For the report of the Committee of Wise Persons, see 'Building Greater Europe without dividing lines – Report of the Committee of Wise Persons to the Committee of Ministers', Document 8261, 25 November 1998.

5 See, for example, House of Representatives, Parliamentary Papers 28 810, Nos. 1 and 5, and the transcript of the AIV's meeting with the Dutch members of the Parliamentary Assembly of the Council of Europe on 16 March 2004.

6 These delegations represent the parliaments of Canada, Israel and Mexico.

A second priority issue concerns the AIV's general perception of the PA. The PA currently comprises 626 parliamentarians from 46 member states, supplemented by a number of parliamentary delegations with observer status.⁶ Apart from a variety of interim contacts and smaller meetings, for example in one of the PA's ten permanent committees or, for some, in the Standing Committee, which acts on behalf of the PA when it is not in session, these representatives meet only four times a year for plenary sessions lasting approximately one week.⁷ Together with the range of opinions and national interests represented in the PA and the role and nature of parliaments as such, this fact calls for a certain degree of realism regarding the PA's ability to make a greater contribution to the achievement of the Council's core tasks and functions.

7 In addition, a special session is often held in the country holding the chairmanship of the Council of Europe.

II Current activities and task perception of the PA

This chapter closely examines several important aspects of the PA's functioning. It starts by identifying the PA's statutory tasks and powers and goes on to consider its practical role in the legislative process, the further development and refinement of the normative framework and monitoring of member states' compliance with their obligations. It then examines how the PA is involved in strengthening the Council's monitoring bodies and mechanisms in general and devotes attention to the PA's role in the process of strengthening national democracies. The final section of this chapter examines the distinction between core tasks and core functions.

II.1 Statutory tasks and powers of the PA

Article 22 of the Statute of the Council of Europe, which was adopted in London on 5 May 1949, lays down the tasks of the Consultative/Parliamentary Assembly:

The Consultative Assembly is the deliberative organ of the Council of Europe. It shall debate matters within its competence under this Statute and present its conclusions, in the form of recommendations, to the Committee of Ministers.

The PA may discuss and make recommendations concerning all aspects of the Council of Europe's mandate as long as it stays within the aim and scope of the organisation's objectives (Article 23). In order to carry out its activities in an effective manner, the PA may establish special committees and commissions. Over the years, it has also acquired various powers relating in particular to appointing officials,⁸ promoting further standard-setting, strengthening the rule of law and monitoring the compliance of member states with their obligations.⁹ The PA's tasks and powers have thus gradually taken shape, with due regard for – and within the constraints of – the opposing viewpoints concerning the PA that existed in 1949. At this time, there was a conflict between those who wanted the Council of Europe to have a traditional intergovernmental structure (with a strong emphasis on the power of the Committee of Ministers) and those who wanted real parliamentary influence on the decision-making of the Committee of Ministers (through representatives of national parliaments). As a compromise, both a Committee of Ministers and a Consultative/Parliamentary Assembly, consisting of nationally elected parliamentarians, were established, making the PA the oldest international pluralistic parliamentary assembly established on the basis of an intergovernmental treaty. The PA is an indirectly elected parliament that differs in nature from the European Parliament, for example, whose members are directly elected. The PA's democratic legitimacy derives primarily from the 'double mandate' of its members. Very soon after its first session, incidentally, the Consultative Assembly asked the Committee of Ministers to recognise its parliamentary character and approve a name change (to 'Parliamentary Assembly'). It took the Committee of Ministers until 1994 to formally agree to this.

8 This includes the Secretary General of the Council of Europe, the Commissioner for Human Rights, judges at the European Court of Human Rights and members of the Committee against Torture.

9 In addition to what will be discussed in section 2.5, these powers also include an official role in relation to the reports of the Committee of Experts, the European Social Charter (Articles 28 and 29) and the related Collective Complaints Protocol (Article 8).

II.2 Involvement of the PA in the legislative process

In the past, the PA helped to shape the scope of the Council of Europe's activities in many ways, both in the field of standard-setting and in the field of monitoring. The AIV feels that, in the process, the PA – within the very large field covered by the Council's stated objectives – also played a role in extending the Council's activities beyond the boundaries of the organisation's core tasks, either by placing issues on the agenda or by allowing consideration of issues that may now rightly be regarded as a proliferation of the Council's activities (see annexe II for an overview of reports debated in the PA). Reference may also be made to the list of Council of Europe treaties, as included in annexe VIII of the previous advisory report, along with the observation that two new treaties have been added to the previous list of 192, one concerning Protocol No. 14 to the ECHR and one revised convention concerning the protection of animals during international transport. As noted in the earlier advisory report – and reiterated here – a quick glance at this list will show that many of the treaties would not have been adopted if the Council had concentrated on its core tasks.¹⁰

In addition, an estimated 20 to 30 per cent of the over 100 parliamentary recommendations and resolutions adopted in 2004 are questionable; the exact percentage depends on how broadly the interpretation of the Council's core mandate is to be interpreted.¹¹ Examples of such resolutions include: 'Global warming: beyond Kyoto' (Resolution 1406), 'OECD and the world economy' (Resolution 1401) and 'The euro and the Greater Europe' (Resolution 1378), which ends as follows:

The Assembly, in conclusion, stresses the importance of, firstly, ensuring observance of the Stability and Growth Pact, secondly, reviving economic activity in the eurozone through structural reform, and finally, facilitating the entry of new EU members into the EMU as soon as possible. [...]

The resolution does not contain a single reference to the Council of Europe's core tasks, so that one is left guessing as to its rationale, unless a phrase like 'to enhance a constructive cooperation between member states of the European Community and the rest of Europe' (Article 1) is meant to fulfil this function. If this is the case, however, the AIV believes that it is too little to qualify as a contribution to the implementation of the Council's core tasks.

Examples such as the above are chiefly meant to help determine the outer limits of the core mandate. In their meeting with the AIV, the Dutch members of the PA indicated that they are willing to make sure that the relationship of the existing treaties to the Council's core mandate will be examined and that they seriously intend to examine whether every future treaty, recommendation and resolution is also related to the core mandate. The AIV is therefore counting on the Dutch members of the PA to keep this promise in the future.

10 See AIV, 'The Council of Europe, less can be more', advisory report no. 33, The Hague, October 2003, p. 24.

11 See <[http://assembly.coe.int/main.asp?link=http://assembly.coe.int/asp/doc/ListAT\(SQL\).asp](http://assembly.coe.int/main.asp?link=http://assembly.coe.int/asp/doc/ListAT(SQL).asp)>.

In the AIV's view, moreover, it speaks for itself that, in order to perform this task properly, the PA should always be involved in the legislative process in a timely manner.¹² In this regard, the following extract from Opinion 251 of the PA, concerning Protocol No. 14 to the ECHR, is very significant:

Finally, the Assembly urges the Committee of Ministers to submit requests for opinions on draft treaties to the PA 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.

'At least three months', instead of the mere two weeks that the PA was given in this particular case. The Committee of Ministers has accepted the proposal to consult the PA when preparing draft treaties and protocols, but the AIV feels that this consultation process still needs to be strengthened so that the PA can play a more effective part in the legislative process.

In connection with the focus on core tasks, the AIV also recommends taking another critical look at the PA's various permanent and *ad hoc* committees. Although the number of permanent committees was reduced from fourteen to ten a few years ago, it would be advisable to re-examine several of them. The AIV is thinking in particular of the permanent Committee on Economic Affairs and Development and the permanent Committee on the Environment, Agriculture and Local and Regional Affairs, which has a large number of subcommittees.¹³ Some of these appear to contribute little to the implementation of the Council's core tasks. The AIV further assumes that it would be possible to transfer any tasks that are related to the Council's core mandate from these committees or subcommittees to others in the context of a reorganisation.

II.3 Proliferation vs. refinement of the normative framework within the core mandate

The proliferation of norms, for which the Council of Europe was criticised in the earlier advisory report, is not the same as tightening up, specifying or promoting existing norms in the area of the Council's core mandate. Based on country studies or as a result of increasing awareness, the PA regularly puts forward suggestions aimed at fine-tuning the existing normative framework within the core mandate. Examples of this from the recent past include Protocol No. 13 to the ECHR (on discrimination) and Recommendation 1670 (2004) on 'Internet and the law', in which the PA noted, among other things, that it believes 'that it has to be decided what is meant by "ethical" behaviour on the Internet, and that the principles to be applied – collectively – to all (access or service) providers, and – individually – to Internet users, have to be established' and that it therefore recommends that the Committee of Ministers:

- i. establish a legal instrument, preferably in the form of an enlarged convention on, inter alia, the basic rights and duties of Internet users;

¹² See also 'Building Greater Europe without dividing lines – Report of the Committee of Wise Persons to the Committee of Ministers', Document 8261, 25 November 1998, paras. 41, 48 and 49.

¹³ These include the Subcommittees on Sustainable Development, Local and Regional Democracy, Agriculture and Fisheries, Food and Consumer Protection and the Europe Prize.

- ii. establish, in the framework of the convention, an international body, based in Europe, and representing various cultural approaches;
- iii. give to the above-mentioned body the responsibility for drawing up and monitoring the rules and principles and ensuring that national cyberethics committees backing it respect them; [...]

In the AIV's opinion, this is the correct way to incorporate a contemporary issue into the Council's area of activity.

II.4 Promoting the rule of law

An activity like the campaign to combat domestic violence against women in Europe (Recommendation 1681 (2004)) is a natural extension of this tightening of norms in the area of the Council's core mandate. In its recommendation, the PA states that such a campaign should focus on three key issues: prevention, assistance to victims and education. It recommends the Committee of Ministers to deal with the issue at the Third Summit of Heads of State and Government of the Council of Europe and to establish an *ad hoc* working group to define the parameters of the campaign and set up a monitoring mechanism. These actions by the PA appear to be aimed not so much at tightening up norms as such but at increasing the awareness needed to secure compliance with existing norms. At the same time, they draw attention to an underestimated phenomenon that has so far remained largely outside the field of human rights. The AIV regards the PA's approach as a justified tightening of norms that is entirely in line with the debate on core tasks.

II.5 Monitoring member states' compliance with their obligations

Many of the texts adopted by the PA basically state that the members of the Council should comply with the obligations they have taken upon themselves as members of the Council of Europe. In this context, the PA generally relies on reports prepared by one of its permanent committees, in particular by the Political Affairs Committee, the Committee on Judicial Affairs and Human Rights or the Monitoring Committee, but sometimes also by others, like the Committee on Migration, Refugees and Population. These reports usually concern issues that, in the AIV's opinion, are related to the Council's core tasks.

