Parliamentary Assembly
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COUNCIL OF EUROPE
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Resolution 1896 (2012)[1]
Final version

The honouring of obligations and commitments by the Russian Federation

Parliamentary Assembly

1. The Russian Federation joined the Council of Europe on 28 February 1996. Upon accession, it committed itself to respect the obligations incumbent upon every member State under Article 3 of the Statute, with regard to pluralist democracy, the rule of law and human rights. It also undertook a number of specific commitments listed in Parliamentary Assembly Opinion 193 (1996) on the application by Russia for membership of the Council of Europe.

2. In accordance with the monitoring procedure, as set out in Resolution 1115 (1997) on the setting up of a Parliamentary Assembly Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) and amended by Resolution 1431 (2005) on the initiation of a monitoring procedure and post-monitoring dialogue and Resolution 1515 (2006) on the progress of the Assembly's Monitoring Procedure (May 2005 – June 2006), the Assembly has assessed the progress made by the Russian Federation in the fulfilment of its obligations and commitments in Resolutions 1277 (2002) and 1455 (2005).

3. The Russian Federation has reached a unique moment in its short history of democratic development. The engagement and the mobilisation of more than 100 000 citizens following the December 2011 elections, the awakening of a very engaged civil society and the willingness of the authorities to hear the call for reforms could create a momentum for change.

4. To realise this unique political potential, Russian society needs concrete reforms. A number of laws introduced since December 2011 – including amendments to the law on political parties, changes in the electoral law and the re-introduction of direct elections of governors – constitute positive steps and illustrate a will to liberalise the system and make it more inclusive. That is why the Assembly welcomes the decrease of the electoral threshold from 7% to 5%, the liberalisation of the rules for registration of political parties and the reduction of the number of members needed, as well as the reduction of signatures needed for a presidential candidate from 2 million to 100 000 signatures, and the abrogation of the obligation to collect signatures for all other elections.

5. The Assembly also welcomes the decision of the Constitutional Court of 19 November 2009, to abolish *de facto* the death penalty and firmly asks for the establishment also of the *de jure* abolition of the death penalty in Russia. The Assembly urges the authorities to ratify Protocol No. 6 to the European Convention on Human Rights concerning the abolition of the death penalty (ETS No. 114) without delay.

6. Other measures and decisions taken this year raise serious concerns. In particular, four laws adopted by the State Duma in June and July 2012, namely the laws on the criminalisation of defamation and on the Internet, and amendments to the laws on assemblies (the so-called "protest law") and on non-governmental organisations (NGOs) (the so-called "law on foreign agents"), are worrying. These texts illustrate how full of contradictions the political situation in the Russian Federation is and can only call the authorities' real

1. Assembly debate on 2 October 2012 (30th and 31st Sittings) (see Doc. 13018 and addendum, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: Mr Frunda and Mr Gross). Text adopted by the Assembly on 2 October 2012 (31st Sitting).

intentions into question. The recently announced two-year prison sentence handed down to three members of the band Pussy Riot, widely perceived as patently disproportionate, has added to existing concerns and the Assembly calls for their immediate release.

7. In Resolution 1455 (2005), the Assembly fully recognised the right of the Russian authorities to carry out reforms adapted to economic, political and administrative realities. It welcomed the progress made in the fulfilment of a number of commitments, for example the ratification of the (revised) European Social Charter (ETS No. 163), the establishment of a public media service, the review of the way the regional governors are elected and many others.

8. Referring to the concern expressed in its last report about the reforms introduced by President Putin to reinforce "the verticality of power", as fundamentally undermining in many respects the system of checks and balances indispensable for the proper functioning of pluralistic democracy, the Assembly urges the newly elected President Putin to democratise the system.

9. Since the adoption of the previous resolution, two parliamentary elections, in 2007 and 2011, and two presidential elections, in 2008 and 2012, have taken place. All of them were marked by serious shortcomings and concerns relating to the whole electoral process, identified by both international and national observers, who nevertheless praised the number of Russian citizens making use of their right to vote. Throughout the whole reporting period, the same political force, United Russia, has held the majority of seats in the Duma, and its candidates, Mr Medvedev and Mr Putin, have won consecutive presidential elections.

10. Up until the parliamentary elections in December 2011, the reporting period was marked by a further strengthening of executive power and narrowing pluralism, despite a number of legislative initiatives undertaken by President Medvedev in 2009 and 2010 to liberalise the political system. Regrettably, the reforms aimed at increasing parliamentary control over the executive and enhancing party pluralism have had little impact and have not contributed in any significant way to the improvement of the democratic process.

