

Resolution 1858 (2012)¹

Final version

The honouring of obligations and commitments by Serbia

Parliamentary Assembly

1. The Parliamentary Assembly recalls its [Resolution 1661](#) (2009) on the honouring of obligations and commitments by Serbia. It welcomes the significant progress achieved by Serbia over the past two years in order to comply with Council of Europe standards and norms by steadily implementing the obligations and commitments entered into at the moment of its accession in 2003. The Assembly praises Serbia for the political stability achieved over the past years, the progress achieved, its efforts in view of integration into the European Union and its co-operation with the International Criminal Tribunal for the former Yugoslavia (ICTY).
2. The strengthening of democratic institutions and human rights, the reform of the judiciary and the prosecutor's office, the fight against crime and corruption, and the situation of the media have been on the State's political agenda and should remain key priorities in the coming years. In this respect, the Assembly welcomes the submission by the Serbian Parliament of a roadmap for the completion of its commitments and implementation of its statutory obligations, in line with [Resolution 1661](#) (2009), which has proved to be instrumental in measuring the progress achieved and determining the commitments yet to be fulfilled.
3. As regards regional co-operation:
 - 3.1. The Assembly acknowledges the positive and constructive role Serbia can play in the stabilisation of the region and welcomes the steps taken by the Serbian authorities to enhance Serbia's relations with its neighbours. The Assembly would like, in particular, to highlight the role of the parliament in that process and the adoption by the Serbian National Assembly, on 31 March 2010, of a declaration condemning the crimes committed in Srebrenica. The Assembly encourages the Serbian authorities to continue to implement a foreign policy aimed at strengthening dialogue, reconciliation and co-operation in the region, especially with Montenegro, Bosnia and Herzegovina and Croatia, and to maintain dialogue and promote good neighbourly relations based on respect for the sovereignty of the neighbouring countries.
 - 3.2. The Assembly praises the efforts deployed by Serbia to reactivate the process of finding long-term solutions for refugees and internally displaced persons, launched in Sarajevo in 2005. The Assembly also welcomes the signature of a joint declaration by the Foreign Ministers of Serbia, Bosnia and Herzegovina, Croatia and Montenegro on 14 November 2011 aimed at identifying concrete steps to remove the remaining obstacles to a durable solution for the return of refugees and displaced persons and urges the international community to support the process at the donors' conference foreseen in 2012.

1. Assembly debate on 25 January 2012 (6th Sitting) (see [Doc. 12813](#), report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: Mr Harutyunyan and Mr Saar). Text adopted by the Assembly on 25 January 2012 (6th Sitting).



4. As regards co-operation between Serbia and the ICTY:

4.1. The Assembly congratulates the Serbian authorities on the arrest of the two indicted war-crimes fugitives, Ratko Mladić, in May 2011, and Goran Hadžić, in August 2011, and their extradition to the ICTY, and expresses its firm conviction that these arrests will contribute to bringing justice to the victims of the war. The Assembly further encourages the Serbian authorities to identify and bring to justice those who aided and abetted the fugitives.

4.2. The Assembly congratulates Serbia for the ratification of the European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes (ETS No. 82). It also welcomes the signature of the European Convention on the Compensation of Victims of Violent Crimes (ETS No. 116) and encourages Serbia to ratify it without further delay.

4.3. The Assembly takes note of the Serbian authorities' intention to improve the witness protection system by transferring the powers and responsibilities concerned to the Ministry of Justice and to provide witnesses with proper protection. It asks Serbia to draft and adopt the relevant legislation without further delay, in line with Assembly Resolution 1784 (2011) on the protection of witnesses as a cornerstone for justice and reconciliation in the Balkans.

5. The Assembly has followed the developments concerning the status of Kosovo² and the Belgrade–Pristina dialogue. The Assembly strongly condemns the violent incidents that occurred in July 2011 in northern Kosovo leading to a number of casualties. It welcomes the resumption of the Belgrade–Pristina dialogue and the agreement reached in July 2011 on freedom of movement of persons and vehicles, the exchange of information concerning civil status and the agreement in November 2011 on the mutual recognition of school and university diplomas and degrees. The Assembly invites all stakeholders to implement these agreements in good faith. Such practical agreements will have a positive effect on citizens.

6. The Assembly reiterates the appeal launched in Resolution 1661 and firmly hopes that the political parties will use peaceful and democratic means and make the necessary compromises to reach a solution agreed by all stakeholders with a view to ensuring the safety of the people living in the region.

7. The Assembly notes that integration into the European Union has remained a goal for Serbia in recent years and has boosted a number of reforms in the field of human rights, the rule of law and democracy. The decision of the European Commission of 12 October 2011 to propose that Serbia be granted candidate status is a clear acknowledgement of the progress achieved.

