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The state of human rights in Europe and the progress of the Assembly's monitoring procedure

Report[1]
Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)
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Summary

Throughout the reporting period (June 2008 – June 2009), the Monitoring Committee has made public a number of information documents for all countries under monitoring procedure, with the exception of Montenegro, and for all countries involved in a post-monitoring dialogue and has presented no less than twelve reports to the Assembly, of which five were under urgent procedure.

The objective of this report remains to ensure that it can provide a meaningful contribution to the Assembly's debate on the state of human rights in Europe. Therefore, the present report, like last year's report, does not simply present the activities of the Monitoring Committee during the reporting period, but enters into the merits and summarises the main human rights issues raised in all member states currently under a monitoring procedure or involved in a post-monitoring dialogue. It does follow a thematic transversal approach and in no way attempts to make any comparison between these states.

Moreover, the second cycle of periodic reports on member states which are not subject to a monitoring procedure or involved in a post-monitoring dialogue has been initiated. The periodic reports on the first group of 11 member states have been prepared and are set out in the addendum to this report: Andorra, Austria, Belgium, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France and Germany.

1. Reference to committee: Resolution 1115 (1997).

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A. Draft resolution

1. The Parliamentary Assembly acknowledges the work carried out by its Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) in accompanying eleven countries currently under monitoring (Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Moldova, Monaco, Montenegro, the Russian Federation, Serbia and Ukraine) and three countries engaged in a post-monitoring dialogue (Bulgaria, Turkey and "the former Yugoslav Republic of Macedonia") through the process of enhancing the protection of human rights and respect for the principles of the rule of law. It particularly appreciates the fact that, throughout the reporting period (June 2008 – June 2009), the Monitoring Committee has produced public assessments for all countries under monitoring, with the exception of Montenegro, and for all countries involved in a post-monitoring dialogue.

2. The Assembly welcomes the initiative of the Monitoring Committee to contribute to its debate on the state of human rights in Europe by focusing this year's progress report on the human rights situation in the above-mentioned member states on the basis of its most recent reports. Some of the latter were prepared under accelerated procedures in order to enable the Assembly to react quickly and efficiently to urgent and critical situations raising serious human rights concerns, such as: the outbreak of war in August 2008 between two member states of the Organisation, Georgia and Russia, both of which are under the Assembly's monitoring procedure; the reconsideration of previously ratified credentials of the Russian delegation on substantial grounds; the consequences of the post-electoral crisis in Armenia throughout the reporting period; the crisis that erupted in Turkey when the ruling AKP Party was threatened with dissolution in spring 2008, and the post-electoral crisis in Moldova in April 2009.

3. As regards the serious human rights violations committed by both sides in the course and in the aftermath of the war, the Assembly recalls its Resolution 1633 (2008) on the consequences of the war between Georgia and Russia and its Resolution 1647 (2009) on the implementation of Resolution 1633 (2008) in which it urged both states to investigate allegations of human rights violations and bring the perpetrators to account before the domestic courts, implement the interim measures ordered by the European Court of Human Rights and the International Court of Justice and any forthcoming judgments of these courts, and co-operate fully and unconditionally with any possible investigation by the International Criminal Court.

4. On the basis of the Monitoring Committee's country specific reports, the Assembly notes with satisfaction that most states under monitoring or post-monitoring have honoured their formal commitments relating to the ratification of Council of Europe human rights conventions:

4.1. the most notorious exception remains the non ratification by Russia of Protocol No. 6 to the European Convention of Human Rights (the Convention) (ETS No. 5) on the abolition of the death penalty (ETS No. 114) and of Protocol No. 14 amending the control system of the Convention (ETS. No. 194). Russia being the only member state which has not yet ratified these two important protocols, this issue is a key stumbling block in its co-operation with the Council of Europe. The Assembly reiterates that the recent adoption of Protocol No. 14 *bis* is only an interim solution and should not be seen as an alternative to the ratification by Russia of Protocol No. 14;

4.2. Monaco has yet to ratify Protocols No. 1 (ETS No. 9) and No. 12 (ETS No. 177) to the Convention, in line with its accession commitments. Protocol No. 12 has been signed but not yet ratified by Azerbaijan, Moldova and Turkey;

4.3. ratification of the Revised European Social Charter (ETS No. 163) has yet to be completed, in line with accession commitments, by Monaco and Montenegro. The Assembly welcomes the recent adoption of the law on the ratification of the Charter by both chambers of the Russian Parliament, as well as by the National Assembly of Serbia.

5. The Assembly welcomes the fact that most member states under monitoring or post-monitoring have ratified the Convention on Action against Trafficking in Human Beings, which entered into force on 1 February 2008 and led to the setting up of a new specific monitoring mechanism, the GRETA. The Convention has been signed but not yet ratified by "the former Yugoslav Republic of Macedonia", Turkey and Ukraine, and has yet to be signed by Azerbaijan, Monaco and Russia.

