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Mechanisms of transformation of the Council of Europe standards into the system practice of the Member States

Abstract

The purpose of this article is to present the mechanisms by which the Council of Europe influenced the transformation of its standards into the systemic practice of the member states. The legitimacy of taking up this issue is related to the fact that each accession of a new state to membership of the Council turns out to be an excellent opportunity to analyze the path traveled, as well as the consequences of membership in this international organization, both in the context of political changes and transformations in the legal system.

Keywords: Council of Europe, membership, democratic standards, transformation, implementation.

Introduction

The analysis of the axiological system of the Council of Europe (Rada Europy, CoE) shows that we deal with an organization with the greatest tradition in the protection of democracy, the rule of law and human rights. Particularly noteworthy is the influence of the Council of Europe on the process of implementing democratic and human rights standards in the legislation of the Member States¹.

The genesis of its activity indicates that, from the 1980s, the CoE played an important role, contributing to the legal, political and social transformation of

¹ A. Bisztyga, *The impact of the European Convention on Human Rights on the legal order of the United Kingdom*, Katowice 2008, p. 34.

many European countries². Thus, it provided support for the candidate countries to the European Union in their preparation for full membership. Indeed, as noted by F. Benoit-Rohmer and H. Klebes, the political criteria that future Member States must meet, the so-called Copenhagen criteria³, are fundamental, long established principles of the Council⁴. Candidate countries must adapt their political systems to democratic standards, which is a *sine qua non* condition for accession⁵.

It is noteworthy that the Preamble to the Statute of the Council of Europe, in which it was emphasized that the CoE sees political freedom in respecting the principles of true democracy. The conclusion is that it would be difficult to talk about political freedom and true democracy if it were not related to the principle of political pluralism⁶.

It was stipulated in Art. 1 of the Statute of the Council of Europe that

the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress⁷.

These ideals and values include, above all, free parliamentary elections, which are a *sine qua non* condition for recognizing a country as democratic, and therefore eligible for membership in the Council of Europe. For this reason, Poland became a member of the organization only on 26 November 1991, after holding completely free elections to the Sejm and Senate⁸.

1. Conditions for joining the Council of Europe

In countries that are preparing to meet the standards for membership of the Council of Europe, the accession procedure is of fundamental importance⁹. It

² H. Machińska, *Strengthening the principle of non-discrimination as a standard for the functioning of a democratic state. The role of the Council of Europe*, [in:] *Council of Europe anti-discrimination standards*, “Biuletyn Ośrodka Informacji Rady Europy” 2008, no. 3, p. 38.

³ Copenhagen European Council 21–22 June 1993, Conclusions of the Presidency, SN 180/1/93. REV 1.

⁴ F. Benoit-Rohmer, H. Klebes, *Council of Europe law. Towards a pan-European legal space*, translation M.A. Nowicki, Warsaw 2006, p. 142.

⁵ J. Jaskiernia, *Post-sovereign state and the protection of human rights*, [in:] *A modern leviathan. Studies on the modern state*, ed. J. Kornaś, Kielce 2006, p. 42.

⁶ M. Chmaj, *Principles of political pluralism in Poland against the standards of the Council of Europe*, [in:] *The Council of Europe and democratic changes in the countries of Central and Eastern Europe in 1989–2009*, ed. J. Jaskiernia, Toruń 2010, p. 505–519.

⁷ Journal of Laws of 1994, no. 118, item 565.

⁸ J. Jaskiernia, *The Council of Europe after 60 years of existence*, “Państwo i Prawo” 2009, notebook no. 5, p. 6.

⁹ H. Winkler, *Survey of the Admission Practice of the Council of Europe*, “Austrian Journal of Public and International Law” 1995, no. 2–3, p. 154.