8. The Assembly welcomes Serbia's commitment to pursue its integration into the European Union and reiterates its support to Serbia on this path. In this respect, the Assembly takes note of the conclusions adopted by the European Council on 9 December 2011 acknowledging the considerable progress Serbia has made towards fulfilling the political criteria set by the Copenhagen European Council and the Stabilisation and Association Process requirements. It also notes the fact that the European Council will decide in February or March 2012 to grant candidate status to Serbia after it has examined and confirmed that Serbia has continued to show credible commitment and achieved further progress with the implementation in good faith of the agreements reached in the dialogue with Pristina, has reached an agreement on inclusive regional co-operation and has actively co-operated to enable the European Union Rule of Law Mission in Kosovo (EULEX) and the NATO Kosovo Force (KFOR) to execute their mandates.

9. As regards the functioning of democratic institutions, the Assembly stresses the progress achieved in compliance with Resolution 1661. In particular, the Assembly:

9.1. notes the political stability that has prevailed since the last parliamentary elections in 2008 which creates a favourable environment for society to progress and to implement the necessary reforms in the field of democracy, human rights and the rule of law. The Assembly reiterates its call to the opposition to adopt a constructive attitude and to the majority coalition to create conditions for a meaningful dialogue with the opposition on key issues;

9.2. welcomes the adoption of the National Assembly Act on 26 February 2010, of its new Rules of Procedure on 28 July 2010, and the rules on the organisation and work of the services of the parliament on 5 July 2011, which should make the Serbian Parliament a more efficient and modern institution, strengthen its role and turn it into a proper arena for democratic debate;

2. . All reference to Kosovo in this text, whether to the territory, institutions or population, shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

9.3. encourages the National Assembly of Serbia to continue to develop, in co-operation with the Parliamentary Assembly, a follow-up Parliamentary Assistance Programme, making full use in particular of funding opportunities within the framework of the European Union's Instrument for Pre-accession Assistance and further strengthen the capacity of the National Assembly to play an increasingly active role in the political process and improve the quality of the parliamentary output and the role of the opposition in the parliament;

9.4. congratulates Serbia for adopting, in 2011, the Act on Altering and Amending the Act on Election of Members of Parliament of the Republic of Serbia in accordance with the Joint Opinion of the European Commission for Democracy through Law (Venice Commission) and the OSCE/ODIHR, which has brought the system of allocation of mandates in the parliament into line with European standards; it abolished the "party-administrated mandates" and the "blank resignations", as requested by the Assembly in its Resolution 1661; in addition, the Assembly praises the fact that these amendments will increase women's participation in parliamentary elections to 30%. The Assembly notes, however, that the Serbian Constitution still contains a provision allowing for "imperative mandates";

9.5. welcomes the amendments adopted on 20 June 2011 to the 2007 Local Elections Act, which formally abolish "blank resignations" at local level, in line with the decision of the Constitutional Court of 20 April 2010;

9.6. considers that the adoption of the 2009 Single Voters Register Act (which entered into force in December 2011) is a positive step to improve the accuracy and security of data; it regrets, however, that the State Electoral Commission Act could not be adopted in time and will not be in force for the 2012 parliamentary elections;

9.7. welcomes the adoption of the Act on the Financing of Political Activities on 14 June 2011, in line with the recommendations of the Group of States against Corruption (GRECO) and the Venice Commission;

9.8. welcomes the consolidation of local self-government and, in particular, the adoption of the Act on the Jurisdiction of the Autonomous Province of Vojvodina in November 2009 and the subsequent enactment of the Statute of the Vojvodina Provincial Assembly; the Assembly also welcomes the adoption of the Public Property Act in September 2011 and the Act on Amendments to the Act on Local Government Finance in July 2011, amending the method of transfer calculation and percentage of local government share in revenues from taxes on salaries;

9.9. congratulates Serbia for setting up and strengthening independent regulatory bodies, such as the Offices of the Defender of Citizens' Rights (Ombudsman), the Commissioner for the Protection of Equality and the Commissioner for the Protection of Free Access to Information. It considers such bodies as comprehensive and effective mechanisms to enhance the protection of citizens' rights and ensure the effective functioning of democratic institutions in Serbia and encourages Serbia to continue on this path;

9.10. therefore calls on the Serbian authorities to:

9.10.1. eliminate from the constitution the provisions establishing the imperative mandate of members of parliament;

9.10.2. take the necessary steps to revise the electoral law and adopt the State Electoral Commission Act after the 2012 parliamentary elections, with a view to setting up an independent and autonomous authority to supervise elections;