An historical but nonetheless striking example of the above concerns the active and forceful manner in which the PA stated its opinion concerning the situation in Greece, a member state of the Council of Europe, between 1967 and 1969. The PA was deeply concerned about the observance of human rights during the military junta. This led, among other things, to the adoption of Resolution 547 (1969), in which the PA refused to recognise the credentials of the Greek delegates and called on the Committee of Ministers to take all necessary measures:

Recommends [...] the Committee of Ministers to take such action, within a specified period, as is appropriate, having regard to Articles 3, 7 and 8 of the Statute and to the resolutions of the Assembly cited above.¹⁴

Later that year, due in part to the PA's actions, the Committee of Ministers decided in favour of the suspension of Greece, which lasted from 1970 until 1974.

¹⁴ Article 8 of the Statute provides for the suspension of membership.

A second interesting example concerning compliance with obligations undertaken relates to a *long-standing* member state, namely Turkey. The institutions of the European Union have recently decided that the negotiations on Turkey's EU membership can begin in 2005. Various PA activities played a role in the build-up to this decision at EU level. The Copenhagen criteria, for instance, are based in part on Council of Europe norms, and the PA's resolution on Turkey of June 2004 (Resolution 1380) is also relevant. In this resolution, the PA notes that Turkey has made progress on many issues in the field of human rights, such as limiting the role of the armed forces, shortening pre-trial detention, abolishing the death penalty, the fight against torture and steps to improve trade union rights and religious freedom. In addition, it encourages Turkey to continue reforming its constitution and to ratify a number of Council of Europe treaties.¹⁵ The PA's resolution concludes with the observation that 'Turkey has clearly demonstrated its commitment and ability to fulfil its statutory obligations as a Council of Europe member state', but also that the PA will continue to ensure, through its Monitoring Committee, that Turkey continues along its chosen path (this is known as post-monitoring dialogue). The text of this resolution has been annexed to this report by way of example, because it clearly illustrates how the PA took an even-handed yet firm approach in this particular case (see annexe III).

Another example from the sphere of compliance monitoring relates to how the PA monitors the extent to which new members of the Council of Europe comply with the obligations they take upon themselves when they join the organisation.¹⁶ One such state scrutinised by the PA in 2004 was Bosnia-Herzegovina, a member of the Council since April 2002. Resolution 1383 (2004) contains conclusions like:

Bosnia and Herzegovina fulfilled almost all major formal commitments due within a year of accession, in particular the accession to key human rights treaties, the implementation of amendments to the constitutions and the adoption of several laws in the field of justice and education. This must now be followed up with concrete implementation of the adopted legislation and compliance with Council of Europe standards.

In addition, the PA calls on Bosnia-Herzegovina to swiftly ratify a number of human rights conventions and devotes attention to the large number of disappearances. The AIV cites this resolution because it presents both a critical and an encouraging view of the situation in Bosnia-Herzegovina and the PA's expectations in this regard.

Resolution 1403 (2004), in which the PA comments on the human rights situation in Chechnya, is also illustrative of the institution's monitoring task. In this resolution, for example, the PA urges the government of the Russian Federation to institute a range of measures aimed at eliminating the climate of impunity in Chechnya:

[...] by fully co-operating with all Council of Europe mechanisms, in particular with the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT); by taking effective measures in order to prevent any reprisals against any person in relation to the filing of an application to the European

15 Such as the Framework Convention for the Protection of National Minorities, the European Charter for Regional or Minority Languages and the Revised European Social Charter.

16 Between April 2002 and October 2004, the Monitoring Committee handled eighteen country reports. In addition to the countries discussed here, some of these reports related to Albania, Armenia, Azerbaijan, Moldova, the Russian Federation and Ukraine.

Court of Human Rights, ensuring that all allegations of such crimes are investigated promptly, thoroughly and independently and that all persons found responsible for such crimes are brought to justice; [...]

In addition, the PA asks the government of the Russian Federation to ensure that decisions concerning anti-terrorism measures are made and implemented in conformity with standards of human rights and humanitarian law and urges the Duma 'to set up, as a matter of urgency, a parliamentary committee of inquiry to investigate the alleged abuses by different branches of the executive, in particular the different law enforcement bodies in the Chechen Republic and in neighbouring regions such as Ingushetia, including the apparent dysfunctioning of the military prosecutor's office in charge of the region'. The AIV cites this resolution because it concerns a highly topical and serious issue and because in it the PA is not afraid to speak plainly. In contrast to the aforementioned situation in Greece, however, the PA apparently does not yet consider the situation in Chechnya so serious and irreversible that it feels the need to call for heavier sanctions, such as the withdrawal of voting rights, or to recommend suspending the Russian Federation's membership of the Council.¹⁷ It goes without saying that all the resolutions mentioned here would be of little value without implementation. In the AIV's opinion, it is therefore very important for the PA to constantly check whether – and to what extent – its conclusions are being taken seriously and where necessary to press for follow-up measures.

II.6 Strengthening monitoring bodies and mechanisms

A further issue to which the PA continuously devotes attention is maintaining and – where necessary – strengthening the Council of Europe's various monitoring bodies. In 2004, for example, several judges were elected to the European Court of Human Rights, a process in which the PA tends to play a crucial role, both during the preliminary phase – see, for example, Resolution 1366 (2004), in which the PA formulates a number of criteria concerning the election procedure and the candidates to be nominated – and during the actual selection. The PA only accepts nominations consisting of three judges whom it regards as serious candidates. Preferential lists, list with hidden preferences and lists containing nominations that cannot be taken seriously are sent back by return of post. Furthermore, in order to ensure that the Court's composition is as balanced as possible, given that female judges are still seriously underrepresented, the PA believes that national nomination lists should contain at least one female candidate.¹⁸ If this condition is not met, it normally declines to process the list in question.¹⁹ The AIV believes that the way in which the nominated candidates are interviewed by the Committee on Legal Affairs and Human Rights could be organised in a more professional manner. The interviews are short (approximately fifteen minutes) and the interview panel consists solely of politicians. Opting for a longer interview conducted by a tripartite panel including judges from the Court

17 Incidentally, the voting rights of the Russian delegation to the PA were revoked in April 2000 in response to the situation in Chechnya. This only lasted until January 2001, officially because there was a marked improvement in the situation, but in essence because other international organisations and bodies did not at all support the Council of Europe's critical stance.

18 See Resolution 1366 (2004) adopted on 30 January 2004.

19 Exceptions to this rule are sometimes allowed, as apparent from the recent election of a judge from Lithuania.

and other experts would improve the quality of the evaluation.²⁰ As long as the current procedure remains in force, however, it should be ensured that the members of the PA interview the candidates with appropriate discretion. It should not be forgotten that, in their capacity as national parliamentarians, they help to produce legislation which, in theory, can be reviewed for compatibility with the ECHR by the Court that the candidates are seeking to join.

Another example of the PA's work to strengthen monitoring bodies and mechanisms concerns the aforementioned protocol that once again thoroughly amends the control system of the ECHR (Protocol No. 14, adopted by the Committee of Ministers in May 2004). In early 2004, after the Dutch chairmanship of the Council of Europe asked it to respond to the draft protocol, the PA made a number of critical comments regarding such issues as the addition of a new admissibility criterion for individual applications, the fact that the Commissioner for Human Rights is not able to bring cases before the Court and the age limit for judges (see Opinion 251 (2004)). The PA's comments on the draft protocol were followed by a large number of proposed amendments, but only one of these found its way into the final protocol, namely the one concerning the age limit (70) for judges.

Furthermore, in 2004, the PA again gave its opinion on such issues as the 'Ratification of protocols and withdrawal of reservations and derogations made in respect of the European Convention on Human Rights' (see, for example, Recommendation 1671 (2004)) and the implementation of judgements of the European Court of Human Rights by member states such as Turkey.

Another aspect of strengthening the PA's monitoring tasks relates to the support it gives to the Council of Europe's Commissioner for Human Rights.²¹ For instance, the PA has spoken out in favour of expanding the Commissioner's role in matters related to the Convention and the Court. It advocates strengthening this role considerably, both with regard to the enforcement of judgements and with regard to the ability to bring cases before the Court. In its recommendation, it therefore calls on the Committee of Ministers to strengthen the Commissioner's mandate in this area and provide him with sufficient funding to carry out all his tasks properly. This appeal to the Committee of Ministers does not alter the fact that the PA also has a responsibility of its own to act as a catalyst in this area.

The AIV also devoted attention to the role of the Commissioner in its earlier report, noting that this post does not have a particularly high profile, that there is much need for improvement in the field of cooperation and that with adequate support the Commissioner could make an important contribution to the Council of Europe's overall activities. With regard to the European Court of Human Rights, incidentally, the AIV saw – and continues to see – the Commissioner's role more in the area of the execution of judgements and reducing the total number of cases brought before the Court than in the development of an independent right to bring cases. Finally, the AIV concluded in its earlier report that the Commissioner's mandate should be thoroughly evaluated following his first term of office.

20 See J.F. Bruinsma, 'De Rechsterverskiezingen voor het EHRM van 2004', ('The 2004 election of judges for the ECHR') *NJCM-Bulletin*, vol. 29 (2004), No. 7.

21 The Commissioner is elected by the PA for a term of office of six years (Resolution 99 (50) of the Committee of Ministers of 7 May 1999). For the PA's views on the Commissioner's work, see for example Resolution 1640 (2004), adopted on 26 January 2004.

The above-mentioned elements of the PA's recommendation once again highlight the importance of most of these observations. The AIV therefore advises the government to make use of its and the PA's suggestions and recommendations when it carries out the evaluation.