is an expression of the fact that the Council of Europe is an organization in which membership is not only an expression of the will of the states concerned, but is associated with the fulfillment of certain requirements relating to its axiological system. However, it should be distinguished in particular between the threshold requirements (enabling accession) and the requirements resulting from the membership obtained. When a state decides to become a member of the Council of Europe, it takes upon itself a set of obligations that it should fulfill¹⁰. Pursuant to the provisions of Art. 4 of the Statute of the Council of Europe, the Committee of Ministers is the body deciding on the admission of a country as a member of the Council of Europe. The Statute Resolution (51) 30 of 3 May 1951 provides for the need to reach, ‘in accordance with the current practice’, an agreement between the Committee of Ministers and the Parliamentary Assembly, before consent is given for the grant of membership to a given state. In practice, then, as long as the Parliamentary Assembly does not present a positive opinion on the country’s membership in the CoE, the Committee of Ministers cannot accept it as a member of the organization. In the Parliamentary Assembly, decisions are prepared by: the Committee on Political Affairs and the Committee on Legal Affairs and Human Rights. Both appoint rapporteurs to determine whether a country meets the CoE membership threshold. This may often be, as was the case with the Russian Federation and Ukraine, for example, a long-term process. Thus, the CoE has the basic mechanism of influencing the candidate countries to implement its standards. It is also important that the study does not only cover standards in the area of legally binding norms (the state’s readiness to sign and ratify the ECHR (The European Convention on Human Rights, Europejska Konwencja Praw Człowieka) is of particular importance here, as a result of which its citizens fall under the jurisdiction of the ECHR), but also those that are ‘soft rights’ and occupy an important place in the axiological system of the CoE. This is precisely one of the important reasons why ‘soft law’ in the activities of the CoE has a meaning that goes far beyond its limited – from the point of view of the rules of international law – legal value.

On behalf of the Parliamentary Assembly of the CoE, which has the right to express an opinion on granting membership to the state, the Committee on Political Affairs and the Committee on Legal Affairs and Human Rights examine whether the candidate country has met the threshold requirements, which include in particular: democratic election of state authorities (president, parliament) and readiness to sign and ratify the ECHR. The positive opinion of the Assembly paves the way for the decision of the Committee of Ministers to invite the state to membership.

¹⁰ A. Nordström, *The Interactive Dynamics of Regulation: the Council of Europe’s Monitoring of Ukraine*, Stockholm 2008, p. 21.

2. Obtaining membership in the Council of Europe

Each decision to invite to membership is accompanied by a set of expectations for the state, which it should fulfill already as a member of the CoE¹¹. Six months after accession (and in the case of Armenia, Azerbaijan and Georgia – directly), the monitoring procedure is initiated. It examines whether the Member State has complied with these obligations¹². It runs in two directions. Under this procedure, the Committee of Ministers analyzes how individual states will implement individual standards (values) that form the axiological system of the CoE¹³. On the other hand, the CoE monitoring procedure is aimed in particular at newly admitted states. It is therefore about examining whether these countries have complied with the obligations they adopted upon accession.

Currently – due to the fact that only few European countries are outside the CoE – the monitoring procedure is of key importance. It examines whether the state fulfills its obligations taken while joining the CoE¹⁴. The list of these obligations, established by the Committee of Ministers on the basis of a resolution of the Parliamentary Assembly recommending membership, is sometimes wide and includes transformations in many important areas of state life, such as: the functioning of democratic mechanisms (e.g. the principles of free elections, the role of opposition parties), the organization of the judiciary (e.g. guarantees of judicial independence), organization of the penitentiary system (e.g. conditions of detention of convicts and detainees), protection of human rights (e.g. the rights of national and ethnic minorities, freedom of conscience), the system of protection of rights (e.g. the ombudsman institution) or the rules of self-government (e.g. the system of appointing commune heads and mayors). The delicacy of this mission of the CoE is related to the fact that it concerns areas of special sensitivity related to the constitutional autonomy of the Member States.

Several of these obligations arise directly from the European Convention on Human Rights and are developed by the European Court of Human Rights. Thus, the monitoring procedure appears, apart from the obviously essential control

¹¹ S.A. Gorchkova, *European Norms on the Protection of Human Rights: on the Development of Russian Human Rights Legislation*, “*Revue of Central and East European Law*” 2004, no. 3, p. 367.

¹² J. Jaskiernia, *The influence of an international organization on the shape of the state's political system (on the example of the Council of Europe)*, [in:] *The constitution and power in the modern world. Doctrine – Law – Practice. Works dedicated to Professor Wojciech Sokolewicz for his 70th birthday*, eds. M. Kruk, J. Trzeciński, J. Wawrzyniak, Warsaw 2002, p. 213.

