



## Resolution 1594 (2007)<sup>1</sup>

# The principle of the Rule of Law

Parliamentary Assembly

1. The notion of “rule of law”, conceived by European nations as a common value and fundamental principle for greater unity, was recognised in the Statute of the Council of Europe of 1949 (ETS No. 1). This principle, together with those of democracy and human rights, plays a significant role today in the Council of Europe and the case law of the European Court of Human Rights in particular.

2. The European Union, the Organization for Security and Co-operation in Europe (OSCE) and their member states are also committed to the principles of the “rule of law”, democracy and human rights. Explicit reference to the “rule of law” can be found, *inter alia*, in European Union/European Community treaties, the case law of the European Court of Justice, as well as in the Copenhagen criteria of 1993 for accession to the European Union.

3. Despite a general commitment to this principle, the variability in terminology and understanding of the term, both within the Council of Europe and in its member states, has elicited confusion. In particular, the French expression *Etat de droit* (being perhaps the translation of the term *Rechtsstaat* known in the German legal tradition and in many others) has often been used but does not always reflect the English language notion of “rule of law” as adequately as the expression *prééminence du droit*, which is reflected in the French version of the Statute of the Council of Europe, in the preamble to the European Convention on Human Rights (ETS No. 5) and in the Strasbourg Court’s case law.

4. The Parliamentary Assembly draws attention to the fact that in some recent democracies in eastern Europe, the main trends in legal thinking foster an understanding of the “rule of law” as “supremacy of statute law”, in Russian *verkhovensto zakona*. “Rule of law” should, however, be translated into Russian as *verkhovensto prava*, just as “rule of law” is correctly translated into French as *prééminence du droit* and not as *prééminence de la loi*. (Similarly the words *Recht* and *droit* in *Rechtsstaat/Etat de droit* should be translated into Russian as *prava*.) Translating “rule of law” as *verkhovensto zakona* gives rise to great concern, since in some of these countries certain traditions of the totalitarian state, contrary to the “rule of law”, are still present both in theory and in practice. Such a formalistic interpretation of the terms “rule of law” and *Etat de droit* (as well as of *Rechtsstaat*) runs contrary to the essence of both “rule of law” and *prééminence du droit*. Certainly in these cases there is an inappropriate lack of consistency and clarity when translating into the legal terms used in member states.

5. The Assembly emphasises the need to ensure the unification that encompasses the principles of legality and of due process, which has the same basic elements, found in particular in the case law of the European Court of Human Rights, by whatever name this concept is now used in the Council of Europe.

6. Consequently, the Assembly:

6.1. stresses that the terms “rule of law” and *prééminence du droit* are substantive legal concepts which are synonymous, and which should be considered as such in all English and French language versions of documents issued by the Assembly as well as in the member states in their official translations;

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1. *Text adopted by the Standing Committee, acting on behalf of the Assembly, on 23 November 2007 (see Doc. 11343, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Jurgens).*



6.2. believes that the subject merits further reflection with the assistance of the European Commission for Democracy through Law (Venice Commission).