6. The Assembly notes that protection of human rights can only be achieved if the victims of human rights violations have access to an effective remedy and are entitled to a fair trial within a reasonable time by an independent court. In this respect:

6.1. while judicial reform is progressing in almost all countries under monitoring or post-monitoring, shortcomings still persist as regards the independence of the judiciary, notably in Armenia, Bulgaria, Russia, Serbia, Turkey and Ukraine. Poor material conditions and a serious backlog affect the functioning of the judiciary in Bosnia and Herzegovina;

6.2. the reform of the Prosecutor General's Office is an outstanding commitment in many countries under monitoring procedure, such as, in particular, in Albania, Russia and Ukraine. As regards in particular the issue of extra-penal functions exercised by *Procuraturas* in some of them, the Assembly underlines the importance that these functions respect the principle of separation of powers and the role of courts to protect human rights, and that they are carried out on behalf of the society and public interest to ensure the application of law while respecting fundamental rights and freedoms.

7. A number of systemic problems in the functioning of the judiciary are often at the origin of violations of the right to a fair trial within a reasonable time. The non-execution of final domestic judicial decisions or unreasonable delays in proceedings represent such systemic problems in many countries under monitoring or post-monitoring, such as Albania, Bosnia and Herzegovina, Russia, "the former Yugoslav Republic of Macedonia" and Ukraine. Although the Russian authorities have taken measures in the right direction over the last couple of years, the functioning of the Russian judiciary is currently affected by two additional structural problems, namely the quality of domestic judicial remedies compelling the higher courts to overrule final judgments through supervisory review ("*nadzor*") proceedings and the length of pre-trial detention.

8. Overcrowding and poor conditions in prisons and pre-trial detention centres continue to be issues of concern in all countries under monitoring or post-monitoring, as well as in most European countries. The last report by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on the situation in prisons in "the former Yugoslav Republic of Macedonia" is extremely alarming. In Ukraine, the human rights situation in prisons has significantly deteriorated over the last four years and implementation of reforms in the prison system has not yet been completed in line with its accession commitment, despite repeated calls by the Assembly and its Monitoring Committee.

9. The Assembly remains concerned about the continued detention of opposition supporters in relation to the post-electoral events of 1 and 2 March 2008 in Armenia which, notwithstanding positive legislative changes, undermines the possibility for a meaningful dialogue between the authorities and the opposition and the normalisation of political life. It therefore urges once more the Armenian authorities to consider all legal means available to them, including amnesty, pardons and dismissal of charges, to release these persons without delay.

10. 10 Despite repeated calls by the Assembly for the release of all alleged political prisoners in Azerbaijan, a number of them remain in prison, including two prominent opposition journalists. The Assembly can only but reiterate its call for their immediate release.

11. Excessive use of force and ill-treatment by the police continue to be issues of concern in most countries under consideration (Albania, Armenia, Azerbaijan, Bulgaria, Georgia, Moldova, Russia, "the former Yugoslav Republic of Macedonia" and Ukraine). The failure to investigate and prosecute allegations of police ill-treatment continues to foster a climate of impunity:

11.1. an independent, transparent and credible inquiry into the events that occurred on 1 and 2 March 2008 in Armenia, including the excessive use of force by the police and the precise circumstances leading to the fatalities, and an independent and thorough investigation into all human rights violations committed by the police in Moldova following the elections of 5 April 2009, have been specifically demanded by the Assembly when reacting to post-electoral crises in the two countries;

11.2. cases of unjustified use of force by members of the Russian security forces during operations in Chechnya, disappearances, unacknowledged detentions, torture and ill-treatment, unlawful search and destruction of property, lack of effective investigations and continuing shortcomings in domestic remedies in this respect are pending before the Committee of Ministers within the framework of the supervision of the execution of an important number of judgments of the European Court of Human Rights (the Court) on Russia. The supervision of the execution of 175 judgments and decisions of the Court concerning similar such violations committed by the security forces in Turkey has recently been closed following the adoption of a number of measures by the Turkish authorities;

11.3. the Assembly welcomes the introduction of new mechanisms of democratic oversight over the activities of the armed and security forces, as well as the police, in Serbia;

11.4. hazing in the Russian armed forces continues to be an issue of concern despite measures taken to combat the phenomenon, in particular the move towards fully professional armed forces.

12. As regards freedom of expression:

12.1. cases of harassment and intimidation of, or even physical threats against, journalists, as well as the absence of appropriate investigations and prosecutions in such cases, remain or have recently emerged as issues of serious concern in Armenia, Azerbaijan, Bulgaria, Moldova, Russia, Serbia and Ukraine;

12.2. in Georgia, although the Law on Freedom of Speech and Expression has been considered as a model for the region, weak editorial independence, low professional standards and self-censorship persist;

12.3. in Turkey, the reform of Article 301 of the Criminal Code has by no means lifted all the restrictions on the exercise of freedom of expression. The Committee of Ministers continues to supervise the execution of 82 judgments of the Court finding violations of freedom of expression.