¹³ A. Drzemczewski, *Monitoring procedure of the Committee of Ministers of the Council of Europe. A useful mechanism for “human rights”?*, [in:] *Poland in the Council of Europe 10 years of membership, selected issues*, eds. H. Machińska, Ośrodek Informacji Rady Europy, Warsaw 2002, p. 55–77.

¹⁴ V. Djerić, *Admission to Membership of the Council of Europe and Legal Significance of Commitments Entered by New Member States*, “*Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*” 2000, no. 3–4, p. 625.

mechanism of the Convention, as an important means of ensuring that these obligations are respected. One of the objectives of the monitoring procedure is to assess whether the legislation resulting from the implementation of the Convention has been adopted, which also means the implementation of the Court's jurisprudence standards. This gives an important instrument of influence, because states are interested, *inter alia*, for prestigious, but also political reasons (the implementation of the CoE standards is a necessary condition for successfully applying for EU membership), in publicly declaring that they meet the standards of the Council of Europe. However, such a statement may only take place when all obligations covered by the control in the monitoring procedure have been fulfilled and it was closed in relation to a given country.

3. The impact of the Council of Europe mechanisms on the political and constitutional changes in Member States

The process of expanding the Council of Europe has made it necessary to improve various forms of monitoring states in terms of adhering to democratic standards¹⁵ and thus ensuring democratic security¹⁶ through monitoring commitments. The fact of adopting the principle of political pluralism in the countries of Central and Eastern Europe after 1989, which was the basic manifestation of democratism in those countries, also played a significant role. The single-party system was replaced¹⁷ by the principle of freedom to form political parties¹⁸. An important supplement to this was basing political systems on the principle of creating state bodies as a result of free elections. This is the essence of the political breakthrough that took place in these countries. Adopting this principle opened the way for these countries to join the Council of Europe.

The documents of the Council of Europe recognized the importance of the elections held on 4 June 1989 as the first pluralist elections in the countries of Central and Eastern Europe. Their limited formula, developed at the Round Table, meant that only the Senate had the characteristics of a legislative body selected as a result of free elections. The Parliamentary Assembly of the Council of Europe stated that Poland should be admitted as a member of the Council of Europe "immediately on being informed by the President of the Assembly that

¹⁵ H. Machińska, *Poland's membership in the Council of Europe as a path to the European Union*, [in:] *Poland in the Council of Europe 10 years of membership, selected issues*, ed. H. Machińska, Warsaw 2002, p. 214.

¹⁶ More J. Robel, *The influence of the Council of Europe on the implementation of the concept of democratic security in the member states*, Toruń 2016.

¹⁷ M. Weller, *The End of the Communist Power Monopoly*, Manchester – New York 1993, p. 24.

¹⁸ H. Kitschelt, *Formation of Party Cleavages in Post-Communist Democracies: Theoretical Propositions*, "Party Politics" 1995, no. 4.

the Bureau of the Assembly is satisfied that free general elections have been held”¹⁹. The Committee of Ministers took a similar position²⁰. The Ginsberg report on the necessary changes in Poland noted the introduction of the principles of separation of powers and political pluralism into the constitution as part of the changes made on 7 April 1989. An important condition was also to ensure the independence of the judiciary. The constitutional changes were treated as removing the obstacles preventing Poland from joining the European Convention on Human Rights²¹. Eventually, Poland’s membership became possible after holding free elections to the Sejm on 27 October 1991²².

Principles relating to democratic standards of conduct concerning, inter alia, elections, were confirmed by the Presidium of the CoE Parliamentary Assembly at its session on 26 June 1996. It reminded that holding free and equal elections is a necessary condition for membership of the CoE and participation of the delegation of a given country in the CoE Parliamentary Assembly²³.

The practical implementation of the goal of establishing a democratic parliamentary representation is often difficult. Reports from election observation missions show that in some Member States of the CoE there are phenomena that cast a shadow on the practice of ensuring the implementation of the principle of political pluralism. An example is Croatia at the time of its efforts to become a member of the Council of Europe. The observers of the Council of Europe pointed out that the fact that the 10% of parliamentary seats reserved for the Croatian diaspora abroad is a factor that distorts free elections (in practice, in favor of the ruling party at that time – HZDS), and consequently it could not be considered that the parliament was elected in line with the ideas of free and democratic elections. Croatia – under pressure from, inter alia, the Council of Europe – eliminated this factor that distorts the idea of democratic parliamentarism²⁴.