In general, the AIV is in favour of strengthening the existing monitoring bodies and mechanisms and providing the strongest possible follow-up to whatever is achieved in this framework. This can be done not only within the Council of Europe but also at national level, due to the double mandate of the members of the PA. Moreover, the AIV considers it very important for the PA or, where appropriate, the Council of Europe in general to exercise restraint with regard to the creation of new institutions, unless they are really necessary for implementing core tasks. If new institutions are to be established, the AIV believes that the risk of duplicating existing activities, organisations or institutions in Europe, including those outside the Council of Europe framework, should be carefully considered. Complementarity should be the main priority. The AIV therefore welcomes the ministerial decision adopted in both the Council of Europe and the OSCE to further improve cooperation between the two organisations.²² In the future, the coordination group specially established by this decision should be able to prevent much overlap in the organisations' operational activities. The AIV also wishes to draw attention to the possibility of regulating and prioritising by means of the budget. Before a decision is adopted by any organ of the Council of Europe, including the PA, a detailed projection of the expected material costs and required manpower should be prepared, more often than is currently the case. As a result, decision-making will once again become realistic and the potential influence of personal preoccupations and casual interests will be further reduced.

II.7 Strengthening national democracies

Many of the PA's efforts focus on interacting with national parliaments and building up national democracies. Obviously, this task overlaps partly with the development of the rule of law, mentioned earlier in this report. The PA performs this task by assessing individual countries in a critical or encouraging manner, but also – and especially – by constantly keeping in mind the standards to which democratic systems may be held.²³ The PA's activities in 2004 also provide interesting jumping-off points in this area. See, for example, 'New concepts to evaluate the state of democratic development' (Resolution 1407 (2004)). Following a number of general observations concerning the Council of Europe's nature as a community of shared values, this resolution considers such issues as the democratic deficit, levels of democratic development and how they can be achieved, and the Council of Europe's traditional democratic standards. The PA closely examines 23 parameters that are vital for determining a country's level of democratic development. The resolution, which highlights the 'service' character of the PA, has been annexed to this report by way of an example (see annexe IV).

22 See, *inter alia*, OSCE, Decision No. 637, Enhanced Co-operation between the Organization for Security and Co-operation in Europe (OSCE) and the Council of Europe (CoE), 535th Plenary Meeting, Doc. PC.DEC/637, 2 December 2004.

23 See, for example, Resolutions 1358 and 1398 (2004) on the functioning of democratic institutions in Azerbaijan and Resolution 1363 (2004) on the functioning of democratic institutions in Georgia.

The European Commission for Democracy through Law (Venice Commission) also plays an important and leading role in the process of strengthening national democracies. Established in 1990, it consists of independent legal experts and judges from supreme and constitutional courts who are each appointed for a period of four years. The PA was a great advocate of the Venice Commission²⁴ and frequently turns to it for assistance. The Commission's aim is to promote the shared core values of the Council of Europe, which it does in part by assisting with the drafting of constitutions and the preparation and organisation of elections and referendums, conducting transnational studies and organising seminars. The Commission's activities initially focused on bringing about constitutional change, but it is increasingly regarded as an independent legal think-tank of the Council of Europe, albeit one based on a partial agreement and open to non-European countries.²⁵ The AIV warmly welcomes this development.

II.8 Core tasks, core functions and related activities

The issue of strengthening national democracies links up perfectly with one of the core functions – rather than one of the core tasks – that the PA has for decades regarded as part of its remit: providing a meeting place for the representatives of young democracies and new member states. By participating in the PA's activities and witnessing democracy in action, parliamentarians from these countries, including members of opposition parties, gradually become familiar with the conventions that are part and parcel of the democratic process: freedom of expression, respect for other opinions and a willingness to consider the intense wishes of minorities. Learning to deal with democracy is not a rational process but an experiential one. Incidentally, this learning experience also applies to parliamentarians from the older European democracies.²⁶ For them, too, a democratic order is not an immutable and straightforward given that could survive without constant maintenance or attention to the issues that threaten it or grant it lasting legitimacy. The reciprocal learning experience is further strengthened by the existence of the double mandate, which means that experiences in the Council of Europe can have an impact at national level. This may occur in a fragmented and random manner or more systematically, for example when members of the PA are asked to report on their experiences in their national parliamentary parties and incorporate these experiences into the national debate.

24 See, for example, Recommendation 1103 (1989), 'The future role of the Council of Europe in the process of European construction', 15 March 1989.

25 In addition to all the member states of the Council of Europe, Kyrgyzstan has been a member of the Commission since 2004. Belarus is an associate member, and Argentina, Canada, Israel, Japan, Kazakhstan, Korea, Mexico, the United States, Uruguay and Vatican City are observers. On the basis of a special cooperation agreement, South Africa enjoys the same status as the other observers.

26 See also Doc. A/1685, 'Parliamentary diplomacy: the role of international assemblies', report by Ms Squarcialupi, adopted on 6 June 2000.

III Conclusions and recommendations

1. The PA is the oldest international pluralistic parliamentary assembly established on the basis of an intergovernmental treaty. It is the driving force behind many of the Council's activities in the field of setting and monitoring compliance with norms. Because the PA has the authority to give its opinion and make recommendations concerning all aspects of the Council of Europe's mandate, it plays an important role within the organisation. The AIV wishes to highlight this role and presents the recommendations below, aimed at strengthening it. It does so somewhat reluctantly, however, because it does not actually consider it appropriate to give its opinion on how the PA performs its tasks in an advisory report addressed to the government.
2. The AIV notes that, over the years, the PA has held its own in the debate on standard-setting and compliance with agreed norms. The PA has frequently performed good work in this area and also regularly makes its voice heard more effectively than, for example, the Committee of Ministers. However, it is essential for the PA to constantly check to what extent its conclusions are being taken seriously and, where necessary, to press for follow-up measures.
3. It is also useful and necessary for the PA to reflect on its own functioning on a regular basis, to focus on core tasks and not to contribute to the proliferation of the Council of Europe's activities outside its core mandate. The limited time available for plenary meetings, the sheer range of views and interests and the nature of parliaments as such call for a certain degree of realism regarding the PA's abilities in this regard, but its members should be prevented from allowing the Council's range of tasks to continue expanding. The debate within the PA and the decisions that this produces should always contribute to the implementation of the core tasks. The AIV therefore believes that it is primarily up to the PA as a whole, but also the individual members and political groups within the PA, to remain constantly aware of the positive opportunities to contribute to the implementation of the Council of Europe's core mandate as well as the risk of the further proliferation of its activities. In addition to the Committee of Ministers and the secretariat, the PA has its own role to play here.
4. The AIV recommends that the PA take a restrained approach to legislation that goes beyond the core mandate formulated by the AIV. It is fair to say that one could question the appropriateness of an estimated 20 to 30 per cent of the more than 100 parliamentary recommendations and resolutions adopted in 2004. In this context, the AIV repeats its earlier recommendation to the PA to take another critical look at its current list of treaties and, in addition, to exercise restraint with regard to the adoption of new ones. The AIV also advises the PA to take another critical look at its various permanent and *ad hoc* committees, some of which appear to contribute little to the implementation of the Council's core tasks. In this context, the AIV assumes that it will be possible to transfer any tasks that are related to the Council's core mandate from the non-relevant committees or subcommittees to others. Finally, before any decision is adopted, a detailed projection of the expected financial implications should always be prepared. As a result, decision-making will once again be realistic and the potential influence of personal preoccupations and casual interests will be further reduced.

5. The AIV recommends further improving the coordination of activities between the Committee of Ministers and the PA. There are countless opportunities for regular, timely and intensive consultations between these two bodies. The Committee of Ministers has accepted the proposal to consult the PA when preparing draft treaties and protocols, but the AIV feels that this consultation process still needs to be strengthened so that the PA can exploit its involvement in the legislative process more effectively and move closer to becoming a co-legislator.
6. The AIV repeats its recommendation to exercise restraint with regard to the creation of new institutions, unless they are really necessary for implementing core tasks. If new institutions are to be established, the risk of duplicating existing activities, organisations or institutions in Europe should be closely monitored. The key word here is complementarity, and a deliberate overlap in activities would require detailed explanation and justification. The AIV also warmly welcomes the recent decision of both the Council of Europe and the OSCE to improve cooperation between the two organisations.
7. The AIV acknowledges the PA's key role in the election of judges to the European Court of Human Rights, both during the preliminary phase and during the actual selection. However, there is still ample room for improvement in this area, both at national level and within the Council of Europe. The AIV believes that special attention to the gender ratio remains necessary and that the way in which the nominated candidates are interviewed could be organised in a more professional manner. Opting for a longer interview conducted by a tripartite panel including judges from the Court and other experts would improve the quality of the evaluation. As long as the current procedure remains in force, however, it should be ensured that the members of the PA interview the candidates with appropriate discretion, given that, as national parliamentarians, they help to produce legislation that is theoretically subject to review by the Court.
8. The PA recently reconfirmed its appreciation for the annual reports of the Commissioner for Human Rights and stated its intention to do more to implement the Commissioner's recommendations. It also advocated expanding the Commissioner's role with regard to the enforcement of judgements and the ability to bring cases before the Court. The AIV continues to believe in the importance of this post, but sees the Commissioner's role in relation to the European Court of Human Rights more in the area of the execution of judgements and reducing the total number of cases brought before the Court than in the development of an independent right to bring cases before the Court. Finally, the AIV repeats its recommendation in favour of a thorough evaluation of the Commissioner's mandate. In that evaluation, the Dutch government and the PA could apply various recommendations from the earlier and present advisory reports.
9. The AIV wishes to emphasise the key role played by the PA in the areas of interaction with national parliaments, building up national democracies and safeguarding a uniform European area of justice. The PA does this by assessing individual countries in a critical or encouraging manner, but also – and especially – by constantly keeping in mind the standards to which democratic systems may be held. The aforementioned resolution 'New concepts to evaluate the state of democratic development' is a good example of this, and the activities of the Venice Commission are also extremely relevant in this regard.

10. One of the core *functions* that the PA continues to see as part of its remit, alongside its core tasks, is to provide a forum for the representatives of young democracies and new member states. Among other things, this provides them with an opportunity to try out democratic approaches in practice. Learning to take part in a democracy is not purely a rational process but an experiential one. Incidentally, this learning experience also applies to parliamentarians from the older European democracies. For them, too, a democratic order is not an immutable and straightforward given that can survive without constant maintenance or attention to issues that threaten it or grant it lasting legitimacy. The reciprocal learning experience is further strengthened by the existence of the double mandate, which means that European experiences can also have an impact at national level. The AIV strongly supports this function of the PA and advises it to continue investing in this area.