13. As regards freedom of association, the Assembly refers to its recent Resolution 1660 (2009) on the situation of human rights defenders in Council of Europe member states and further notes that:

13.1. freedom of association and harassment of non-governmental organisations (NGOs) has been one of the main issues of concern in Russia, especially since the entry into force of new legislation ("NGO law") in 2006, which led to the closure and the denial of registration of several thousands of NGOs. The Assembly thus welcomes the recent initiative of the President of the Russian Federation to set up a working group to draft changes to the NGO law;

13.2. legal restrictions on freedom of association have recently been introduced in Azerbaijan and have led to a deterioration of the situation for civil society activists who already were subjected to harassment;

13.3. the adoption of the Law on Associations remains an outstanding commitment for Serbia;

13.4. the execution of the judgment of the Court in the case of the *United Macedonian Organisation Ilinden – Pirin and others v. Bulgaria*, in which the Court found that the dissolution of this political party violated Article 11 of the Convention guaranteeing freedom of association, is still pending;

13.5. in the wake of its Resolution 1622 (2008) on the functioning of democratic institutions in Turkey: recent developments, which was adopted in June 2008, when the ruling AKP party in Turkey was threatened with dissolution, the European Commission for Democracy through Law (Venice Commission), seized by the Monitoring Committee, held that the relevant constitutional and legal provisions concerning the dissolution of political parties in Turkey together form a system which as a whole is incompatible with Article 11 of the Convention. The Assembly therefore urges once again the Turkish authorities to speed up the process of fully overhauling the 1982 Constitution, in co-operation with the Venice Commission.

14. Despite positive changes in the law, freedom of assembly is not fully respected in practice in Armenia and Azerbaijan. Ukraine has not yet adopted a law governing peaceful assemblies, despite its accession commitment, and systematic abuses of this freedom have been reported in 2008. In Georgia, the growing number of attacks by unknown assailants on opposition activists and peaceful demonstrators participating in the protest rallies that started as of 9 April 2009 is a matter of serious concern and needs to be fully investigated. As regards the acts of violence which were committed during the post-electoral protests in Chisinau in April 2009, the Assembly recalls its Resolution 1666 (2009) on the functioning of democratic institutions in Moldova and the necessity of carrying out an independent, transparent and credible inquiry into the events and the circumstances which led to them.

15. As regards freedom of religion and of conscience:

15.1. recent amendments to the relevant legislation raise concerns in Armenia, in particular as regards the requirements for registration of religious organisations and the definition of the offence of proselytism;

15.2. in Turkey, the lack of recognition of legal personality is a problem affecting all religious communities. The Assembly notes that the Venice Commission is currently preparing an opinion on this issue, as well as on the right of the Greek Orthodox Patriarchate of Istanbul to use the title "Ecumenical";

15.3. legislation on alternative service has not yet been introduced in Azerbaijan and Turkey, whereas in Armenia and Russia relevant legislation exists but does not offer conscientious objectors the guarantee of a genuine alternative service of a clearly civilian nature; the continuing imprisonment of conscientious objectors in Armenia and Turkey is a matter of serious concern.

16. Problems related to the situation of refugees and internally displaced persons persist in Bosnia and Herzegovina, Georgia and Serbia, while Turkey has not yet lifted the geographical reservation to the 1951 Geneva Convention on the Status of Refugees. Alarming practices regarding the removal of refugees and asylum seekers in Ukraine have been documented by the United Nations High Commissioner for Refugees in 2008. The Assembly also refers in this respect to its Resolution […] on protecting the human rights of long-term displaced persons in Europe.

17. As regards non-discrimination and the need to promote equality, the Assembly notes that:

17.1. discrimination and violence against women are persisting problems in many countries under monitoring or post-monitoring. Legislative measures taken by the Albanian authorities to fight these phenomena are to be welcomed but have yet to prove their effectiveness in practice;

17.2. discrimination and violence against lesbians, gay, bisexual and transgender (LGBT) people are continuing issues of concern in Albania, Bosnia and Herzegovina, Russia and Serbia. The Assembly has welcomed the recent adoption in Serbia of an anti-discrimination law that addresses discrimination on grounds of sexual orientation, and expects that a similar law pending before the Albanian parliament will also be adopted soon;

17.3. serious concerns persist in Bosnia and Herzegovina where not all citizens have equal access to government structures at all levels, as the so-called "Others" cannot run in the election for members of the presidency and participate in the designation of delegates to the House of Peoples, despite repeated calls by the Assembly for a constitutional reform which would abolish such inequalities. Furthermore, the Assembly's repeated calls to put an end to the unacceptable phenomenon of "ethnic segregation" in primary and secondary schools have yet to be followed.