9.10.3. strengthen the oversight role of the parliament;

9.10.4. ensure that the Anti-Corruption Agency is provided with sufficient resources to control the funding of political parties and take the appropriate sanctions when necessary;

9.10.5. implement Recommendation 316 (2011) of the Congress of Local and Regional authorities of the Council of Europe, to continue to implement a comprehensive decentralisation reform in compliance with the European Charter of Local Self-Government (ETS No. 122), and to adopt the Act on Local Government Staff to increase the capacity of local authorities;

9.10.6. ensure adequate financial guarantees to enable local self-government and Vojvodina to exercise their jurisdictions;

9.10.7. sign and ratify, without further delay, the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106) and its additional protocols.

10. As regards the rule of law, the Assembly:

10.1. takes note of the comprehensive reform of the justice system carried out since 2008 that has resulted in the adoption of the Act on the Organisation of Courts, the Judges Act, the High Judicial Council Act, the Public Prosecution Act, the Act on the State Prosecutorial Council, and the Act on Court and Public Prosecutors Seats and Districts; the Assembly welcomes the fact that Serbia sought expertise from the Venice Commission on most of this legislation;

10.2. considers that the amendments to the Judicial Academy Act adopted in July 2011 will reinforce a merit-based recruitment of judges and encourages the Serbian authorities to further reinforce their initial and in-service training;

10.3. remains preoccupied by the lack of independence of the judiciary and stresses the need to reinforce the institutions and restore the confidence of the people in their justice system;

10.4. as regards the review of the cases of 800 non-re-elected judges and 150 non-re-elected prosecutors as a result of the reform of the justice system and the decisions of the High Judicial Council and the State Prosecutorial Council:

10.4.1. observes that the review process initiated in December 2009 was delayed but that, finally, in co-operation with international organisations, it is being carried out based on more transparent criteria;

10.4.2. considers that, despite some shortcomings, this process should ensure a fairer reappointment procedure of judges and prosecutors;

10.4.3. urges the High Judicial Council and the State Prosecutorial Council to complete the reappointment procedure of judges and prosecutors based on objective, undisputed, transparent and unbiased criteria, within a reasonable time and in compliance with European standards;

10.5. welcomes the planned revision of the Constitutional Court Act with a view to increasing its efficiency and invites the Serbian authorities to take into account the forthcoming opinion of the Venice Commission on that draft law;

10.6. remains highly concerned about the corruption which is still widespread in Serbia and affects many sectors of society, including political life, the judiciary and the health and education sectors;

10.7. welcomes the co-operation between the Serbian authorities and the Council of Europe in the fields of the reform of the judiciary and the fight against corruption, money laundering and the financing of terrorism;

10.8. in particular, calls on the Serbian authorities to:

10.8.1. develop and implement the legislation on the judiciary in accordance with European standards, guaranteeing in particular that the judiciary and prosecutors are immune from political influence; in that respect, the Assembly expresses its concern over the political influence exercised by the parliament and the president over the judiciary;

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

10.8.3. implement in full the recommendations of GRECO;

10.8.4. adopt legislation which will enable the implementation of the new Criminal Procedure Code of 2011, in line with Council of Europe standards;

10.8.5. continue to work with the Council of Europe in the consolidation of the Anti-Corruption Agency, which will play an increased role in the implementation of different policies and measures to combat political and administrative corruption;

10.8.6. set up an efficient and effective system of protection for "whistle-blowers" employed not only in the public but also in the private sector;

10.8.7. spare no efforts to strengthen the legislation and policies aimed at preventing money laundering and the financing of terrorism, in line with the recommendations of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL).

11. As regards human rights, the Assembly:

11.1. welcomes the adoption of the 2009 Anti-Discrimination Act and the development of a comprehensive policy to eliminate all forms of discrimination, including against sexual minorities;

11.2. welcomes the adoption of the Act on the Residence and Domicile of Citizens in November 2011, as well as the adoption of the Act amending the Identity Cards Act (in force since June 2011) and the Act amending the State Administrative Fees Act in July 2011;

11.3. believes that the adoption of the Act on National Councils of National Minorities in August 2009 and the subsequent election of 19 councils on 6 June 2010 – concerning more than 400 000 members of 16 national minorities – can contribute to the promotion of dialogue and co-operation between the central government and the minority communities, in particular regarding the use of minority languages, education, culture and media;

11.4. regrets that, to date, it has not been possible to organise in a proper way the election of the national council of the Bosniac minority and invites the Serbian authorities to foster interethnic, inter-religious and intercultural dialogue and strengthen its efforts to promote the social and economic development of this region;