11. This advisory report once again demonstrates how much importance the AIV attaches to the PA's role in monitoring compliance with the Council of Europe's *acquis*. This activity, which is often based on the PA's own high-quality reports, has contributed greatly to strengthening democracy throughout the Council of Europe's area and deserves to have an impact at all levels of the Council. The AIV believes that further improvement in the cooperation between the Council of Europe's institutions – the Committee of Ministers, the PA, the Secretariat, the European Court of Human Rights, the Commissioner for Human Rights and others, including the Venice Commission – will help to sharpen the Council's profile in the core areas in which it operates.

Mr F. Korthals Altes
Chairman of the Advisory Council on International Affairs
Postbus 20061
2500 EB Den Haag

April 2004

Dear Mr Korthals Altes,

I hereby submit a request for an advisory report on the role and position of the Parliamentary Assembly of the Council of Europe. This advisory report should be regarded as a supplement to the report received in 2003, entitled 'The Council of Europe, less can be more'.

On 7 April 2004, the Chairperson of the Dutch delegation to the Parliamentary Assembly of the Council of Europe asked me to request the Advisory Council on International Affairs to produce an additional advisory report on the role and position of the Parliamentary Assembly of the Council of Europe and similar assemblies in Europe, to supplement the advisory report published in 2003, 'The Council of Europe, less can be more'.

This request was mainly prompted by the observation made by the Senate in November 2003 and by the Dutch delegation to the Assembly in the meeting with members of the AIV on 16 March 2004 that too little attention was paid in the advisory report to the role and position of the Parliamentary Assembly. I, too, indicated this in my response to the advisory report.

I therefore support the delegation's request and would appreciate it if the Advisory Committee could provide me with further advice on the role, position and function of the Parliamentary Assembly within the Council of Europe.

I would like to make an additional observation. In my response, I indicated the importance that I, like you, attach to concentrating the Council of Europe's activities. I would be grateful to receive your Committee's views as to how the Parliamentary Assembly can contribute to helping the Council to carry out the tasks related to its core activities in a more coherent and effective manner.

The differences between the mandates of the parliamentary assemblies of the Council of Europe, the EU, the WEU and the OSCE are such that a comparative study would not fall within the scope of the advisory report, which deals specifically with the functioning of the Council of Europe. In my opinion, a follow-up report on the role and position of this important organ of the Council should focus on the nature of its relationship with other institutions of the Council.

I look forward with interest to receiving your views on the above matters. The Committee of Ministers is presently discussing whether to hold a Third Council of Europe Summit in May 2005. I informed the Parliamentary Assembly in January that the summit should revitalise the operation of the Council of Europe's organs and institutions, including the Assembly. In the light of this, I would be grateful if you could produce your advisory report before the end of 2004, so that the results can be discussed during the preparation of the summit in 2005.

Yours sincerely,

Bernard Bot

LIST OF REPORTS DEBATED BY THE PARLIAMENTARY ASSEMBLY
(in *Standing Committee meetings* (in italics) and plenary sessions)
in 2002 / 2003 / 2004 – per committees

COMMISSION	TITLE OF THE REPORT	DATE OF DISCUSSION IN THE ASSEMBLY
Political Affairs	- Bosnia and Herzegovina's application for membership of the CE (Doc. 9287)	22 January 2002
	- Situation in Cyprus (Doc. 9302)	22 January 2002
	- Conflict in the Chechen Republic (Doc. 9319)	23 January 2002
	- Situation in the Middle East (Doc. 9421)	25 April 2002
	- Situation in the Middle East (Doc. 9499)	27 June 2002
	- Parliamentary scrutiny of international institutions (Doc. 9484)	25 June 2002
	- Future of co-operation between European institutions (Doc. 9483)	26 June 2002
	- Federal Rep of Yugoslavia's application for membership of the CE (Doc. 9533)	24 September 2002
	- Conflict in the Chechen Republic: information report (Doc. 9559)	24 September 2002
	- The CE and the new issues involved in building Europe (Doc. 9544)	24 September 2002
	- Enlargement of the EU and the Kaliningrad Region (Doc. 9560)	25 September 2002
	- Situation in Georgia and the consequences for the stability of the Caucasus region (Doc. 9564)	25 September 2002
	- Threat of military action against Iraq (Doc. 9572)	26 September 2002
	- Situation in Belarus (Doc. 9543)	27 September 2002
	- <i>Restrictions on political parties in CE member States (Doc. 9526)</i>	18 November 2002
	- Contribution of the CE to the Constitution-making process of the EU (Doc. 9666)	29 January 2003
	- Iraq (Doc. 9690)	30 January 2003
	- Code of good practice in electoral matters (Doc. 9624)	30 January 2003
	- Europe and the war in Iraq (Doc. 9768)	3 April 2003
	- Positive experiences of autonomous regions as a source of inspiration for conflict resolution in Europe (Doc. 9824)	24 June 2003
	- The CE and the Convention on the Future of Europe (Doc. 9846)	26 June 2003
	- Threat posed to democracy by extremist parties and movements in Europe (Doc. 9890)	29 September 2003
	- Relations between the CE and non-governmental organisations	29 September 2003
	- <i>Future of democracy: strengthening democratic institutions (Doc. 9951)</i>	25 November 2003
	- Situation in Cyprus (Doc. 10028)	28 January 2004
	- Terrorism: a threat to democracies (Doc. 10056)	29 January 2004
	- The Principality of Monaco's application for membership of the CE (Doc. 10128)	27 April 2004
	- Persecution of the press in the Republic of Belarus (Doc. 10107)	28 April 2004
	- Strengthening of the UN (Doc. 10120)	28 April 2004
	- Situation in Kosovo (Doc. 10157)	29 April 2004
	- Cyprus (Doc. 10161)	29 April 2004
	- Strengthening of democratic institutions in Bosnia and Herzegovina (Doc. 10196)	23 June 2004
	- The CE's contribution to the settlement of the situation in Iraq (Doc. 10224)	24 June 2004
- <i>The CE and the conflict in Northern Ireland (Doc. 10245)</i>	7 September 2004	
- Challenge of terrorism in CE member states (Doc. 10312)	6 October 2004	
- The political situation in the Chechen Republic: measures to increase democratic stability in accordance with CE standards (Doc. 10276)	7 October 2004	

COMMISSION	TITLE OF THE REPORT	DATE OF DISCUSSION IN THE ASSEMBLY
Legal Affairs and Human Rights	- New concepts to evaluate the state of democratic development (Doc. 10279)	8 October 2004
	- <i>Situation in Western Sahara</i> (Doc. 10346)	23 November 2004
	- <i>Parliamentary contribution to the implementation of the Stability Pact in South-East Europe</i> (Doc. 10349)	23 November 2004
	- Draft protocol to the European Convention on Human Rights concerning the abolition of the death penalty in all circumstances (Doc. 9316)	21 January 2002
	- Implementation of decisions of the European Court of HR (Doc. 9307)	22 January 2002
	- Combating terrorism and respect for HR (Doc. 9331)	24 January 2002
	- Political prisoners in Azerbaijan (Doc. 9310)	24 January 2002
	- <i>Draft European Convention on contact concerning children</i> (Docs. 9305 & 9070)	26 March 2002
	- Russia's law on religion (Doc. 9393)	23 April 2002
	- Protection of minorities in Belgium (Doc. 9395)	24 April 2002
	- Legal situation of Roma in Europe (Doc. 9397)	25 April 2002
	- <i>Right to association for members of the professional staff of the armed forces</i> (Doc. 9518)	3 September 2002
	- Implementation of decisions of the European Court of Human Rights by Turkey (Doc. 9537)	23 September 2002
	- Risks for the integrity of the Statute of the International Criminal Court (Doc. 9567)	25 September 2002
	- Protection and Minorities in Belgium (Doc 9536)	26 September 2002
	- Draft additional Protocol to the Convention on Cybercrime on the criminalisation of acts of a racist or xenophobic nature committed through computer systems (Doc. 9538)	27 September 2002
	- <i>Prevention of recidivism in crimes against minors</i> (Doc. 9613)	18 November 2002
	- <i>Draft additional Protocol to the Criminal Law Convention on Corruption</i> (Doc. 9611)	18 November 2002
	- <i>Freedom of religion and religious minorities in France</i> (Doc. 9612)	18 November 2002
	- Draft protocol amending the European Convention on the Suppression of Terrorism (Doc. 9649)	31 January 2003
	- Protection of sign languages in member states of the CE (Doc. 9738)	1 April 2003
	- The Human Rights situation in the Chechen Republic (Doc. 9732)	2 April 2003
	- <i>Role of the public prosecutor's office in a democratic society governed by the rule of law</i> (Doc. 9796)	27 May 2003
	- Areas where the ECHR cannot be implemented (Doc. 9730)	23 June 2003
	- Rights and fundamental freedoms of Greek Cypriots and Maronites living in the northern part of Cyprus (Doc. 9714)	24 June 2003
	- Preferential treatment of national minorities by the kin-state: the case of the Hungarian law of 19 June 2001 on Hungarians living in neighbouring countries ("Magyars") (Doc. 9744)	25 June 2003
	- Threats to the International Criminal Court (Doc. 9844)	25 June 2003
	- Political prisoners in Azerbaijan (Doc. 9826)	26 June 2003
	- Rights of persons held in the custody of the US in Afghanistan or Guantanamo Bay (Doc. 9817)	26 June 2003
	- <i>Office of Lord Chancellor in the constitutional system of the UK</i> (Doc. 9798)	8 September 2003
- <i>The institution of Ombudsman</i> (Doc. 9878)	8 September 2003	
- Racist, xenophobic and intolerant discourse in politics (Doc. 9904)	29 September 2003	
- Rights of national minorities (Doc. 9862)	29 September 2003	