Therefore, it should be reminded that the very fulfillment by Croatia of the commitments made when it became a member of the European Council has become an important factor in democratic changes. The monitoring procedure highlighted those areas where Croatia had to change its legislation and system

¹⁹ Opinion No. 154 (1990) on Poland’s application for membership of the Council of Europe.

²⁰ Resolution (90) 18, Invitation to Republic of Poland to become a member of the Council of Europe (Adopted by the Committee of Ministers on 23 October 1990 at the 446th meeting of Ministers’ Deputies).

²¹ *Report on Poland’s application for membership of the Council of Europe* (Rapporteur: Sir Geoffrey Finsberg, United Kingdom, Conservative), Parliamentary Assembly of the Council of Europe, Strasbourg – 19 September 1990, Doc. 6289, p. 3–6.

²² M. Grzybowski, *First free parliamentary elections: Poland, Czech Republic, Slovakia. In search of an adequate system*, “Ad Meritum” 1995, no. 1, p. 59–69.

²³ Report on the activities of the Bureau and Standing Committee (Doc. 7633 with appendix), adopted by the Presidium of the Parliamentary Assembly of the Council of Europe for information on 23 September 1996.

²⁴ Report Croatia’s Request for Membership of the Council of Europe, 29 March 1996, Doc. 7510.

practice in order to meet the requirements of the Council of Europe²⁵. The Parliamentary Assembly of the Council of Europe, in a resolution adopted on 29 May 1996, expressed its dissatisfaction with the fact that the Croatian authorities were acting in a manner inconsistent with the commitments made. It was about the repression of the media and the dissolution of the Zagreb City Council. The assembly doubted whether the Croatian authorities were acting in good faith. There were also doubts about Croatia's cooperation with the International Tribunal for the Former Yugoslavia²⁶.

The assembly noted, however, that the decision of the Croatian Constitutional Court to cancel the government's decision to dissolve the Zagreb City Council could send a positive signal to the functioning of the rule of law in Croatia.

The Assembly also noted the position of the Committee of Ministers of the Council of Europe of 15 May 1996, in which the Committee of Ministers indicated that, before adopting a decision on Croatia's membership, it would examine how Croatia was implementing the commitments made at this stage.

The Assembly demanded that the Croatian authorities strictly comply with the obligations set out in Assembly Opinion 195 (1996), and that the Croatian Parliament should implement them in order to make Croatia's swift accession possible²⁷.

Eventually, Croatia was admitted to the Council of Europe on 6 November 1996. The monitoring procedure for Croatia was opened pursuant to the provisions of § 12 of Opinion 195 (1996) on Croatia's application for membership of the Council of Europe.

To fulfill its obligations, Croatia has signed and ratified many conventions of the Council of Europe, in particular: the European Convention on Human Rights and additional protocols: 1, 2, 3, 4, 5, 6, 7, 8 and 11; The European Convention against Torture, Inhuman or Degrading Treatment or Punishment; The Framework Convention for the Protection of National Minorities; The European Charter for Local Authorities and the European Charter for Regional or Minority Languages.

Croatia undertook a constitutional reform aimed at limiting the powers of the president and increasing parliamentary control over the executive.

Croatia amended its electoral law in October 1999, as recommended by Parliamentary Assembly Resolution of the Council of Europe 1185 (1999)²⁸, in particular regarding the special representation of the Croatian diaspora, ensuring multi-party representation in electoral commissions at state and local level, as well as admitting internal, non-party observers to the election process (ensuring accreditation).

²⁵ J. Jaskiernia, *Croatia in the Council of Europe – membership challenges in the light of the monitoring procedure*, [in:] *Polish-Croatian Meetings*, eds. E. Olszewski, B. Zieliński, Toruń 2014, p. 10.