18. As regards the protection of minorities and the fight against racism and intolerance, the Assembly:

18.1. welcomes the fact that the Framework Convention for the Protection of National Minorities (the Framework Convention, ETS No. 157) is in force in all counties under monitoring or post-monitoring, with the exception of Turkey;

18.2. regrets that the signature and/or ratification of the European Charter for Regional or Minority Languages (ETS No. 148) is still an outstanding commitment for Albania, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Russia and "the former Yugoslav Republic of Macedonia". The Charter has been signed but not yet ratified by Moldova, while it has not been signed by Turkey;

18.3. notes that problems relating to the protection of national minorities are examined in depth by its Monitoring Committee in all its country specific reports, which also take into account the findings of the Advisory Committee on the implementation of the Framework Convention, the European Commission against Racism and Intolerance (ECRI) and the Committee of Experts of the European Charter for Regional or Minority Languages;

18.4. notes the common problems faced by the Roma community, including lack of personal documents, low school enrolment rates, and obstacles in access to or discrimination in employment, education and housing, in several countries under monitoring or post-monitoring (notably Albania, Bosnia and Herzegovina, Bulgaria, and Serbia). The Assembly welcomes the efforts made by the authorities of these states to tackle the problem through the adoption of several National Strategies and Action Plans, including in the context of the 2005 -2015 Decade of Roma Inclusion. However, further efforts are needed to combat anti-gypsyism and promote a positive image of Roma through awareness-raising campaigns.

19. The Assembly welcomes the synergies that the Monitoring Committee has developed with the Commissioner for Human Rights throughout the reporting period, in particular, as regards the handling of the war between Georgia and Russia and the post-electoral crises in Armenia and Moldova.

20. The Assembly urges all states currently under monitoring or engaged in a post-monitoring dialogue to step up their co-operation with the Monitoring Committee and to implement all the recommendations contained in the country-specific resolutions adopted by the Assembly, as well as those issued by the Commissioner for Human Rights and other Council of Europe institutions and monitoring bodies. It reaffirms its readiness to provide the necessary support to the countries concerned through its parliamentary co-operation and assistance programmes.

21. Furthermore, the Assembly takes note of the second cycle of periodic reports on the first group of 11 member states which are not subject to a monitoring procedure or involved in a post-monitoring dialogue: Andorra, Austria, Belgium, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France and Germany. As was the case for the first cycle, they are based on the country-by-country assessments made by the Commissioner for Human Rights and other Council of Europe monitoring mechanisms or institutions.

22. The Assembly welcomes the fact that, since the adoption of its Resolution 1515 (2006) on the progress of the Assembly's monitoring procedure (May 2005 – June 2006):

22.1. Andorra ratified Protocol No. 12 to the European Convention on Human Rights (the Convention) (ETS No. 177);

22.2. France ratified Protocol No. 13 to the Convention on the abolition of the death penalty in all circumstances (ETS No. 187);

22.3. Andorra and Belgium ratified Protocol No. 14 to the Convention amending the control system of the Convention (CETS No. 194);

23. Noting that a number of the states under periodic reporting are not subject to certain specific monitoring mechanisms of the Organisation because they have not yet ratified the relevant conventions, the Assembly urges once more:

23.1. Denmark and France to sign and ratify and Austria, Belgium, the Czech Republic, Estonia and Germany to ratify Protocol No. 12 to the European Convention on Human Rights (ETS No. 177);

23.2. Austria, the Czech Republic, Denmark and Germany to ratify the revised European Social Charter (ETS No. 163), noting that all of them have ratified the 1961 European Social Charter (ETS No. 35);

23.3. Estonia and Germany to sign and ratify and Austria, the Czech Republic and Denmark to ratify the Additional Protocol to the European Social Charter providing for a system of collective complaints (ETS No. 158);

23.4. France to sign and ratify and Belgium to ratify the Framework Convention for the Protection of National Minorities (ETS No. 157);

23.5. Belgium and Estonia to sign and ratify and the Czech Republic and France to ratify the European Charter for Regional or Minority Languages (ETS No. 148).

24. The Assembly, reiterating the special role of national parliaments in providing democratic oversight over government action, urges the national parliaments of the states under periodic reporting to:

24.1. use these periodic reports as the basis for a debate on their country's record with regard to the fulfillment of their statutory and conventional obligations as member states of the Council of Europe;

24.2. promote execution of the judgments of the European Court of Human Rights and compliance with recommendations made by the Commissioner for Human Rights and other specific Council of Europe monitoring bodies, both by provoking and accelerating the necessary legislative initiatives and exercising their oversight role with respect to government action.