COMMISSION	TITLE OF THE REPORT	DATE OF DISCUSSION IN THE ASSEMBLY
	- Abolition of the death penalty in CE observer states (Doc. 9908)	1 October 2003
	- <i>Conviction of Grigory Pasko</i> (Doc. 9926)	25 November 2003
	- 3rd Annual report on the activities of the CE Commissioner for HR (1.1.-31.12.2002) (Doc 9916, 10024)	26 January 2004
	- Political prisoners in Azerbaijan (Doc. 10026)	27 January 2004
	- Consequences of EU enlargement for freedom of movement between CE member states (Doc. 9979)	30 January 2004
	- Situation of European prisons and pre-trial detention centres (Doc. 10097)	27 April 2004
	- Disappeared persons in Belarus (Doc. 10062)	28 April 2004
	- Draft Protocol No 14 to the ECHR and Fundamental Freedoms, amending the control system of the Convention (Doc. 10137 + 10147)	28 April 2004
	- Implementation of decisions of the ECHR by Turkey (Doc. 10192)	22 June 2004
	- Italian law on legitimate suspicion (Doc. 10124)	24 June 2004
	- <i>New Bulgarian law on Religion known as the Confessions Act 2002</i> (Doc. 10065)	7 September 2004
	- <i>Internet and the Law</i> (Doc. 10064)	7 September 2004
	- <i>Ratification of Protocols and withdrawals of reservations and derogations made in respect of the ECHR</i> (Doc. 10136)	7 September 2004
	- The human rights situation in the Chechen Republic (Doc. 10283)	7 October 2004
	- <i>Repayment of the deposits of foreign exchange made in the offices of the Ljubljanska Banka not on the territory of Slovenia, 1977-1991</i> (Doc. 10135)	23 November 2004
	- <i>Implementation of decisions of the ECHR</i> (Doc. 10351)	23 November 2004
Economic Affairs and Development	- Managing globalisation: the role of the WTO in the world economy (Doc. 9295)	23 January 2002
	- Air transport and terrorism: how to enhance security? (Doc. 9296)	23 January 2002
	- Budgets of the CE for the financial year 2003 (Doc. 9386)	22 April 2002
	- Expenditure of the PACE for the financial year 2003 (Doc. 9387)	22 April 2002
	- The "New Economy" and Europe (Doc. 9398)	23 April 2002
	- <i>Tapping Europe's tourism potential</i> (Doc. 9461)	29 May 2002
	- Contribution of the EBRD to economic development in central and eastern Europe (Doc. 9482)	25 June 2002
	- The IMF and the WB: challenges ahead (Doc. 9478)	25 June 2002
	- Ensuring a prosperous future for the Kaliningrad region: the need for European solidarity (Doc. 9524)	25 September 2002
	- OECD and the World Economy (Doc. 9505)	25 September 2002
	- <i>The need for intensified international co-operation to neutralise funds for terrorist purposes</i> (Doc. 9520)	18 November 2002
	- Progress on the Stability Pact for South-Eastern Europe: enhancing security and political stability through economic co-operation (Doc. 9638)	27 January 2003
	- Budgets of the CE for the financial year 2004 (Doc. 9734)	31 March 2003
	- Expenditure of the PACE for the financial year 2004 (Doc. 9735)	31 March 2003
	- 50 years of ECMT: transport policies for the Greater Europe (Doc. 9737)	1 April 2003
	- European and the development of energy resources in the Caspian Sea region (Doc. 9635)	2 April 2003
	- <i>Economic development in Moldova: challenges and prospect</i> (Doc. 9797)	27 May 2003

COMMISSION	TITLE OF THE REPORT	DATE OF DISCUSSION IN THE ASSEMBLY
	- Contribution of the EBRD to economic development in central and eastern Europe (Doc. 9825)	24 June 2003
	- European air transport policies: crucial choices at a critical time (Doc. 9823)	27 June 2003
	- <i>The CE's North-South Centre and its contribution to development co-operation in the 21st century</i> (Doc. 9879)	8 September 2003
	- <i>Civil service reform in Europe</i> (Doc. 9711)	8 September 2003
	- OECD and the World Economy (Doc. 9851)	1 October 2003
	- <i>Erosion of the Mediterranean coastline: implications for tourism</i> (Doc. 9981)	25 November 2003
	- Realising Strasbourg's potential as a European capital (Doc. 10023)	26 January 2004
	- Improving the prospects of developing countries: a moral imperative for the world (Doc. 10013)	29 January 2004
	- Economic aspects of EU enlargement: the crucial years ahead (Doc. 10012)	30 January 2004
	- Budgets of the CE for the financial year 2005 (Doc. 10129)	26 April 2004
	- Expenditure of the PACE for the financial year 2005 (Doc. 10130)	26 April 2004
	- The Euro and the Greater Europe (Doc. 10188)	21 June 2004
	- Contribution of the EBRD to economic development in central and eastern Europe (Doc. 10198)	22 June 2004
	- <i>CE Development Bank: a voice for solidarity</i> (Doc. 10204)	7 September 2004
	- <i>Counterfeiting: problems and solutions</i> (Doc. 10069)	7 September 2004
	- <i>Corporate ethics in Europe</i> (Doc. 10103)	7 September 2004
	- The Doha Development Agenda: world trade at a crossroads (Doc. 10278)	4 October 2004
	- OECD and the world economy (Doc. 10254)	6 October 2004
	- <i>Avoiding electricity blackouts in Europe</i> (Doc. 10350)	23 November 2004
Social, Health and Family Affairs	- Social consequences of and responses to drug misuse in member states (Doc. 9303)	24 January 2002
	- <i>Building a 21st century society with and for children: follow-up to the European strategy for children</i> (Doc. 9188)	26 March 2002
	- Training of workers in the use of new technologies (Doc. 9402)	26 April 2002
	- <i>Social measures for children of war in South-Eastern Europe</i> (Doc. 9454)	26 April 2002
	- <i>Controlling the diagnosis and treatment of hyperactive children in Europe</i> (Doc. 9456)	29 May 2002
	- Towards concerted efforts for treating and curing spinal cord injury (Doc. 9401)	29 May 2002
	- Campaigning against passive and active smoking: daring to innovate and step up public health protection measures (Doc. 9463)	24 June 2002
	- <i>Ratification of the European Code of Social Security</i> (Doc. 9502)	26 June 2002
	- International abduction of children by one of the parents (Doc. 9476)	3 September 2002
	- <i>Maternity in Europe: improving social and health conditions</i> (Doc. 9566)	27 September 2002
	- Sexual exploitation of children: zero tolerance (Doc. 9535)	18 November 2002
	- Challenges of social policy in our ageing societies (Doc. 9615)	29 January 2003
	- Towards full social inclusion of persons with disabilities (Doc. 9632)	29 January 2003
	- Improving the lot of abandoned children in institutions (Doc. 9692)	2 April 2003
	- Trafficking in organs in Europe (Doc. 9822)	25 June 2003
	- The reform of health care systems in Europe: reconciling equity, quality and efficiency (Doc. 9903)	1 October 2003
	- <i>Teenagers in distress: a social and health-based approach to youth malaise</i> (Doc. 9986)	25 November 2003

COMMISSION	TITLE OF THE REPORT	DATE OF DISCUSSION IN THE ASSEMBLY
Migration, Refugees and Population	<ul style="list-style-type: none"> - <i>Bio-terrorism: a serious threat for citizens' health</i> (Doc. 10067) - Euthanasia (Doc. 9898) - Future of social security in Europe (Doc. 10098) - Europe-wide ban on corporal punishment of children (Doc. 10199) - European strategy for the promotion of sexual and reproductive health and rights (Doc. 10266) 	<p>2 March 2004 27 April 2004 30 April 2004 23 June 2004 5 October 2004</p>
	<ul style="list-style-type: none"> - Expulsion procedures in conformity with HR and enforced with respect for safety and dignity (Doc. 9196) - Right to family life for migrants and refugees (Doc. 9295) - <i>Vocational training of young asylum seekers in host countries</i> (Doc. 9380) - Activities of the ICRC (Doc. 9388) - <i>Humanitarian situation of the displaced Kurdish population in Turkey</i> (Doc. 9391) - <i>State of the World Population</i> (Doc. 9452) - Situation of refugees and displaced persons in the Federal Republic of Yugoslavia (Doc. 9479) - Situation of refugees and displaced persons in Armenia, Azerbaijan and Georgia (Doc. 9480) - Creation of a charter of intent on clandestine migration (Doc. 9522) - <i>Residence, legal status and freedom of movement of migrant workers in Europe: lessons from the case of Portugal</i> (Doc. 9603) - Population displacement in South-Eastern Europe: trends, problems, solutions (Doc. 9519) - The situation of young migrants in Europe (Doc 9645) - Activities of the International Organisation for Migration, 1998 – 2002 (Doc. 9814) - Colonisation by Turkish settlers of the occupied part of Cyprus (Doc. 9799) - The situation of Palestinian refugees (Doc. 9808) - <i>Migrants in irregular employment in the agricultural sector of Southern European countries</i> (Doc. 9883) - <i>Right of elderly migrants</i> (Doc. 9884) - Common policy on migration and asylum (Doc. 9889) - Policies for the integration of immigrants in CE member states (Doc. 9888) - <i>Internal displacement in Europe</i> (Doc. 9989) - <i>Forced returns of Roma from the Former Fed. Rep. of Yugoslavia, including Kosovo, to Serbia and Montenegro from CE member States</i> (Doc. 9990) - Access to assistance and protection for asylum seekers at European seaports and coastal areas (Doc. 10011) - <i>Links between Europeans living abroad and their countries of origin</i> (Doc. 10072) - A European Migration Observatory/Agency (Doc. 10108) - Situation of refugees and displaced persons in the Russian Federation and some other CIS (Doc. 10118) - The humanitarian situation in the Chechen displaced population (Doc. 10282) - Population trends in Europe and their sensitivity to policy measures (Doc. 10182) 	<p>22 January 2002 25 January 2002 26 March 2002 22 April 2002 29 May 2002 29 May 2002 27 June 2002 27 June 2002 23 September 2002 18 November 2002 27 January 2003 31 January 2003 24 June 2003 24 June 2003 25 June 2003 8 September 2003 8 September 2003 30 September 2003 30 September 2003 25 November 2003 25 November 2003 29 January 2004 2 March 2004 26 April 2004 25 June 2004 7 October 2004 8 October 2004</p>

