



**Resolution 2040 (2015)<sup>1</sup>**

Final version

## Threats to the rule of law in Council of Europe member States: asserting the Parliamentary Assembly's authority

Parliamentary Assembly

1. The Parliamentary Assembly recalls its previous texts upholding the rule of law in the member States of the Council of Europe, in particular [Resolutions 1738 \(2010\)](#), [1685 \(2009\)](#), [1645 \(2009\)](#), [1606 \(2008\)](#), [1551 \(2007\)](#) and [Recommendations 1955 \(2010\)](#), [1856 \(2009\)](#), [1832 \(2008\)](#) and [1792 \(2007\)](#). It stresses that this list is by no means exhaustive and that serious problems related to the rule of law exist in other member and observer States.
2. The Assembly considers that assessing the actual implementation of these texts, which provide examples of issues of variable nature and gravity concerning States representing different legal systems and cultures, will contribute to asserting its authority in all member, observer and applicant States.
3. The Assembly regrets that a number of recommendations addressed to member States in these texts, in order to safeguard and strengthen the rule of law, have still not been implemented by the States concerned:
  - 3.1. in the Russian Federation, the Assembly's recommendations – notably those regarding the cases of the former leading executives of Yukos, the Magnitsky case (including the first call, in [Resolution 1685 \(2009\)](#), to free Sergei Magnitsky when he was still alive), and the “spy mania” cases of prominent academics and environmental whistle-blowers given long prison terms for purported violations of State secrecy ([Resolution 1551](#) and [Recommendation 1792 \(2007\)](#)) – have remained largely unimplemented, despite the release of Mikhail Khodorkovsky and Platon Lebedev from prison shortly before the end of their prison terms. The rule of law in the Russian Federation continues to be threatened by a climate of intimidation vis-à-vis lawyers, journalists and human rights activists;
  - 3.2. in Ukraine, the Assembly's call to hold to account the perpetrators and the instigators and organisers of the murder of journalist Georgiy Gongadze ([Resolution 1645](#) and [Recommendation 1856 \(2009\)](#)) was implemented only in part. Three interior ministry officials and their commander, General Pukach, have been found guilty of the murder. But their former minister committed suicide in suspicious circumstances and the accusations launched by General Pukach against the former president and the former head of the presidential administration were not followed up effectively;
  - 3.3. in Germany, the Assembly's recommendation to introduce elements of judicial self-administration to limit the right of ministers to issue instructions to prosecutors in individual cases and to increase judges' and prosecutors' salaries in line with the dignity and importance of judicial office ([Resolution 1685 \(2009\)](#)) have not been implemented. Germany still lacks judicial self-administration and remains one of the Council of Europe member States with the lowest salaries for judges and prosecutors in relation to the average salary at the national level;
  - 3.4. regarding France, the Assembly is pleased to note that, in line with [Resolution 1685 \(2009\)](#), the institution of the investigating judge was not abolished, that the right of defence lawyers' access to suspects held in police detention has been considerably improved, and that the right of ministers to give instructions to prosecutors has been further limited by law. Regrettably, the Assembly's call to

---

1. *Text adopted by the Standing Committee, acting on behalf of the Assembly, on 6 March 2015 (see [Doc. 13713](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Ms Marieluise Beck).*



strengthen the role of the elected representatives of judges and prosecutors vis-à-vis the politically appointed members of the High Judicial Council was not heard. France also remains one of the countries with the lowest per capita resources allocated to the judiciary and the lowest salaries for judges and prosecutors in relation to national average salaries. Finally, judges and prosecutors have complained about frequent attempts by politicians to interfere with their independence;

3.5. in Belarus, the Assembly's calls to stop abuses of the criminal justice system for the persecution of political opponents, to hold to account the senior officials named by the Assembly as suspects in a series of high-profile disappearances and to abolish the death penalty have not been heard. Even after the release of the Václav Havel Human Rights Prize winner Ales Bialiatski, several political opponents remain unjustly imprisoned, the investigations into high-profile disappearances remain pending without any results, and executions have continued.

4. The Assembly considers that lessons for strengthening the rule of law in all Council of Europe member States can be drawn from the above examples. In particular, it invites the competent authorities of all member, observer and applicant States to ensure that the judiciary is:

4.1. fully independent, in law and practice, in order to successfully resist both politically motivated prosecutions of political opponents, journalists and civil society activists and cover-ups of crimes committed or instigated and organised by politicians;

4.2. sufficiently well-funded in terms of resources allocated to the judiciary per capita of the population and of the social status of the holders of judicial office, in order to provide meaningful access to high-quality justice for all.

5. The Assembly calls on all member, observer and applicant States to give due consideration to its texts, which reflect the views of a majority of the democratically elected representatives of the Council of Europe's 47 member States.