25. The Assembly invites the European Union bodies, as far as applicable, to make use of the reports of the Assembly's Monitoring Committee, prepared under its monitoring procedure or post-monitoring dialogue, as well as its periodic reports, and take into account the findings of the relevant Council of Europe human rights institutions and monitoring mechanisms, such as the judgments of the Court and the reports of the Commissioner for Human Rights, as well as the relevant resolutions and recommendations adopted by the Assembly.

B. Explanatory memorandum by Mr Holovaty, rapporteur

1. Introduction

1. During the reporting period, i.e. from June 2008 to June 2009, the Monitoring Committee has been particularly busy. The period has been marked by the outbreak of a war in August 2008 between two member states of the Organisation, both of which are under the Assembly's monitoring procedure – Georgia and Russia – which resulted in serious human rights violations and gave rise to three reports being presented to the Parliamentary Assembly by the Monitoring Committee in October 2008, January 2009 and April 2009, the first one under urgent procedure. As a consequence, the Assembly has urged its Monitoring Committee to step up its monitoring procedure with respect to both Georgia and Russia.

2. The Committee was also confronted with urgent or critical situations raising serious human rights concerns in other member states, such as: the post-electoral crisis in Armenia, which led to two Assembly debates in June 2008 and January 2009 and will lead to a third one in June 2009, the first one under urgent procedure; the crisis which erupted in Turkey when the ruling AKP Party was threatened with dissolution which led to an Assembly debate under urgent procedure in June 2008; the post-electoral crisis in Moldova which led to an Assembly debate under urgent procedure in April 2009. Three more reports were presented to the Assembly under the regular monitoring procedure on the functioning of democratic institutions in Azerbaijan (June 2008) and on the honouring of obligations and commitments by Bosnia and Herzegovina (October 2008) and Serbia (April 2009). Finally, in October 2008 the Monitoring Committee presented to the Assembly a report on the reconsideration of previously ratified credentials of the Russian delegation on substantial grounds related to the violation of obligations and commitments committed by Russia during and in the aftermath of the war with Georgia. In total, the Monitoring Committee has presented no less than twelve reports to the Assembly of which five were under urgent procedure. The Committee has also approved and made public a number of information documents prepared by its co-rapporteurs on all but one of the countries under monitoring procedure (Montenegro) and by myself on all three countries involved in a post-monitoring dialogue[2].

3. That said, in accordance with the practice established by our committee and welcomed by the Assembly last year in its Resolution 1619 (2008), I have prepared this year's progress report with the same objective in mind, which is to ensure that it can provide a meaningful contribution to the Assembly's debate during the June part-session on the state of human rights in Europe. Therefore, the present report, like last year's report, does not simply present the activities of the Monitoring Committee during the reporting period, but enters into the merits and summarises the main human rights issues raised in all member states currently under a monitoring procedure or involved in a post-monitoring dialogue (see below, under 2).

4. As the rapporteur of the Committee on Legal Affairs and Human Rights, Mr Christos Pourgourides, said in his report on the "State of Human Rights and Democracy in Europe" in 2007 (Doc. 11202), the rule of law is the backbone of human rights implementation. Effective protection of human rights can only be achieved if the victims of human rights violations have access to an effective remedy (Article 13 of the European Convention on Human Rights (ECHR)) and are entitled to a fair and public hearing within a reasonable time before an independent and impartial tribunal established by law (Article 6 of the ECHR). For this reason, before dealing with the "classic" human rights subject-matters raised in the country specific reports of the Committee (see below, under 2., sections 2.3 to 2.10), I have briefly dealt with two main subjects related to the rule of law which the Monitoring Committee is consistently covering in its reports, namely independence and effectiveness of national judicial systems, as well as the existence and effectiveness of domestic remedies against human rights violations (see below, under 2., sections 2.1 and 2.2). Finally, I have briefly dealt in a separate section with the human rights concerns raised in the context of the Georgia-Russia war (see below, under 2.11).

5. From a methodological point of view, as was the case last year, I have limited myself to references to texts adopted by the Assembly and to reports or other public documents prepared by our Committee's co-rapporteurs who follow the situation in each specific country or myself in my capacity as rapporteur for the post-monitoring dialogue with three countries. I have also included references to relevant work carried out by the two international non-governmental organisations (NGOs) that serve most frequently as sources for the preparation of our Committee documents, namely Amnesty International (AI) and Human Rights Watch

2. All documents of the Monitoring Committee quoted in this report with an AS/Mon reference can be found on the website of the committee.

(HRW). In this respect, I am also particular pleased that the Secretary General of AI, Ms Irene Khan, and the Director for Europe and Central Asia of HRW, Ms Holly Cartner, have both accepted our invitation to address the Assembly in the framework of the debate on our Committee's report.