COMMISSION	TITLE OF THE REPORT	DATE OF DISCUSSION IN THE ASSEMBLY
	<ul style="list-style-type: none"> - <i>Persons unaccounted for as a result of armed conflicts or internal violence in the Balkans (Doc. 10251)</i> - <i>Human mobility and right to family reunion (Doc. 10123)</i> 	<p>23 November 2004</p> <p>23 November 2004</p>
Culture, Science and Education	<ul style="list-style-type: none"> - Scientific communication (Doc. 9300) - Religion and change in central and eastern European countries (Doc. 9399) - <i>European Sports co-operation (Doc. 9451)</i> - <i>Draft additional Protocol to the Anti-Doping Convention (Doc. 9453)</i> - European cultural cooperation and the future role of the Assembly (Doc. 9473) - <i>The spirit of Europe in museums (Doc. 9503)</i> - <i>Youth policies in Europe (Doc. 9617)</i> - Freedom of expression in the media in Europe (Doc. 9640) - Cultural co-operation between Europe and the south Mediterranean countries (Doc. 9626) - Cultural situation in the south Caucasus (Doc. 9736) - <i>CE contribution to the higher education area (Doc. 9880)</i> - <i>The promotion of art history in Europe (Doc. 9881)</i> - Human stem cell research (Doc. 9902) - <i>Tax incentives for cultural heritage conservation (Doc. 9913)</i> - <i>Lesbians and gays in sport (Doc. 9988)</i> - Public service broadcasting (Doc. 10029 + Add) - <i>Ending the plundering of African cultural objects (Doc. 10063)</i> - <i>Education of refugees and internally displaced persons (Doc. 9996)</i> - Draft additional Protocol to the Convention on HR and Biomedicine, on biomedical research (Doc. 9924 + 10121) - Monopolisation of the electronic media and possible abuse of power in Italy (Doc. 10195) - <i>Parliaments and the knowledge society (Doc. 10252)</i> - <i>Challenges facing the European audiovisual sector (Doc. 10253)</i> - Education for Europe (Doc. 10203) - <i>Combating terrorism through culture (Doc. 10341)</i> - <i>Diaspora cultures (Doc. 10342)</i> 	<p>25 January 2002</p> <p>24 April 2002</p> <p>29 May 2002</p> <p>29 May 2002</p> <p>24 June 2002</p> <p>3 September 2002</p> <p>18 November 2002</p> <p>28 January 2003</p> <p>28 January 2003</p> <p>1 April 2003</p> <p>8 September 2003</p> <p>8 September 2003</p> <p>2 October 2003</p> <p>25 November 2003</p> <p>25 November 2003</p> <p>27 January 2004</p> <p>2 March 2004</p> <p>2 March 2004</p> <p>30 April 2004</p> <p>24 June 2004</p> <p>7 September 2004</p> <p>7 September 2004</p> <p>8 October 2004</p> <p>23 November 2004</p> <p>23 November 2004</p>
Environment, Agriculture and Local and Regional Authorities	<ul style="list-style-type: none"> - Forest management in Canada and co-operation with Europe (Doc. 9289) - Fisheries in Europe's semi-land-locked seas (Doc. 9373) - Preservation and management of fish stocks (Doc. 9383) - World summit on sustainable development: ten years after Rio (Doc. 9481) - Reducing environmental risks by destroying chemical weapons (Doc. 9472) - State of the environment of the Baltic Sea (Doc. 9470) - <i>Introduction of a quality label for food products derived from hill farming (Doc. 9504)</i> - <i>Functional food: serving the interests of the consumer or the food industry? (Doc. 9604)</i> - Marine pollution (Doc. 9684) - Globalisation and sustainable development (Doc. 9660) 	<p>25 April 2002</p> <p>25 April 2002</p> <p>25 April 2002</p> <p>26 June 2002</p> <p>28 June 2002</p> <p>28 June 2002</p> <p>3 September 2002</p> <p>18 November 2002</p> <p>30 January 2003</p> <p>30 January 2003</p>

COMMISSION	TITLE OF THE REPORT	DATE OF DISCUSSION IN THE ASSEMBLY
	- Follow-up to the World Summit on Sustainable development: a common challenge (Doc. 9659)	30 January 2003
	- Draft revised Convention for the protection of animals during international transport – request by the CM for an opinion (Doc. 9743)	1 April 2003
	- Challenges for a new agricultural policy (Doc. 9636)	1 April 2003
	- Agriculture and enlargement of the European Union (Doc. 9812)	23 June 2003
	- Challenges for Mediterranean agriculture (Doc. 9807)	23 June 2003
	- Environment and human rights (Doc. 9791)	27 June 2003
	- <i>Development of organic farming</i> (Doc. 9887)	25 November 2003
	- <i>Pan-European environmental co-operation: the CE's role after the Kyiv Ministerial Conf. and the Johannesburg Summit</i> (Doc. 9985)	25 November 2003
	- <i>Sustainable development of mountain regions</i> (Doc. 9992)	25 November 2003
	- <i>Public ethics at local level – Model initiative Package</i> (Doc. 9991)	25 November 2003
	- <i>Environmental accounting as a sustainable development tool</i> (Doc. 10071)	2 March 2004
	- Management of water resources in Europe (Doc. 10132)	25 June 2004
	- Transboundary water basins in Europe (Doc. 10131)	25 June 2004
	- Global warming: beyond Kyoto (Doc. 10277)	7 October 2004
	- <i>Hunting and Europe's environmental balance</i> (Doc. 10337)	23 November 2004
Monitoring	- Honouring of obligations and commitments by the Russian Federation (Doc. 9396)	23 April 2002
	- Functioning of democratic institutions in Moldova (Doc. 9418)	24 April 2002
	- Honouring of obligations and commitments by Armenia (Doc. 9542)	26 September 2002
	- Honouring of obligations and commitments by Azerbaijan (Doc. 9545)	26 September 2002
	- Functioning of democratic institutions in Moldova (Doc. 9571)	26 September 2002
	- Progress of the Assembly's monitoring procedure (Doc. 9651)	31 January 2003
	- Honouring of obligations and commitments by Ukraine (Doc. 9852)	29 September 2003
	- Functioning of democratic institutions in Azerbaijan (Doc. 10030)	27 January 2004
	- Honouring of obligations and commitments by Armenia (Doc. 10027)	27 January 2004
	- Functioning of democratic institutions in Georgia (Doc. 10049)	28 January 2004
	- The constitutional crisis in Ukraine (Doc. 10058)	29 January 2004
	- Armenia (Doc. 10163)	28 April 2004
	- Honouring of obligations and commitments by Albania (Doc. 10116)	29 April 2004
	- Honouring of obligations and commitments by Turkey (Doc. 10111)	22 June 2004
	- Honouring of obligations and commitments by Bosnia and Herzegovina (Doc. 10200)	23 June 2004
	- Functioning of democratic institutions in Bosnia and Herzegovina (Doc. 10281)	5 October 2004
	- Implementation of Resolution 1358(2004) on the functioning of democratic institutions in Azerbaijan (Doc. 10285)	5 October 2004
	- Implementation of Resolutions 1361 & 1374 (2004) on the honouring of obligations and commitments by Armenia (Doc. 10286)	7 October 2004
Equal Opportunities for Women and Men	- Campaign against trafficking in women (Doc. 9190)	21 January 2002
	- <i>Parental leave</i> (Doc. 9315)	26 March 2002
	- Image of women in the media (Doc. 9394)	24 April 2002
	- Situation of Maghrebi women (Doc. 9487)	27 June 2002
	- Domestic violence (Doc. 9525)	27 September 2002
	- So-called "honour crimes" (Doc. 9720)	4 April 2003
	- Women and micro-loans (Doc. 9696)	4 April 2003

COMMISSION	TITLE OF THE REPORT	DATE OF DISCUSSION IN THE ASSEMBLY	
	- <i>Status of collaborating partners in family businesses (doc. 9800)</i>	27 May 2003	
	- <i>Migration connected with trafficking in women and prostitution (Doc. 9795)</i>	25 June 2003	
	- <i>Impact of the "Mexico City Policy" on the free choice of contraception in Europe (Doc. 9901)</i>	30 September 2003	
	- <i>Family mediation and equality of the sexes (Doc. 9983)</i>	25 November 2003	
	- <i>The situation of women in the countries of post-communism transition (Doc. 9997)</i>	2 March 2004	
	- <i>Nationality rights and equal opportunities (Doc. 10070)</i>	2 March 2004	
	- <i>Domestic slavery: servitude, au pairs and mail-order brides (Doc. 10144)</i>	22 June 2004	
	- <i>Conflict prevention and resolution: the role of women (doc. 10117)</i>	23 June 2004	
	- <i>The involvement of men, especially young men, in reproductive health (Doc. 10207)</i>	7 September 2004	
	- <i>Women's participation in elections (Doc. 10202)</i>	5 October 2004	
	- <i>Campaign to combat domestic violence against women in Europe (Doc. 10273)</i>	8 October 2004	
	Rules of Procedure and Immunities	- <i>Tabling and adoption of amendments and sub-amendments (Doc. 9369)</i>	26 March 2002
		- <i>Membership of the immediate past Assembly President and the Chairpersons of Political groups in the Assembly's Political Affairs Committee (Doc. 9455)</i>	26 May 2002
		- <i>Change of the name of the Cttee on the Environment and Agriculture to Cttee on the Environment, Agriculture and Local and Regional Affairs (Doc. 9523)</i>	3 September 2002
		- <i>Immunities of the Members of the Parliamentary Assembly (Doc. 9718)</i>	2 April 2003
- <i>Change of the name of the Cttee on Migration, Refugees and Demography to Cttee on Migration, Refugees and Population (Doc. 9863)</i>		8 September 2003	
- <i>Gender-Balanced Representation in the Parliamentary Assembly (Doc. 9870)</i>		30 September 2003	
- <i>Increase of the number of seats of the Cttee on Honouring of obligations and commitments by member States of the CE (Doc. 9984)</i>		25 November 2003	
- <i>Procedure for elections held by the PACE other than those of its President and vice-Presidents (Doc. 9987)</i>		25 November 2003	
- <i>Assembly motions for orders and draft orders (Doc. 10073)</i>		2 March 2004	
- <i>Reference date for determining the budgetary allocation to the Assembly's political groups and the allocation of Committee Chairmanships, of seats on the Monitoring Committee and establishing the order of speakers in debates (Doc. 10066)</i>		2 March 2004	
- <i>Content of written declarations and motions for recommendations and resolutions (Doc. 10183)</i>		7 September 2004	