²⁶ F. Gaynor, *Prosecution at the ICTY: Achievements and Challenges*, [in:] *War Crimes and Transitional Justice in Former Yugoslavia*, "Südosteuropa-Mitteilungen" 2012, no. 3, p. 16.

²⁷ The application by Croatia for Membership of the Council of Europe, Doc. 7534 23, April 1996.

²⁸ Resolution 1185 (1999) on the Honouring of Obligations and Commitments by Croatia.

Croatia also amended the Local Government and Administration Act (November 1999), taking into account many of the suggestions made by the Congress of Local and Regional Authorities of Europe²⁹. It was pointed out, however, that for the full implementation of this obligation, appropriate changes to the law on the management system and the law on the city of Zagreb would have to be introduced. The Assembly took note of the fact that new legislation, in line with the standards of the European Charter of Local Self-Government, was then being prepared with a view to applying it in the 2001 local elections.

The amendments also concerned the Act on the Supreme Council of the Judiciary (May 1999) and considered most of the recommendations of the Council of Europe experts. In addition, the Parliamentary Assembly took into account that new amendments to this law, relating to the judicial appointment procedure, are being prepared to depoliticize the judiciary, and that changes to the criminal procedure, bankruptcy law, inheritance law etc. are being prepared to increase the efficiency of the judiciary and reduce the number of pending cases³⁰.

There is no doubt that Croatia's membership in the Council of Europe has contributed to fundamental systemic transformations in line with the standards of the Council of Europe. The signing and ratification of the European Convention on Human Rights was of key importance here, which entailed the inclusion of Croatian citizens under the jurisdiction of the European Court of Human Rights. The Venice Commission also played an important role here, offering Croatia an assessment of the proposed constitutional and legislative solutions from the point of view of compliance with the standards of the Council of Europe.

The fulfillment of Croatia's commitments in relation to the Council of Europe was all the more important as the European Union clearly emphasizes that a country that does not meet the standards of the Council of Europe has no chance to join the European Union.

The example of Croatia indicates that monitoring activities undertaken in the Member States of the CoE show the degree of fulfillment of obligations and sometimes prove a very high dynamics of activity in this area. These activities testify to the great importance attached to the effectiveness of the Organization, and consequently its ability to verify the degree of compliance with European standards in various areas of the functioning of states.

In order to illustrate what problems with the implementation of the idea of democratic pluralism appear in the systemic practice of the Member States and how the Council of Europe influences their correction, it is worth making an analysis based on the reports of the Monitoring Committee in subsequent Member States.

²⁹ M. Jelu, *Transfrontier Co-operation for Units of Local Government in Europe and Croatian Law*, "Politika misao", 1999, no. 5, p. 109–116.

³⁰ J. Jaskiernia, *Croatia in the Council of Europe...*, p. 20.

Prince Jan Adam II, in his speech on the occasion of the opening of the Landtag session, said:

There is probably no country that would grant so many democratic rights to its citizens as the Principality of Liechtenstein [...]. A prince holds the office of head of state only as long as the majority of citizens wish. As far as I know, in the history of mankind there has not been a monarchy that was based directly on the will of the people [...]³¹.

The Council of Europe reacted negatively to the changes adopted by the citizens of Liechtenstein. The European Commission for Democracy through Law (Venice Commission), acting within its framework, indicated that the amendments to the constitution of the Principality remove the monarchy in question from the circle of European parliamentary democracies. The issues raised by the Venice Commission are:

- 1) government accountability – in Liechtenstein, the government is accountable to the prince and the parliament; most European democracies - only to parliament; the accusation of members of the Venice Commission comes down to the thesis that the government, even if supported by parliament, may be dismissed by the prince, which is unacceptable in states adhering to the principles of parliamentary democracy;
- 2) election of judges – in Liechtenstein, the prince plays a decisive role in the nomination process, while he does not have the mandate of public support, which is required in most European democracies;
- 3) state of emergency – legislation in the course of a state of emergency is not sufficiently specified in the opinion of the Venice Commission; the objection also concerns the possibility of suspending the provisions of the constitution;
- 4) determination of sovereign – in Liechtenstein it is all citizens of the Principality and the prince as equal entities: both in the republics (France and the USA) and monarchies (Belgium and Luxembourg), as a rule, the entity exercising power is clearly defined³²; however, in no constitution among the states of modern Europe (except the Vatican) sovereign power has been granted directly to the monarch;
- 5) legal protection of the head of state – according to the Venice Commission, it is unacceptable to grant the reigning prince full immunity from the person of the coregent³³.