6. In accordance with the practice established since 2006 which was welcomed by the Assembly in its Resolution 1515 (2006), a second cycle of periodic reports on member states which are not subject to a monitoring procedure or involved in a post-monitoring dialogue has been initiated. Periodic reports on the first group of 11 member states have been prepared and are set out in the addendum to this report: Andorra, Austria, Belgium, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France and Germany. As in the first cycle, they are based on the country-by-country assessments made by the Commissioner for Human Rights and other Council of Europe monitoring bodies and human rights institutions. However, reference is only made to the most recent assessments made after June 2006, when the first periodic reports on the same states were presented. The Convention on Action against Trafficking in Human Beings, which entered into force on 1 February 2008 and led to the setting up of a new specific monitoring mechanism, the GRETA, has been added to the country grid and, as of next year, the periodic country reports should also cover the conclusions drawn by GRETA.

7. In the preliminary draft resolution, I have tried to group recurrent human rights issues raised in all countries under monitoring or engaged in a post-monitoring dialogue, as well as conclusions drawn from this year's periodic reports.

2. Overview of the human rights situation in the countries under the Assembly's monitoring procedure or involved in a post-monitoring dialogue

2.1. Independence and effectiveness of the judiciary and reform of the Public Prosecutor's Office

8. Judicial independence is a pre-requisite for the rule of law and a fundamental guarantee of a fair trial. In this respect, the standards contained in the Opinion n°10 on the "Council for the Judiciary in the service of society" of the Consultative Council of European Judges, as well as the "European Standards on the Independence of the Judiciary – a Systematic Overview", prepared by the Sub-Committee on the Judiciary of the Venice Commission[3], provide clear benchmarks for the work of the Monitoring Committee. It is against these benchmarks that we have analysed the situation in our member states over the past years. As for the reform of the Public Prosecutor's Office, this was a commitment undertaken by almost all countries upon accession which remains outstanding in many of them.

9. A weak, badly remunerated and partly corrupt judiciary has been one of the Council of Europe's major concerns in **Albania**. In their preliminary draft report on the honouring of obligations and commitments by Albania[4], the co-rapporteurs noted that the reform of the judiciary is progressing and that the authorities are strongly committed to reinforcing the rule of law in the country. However, the opposition leaders, international observers and NGO representatives appear to believe that the reform is being carried out in a hasty and uncoordinated way. A new law on the organisation of the judiciary was adopted in February 2008. It was supported by both the government and opposition parties. It was only adopted after a long period of consultations with the interested groups and with help from a group of experts. In March 2008, a National Pact on Justice was endorsed by the main political parties. However, a clear reform strategy and vision for the judiciary are still missing. As for the reform of the Public Prosecutor's Office, the changes introduced in the Constitution on 21 April 2008 modified the mandate of the General Prosecutor from an unlimited to a 5-year term with the possibility to be re-appointed. In its opinion adopted in December 2008 upon our request, the Venice Commission considered that this amendment was a step back and risked compromising the impartiality of the Prosecutor General, especially in the period when he or she is seeking re-election[5]. On 29 December 2008, the parliament adopted a law amending the law on the organisation and functioning of the Prosecutor's Office. Following inspections, the Minister of Justice is now able to recommend the initiation of disciplinary proceedings against prosecutors. Concern has been expressed by the latter that the new law might result in future government interference with their work[6].

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3. See Doc. CDL-JD(2008)002; see also Opinion No. 403/2006 of the Venice Commission on Judicial Appointments, CDL-AD(2007)025.
4. See Doc. AS/Mon(2009)03 rev.
5. See Doc. CDL-AD(2008)033.
6. See Doc. AS/Mon (2009)03 rev.

10. In **Armenia**, the Assembly noted that the apparent lack of trustin the independence of the judiciary as impartial arbiters in election disputes explained the relatively few formal complaints filed with the courts after the presidential elections of 19 February 2008 (see Doc. 11579). In this respect, the Assembly, in its Resolution 1609(2008), recommended that the authorities should step up their efforts to establish a truly independent judiciary and enhance the public's trust in the courts.

11. In **Bosnia and Herzegovina**, while no major problems with respect to the independence of the judiciary were detected, the Committee co-rapporteurs expressed concern about the rather severe criticism of the functioning of the judiciary[7]. It appears that co-operation between police and prosecutors is allegedly poor, cantonal and district courts are understaffed and under equipped and the courts' backlog has reached alarming proportions. The different application by the Entities of procedural norms, such as the statute of limitation for the prosecution of war crimes, and diverging instances of case law are another major problem preventing the normal functioning of the judicial system. There seems to be a need for a Supreme Court at state level which could review the decisions of the Entities' supreme courts in order to provide guidance and ensure consistency. Under these conditions, the judiciary in Bosnia and Herzegovina does not seem to be well equipped to provide effective remedies against human rights violations. In this respect, the Assembly, in its Resolution 1626 (2008), called upon the authorities of Bosnia and Herzegovina to further pursue the judicial reform, in particular, by improving the material conditions of courts, strengthening co-operation between judges, prosecutors and the police and promoting better consistency in the judicial practice at Entity and State level, notably by considering the creation of a state level supreme court as recommended by the Assembly in Resolution 1513 (2006).