11. At the same time, deficiencies in and restrictive implementation of other laws, crucial for the functioning of democratic institutions and the political environment, in particular the laws on political parties and on freedom of assembly, have led to a deterioration of the conditions for genuine political pluralism. The delegalisation of the Republican Party in 2007, rebuked by the European Court of Human Rights ("the Court"), the refusal to register some political parties, such as Parnas, the systematic non-authorisation of peaceful demonstrations and the use of disproportionate force to disperse them, the creation of restrictive conditions for freedom of the media – and especially the big and influential media – and harassment of the opposition, all had negative effects on the state of democracy in Russia until autumn 2011.

12. Furthermore, legislative amendments to the laws on the constitutional court have been widely viewed as a step backwards in terms of democracy and are indicative of the growing lack of judicial independence in Russia. For example, the sentencing of Mr Mikhail Khodorkovsky, in December 2010, to six more years of imprisonment and that of the members of the punk band Pussy Riot, in August 2012, were largely perceived as a sign that the judiciary in Russia remains subject to political pressure and the influence of the executive.

13. Although the murder of just one journalist is one too many in a democratic society, the Assembly takes note that the number of cases of violence against journalists decreased in the Russian Federation during the reporting period. But serious human rights violations, such as harassment, beatings and murder of engaged citizens, including, among others, the murders of Ms Anna Politkovskaya and Ms Natalia Estemirova, still remain unpunished.

14. Torture and death in detention are unacceptable in a Council of Europe member State, whatever the circumstances. That is why the cases of Mr Sergei Magnitsky and Ms Vera Trifonova, and the continuous impunity of the perpetrators, have been of utmost concern to the Assembly during the reporting period. The people responsible for these deaths must be identified and punished and these cases have to remain subject to investigation and follow-up during the next reporting period on the Russian Federation.

15. The situation in the North Caucasus, and in particular in Ingushetia and Dagestan, with serious abuses by law-enforcement agents, including murder, abductions and torture, as well as the prevailing impunity of the perpetrators in the region, confirmed by over 150 judgments of the Court, remain extremely worrying and unacceptable. The Assembly urges the Russian authorities to bring the perpetrators to justice.

16. At the same time, the Assembly notes with satisfaction that a number of reforms in the field of the judiciary, such as the establishment of the Investigative Committee and its separation from the Prosecutor's Office (the *Prokuratura*), the adoption of the Compensation Act, reform of the penitentiary system and a considerable decrease in the number of detainees in pre-trial detention, address long-standing concerns expressed by the Assembly on many occasions.

17. Terrorist attacks in the Russian Federation regrettably remain a major concern. Since the adoption of Resolution 1431 (2005), the country has been shaken by a considerable number of deadly attacks, notably in the Moscow Metro in March 2010 and in one of the big Moscow airports in January 2011.

18. With regard to the consequences of the war between Georgia and Russia, the Assembly reiterates its Resolutions 1633 (2008) on the consequences of the war between Georgia and Russia, 1647 (2009) on the implementation of Resolution 1633 on the consequences of the war between Georgia and Russia and 1683 (2009) on the war between Georgia and Russia: one year after, and recalls the conclusions of the report of the International Independent Fact-Finding Mission on the Conflict in Georgia, established by the European Union and led by Ambassador Tagliavini. The Assembly reaffirms the decision of the Monitoring Committee of January 2011 on the modalities of how to further proceed with this matter. The opening of polling stations in Abkhazia (Georgia), South Ossetia (Georgia) and Transnistria (Republic of Moldova) without the explicit consent of the *de jure* authorities in Tbilisi and Chişinău, as well as the prior "passportisation" of populations in these territories, violated the territorial integrity of these States, as recognised by the international community, including the Parliamentary Assembly.

19. Continuing attacks on the rights of lesbian, gay, bisexual and transgender persons remain a serious concern, with the introduction of laws restricting freedom of expression and assembly in relation to homosexuality in nine constituent entities of the Russian Federation and a proposal for similar legislation in the State Duma, and with the frequent refusal to allow peaceful assemblies despite the European Court of Human Rights judgment in *Alekseyev v. Russia*.