³¹ Speech by Prince John Adam II on the occasion of the opening of the parliamentary session on 13 February 2003, www.liechtenstein.li/liechtenstein_main_sites/portal_fuerstentum_liechtenstein/fl-med-infos-medien/fl-med-reden/fl-med-pia-reden-2003.htm?rid=42916 [access: 25.03.2021].

³² See Z.T., *Principality of Liechtenstein against the background of international comparisons*, „Beiträge Liechtenstein – Institut“ 2003, no. 14, p. 12.

³³ Opinion on amendments to the constitution proposed by the Princely Court of Liechtenstein of the European Commission for Democracy through Law (Venice Commission), Opinion No. 227/2002, www.venice.coe.int/docs/2002/CDL%282002%-29149-e.asp [access: 25.03.2021].

The prince reacted sharply to the opinions of the Council of Europe. During the above-cited speech, the prince accused the institutions of the Council of Europe that they wanted to take the Duchy a protectorate, which he cannot allow. The prince also attacked *ad personam* one of the opponents of the amendments to the constitution (a member of the Venice Commission from Northern Ireland). He stated that a person who is a citizen of a country that does not have a constitution and has a much narrower range of civil rights should not comment on this matter.

The changes to the Duchy's Constitution that took place in 2003 undoubtedly strengthened the prince's political position. It would therefore seem that the concerns of the Council of Europe expressed towards the authorities responsible for leading to the referendum are justified. However, the strong political position of the head of state is counterbalanced by two articles of the Liechtenstein constitution, according to which citizens may, in a popular vote, support a motion for a vote of no confidence in the monarchy. In addition, citizens have the right to abolish the monarchy by popular vote³⁴.

Another safeguard applied by the legislator is the exclusion of the right of veto in relation to the decision that would be taken in a referendum on the change of the form of government from monarchy to republic³⁵.

In 2003, the Constitution was revised in Monaco. It was pointed out that the new political structure created in 2003 provides, on the one hand, a wide catalog of civil rights, and on the other hand - it strengthens and clarifies the power of the monarch.

On 17 March 2015, Monaco was visited by the Monitoring Committee of the CoE. An important event was the adoption of the resolution on the monitoring process in that country. It was noted that Monaco adopted a political system that is "one of a kind"³⁶. The Monitoring Commission noted, with regard to the political system of the Principality of Monaco, that there is a broad consensus among the population and that political leaders together with the opposition constitute a significant element of this system. The Monitoring Committee decided to propose to end the monitoring while sending a clear signal to the Monakish authorities that they must continue work on outstanding issues. At the same time, it was decided to create working groups composed of experts from the Council of Europe and the Monaco authorities to find technical solutions to enable the ratification of the revised European Social Charter³⁷.

³⁴ A. Ławniczak, *Monarchies and republican heads of state in Europe*, Wrocław 2011, p. 28.

³⁵ G. Winkler, *The Council of Europe. Monitoring Procedures and the Constitutional Autonomy of the Member States*, Springer-Verlag, Wien 2006, p. 78.

³⁶ Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), Post-monitoring dialogue with Monaco, Adopted on 17 March 2015.

³⁷ Monaco: Monitoring Committee Proposes to end Post-monitoring to end Post-monitoring Dialogue, [http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=5479&lang=2&](http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=5479&lang=2&[access: 25.03.2021]) [access: 25.03.2021].

The membership of the Russian Federation in the Council of Europe remains a controversial issue. While summarizing the period of the Russian presence in the CoE structures, several key problems can be identified. First, the Russian government's policy towards Chechnya was a stir in Strasbourg. On 7 April 2000, the Parliamentary Assembly of the Council of Europe voted to suspend the voting rights of members of the Russian delegation. It was reintroduced on 21 January 2001, after President Putin announced that he would reduce the number of troops in Chechnya, give a new structure to the civilian government in the republic and transfer responsibility for security to the Federal Security Service. The restoration of full membership rights can be interpreted as a propaganda victory for Russia and a failure of the European Council to enforce human rights on an equal basis with all its members. Second, Russia has not yet fulfilled all the commitments it made on joining the Council of Europe³⁸.