12. The problem of judicial independence has to be viewed within the wider context of the reform of the judiciary system in **Bulgaria**. In my information note on the post-monitoring dialogue with Bulgaria[8], I stressed that the judiciary is still regarded today as largely unaccountable, inefficient, non-transparent and corrupt. It appears that the executive and legislative bodies show persistent and widespread mistrust towards the judiciary and are reluctant to concede the existence of a truly independent judicial branch. In February 2007, a package of constitutional amendments relating mainly to the judiciary was adopted, without prior consultation of the Council of Europe. After the adoption of the amendments to the Constitution, the Venice Commission prepared an opinion on the Constitution of Bulgaria, at the request of the Monitoring Committee, in which it found a number of shortcomings from the angle of the separation of powers and the independence of the judiciary[9].

13. In **Russia**, the Committee welcomed the improvements made to the functioning of the judiciary. In particular, the budget of the courts is now in the hands of the judiciary itself. The Judicial Department at the Supreme Court has the right to defend the proposed budgetary allocations for financing the court system directly in parliament. However, the financial and organisational improvements in the functioning of the judiciary have not resolved the concerns expressed by the Assembly previously about the independence of the courts and the apparent misuse of the judiciary for political purposes. In their information note on the state of the monitoring procedure with respect to Russia[10], the Committee co-rapporteurs referred to the investigation of high-profile cases against politicians, businessmen, journalists and human rights activists. They expressed concern about the outcome of the trial concerning the murder of the independent journalist Anna Politkovskaya which ended recently with the acquittal of the suspects by the jury[11]. They noted that the investigation into the murder was not effectively conducted and called upon the authorities to promptly complete the investigation of this case in order to bring to justice not only the authors of this heinous crime, but also the instigators. Equally, the co-rapporteurs urged the Russian Investigation Committee to seriously and promptly investigate the recent murder of the lawyer and human rights defender Stanislav Markelov[12] and of the journalist Anastasia Baburova, in line with their obligation to take positive steps to ensure the protection of human rights activists under the ECHR[13]. At the same time, the co-rapporteurs agreed with the Russian authorities to examine in detail the situation concerning the investigation of cases of human rights violations in the North Caucasus and, in particular, in the Chechen Republic on the occasion of their

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7. See Doc. 11700; see Human Rights Watch report of 9 July 2008, Still Waiting: Bringing Justice for War Crimes, Crimes against Humanity, and Genocide in Bosnia and Herzegovina's Cantonal and District Courts.
8. See Doc. AS/Mon(2008)35 rev.
9. See Doc. CDL(2008)009.
10. See Doc. AS/Mon(2009)09 rev.
11. See Amnesty International press release of 19 February 2009, Anna Politkovskaya's trial closes – but the investigation must continue.
12. See Amnesty International press release of 19 January 2009, Prominent Human Rights Lawyer Murdered in Moscow.
13. See also the recently adopted Resolution 1660 (2009) and Recommendation 1866 (2009) on the situation of human rights defenders in Council of Europe member states.

forthcoming visit to the country. Currently, there is an important number of cases pending before the Committee of Ministers within the framework of the supervision of the execution of the judgments of the European Court of Human Rights relating to a series of violations of the ECHR resulting from and/or relating to the Russian authorities' actions during anti-terrorist operations in Chechnya in 1999-2002 (mainly unjustified use of force by members of the security forces, disappearances, unacknowledged detentions, torture and ill-treatment, unlawful search and seizure and destruction of property), including the lack of effective investigations into the alleged abuses and the continuing shortcomings in domestic remedies in this respect (violations of Articles 2, 3, 5, 6, 8 and 13 ECHR and of Article 1 of Protocol No. 1 to ECHR)[14].

14. The Committee welcomed the establishment of the Investigation Committee within the Prosecutor General's Office of the Russia which has led to a separation between investigation and oversight functions exercised by this Office, in line with earlier recommendations of the Assembly. However, concerns about broad extra-penal functions of the *Procuratura* still remain. While acknowledging the fact that similar extra-penal functions are exercised by *Procuraturas* in different Council of Europe member-states, the Committee reiterated the recommendation of the Consultative Committee of European Prosecutors that "the principle of separation of powers should be respected in connection with the prosecutor's tasks and activities outside the criminal law field and the role of courts to protect human rights"[15] and that "these functions are carried out, on behalf of the society and public interest, to ensure the application of law while respecting fundamental rights and freedoms and within the competences given to prosecutors by law, as well as the Convention and the case law of the Court"[16]. In the view of the Committee, these principles should guide the Russian authorities in pursuing further the reform of the *Procuratura*, with a view to gradually decreasing its broad powers of legality oversight and protection of human rights in favour of the creation of more effective legal remedies against human rights violations, allowing the victims to protect their rights directly before the courts or with the assistance of independent lawyers[17].

