



Resolution 1661 (2009)¹

Honouring of obligations and commitments by Serbia

Parliamentary Assembly

1. Serbia has been a member state of the Council of Europe since 2003, succeeding in 2006 to the State Union of Serbia and Montenegro. Over this period, Serbia has been steadily implementing the obligations and commitments entered into at the moment of its accession. It actively co-operates with the Council of Europe and chaired the Committee of Ministers from May to November 2007.

2. The Parliamentary Assembly recalls its [Resolution 1514 \(2006\)](#) on the consequences of the referendum in Montenegro and takes note of the key political developments which have occurred in Serbia since the dissolution of the State Union of Serbia and Montenegro in June 2006: a new constitution was approved by referendum on 28 and 29 October 2006, parliamentary elections were held on 21 January 2007, a presidential election was organised on 20 January and 3 February 2008 and, after a government crisis, pre-term parliamentary elections were held on 11 May 2008.

3. The Assembly refers to the reports of its Election Assessment Mission for the presidential election (second round) and Ad hoc Committee for the Observation of the Parliamentary Elections in Serbia on 11 May 2008 and congratulates the people of Serbia and the Serbian authorities for having conducted the elections in accordance with Council of Europe standards for democratic elections.

4. The Assembly notes that the majority of the citizens of Serbia made a clear choice in favour of European integration.

5. The Assembly welcomes Serbia's ambition to pursue European integration and is strongly committed to supporting Serbia on this path. In this respect, the Assembly welcomes the ratification, on 9 September 2008, of the Stabilisation and Association Agreement between the European Union and Serbia. This agreement will give a fresh impetus to the necessary reforms aiming at bringing the Serbian legal order closer to the European *acquis* in the field of democracy, the rule of law and human rights. Moreover, the Assembly takes note of the decision of the Serbian authorities to apply the Interim Trade Agreement unilaterally, pending the completion of the ratification process of the Stabilisation and Association Agreement by all European Union member states. At the same time, the Assembly considers that the Serbian authorities should urgently take a number of concrete reform measures to make the benefits of European integration available to all citizens of the country. Only then will European integration become a shared vision of the country's future.

6. The Assembly is closely following the developments concerning the status of Kosovo. It has taken note of the unilateral declaration of independence, adopted by the Kosovo Assembly on 17 February 2008, and of the fact that several countries, including a number of Council of Europe member states, have already recognised the independence of Kosovo. Equally, the Assembly has taken note of the rejection of this declaration by Serbia and several Council of Europe member states as being illegal and contradicting international law.

1. *Assembly debate* on 28 April 2009 (13th Sitting) (see Doc. 11701, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: Mr Goerens and Mr Gross). *Text adopted by the Assembly* on 28 April 2009 (13th Sitting). See also [Recommendation 1867 \(2009\)](#).



7. The Assembly understands the frustration of the Serbian people with respect to the developments in Kosovo. It welcomes the fact that the Serbian authorities are defending their position by peaceful and diplomatic means, in accordance with international law, as exemplified by the request for an advisory opinion addressed to the International Court of Justice by the United Nations General Assembly, at the proposal of the Serbian delegation. Furthermore, the Assembly congratulates the Serbian authorities on their constructive approach with respect to the deployment of the European Union Rule of Law Mission (EULEX) as an essential step in ensuring respect for human rights and the rule of law in Kosovo.

8. The Assembly strongly condemns the violent incidents which occurred in February 2008 after the adoption of the unilateral declaration of independence in the northern areas of Kosovo and in Belgrade, and, in particular, the attacks against some foreign embassies, which are totally unacceptable in a country adhering to democratic principles and international law. At the same time, the Assembly notes that these incidents have remained isolated and that the authorities have taken steps to bring those responsible to justice.

9. Therefore, the Assembly calls upon the Serbian authorities to:

9.1. continue to defend their position with respect to Kosovo exclusively by peaceful and diplomatic means;

9.2. provide a forum for open dialogue between all political parties and actors on the developments in Kosovo;

9.3. continue co-operation and dialogue with all international and regional actors in order to promote peace, stability and reconciliation in the Western Balkans, in the spirit of European integration;

9.4. continue co-operation with the United Nations international civil presence in Kosovo with a view to preserving and promoting the cultural, linguistic and religious rights of all communities in Kosovo;

9.5. ensure full co-operation with the competent bodies in Kosovo,² including EULEX, to determine the fate and whereabouts of all victims of enforced disappearances and abductions, sharing all relevant data and information, including the whereabouts of potential grave-site locations.

10. The Assembly welcomes the establishment, in June 2008, of a new government supported by a wide and diverse coalition of political forces. The newly achieved political stability creates a favourable environment for society to progress and implement necessary reforms in the field of democracy, human rights and the rule of law. In this respect, the Assembly calls upon the majority coalition to create conditions for a meaningful dialogue with the opposition on key issues. At the same time, it urges some of the opposition parties to stop obstructionism and the opposition in general to adopt a constructive attitude in the parliamentary arena. Serbia has had too many elections over the past two years. The time has now come for all political forces to work together to make Serbia a better place to live in: European integration, co-operation with the International Criminal Tribunal for the former Yugoslavia (ICTY), strengthening of democratic institutions and human and minority rights, reform of the judiciary and the Public Prosecutor's Office, the fight against crime and corruption and the improvement of citizens' living standards should be the key priorities.