Parliamentary **Assembly** **Assemblée** parlementaire

Resolution 1380 (2004)¹

Honouring of obligations and commitments by Turkey

1. Turkey has been a member of the Council of Europe since 1949 and as such has undertaken to honour the obligations concerning pluralist democracy, the rule of law and human rights arising from Article 3 of the Statute. It has been the subject of a monitoring procedure since the adoption, in 1996, of Recommendation 1298 on Turkey's respect of commitments to constitutional and legislative reforms.
2. On 28 June 2001, in Resolution 1256 concerning the honouring of obligations and commitments by Turkey, the Parliamentary Assembly welcomed the progress made by Turkey but decided to continue the monitoring process and review progress, pending a further decision to close the procedure.
3. The Assembly notes that, despite a serious economic crisis in 2001, the political instability that led to early elections in November 2002 and the uncertainties caused by the war in Iraq, the Turkish authorities have not deviated from their efforts to implement the reforms necessary for the country's modernisation. Turkey has achieved more reforms in little more than two years than in the previous ten.
4. The Assembly welcomes the adoption in October 2001 of important changes to the constitution, seven reform packages approved by parliament between February 2002 and August 2003 and numerous other laws, decrees and circulars to implement these reforms. It also welcomes the changes made to the constitution in May 2004, which paved the way for the ratification of the Statute of the International Criminal Court.
5. It notes with satisfaction that, despite initial concern in November 2002 about the accession to power of the Justice and Development Party, led by Mr Erdogan, the new government, with the unstinting support of the only opposition party, the Republican People's Party (CHP), has so far made good use of its absolute majority in parliament to expedite and intensify the reform process.
6. With regard to pluralist democracy, the Assembly recognises that Turkey is a functioning democracy with a multiparty system, free elections and separation of powers. The frequency with which political parties are dissolved is nevertheless a real source of concern and the Assembly hopes that in future the constitutional changes of October 2001 and those introduced by the March 2002 legislation on political parties will limit the use of such an extreme measure as dissolution. The Assembly also considers that requiring parties to win at least 10% of the votes cast nationally before they can be represented in parliament is excessive and that the voting arrangements for Turkish citizens living abroad should be changed.
7. With regard to institutional arrangements, the Assembly congratulates Turkey on reducing the role of the National Security Council to what it should never have ceased to be, namely a purely consultative body concerned with defence and national security. The amendment to Article 118 of the constitution and those to the legislation governing the

1 *Assembly debate* on 22 June 2004 (18th Sitting) (see Doc. 10111, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: Ms Delvaux-Stehres and Mr Van den Brande). *Text adopted by the Assembly* on 22 June 2004 (19th Sitting).

National Security Council and its secretariat represent fundamental progress that is to be welcomed. With the changes made to the constitution in May 2004, Turkey completed this reform by taking the necessary steps to exclude army representatives from civil bodies such as the Higher Education Council (YÖK) and to establish parliamentary supervision of military activities, particularly from a financial standpoint. The Assembly also calls on the Turkish authorities to exclude any army representatives from the Supreme Board of Radio and Television (RTÜK). Despite Turkey's geostrategic position, the Assembly also demands that Turkey recognise the right of conscientious objection and introduce an alternative civilian service.

8. The Assembly welcomes the fact that the maximum period of police custody for collective offences has been reduced from fifteen to four days and that all detained persons are entitled to see a lawyer from the first hour of police custody.
9. The Assembly also welcomes the Turkish authorities' decision to abolish the state security courts, following the abrogation of Article 143 of the constitution in May 2004. It strongly urges Turkey, as it did in 2001, to draw on the experience of the Venice Commission for any further constitutional revisions. It believes that the 1982 Constitution, which has already been frequently modified, would gain in coherence and clarity from a complete overhaul. The Assembly also welcomes the fact that the Turkish authorities have started to consider granting individuals direct access to the Constitutional Court.
10. The Assembly also calls on the Turkish authorities to finalise without delay the draft proposal to create an ombudsman institution and congratulates Turkey on the steps taken to improve dialogue with NGOs, particularly via the new composition of regional human rights councils and the more flexible legislation on associations. NGOs' freedom of action nevertheless needs to be strengthened.
11. The Assembly welcomes Turkey's determination to fight corruption, particularly through the establishment of several parliamentary committees of inquiry, its approval in January 2003 of an emergency anticorruption plan and its ratification of the Council of Europe Criminal and Civil Law Conventions on Corruption (ETS Nos. 173 and 174) in September 2003 and March 2004 respectively. It hopes that Turkey will shortly submit the instruments of ratification of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141), already ratified by the Turkish Parliament on 16 June 2004.
12. The Assembly welcomes the significant advances in women's rights resulting from the constitutional revisions of October 2001 and May 2004, the entry into force in January 2002 of the new Civil Code and the August 2002 Job Security Act, and welcomes the fact that Article 10 of the constitution, as amended in May 2004, now expressly stipulates that the state has a duty to guarantee equality between men and women. Modern states must provide for equality between all their citizens, particularly as regards access to employment, public and elective offices, health and education. It calls on the Turkish authorities to introduce programmes to eradicate female illiteracy, which is essential for women to be able to exercise their rights. The Assembly has noted with satisfaction that the Criminal Code was amended in July 2003 to make it impossible to plead mitigating circumstances for honour crimes. It calls on the authorities to take a clear stand against honour crimes and domestic violence and to offer women support, particularly by increasing the number of refuges.
13. Regarding fundamental freedoms, the Assembly congratulates Turkey for finally abolishing the death penalty, by ratifying Protocol No. 6 of the European Convention on Human Rights in November 2003 and signing Protocol No. 13 in January 2004. Following the changes made to the constitution in May 2004, Protocol No. 13 should be ratified very shortly.
14. It also congratulates Turkey for its commitment to combating torture and impunity – the authorities' zero tolerance policy is starting to bear fruit. Improvements to conditions of

police custody, greater safeguards for the rights of the defence and entitlement to a medical examination have been welcomed by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), whose recommendations, including those relating to detention conditions, have been systematically implemented. Although the latest report published by the CPT on 18 June 2004 recognises that important progress has been achieved, the Assembly agrees with the CPT that the Turkish authorities must remain vigilant and ensure that their instructions are followed throughout the country.

15. The Assembly considers that, as part of the fight against impunity, abolishing the requirement to secure prior administrative approval to prosecute officials charged with torture or inhuman or degrading treatment, removing the power to suspend prison sentences or commute them into fines, making it obligatory to investigate complaints from victims as a priority and requiring prosecutors to conduct investigations personally all represent considerable progress. It also notes that considerable efforts have been made to improve police and gendarmerie training, with Council of Europe assistance.
16. The Assembly takes note of important measures to liberalise the legislation on freedom of expression: Section 8 of the Anti-Terrorism Act has simply been repealed, Articles 312, 159, 169 of the Criminal Code and Section 7 of the Anti-Terrorism Act have been amended to make them more compatible with the case-law of the European Court of Human Rights and the legislation on press-related offences has also been amended. However, the Assembly still awaits progress on the offences of defaming or insulting the principal organs of state, which should no longer be liable to imprisonment.
17. The Assembly notes that important progress has been made regarding freedom of association. Under the amended Article 33 of the constitution, only the courts may refuse to register associations' statutes or dissolve or suspend their activities. The 1983 Associations Act has been considerably revised, particularly as regards prior scrutiny of associations' activities. Concerning freedom of assembly, meetings can now only be banned if they pose a clear threat to public order.
18. Turning to freedom of religion and the treatment of religious minorities, the Assembly congratulates the Turkish authorities for amending the legislation on religious foundations and on constructions, which will now allow the bodies concerned to buy and sell property and build new places of worship.
19. Turkey is a secular Muslim state. This unique state of affairs is evidence of its attachment to European democratic values, based on tolerance and mutual respect. Turkey must ensure that the state's neutrality continues to be respected and that the religious sphere does not interfere with the principles of governance of a modern society.
20. The Assembly welcomes the lifting of the state of emergency in the remaining four south-eastern provinces where it was still in force, and the passing of the Reintegration Act in July 2003, which has permitted the release, among others, of several thousand Turkish citizens of Kurdish origin and a return to normal life for hundreds of other people who have given themselves up to the authorities. The Assembly also hopes that parliament will shortly approve the draft legislation to compensate the victims of terrorism or of measures taken by the government to combat terrorism. Nearly five years after the end of hostilities, the Assembly believes that the time has come to invest more in the economic and social reconstruction of the south-east. It notes the Turkish authorities' commitment to developing the "village return" programme, with the assistance of the World Bank and the United Nations. The Assembly also welcomes the recent adoption of the law encouraging investments in provinces with low per capita income.
21. The Assembly regrets that Turkey has still not ratified the Framework Convention for the Protection of National Minorities (ETS No. 157) and the European Charter for Regional or Minority Languages (ETS No. 148). Nevertheless, it considers that the first steps have been taken towards recognising the cultural rights of members of different ethnic groups

and notably of persons of Kurdish origin. The constitution has been revised and no longer bans the use of languages other than Turkish; it is now possible to open language schools for studying the Kurdish language or languages, radio and television broadcasts are now authorised in Kurdish and parents may choose Kurdish first names for their children. The Assembly strongly encourages the Turkish authorities to continue promoting cultural and linguistic diversity, and hopes that the measures will have a real impact on the daily lives of those concerned, particularly their access to the judicial and administrative authorities and the organisation of health care.

22. The Assembly notes that the points it made in Resolution 1256 have been dealt with satisfactorily:
 - i. it congratulates the Turkish authorities for introducing the necessary changes to domestic legislation in 2002 and 2003 to permit the retrial of cases following findings by the Court of a violation of the Convention, which in particular has permitted the reopening of the trial of Leyla Zana and three other members of parliament in the Ankara Security Court. Nevertheless, the Assembly deeply regrets the decision handed down by the Ankara Security Court on 21 April 2004, at the end of the retrial, upholding the prison sentences they were given in 1994. It invites the Turkish Court of Cassation to examine with the utmost care the complaints currently before it concerning the way in which the trial was conducted and is pleased to note the court's decision of 9 June 2004 to release them in the meantime;
 - ii. it also notes that more than five years after the judgment awarding Ms Loizidou just satisfaction, and in accordance with Article 46 of the Convention by which, like all the other parties to the Convention, it is bound, Turkey has finally agreed unconditionally to make the required payment. It reminds the Turkish authorities that they must still execute the judgment on the merits in the same case, delivered in 1996, and in particular adopt general measures to avoid repetition or continuation of the violations found by the Court. It asks Turkey to continue to co-operate fully with the Committee of Ministers in its difficult task of securing the proper implementation of judgments, particularly in the Cyprus v. Turkey inter-state case.
23. The Assembly therefore invites Turkey, as part of its authorities' current reform process, to:
 - i. carry out a major reform of the 1982 Constitution, with the assistance of the Venice Commission, to bring it into line with current European standards;
 - ii. amend the electoral code to lower the 10% threshold and enable Turkish citizens living abroad to vote without having to present themselves at the frontier;
 - iii. recognise the right of conscientious objection and establish an alternative civilian service;
 - iv. establish the institution of ombudsman;
 - v. ratify the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, the Framework Convention for the Protection of National Minorities, the European Charter for Regional or Minority Languages and the Revised European Social Charter and accept the provisions of the Charter which it has not already accepted;
 - vi. complete the revision of the Criminal Code, with the Council of Europe's assistance, bearing in mind the Assembly's observations on the definitions of the offences of insulting language and defamation, rape, honour crimes and, more generally, the need for proportionality arising from the European Court of Human Rights' case-law on freedom of expression and association;
 - vii. undertake, with the Council of Europe's assistance, a comprehensive examination of the legislation dating from the period of the state of emergency, particularly that relating to association, trade unions and political parties, to ensure that as far as possible it reflects the spirit of recent reforms;

