

Resolution 1675 (2009)¹

State of human rights in Europe: the need to eradicate impunity

Parliamentary Assembly

1. The Parliamentary Assembly insists that all perpetrators of serious human rights violations must be held to account for their actions.
2. This shall also apply to the instigators and organisers of such crimes, as recently affirmed by the Assembly in [Resolution 1645 \(2009\)](#) with respect to the Gongadze case.
3. The Assembly further recalls that it is internationally recognised, since the Nuremberg and Tokyo trials held in the wake of the Second World War, that the excuse of simply following orders or instructions from one's superiors is not valid for cases of serious human rights violations.
4. Consequently, the European Court of Human Rights (the Court), in cases concerning the killings of refugees at the Berlin Wall, upheld condemnations both of the German Democratic Republic politburo members responsible for the orders to shoot and of the border guards who executed those orders.
5. Impunity for perpetrators of serious human rights violations occurs in member and observer states of the Council of Europe, in different shapes and forms.
 - 5.1. The most serious cases involve widespread abuses committed by the security forces in conflict situations. The cases of the Court concerning the conflicts and/or the fight against terrorism in Northern Ireland, south-eastern Turkey and the Chechen Republic of the Russian Federation, which have found widespread violations of Article 2 (right to life) of the European Convention on Human Rights (the Convention – ETS No. 5) in the form of, *inter alia*, indiscriminate use of force, enforced disappearance, torture or inhuman and degrading treatment of prisoners provide shocking examples of such abuses in Europe. The Court has frequently found that the investigation into such abuses was plainly insufficient.
 - 5.2. The Assembly's reports on renditions and secret detentions have provided numerous indications of serious human rights violations – including torture, abductions and detentions – committed in the context of the so-called “war on terror” by or with the participation, consent or acquiescence of officials of Council of Europe member states on their territory and elsewhere. Yet, in many states, the authorities have failed to ensure that independent, impartial and effective investigations are conducted, and that those responsible are brought to justice.
 - 5.3. Insufficient investigations are also the cause of impunity in cases in which state agents are suspected of having ordered or otherwise instigated or covered up crimes committed by non-state agents. This may be the case regarding numerous killings of journalists and human rights activists by “unknown perpetrators”.
 - 5.4. Crimes such as the reckless or negligent killing or ill-treatment of detainees by rogue members of the security forces are often not properly investigated and prosecuted because of a culture of ill-conceived solidarity among colleagues. The Court has repeatedly been obliged to find violations of the Convention in the face of the complete passivity or exaggerated leniency of the law-enforcement authorities and the courts faced with such cases. In this context, the Assembly recalls its [Resolution](#)

1. *Assembly debate* on 24 June 2009 (22nd Sitting) (see [Doc. 11934](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mrs Däubler-Gmelin; and [Doc. 11964](#), opinion of the Committee on Equal Opportunities for Women and Men, rapporteur: Mrs Čurdová). *Text adopted by the Assembly* on 24 June 2009 (22nd Sitting). See also [Recommendation 1876 \(2009\)](#).



1742 (2006) on the human rights of members of the armed forces in which it deplores the unacceptable tolerance in the militaries of many countries of “hazing” practices that grossly violate human dignity and sometimes even the right to life of young soldiers.

5.5. Other types of crimes, though definitely committed by non-state actors, without any involvement of the authorities, need to be addressed as impunity issues because of the passive or overly lenient attitude of the members of the law-enforcement bodies dealing with these cases, motivated by a disregard for women’s fundamental human rights, racism, anti-Semitism, xenophobia, Islamophobia, homophobia, sexism or other forms of intolerance.

5.5.1. Violence against women and girls – including domestic violence, rape, forced marriages, so-called “honour crimes” and female genital mutilation – are often not prosecuted with the required severity, if they are prosecuted at all, because of a general disregard for women’s fundamental human rights and a lack of gender equality, as well as because of sexist attitudes that can be found among the police, prosecutors or judges, or because of archaic cultural attitudes that place the “honour” of the family above the right to individual liberty, bodily integrity or even the right to life.

5.5.2. Violence against foreigners or even just foreign-looking people on grounds of racism and xenophobia is on the rise in many member states, exacerbated by the current economic crisis. Police officers either fail to intervene to protect victims or even participate themselves in acts of aggression, intimidation and denigration.