20. The developments following the last parliamentary elections in December 2011, initiated by mass protest demonstrations, and the subsequent declared readiness of the authorities to reform the system, have created a window of opportunity which is still open.

21. Unfortunately, these positive developments have been recently overshadowed by the adoption by the State Duma of a number of restrictive federal laws, including amendments to the law on defamation, the law on information, the law on NGOs, and the law on assemblies. The Assembly considers these laws as potentially regressive in terms of democratic development and urges the authorities not to make use of them in this harmful way.

22. The Assembly points to the recent opinions of the European Commission for Democracy through Law (Venice Commission) on five federal laws, namely the electoral law, the law on assemblies, the law on extremism, the law on the Federal Security Service (FSB) and the law on political parties, which identified a number of shortcomings, as well as to its forthcoming opinion on the amendments to the law on the freedom of Assembly adopted on 9 June 2012, and calls on the Russian authorities to address the concerns expressed therein.

23. The Assembly asks the Russian Federation to make full use of the legal expertise of the Venice Commission.

24. The Assembly is very concerned by the Duma's recent decision to deprive Mr Gennady Gudkov, member of the "Just Russia" party, of his parliamentary mandate on the basis of Article 4, paragraph 1-B of the Law on the Status of the Deputies of the Duma, in conjunction with Article 6, paragraph 2-B, which prohibits members of the Duma from engaging in any business activity. This decision, taken by a simple majority vote on the basis of the evidence provided by the General Prosecutor's Office and the Investigation Committee without any court proceedings, establishes a dangerous precedent which may undermine the very essence of representative democracy. The Assembly calls on the Duma to retract its decision and establish a proper procedure for the implementation of legal provisions regarding incompatibilities which would comply with democratic standards.

25. The Assembly is convinced that the coming months will be crucial for the democratic future of Russia, and that the Russian authorities must confirm their commitment to the democratic progress of the country. Therefore, the Assembly calls on the Russian authorities to:

With regard to the functioning of pluralist democracy

25.1. reflect, in co-operation with the Venice Commission, on a unified electoral code, which would address all the concerns identified during the 2011 and 2012 elections, in particular relating to:

25.1.1. modalities of the appointment procedure for the members of the Central Electoral Commission and electoral commissions of lower levels, in order to ensure their independence and impartiality;

25.1.2. safeguards which would effectively prevent the convergence of the State and the ruling party;

25.1.3. equal access to the media for all political parties during electoral campaigns;

25.1.4. observation of elections by representatives of national NGOs and associations and ensuring their effective participation;

25.1.5. an effective complaints and appeals procedure;

25.1.6. rules on party financing during electoral campaigns and the introduction of public funding;

25.1.7. the possibility for different political parties to constitute electoral alliances;

25.2. address the outstanding concerns raised by the Venice Commission in its opinion on the law on political parties, in particular relating to the level of bureaucratic control on the establishment and functioning of political parties;

25.3. re-establish a meaningful political dialogue with members of the opposition not represented in the State Duma, as was the case between December 2011 and March 2012;

25.4. improve the political environment so as to allow the opposition forces to be genuinely competitive;

25.5. amend the newly adopted laws on defamation, information and assembly (the so-called “protest law”), so that they cannot be misused in order to suppress public opinion, freedom of expression and civic involvement and mobilisation;

25.6. refrain from undue control of social networking services and the Internet, online filtering and cyberattacks on opposition websites;

25.7. refrain from attempts to discredit some of the most respected domestic and international NGOs by publicly accusing them, without foundation, of acting on foreign instructions and representing foreign interests;

25.8. amend the new law on NGOs (the so-called “law on foreign agents”), so that it cannot be used as an instrument of repression and intimidation of NGOs and civil society;

25.9. refrain from undue pressure and intimidation on the opposition and NGOs which are critical of the Russian Government;

25.10. review the legislation on local and regional authorities, with a view to abolishing the rule allowing for the dismissal of mayors;

25.11. reconsider the legislation on the distribution of powers between the federal executive authorities, executive authorities of entities of the Russian Federation and local authorities;

With regard to the rule of law

25.12. review the legislative and administrative framework, with a view to ensuring better protection of judges from undue influence by State or private interests, with particular focus on:

25.12.1. the procedures for appointment, promotion and dismissal of judges;

25.12.2. the tenure in office, notably in the case of justices of the peace;

25.12.3. the powers of presidents of courts;

25.13. refrain from undue influence on judges;