In March 2014, the Committee of Ministers of the Council of Europe deplored Russia's decision to join Crimea and Sevastopol to the Russian Federation. In the adopted document, it emphatically recalled the obligation of the Member States to comply with their obligations. It also condemned the referendum in Crimea. Representatives of the heads of diplomacy of 47 states of the Council of Europe emphasized that the referendum was conducted in violation of the law. Moreover, they stated that the current crisis had to be solved peacefully, in full compliance with international law³⁹.

On 28 January 2015, the Parliamentary Assembly of the Council of Europe decided that, apart from the lack of the right to vote, Russian deputies will not be able to sit in the government, prepare reports and represent the Assembly on the outside. The Assembly urged Russia to abandon the annexation of the Crimea and to disband the paramilitary troops present there. It called for an end to discrimination against Crimean Tatars, withdrawal of troops from Ukrainian territory, cessation of arming separatists and preventing Russian volunteers from participating in the fighting in Ukraine. Moreover, the Assembly demands the implementation of the decisions adopted in Minsk, the control of the border with Ukraine and the immediate release of the Ukrainian pilot imprisoned in Russia, who is now a member of the Ukrainian parliamentary delegation⁴⁰.

On 28 February 2015, the Monitoring Committee condemned the murder of the Russian opposition leader Boris Nemtsov, "this despicable murder is a clear attack on pluralism in Russian politics"⁴¹. At the same time, an appeal was issued

³⁸ S. Bieliń, M. Raś, *Russia's foreign policy*, Warsaw 2008, p. 45.

³⁹ *Committee of Ministers condemns the holding of the referendum on Crimea*, www.coe.int/en/web/portal/-/committee-of-ministers-condemns-the-holding [access: 25.03.2021].

⁴⁰ *Council of Europe: Strong Sanctions Against Russia*, www.gazetaprawna.pl/artykuly/850241,rada-euro-py-zdecydowane-sankcje-wobec-rosji.html [access: 18.09.2016].

⁴¹ PACE Co-rapporteurs Strongly Condemn the Killing of Russian Opposition leader Boris Nemtsov, <http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=5448&lang=2&> [access: 25.03.2021].

We urge the authorities to fully investigate this obnoxious crime and to prosecute the perpetrators in full compliance with international standards. All the necessary measures must be taken to ensure that this crime does not go unpunished⁴².

The membership of the Russian Federation in the Council of Europe places the organization in a kind of tear. On the one hand, the situation in which one of the Member States commits numerous violations of human rights means that the prestige and position of the organization on the international arena is jeopardized. On the other hand, however, European elites understand that excluding Russia from the organization would be politically irrational, as it would not only increase anti-Western rhetoric in Russia itself, but also deprive European countries of the ability to monitor human rights issues in that country, for example through the action of the European Court of Human Rights.

The Monitoring Committee rapporteurs visited Albania in July 2011 and April 2011. They presented an information note to the Commission which was declassified in June 2012⁴³.

The development of the situation following the local elections on 8 May 2011 exacerbated the political stalemate that had continued since the parliamentary elections in June 2009 and marked a polarization between the ruling Democratic Party and the opposition Socialist Party. On the positive side, the election result was approved by voters and an escalation of the problem was avoided.

The key issue in Albania remains the legitimacy of internal institutions and respect for their decisions – in order to settle electoral disputes. The reform of the Electoral Code is still an urgent need in order to clarify some rules and procedures. Moreover, the current code favors larger parties. In this situation, smaller parties and newly formed parties have less chance of being on the political scene. The rapporteurs of the Monitoring Committee asked the Albanian authorities to work closely with the European Commission for Democracy through Law (Venice Commission) in the process of reforming the electoral code. Moreover, the election crisis revealed the need to modify internal party procedures. Inside-party democracy was criticized in both big parties⁴⁴.

The rapporteurs of the Monitoring Committee welcomed with appreciation the end of the boycott of parliamentary work in September 2011.