11.5. welcomes the adoption by the parliament, on 28 July 2011, of the act supplementing the act ratifying the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;

11.6. welcomes the adoption of the 2009 Civilian Service Act governing matters relating to conscientious objection and alternative civilian service, as requested by the Assembly in its Resolution 1661;

11.7. strongly condemns the threats and attacks against independent journalists and media outlets;

11.8. regrets that the 2011 Belgrade Pride march was banned in response to threats of violence by extremist groups, and calls on the Serbian authorities to ensure that the right of lesbian, gay, bisexual and transgender persons to freedom of assembly and expression is safeguarded in the future;

11.9. in particular, calls on the Serbian authorities to:

11.9.1. put into effect the 2009 Anti-Discrimination Act by implementing Committee of Ministers Resolution CM/ResCMN(2011)7 of March 2011 on the implementation of the Framework Convention for the Protection of National Minorities by Serbia, Recommendation CM/Rec(2010)5 of the Committee of Ministers on measures to combat discrimination on grounds of sexual orientation or gender identity, the recommendations of the European Commission against Racism and Intolerance (ECRI) of 23 March 2011, the conclusions of the report of the Commissioner for Human Rights of September 2011 and the upcoming Committee of Ministers resolution on the implementation of the European Charter for Regional or Minority Languages (ETS No. 148);

11.9.2. develop further strategies to remedy the under-representation of national minorities in public administration and in the courts, as well as in State-owned companies;

11.9.3. pursue educational reform and make arrangements to include in school curricula the principles of tolerance, respect for others, intercultural dialogue and reconciliation;

11.9.4. review the achievements of, and challenges faced by, the national councils of national minorities after their first year of operation and provide, in this context, an assessment of the implementation of Assembly Resolution 1632 (2008) regarding the situation of national minorities in Vojvodina and of the Romanian ethnic minority in Serbia;

11.9.5. publish, in due course, the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and co-operate with the Council of Europe on the implementation of the CPT's recommendations;

11.9.6. investigate and prosecute all cases of violence and harassment against journalists and take positive steps to ensure their protection;

11.9.7. ensure, when implementing the new media strategy adopted on 28 September 2011, that the legislation to be adopted complies with Council of Europe standards, and in particular to:

11.9.7.1. ensure that the State withdraws from media ownership within a set time frame;

- 11.9.7.2. secure the constitutional rights of minorities when privatising the electronic media which broadcast minority programmes;
- 11.9.7.3. decriminalise defamation, in line with Resolution 1577 (2007) "Towards decriminalisation of defamation";
- 11.9.7.4. secure the freedom of information and financial and editorial independence of media outlets;
- 11.9.7.5. in particular make sure that the future media legislation contains well-developed measures for securing independent editorial policy;
- 11.9.8. amend the criminal code and include the criminal offence of "hate speech", in line with Committee of Ministers Recommendation No. R (97) 20 on "hate speech";
- 11.9.9. 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);
- 11.9.10. pursue their efforts to implement the Roma Advancement Strategy, paying particular attention to the Roma's personal identity documents, access to employment, health care, education and housing.

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

12.1. welcomes the fact that, to date, Serbia has signed and ratified 77 Council of Europe conventions and fulfilled, in that area, all its commitments, with the exception of the signature and ratification of the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (Madrid Convention, ETS No. 106);

12.2. calls on the Serbian authorities to ratify, without further delay, the six conventions signed but not yet ratified.

13. In conclusion, the Assembly acknowledges the significant progress made by Serbia to fulfil its obligations and commitments. The Assembly congratulates the Serbian authorities on the impressive reforms carried out and encourages Serbia to further co-operate with the Council of Europe to improve its legislation and practice in the field of the rule of law, democracy and human rights. The Assembly hopes that the next parliament and government will pursue these reforms, remain committed to the fulfilment of the remaining commitments and obligations and pursue the dialogue with Pristina by peaceful and diplomatic means.

14. With a view to fulfilling some essential remaining commitments and obligations that still need to be fully addressed, the Assembly resolves to pursue its monitoring of the honouring of obligations and commitments by Serbia, and sets the following objectives to complete the monitoring procedure and launch a post-monitoring dialogue:

- 14.1. full implementation of the reform of the judiciary in order to guarantee its independence and efficiency, including the completion of the review process of the non-re-elected judges and prosecutors;
- 14.2. adoption and implementation of effective anti-corruption policies;
- 14.3. adoption of amendments to the Criminal Code in line with GRECO recommendations;
- 14.4. improvement of the situation of the media;
- 14.5. full implementation of the rights of minorities, especially Roma.