25.14. ensure proper implementation of the federal law on lawyers, in particular with regard to the responsibility of the bar associations for the appointment of legal representatives for indigent suspects;

25.15. limit the supervisory powers of the Prosecutor's Office (the *Prokuratura)* over the executive and legislative branches and bring the office into line with relevant European standards;

25.16. refrain from using the "supervisory review procedure" (*nadzor*) in civil cases, a procedure which will be abolished on 1 January 2013, thus eliminating violations of the principle of legal certainty by the quashing of final judicial decisions;

25.17. pursue reforms in the field of the judiciary, in strict compliance with Council of Europe standards;

25.18. continue efforts to improve conditions of detention on remand, in particular in pre-trial detention centres;

25.19. publish the most recent report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), as well as previous CPT reports;

25.20. consider measures to implement the recommendations of the Group of States against Corruption (GRECO) and, in particular:

25.20.1. revise the codes of administrative and criminal procedure, in order to firmly establish that cases of corruption must be treated as criminal offences;

25.20.2. adopt the necessary legal measures to establish the liability of legal persons for corruption offences;

25.20.3. provide effective, proportionate and dissuasive sanctions in these cases, in compliance with the requirements of the Criminal Law Convention on Corruption (ETS No. 173);

25.21. enhance efforts to fully implement the judgments of the European Court of Human Rights;

With regard to human rights and fundamental freedoms

25.22. ratify, without further delay, Protocol No. 6 to the European Convention on Human Rights;

25.23. ensure effective investigation of cases of abuse and harassment of human rights defenders and prosecute the perpetrators;

25.24. implement Assembly Resolution 1738 (2010) on legal remedies for human rights violations in the North Caucasus region, and notably bring to justice those found responsible for human rights violations;

25.25. investigate effectively all cases of alleged ill-treatment and torture by the police and by law-enforcement agencies and bring the perpetrators to justice, and in particular elucidate all the circumstances of the deaths of Mr Magnitsky and Ms Trifonova, as well as of the case of Mr Vasily Alexanyan, who was imprisoned on pre-trial detention for over two years and denied adequate medical treatment, and who died about two years after the Russian authorities released him following the intervention of the European Court of Human Rights;

25.26. refrain from using force against peaceful demonstrators;

25.27. review the policies for authorising demonstrations and sanctioning the organisers, and refrain from restrictive or abusive application of the law on assemblies;

25.28. review, in accordance with the procedures provided for by Russian legislation and in compliance with democratic standards, as set forth in the Convention and in the Court's case law, the recent judgment against three members of the band Pussy Riot;

25.29. ratify the European Charter for Regional or Minority Languages (ETS No. 148) without further delay;

25.30. while supporting the Russian authorities in the implementation of alternative military service, review the law on alternative military service and bring these changes into the law as soon as possible;

25.31. refrain from applying the law on extremist activities against all religious communities, especially Jehovah's Witnesses;

25.32. ensure that laws restricting freedom of expression and assembly in relation to homosexuality are repealed and that the right of lesbian, gay, bisexual and transgender persons to freedom of assembly is guaranteed;

With regard to other outstanding commitments

25.33. implement Resolutions 1633 (2008), 1647 (2009) and 1683 (2009) on the consequences of the war between Georgia and Russia;

25.34. complete the withdrawal of the remaining Russian military forces and their equipment from the territory of the Republic of Moldova without further delay;

25.35. denounce as wrong the concept of two different categories of foreign country, whereby some are treated as a zone of special influence called “the near abroad” and refrain from promoting the geographical doctrine of zones of “privileged interests”;

25.36. continue efforts to settle rapidly outstanding issues on the return of cultural and other property by direct negotiation with the countries concerned, in accordance with the commitments entered into by the Russian Federation through Opinion 193 (1996), paragraphs 10.xii, 10.xiii and 10.xiv.

26. The Assembly is encouraged by the renewed willingness of the Russian authorities to pursue the fulfilment of their commitments. However, declarations should be followed by acts. In this respect, the Assembly expects that the Russian authorities will pursue the path of democratisation and will refrain from taking any measures which may hinder democratic progress.

27. Against this background, the Assembly resolves to pursue its monitoring of the honouring of obligations and commitments by the Russian Federation until it receives evidence of substantial progress with regard to the issues raised in this and the above-mentioned resolutions and their fulfilment, as provided by Opinion 193 (1996) of the Assembly and subsequent resolutions, recommendations and reports.