- viii. reform local and regional government and introduce decentralisation in accordance with the principles of the European Charter of Local Self-Government (ETS No. 122); as part of the reform, to give the relevant authorities the necessary institutional and human resources and arrange redistribution of resources to compensate for the underdevelopment of certain regions, particularly south-east Turkey, and move from a dialogue to a formal partnership with United Nations agencies to work for a return, in safety and dignity of those internally displaced by the conflict in the 1990s;
 - ix. continue the training of judges and prosecutors as well as the police and gendarmerie, with the Council of Europe's assistance;
 - x. lift the geographical reservation to the 1951 Geneva Convention relating to the Status of Refugees and implement the recommendations of the Council of Europe Commissioner for Human Rights on the treatment of refugees and asylum seekers;
 - xi. pursue the policy of recognising the existence of national minorities living in Turkey and grant the persons belonging to these minorities the right to maintain, develop and express their identity and to apply it in practice;
 - xii. continue efforts to combat female illiteracy and all forms of violence against women.
24. The Assembly considers that over the last three years Turkey has clearly demonstrated its commitment and ability to fulfil its statutory obligations as a Council of Europe member state. Given the progress achieved since 2001, the Assembly is confident that the Turkish authorities will apply and consolidate the reforms in question, the implementation of which will require considerable changes to its legislation and regulations, extending beyond 2004. The Assembly therefore decides to close the monitoring procedure under way since 1996.
25. The Assembly will continue, through its Monitoring Committee, the post-monitoring dialogue with the Turkish authorities on the issues raised in paragraph 23 above, and on any other matter that might arise in connection with Turkey's obligations as a Council of Europe member state.

Parliamentary **Assembly** **Assemblée** parlementaire

Resolution 1407 (2004)¹

New concepts to evaluate the state of democratic development

1. The Parliamentary Assembly of the Council of Europe acknowledges that democracy is nowadays confronted with a dangerous crisis which can be seen in the low turn-out at elections, lack of interest and low participation of citizens in public life, decreasing respect for and confidence in political parties and politicians and the tendency to elect managers instead of leaders, technocrats instead of policymakers and entertainment stars instead of statesmen.
2. The entire democratic deficit and these negative developments make the classic concepts of democratic rights and freedoms insufficient and demonstrate the necessity for introducing new concepts. The globalisation process amplifies the shortcomings of democratic systems and makes them fragile in the face of transnational phenomena.
3. While the principles of democracy, the rule of law and human rights are considered universal, their models are only indicative. The same values disseminated in different cultural, social, historical and geographical environments might result in a wide variety of public behavior. On the other hand, the same or comparable democratic targets could be reached by following different political avenues and starting from different social and cultural backgrounds.
4. The commitment to democratic standards is one of the fundamental requirements for every member state of the Council of Europe. Accession to the Council of Europe is preceded by a close scrutiny of the state of democracy and of all national legislation as well as the functioning of democratic institutions and the judicial system.
5. Democratic reform and development can only be sustainable when it is based on full integration of democratic norms and practices into the administrative, political and judicial systems, including normative standards and their implementation in everyday practice at operational level.
6. The Assembly is aware that the level of democratic development is not sufficient in member states, as has been indicated by the Council of Europe's monitoring procedures. It is thus necessary to combine these procedures with active assistance to, and co-operation with, all member states. The logic of monitoring should be replaced, or at least coupled with, the logic of partnership.
7. The Assembly will continue to co-operate actively with the Committee of Ministers and the Congress of Local and Regional Authorities of the Council of Europe in order to achieve greater synergies for the Council of Europe by exploiting the specific resources and experiences of each of these bodies with regard to the evaluation of democratic development.
8. One of the main themes of the Conference of Speakers and Presidents of European Parliaments (Strasbourg, 18 and 19 May 2004) was "How democratic is our democracy". The appeal, contained in the conclusions of the conference, to national parliaments to exchange information in this field deserves the full support of the Assembly.

1. *Assembly debate* on 8 October 2004 (32nd Sitting) (see Doc. 10279, report of the Political Affairs Committee, rapporteur: Mr Severin). *Text adopted by the Assembly* on 8 October 2004 (32nd Sitting).

9. Democratic development in Europe must be determined by various factors which may be of different weight depending on the historic, geographic, demographic, cultural, social and economic circumstances of a country. In this context, the Assembly believes that the following list – to be added to the traditional democratic standards of the Council of Europe, such as the various individual freedoms, free and fair elections, the separation of powers, the checks and balances of the state's institutions, etc. – should constitute the parameters for the evaluation of the democratic development in a given country:
- i. the transparency of governmental action and administration;
 - ii. the accountability of decision-making bodies towards the public;
 - iii. the openness of political decision-making processes to the public;
 - iv. the possibilities and the degree of motivation for citizens to effectively participate in the decision-making process;
 - v. the possibility for foreign nationals who reside in a state to gradually acquire all the rights of citizenship, including that of participating in regional and local political decision-making processes;
 - vi. the level of political action by the public outside parliament and its impact on the functioning of parliament as the forum for democratic debate and decision making;
 - vii. the development of civil society and the extent to which its structures and entities are neither controlled by the state nor act as disguised opposition parties lacking democratic legitimacy;
 - viii. the secular character of the state, meaning that the state should remain at an equal distance from all religions and confessions, including agnostics; this does not prevent certain elements of the spiritual and material culture of the traditional religions of the state's population from being considered an important part of national culture;
 - ix. the development of political pluralism and the way in which parties are financed and function;
 - x. the development of civic multiculturalism associating the equality of citizens and their equal loyalty to their common state (the civic nation) with the respect for diversity and intercultural coexistence (multiculturalism as a multi dimensional, complex social fabric);
 - xi. the capacity to aggregate national democracy with local, regional, non-national, transnational and global democracy;
 - xii. the general level of economic development of a society;
 - xiii. the development of the middle class compared to the degree of economic polarisation of a society;
 - xiv. the conditions of minorities, including those measures with regard to positive discrimination which allow them to feel that they have opportunities which are equal to those of the majority and which grant them full opportunities to be integrated in the given society without losing their identity;
 - xv. gender equality in the participation in democratic decision-making processes;
 - xvi. subsidiarity through vertical decentralisation in governmental and administrative action and regional and local self-government while preserving the cohesion of the state, together with horizontal decentralisation in sharing the burden of the social order between the state institutions and society's structures;
 - xvii. the independence of the media from governmental structures, from economic monopolies, from oligarchic control or from any other non-transparent groups of interest;
 - xviii. the measures for the protection of democracy against non-democratic initiatives;

- xix. the level of anti-corruption measures and their effectiveness;
 - xx. the effectiveness of the policies against organised crime;
 - xi. the status of prisoners and the quality of conditions in prisons;
 - xii. the effectiveness of the anti-discrimination rules and regulations, including the ejection of any political, social and economic discrimination on an ethnic basis leading to political separatism and cultural segregation;
 - xxiii. the effectiveness of civil control over public institutions (especially the military and the security services), as well as the transparency and the accountability of the bureaucracy.
10. The Assembly acknowledges that all the above criteria shall be applied and checked in all member states, be they old, new or restored democracies, as the democratic deficit threatens all of them equally.
 11. In order to avoid democratic formalism and to develop a vibrant and real democracy able to have an effective popular appeal, it is crucial to avoid double standards in assessing democratic progress, and at the same time to adapt methods for the evaluation of the possible democratic deficit in such a way as to reflect properly the variety of the cultural, historical and social environment within which democracy should grow.
 12. Democracy is never perfect but always evolving towards perfection; democracy is not a mere set of laws and institutions, but a way of thinking and living, and therefore it should grow naturally, without it being possible to export it or to transfer it mechanically from one place into another; democracy is not immutable but in constant evolution.
 13. The Assembly calls on the national parliaments of member states and civil society to support the stimulation of participatory democracy in Europe through the following action:
 - i. major political projects should be discussed and defined in order to provide the public with political ideas and ideals for public debate;
 - ii. politics should be resocialised by addressing the major dividing lines and rifts in Europe, for instance in the social, cultural, economic or environmental sectors;
 - iii. expertise and knowledge should become part of politics and political decision-making, in particular with regard to the social sciences;
 - iv. the social fabric and cohesion of our societies should be strengthened by developing a community spirit;
 - v. a culture of conflict settlement should be supported, ensuring the solution of differences of opinions and conflicts of interests through appropriate democratic means and processes;
 - vi. political parties and organisations should seek to recruit members who reflect the differences in society and have the capacity to define political ideas and communicate them to the general public;
 - vii. political parties should become more transparent and open to civil society and the different sectors of society;
 - viii. democratic decision making should be decentralised and decisions should be taken as closely as possible to the people concerned, which is of particular importance within the enlarged and reinforced European Union;
 - ix. the public should be provided with more possibilities of expressing differences, either for themselves as a form of individual freedom, or with regard to local, regional and national decisions through consultative and participatory processes.
 14. In this context, the Green Paper on “The future of democracy in Europe – trends, analysis and reforms”, commissioned by the Secretary General of the Council of Europe in the framework of the integrated project “Making democratic institutions work” provides a basis for reflection for national parliaments and governments of member states.

15. The Assembly is determined to introduce a process of periodical reports on the state of democratic development, which allows each member and Observer state to present updated information on democratic reforms and other measures undertaken.
16. The Assembly is also determined to embark on a dynamic dialogue and co-operation with the other international organisations concerned, as well as with the parliaments of non-member states, in order to promote its standards and democratic values beyond its frontiers while recognising everybody's right to have different opinions in accordance with different situations and traditions.

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