11. In this respect, the Assembly notes that Serbia is making significant progress in the implementation of its commitment relating to co-operation with the ICTY. It congratulates the authorities on the arrest of Radovan Karadzic, Stojan Zupljanin, Zdravko Tolimir and Vlastimir Djordjevic. It believes that the new government is strongly committed to completing its co-operation with the ICTY.

12. Therefore, as regards co-operation between Serbia and the ICTY, the Assembly calls upon the Serbian authorities to:

12.1. apprehend and promptly extradite the two remaining indictees, Ratko Mladic and Goran Hadzic;

12.2. make all documents and archives of the Ministry of Defence and of the Security Services available to the ICTY, for the purposes of conducting investigations within its mandate;

12.3. sign and ratify, without further delay, the European Convention on the Non-Applicability of Statutory Limitations to Crimes against Humanity and War Crimes (ETS No. 82) and the European Convention on the Compensation of Victims of Violent Crimes (ETS No. 116).

2. This reference should be understood in full compliance with United Nations Security Council [Resolution 1244](#).

13. Mindful of the impending closure of the ICTY and the continuing impunity for war crimes which took place in Bosnia and Herzegovina, Croatia and Kosovo, the Assembly calls upon the Serbian authorities to:
 - 13.1. strengthen the capacity and increase the resources available to the Special War Crimes Chamber at the Belgrade District Court and the Office of the War Crimes Prosecutor;
 - 13.2. strengthen the capacity of the Interior Ministry's War Crimes Investigation Service.
14. As regards the functioning of democratic institutions, the Assembly:
 - 14.1. regrets that Serbia's democratic institutions are still not strong enough and underlines the need to strengthen them in the fields of electoral legislation, parliamentary democracy and decentralisation;
 - 14.2. believes that the problems which the National Assembly of Serbia is facing are, to a large extent, rooted in the existing constitutional framework, which establishes a "party-administered mandate" of MPs, as well as in the arrangements for the allocation of seats in parliament, which make the MPs dependent on the decisions of their parties' leadership and prevent them from expressing their views freely, as democratically elected representatives of the citizens of Serbia;
 - 14.3. encourages the National Assembly of Serbia to develop, in co-operation with the Assembly, a follow-up parliamentary assistance programme, making full use in particular of new funding opportunities within the framework of the European Union's Instrument for Pre-Accession Assistance (IPA);
 - 14.4. welcomes the readiness of the Speaker of the National Assembly of the Republic of Serbia to work with the Assembly on the drafting of new rules of procedure which would guarantee the rights of the opposition while enabling the parliament to function effectively;
 - 14.5. therefore, the Assembly calls upon the Serbian authorities to:
 - 14.5.1. amend the electoral legislation, in accordance with the joint recommendations of the European Commission for Democracy through Law (Venice Commission) and the Organization for Security and Co-operation in Europe/Office for Democratic Institutions and Human Rights (OSCE/ODIHR), in particular, to bring the system of allocation of mandates in the parliament and in municipal assemblies into line with European standards;
 - 14.5.2. eliminate from the constitution the provisions establishing party-administered mandates of members of parliament and strengthen the capacity of the National Assembly to play an increasingly active role in the political process;
 - 14.5.3. adopt a new law on the National Assembly of Serbia and new rules of procedure of parliament, in close co-operation with the Assembly, within the framework of the Parliamentary Support Programme;
 - 14.5.4. further strengthen the legislative basis for, and the operational capacity of, the Office of the Defender of Citizens' Rights and of the Office of the Commissioner for Freedom of Information;
 - 14.5.5. continue to implement a comprehensive decentralisation reform, with a view to effectively devolving sectoral competences to local authorities and autonomous provinces, strengthening fiscal decentralisation, improving administrative supervision over local authorities' action and building up the capacity of local authorities;
 - 14.5.6. sign and ratify, without further delay, the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106).
15. As regards the rule of law, the Assembly:
 - 15.1. welcomes the adoption of the law on the Constitutional Court and the appointment of the judges to this court;
 - 15.2. welcomes the co-operation between the Serbian authorities and the Council of Europe in the fields of the reform of the judiciary and of the Public Prosecutor's Office, the fight against corruption, money laundering and the financing of terrorism;
 - 15.3. takes note of the adoption, in December 2008, of the legislative package governing the reform of the judiciary and of the Public Prosecutor's Office; the Assembly regrets that not all of the recommendations of the Venice Commission and of the Council of Europe experts concerning these laws have been taken on board;

15.4. notes, furthermore, that Serbia's constitutional and legal order does not establish sufficient guarantees against the politicisation of the judiciary and of the prosecutorial service;

15.5. notes that the new constitution requires the adoption of a whole set of new laws governing the judiciary and the Office of the Public Prosecutor, which should be done in co-operation with the Council of Europe;

15.6. therefore, the Assembly calls upon the Serbian authorities to:

15.6.1. continue to work with the Venice Commission on the establishment of clear legal guarantees allowing the serving judges, against whom there are no allegations of incompetence or behaviour incompatible with the function of the judge, to remain in office;

15.6.2. continue to work on the improvement of the constitutional and legal framework for the judiciary and the Office of the Public Prosecutor in order to establish sufficient guarantees against political interference in their activities;

15.6.3. increase the effectiveness and professionalism of judges and prosecutors, in particular, by reinforcing their initial and in-service training through the Academy of Jurisprudence;

15.6.4. enact specific measures to combat corruption within the judiciary, while preserving the fundamental guarantee of independence of judges;

15.6.5. implement in full the recommendations of the Council of Europe Group of States Against Corruption (GRECO);

15.6.6. work with the Council of Europe in the establishment and development of an anti-corruption agency in order to intensify and streamline the implementation of different policies and measures to combat political and administrative corruption;

15.6.7. spare no effort to strengthen the legislation and policies aiming at preventing money laundering and the financing of terrorism, in line with the recommendations of MONEYVAL.

16. As regards human rights, the Assembly:

16.1. welcomes the comprehensive catalogue of human and minority rights guaranteed by the new constitution;

16.2. welcomes the new mechanisms of democratic control over the armed and security forces introduced by the new constitution and the laws on the army of Serbia and on security forces, while regretting that the legislation on alternative service and conscientious objectors has not yet been enacted;

16.3. welcomes the development of new legislation on the freedom of association in co-operation with the Council of Europe, while regretting that this draft law was, once again, taken off the agenda of the parliament in December 2008;

16.4. welcomes the recent adoption of the anti-discrimination law;

16.5. strongly condemns the threats and attacks against representatives of national minorities, human rights defenders, independent journalists and media outlets which have occurred over the last couple of years;

16.6. in particular, the Assembly calls upon the Serbian authorities to:

16.6.1. enact urgently the law on associations, taking into account all recommendations of the Council of Europe experts;

16.6.2. enact legislation on alternative service and conscientious objectors, in consultation with the Council of Europe;

16.6.3. develop a comprehensive anti-discrimination policy to eliminate all forms of discrimination, including against sexual minorities;

16.6.4. implement the recommendations of the European Commission against Racism and Intolerance (ECRI), adopted on 14 December 2007;

16.6.5. further develop minority rights policy by strengthening confidence between the representatives of different communities and implementing effectively the rights of national minorities, in the spirit of dialogue and co-operation between the central government and the minority communities, in particular, by ensuring effective access to education, media and public

administration in their mother tongue, as well as representation of national minorities in political and administrative bodies at all levels and enabling them to hold religious services in their language;

16.6.6. take effective measures – in the context of Serbia's declared priorities during its current presidency of the Decade of Roma Inclusion – towards guaranteeing to the Roma community in Serbia the right to adequate housing, including through the implementation of the Decade of Roma Inclusion National Action Plan on housing and the Ministry of Infrastructure Guidelines for Improvement and Legalisation of Roma Settlements;

16.6.7. enact a law on national minority councils, clarifying their competencies, election procedures, their role vis-à-vis the central government, as well as the methods of their financing;

16.6.8. investigate and prosecute all cases of violence and harassment against all members of the national minority communities, all human rights activists – including those dealing with the rights of the lesbian, gay, bisexual and transgender population – and journalists, and take positive steps to ensure their protection;

16.6.9. intensify good, neighbourly relations with the kin-states (Romania, Hungary, Croatia and "the former Yugoslav Republic of Macedonia") by fully implementing the bilateral agreements which they have signed. The same applies to the authorities of the neighbouring states;

16.6.10. work with the Council of Europe in the implementation of the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT);

16.6.11. take appropriate measures to increase the pluralism of the media, ensure the proper application of the Broadcasting Law and ensure transparency in the work of the Republican Broadcasting Agency;

16.6.12. continue educational reform and make arrangements to teach the principles of tolerance, respect for others, intercultural dialogue and reconciliation;

16.6.13. sign and ratify the European Convention on Nationality (ETS No. 166) and the Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession (CETS No. 200);

16.6.14. continue working to ensure permanent, safe and sustainable return of refugees and displaced persons, where possible, and spare no efforts to find durable solutions for those who decide to stay in Serbia.

17. As regards accession to the Council of Europe conventions, the Assembly:

17.1. welcomes the fact that, to date, Serbia has signed and ratified 59 Council of Europe conventions;

17.2. calls upon the Serbian authorities to ratify, without further delay, the 14 conventions signed but not ratified to date and, in particular, the (revised) European Social Charter (ETS No. 163).

18. On the basis of the above recommendations, the Assembly invites the Serbian authorities to draw up a roadmap for the implementation of the remaining obligations and commitments in the field of co-operation with the ICTY, the functioning of democratic institutions, the rule of law and human rights. This roadmap should help the Serbian authorities and the Assembly pave the way for the closing of the monitoring procedure and the opening of the post-monitoring dialogue.

19. Pending progress in the implementation of the above recommendations, the Assembly resolves to continue the monitoring procedure with respect to Serbia.