The Republic of Armenia applied for membership of the CoE on 7 March 1996. The Committee of Ministers, by a resolution adopted on 15 May 1996, invited the Parliamentary Assembly to prepare an opinion on the matter in accordance with the provisions of Statutory Resolution 51 (30A). The Armenian Parliament was granted special guest status in the Parliamentary Assembly on 26 January 1996. In 1996–1999 the accession procedure was in progress. As a result

⁴² Ibidem.

⁴³ AS/Mon(2012)11 rev.

⁴⁴ The Honoring of Obligations and Commitments by Albania, <http://assembly.co.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileD=21068&lang> [access: 21.02.2021].

of its effects, the Parliamentary Assembly recognized, in a resolution adopted on 28 June 2000, that Armenia

is moving towards a democratic, pluralist society, in which human rights and the rule of law are respected, and, in accordance with Article 4 of the Statute of the Council of Europe, is able and willing to pursue the democratic reforms initiated in order to bring its entire legislation and practice into conformity with the principles and standards of the Council of Europe.

A number of commitments were formulated which Armenia agreed to undertake as a condition of membership of the CoE⁴⁵.

In 2008, the Parliamentary Assembly of the Council of Europe called on the Armenian authorities to reform the political system and election procedures so that they guarantee the independence of the judiciary, freedom of assembly and freedom of the media. In a special resolution we read, inter alia, that the only way for the state to progress [...] is to start a constructive and open dialogue between political forces. There are also conditions that must be met for this dialogue to begin – launching an independent investigation into the events of the 1 March, releasing political prisoners and amending the law prohibiting gatherings⁴⁶.

Monitoring Committee rapporteurs visited Armenia in January 2012 and presented an information note to the Monitoring Committee, which was declassified in March 2012⁴⁷. The functioning of democratic institutions in Armenia was discussed by the Parliamentary Assembly of the CoE in October 2011⁴⁸. An ad hoc committee appointed by the Assembly observed the parliamentary elections held on 6 May 2012.

The most important here is the release of prisoners who were sent to prisons in connection with the events of March 2008 and the acceleration of the investigation to explain the causes of the fatal accidents that took place during these events and the establishment of a constructive dialogue between the ruling forces and the opposition. The explanation of the tragic events of March 2008 is crucial to democratic progress.

Final remarks

The changes made in the political systems of states during the monitoring procedure of the Council of Europe prove that this mechanism of international influence constitutes an important premise for the implementation of constitu-

⁴⁵ Opinion No. 221 (2000), Armenia application for membership of the Council of Europe. Assembly Debate on 28 June (21st Sitting). Doc. 8747.

⁴⁶ *The Parliamentary Assembly of the Council of Europe admonishes the Armenian authorities*, www.studium.uw.edu.pl?post/6525 [access: 25.03.2021].

⁴⁷ As/Mon (2012)4.

⁴⁸ Doc. 12710, Resolution 1837 (2011).

tional transformations, as was the case, for example, in Croatia. The Council of Europe, enforcing the obligations of a given state along with obtaining membership in this international organization, indicates areas where the announced reforms were not undertaken or were delayed. The fact that states ultimately fulfill these obligations results not only from respecting the consequences of membership in the Council of Europe, but also involves a broader calculation. Most of the countries are aware of the regularity in force in the European Union that if they do not meet the standards of the Council of Europe, they cannot become a member of the European Union. Thus, systemic changes under the influence of the Council of Europe pave the way to EU membership.

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Mechanizmy transformacji standardów Rady Europy do praktyki ustrojowej państw członkowskich

Streszczenie

Celem niniejszego artykułu jest przedstawienie, za pomocą jakich mechanizmów Rada Europy wpłynęła na transformację tworzonych przez nią standardów do praktyki ustrojowej państw członkowskich. Zasadność podjęcia tego zagadnienia jest związana z tym, że każda akcesja nowego państwa do członkostwa w Radzie okazuje się doskonałą okazją do analizy przebytej drogi, jak również konsekwencji członkostwa w tej organizacji międzynarodowej, zarówno w kontekście przemian ustrojowych, jak i przekształceń dokonywanych w systemie prawnym.

Słowa kluczowe: Rada Europy, członkostwo, standardy demokratyczne, transformacja, implementacja.