5.5.3. The Roma population in many European countries is particularly victimised by such unacceptable behaviour.

5.5.4. The spectre of anti-Semitism has shown its ugly face again in a number of countries, including in a novel form that has been on the increase since the recent aggravation of the conflict in the Middle East and consists in extremists expressing their hatred for Israel through violence against the local Jewish population.

5.5.5. Violence motivated by homophobia is also all too often tolerated or even encouraged by complacent or homophobic members of the law-enforcement bodies and the judiciary.

5.5.6. Corruption, both in the public and in the private sectors, is widespread and remains largely unpunished; it undermines the rule of law and presents a serious risk for the prosperity of our countries and their democratic institutions.

5.6. Last but not least, international actors such as members of the military participating in peacekeeping operations are even less accountable for their actions than their colleagues acting in their own countries due to the lack of access of victims of possible violations to national or international legal remedies.

6. The Assembly considers the fight against the impunity of perpetrators of serious human rights violations as a priority for the Council of Europe and all national and international law-enforcement bodies. Impunity must be eradicated both as a matter of individual justice and as a deterrent to future human rights violations.

7. The Assembly commends the European Court of Human Rights for the extensive case law it has developed on impunity, in particular by imposing on member states the positive obligation to investigate serious human rights violations and to hold their perpetrators to account.

8. The full and speedy execution of the Court’s judgments in cases of impunity is the key to fighting this scourge in Council of Europe member states.

8.1. When the Court has found a failure to investigate effectively, the execution of the judgment cannot be limited to the payment of the pecuniary compensation fixed by the Court. Proper investigations must still be carried out and general measures taken to address the underlying causes of the violation.

8.2. The Assembly and its members in their national parliaments have an important role to play in securing the speedy execution of the Court’s judgments.

8.3. The Assembly commends the Committee of Ministers for having consistently noted that there is a continuing obligation to conduct effective investigations inasmuch as procedural violations of Article 2 of the Convention have been found by the Court. The application of these same rules to all states, without double standards, is of particular importance.

8.4. The timely communication by the Court to the states concerned of applications alleging a failure to investigate sends an important message to the competent authorities giving them the opportunity to carry out investigative acts before evidence is irretrievably lost.

9. The Assembly therefore urges all member and observer states to make the fight against impunity a priority, by:

9.1. clearly stating at the highest political level that serious human rights violations committed, aided or abetted by state agents will not be tolerated in any circumstances;

9.2. ensuring that state secrecy and immunities do not prevent effective, independent and impartial investigations into serious human rights violations – including in relation to secret detentions and unlawful interstate transfers of individuals that have taken place in and throughout Europe – and that those responsible are held to account;

9.3. granting their law-enforcement bodies the resources they need in order to effectively investigate human rights violations committed by non-state actors including through *ex officio* prosecution;

9.4. stamping out unacceptable prejudices and cultural attitudes among members of the law-enforcement bodies leading to widespread impunity of violence against women, so-called “honour crimes”, and crimes motivated by racism, anti-Semitism, xenophobia, Islamophobia, homophobia, sexism or other forms of intolerance;

9.5. by developing initial and in-service training modules for staff of the security services, judges and prosecutors, centring on care for victims of human rights violations and on measures to combat prejudice and stereotypes;

9.6. implementing the Assembly’s earlier resolutions and recommendations covering various impunity issues.

10. The Assembly urges the Committee of Ministers to speed up and intensify its work on elaborating guidelines on the fight against impunity, drawing from the case law of the European Court of Human Rights, from its own work on the execution of judgments, the pertinent resolutions and recommendations of the Assembly and the work of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, as well as from the work of the United Nations and relevant non-governmental organisations on this subject.

11. The Assembly also invites the European Court of Human Rights to continue making the fight against impunity a priority.

12. The Assembly calls on the parliaments of the member and observer states of the Council of Europe, as well as their individual members, to take a leading role in the fight against impunity by ensuring that appropriate laws are on their countries’ statute books, monitoring their implementation and using their closeness to the electorate, and thus their capacity for awareness raising and leadership, to change the underlying attitudes in society which make impunity for crimes and human rights violations possible in the first place.

13. The Assembly resolves to examine the advisability of establishing an independent European committee to investigate serious allegations of gross and systematic violations of human rights.