15. In **Serbia**, the Assembly welcomed the adoption by the National Assembly, on 22 December 2008, of a whole set of laws on the reform of the judiciary and of the Public Prosecutor's Office. In the opinion of the Venice Commission, the "Constitution of Serbia endangered judicial independence and created a major risk of politicising the judiciary by providing for the election of judges and of the High Judicial Council in the National Assembly, and by creating a discontinuity between the existing judiciary and the new judiciary to be chosen, once the High Judicial Council is established". The new legislation attempts to provide a response to these problems and reduces the influence of politics in the process of appointment of the majority of the members of the High Judicial Council. The legislation also brought to a minimum the interference of politicians into the appointment of individual judges, although the National Assembly still remains the final decision-making body and may exercise political discretion over the appointments. As for the reform of the Public Prosecutor's Office, the Committee expressed concerns about the possible interference of the Parliament in the work of Public Prosecutors resulting from their double accountability to the Republic Public Prosecutor and the National Assembly. It has also noted that the procedure of election of Public Prosecutors and Deputy Public Prosecutors by the National Assembly upon the proposal of the State Prosecutorial Council (which is composed of members elected directly or indirectly by the National Assembly) was also disturbing because of the interference by the Parliament. The new legislation on Public Prosecutors, adopted in December 2008, did not resolve the concerns of the Committee as the National Assembly can still exercise a degree of political discretion in electing public prosecutors[18]. In the light of these considerations, the Assembly, in its Resolution 1661(2009), invited the Serbian authorities to 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 judge, to remain in office. At the same time, the Assembly called on the authorities to continue to work on the improvement of the constitutional and legal framework for the judiciary and the Public Prosecutor's Office in order to establish sufficient guarantees against political interference in their activities, as well as to increase the effectiveness and professionalism of judges and prosecutors.

16. During my visit to **Turkey** in November 2008 in my capacity as rapporteur for the post-monitoring dialogue, I expressed some concerns with respect to the independence of the judiciary, in particular, as regards the influence of the Minister of Justice on the High Council of Judges and Public Prosecutors. The High Council of Judges and Public Prosecutors is responsible for the selection, appointment, and transfer of judges and prosecutors and for disciplinary measures against them. From my discussions with members of

14. See *Khashiyev v. Russia*, application no. 57942/00 and others. See also below, section 2.4
15. Opinion N°3(2008) of the Consultative Council of European Prosecutors (CCPE), paragraph 34, a).
16. *Ibid*, paragraph 34, c).
17. See Doc. AS/Mon(2009)09 rev.
18. See Doc. 11701.

this council, I understood that the influence of the Ministry of Justice on this body is in fact of a structural nature. The Minister of Justice is its president and sets its agenda; its offices and those of the Ministry of Justice adjoin one another, its budget is controlled by the ministry and it does not have its own secretariat. Moreover, the Judicial Inspection Department answers directly to the Ministry of Justice itself. I was also surprised to learn that the High Council of Judges and Public Prosecutors cannot initiate the prosecution of a judge or prosecutor without the consent of the Minister of Justice. I find it hard to see how the High Council of Judges and Public Prosecutors can operate independently of the Ministry of Justice under these circumstances.

17. In **Ukraine**, the reform of the judiciary remains of particular concern. In the information note on their recent visit to Ukraine[19], the co-rapporteurs noted that judges at all levels remain dependent on political figures of authority or those responsible for the judiciary.The President adopted the Concept Paper on the Reform of the Judiciary in May 2006, which resulted in two draft laws on the reform of the judiciary being submitted to parliament. These two drafts were passed by the Verkhovna Rada in a first reading in April 2007. However, very little has been achieved since then and the two drafts are still pending adoption by the parliament. In addition, the two draft laws were substantially revised by the Legal Affairs Committee of the Rada and reportedly no longer comply with the opinion of the Venice Commission on them. In this context, the co-rapporteurs called on the Verkhovna Rada to submit the revised text to the Venice Commission for opinion and implement any recommendations that this opinion may contain, with the aim to adopt these two draft laws on the reform of the judiciary without further delay.As regards the reform of the Public Prosecutor's Office, this is a commitment undertaken by Ukraine upon accession which has not yet been honoured. On 14 April 2009, the parliament adopted in a first reading the draft Law on the Office of the Public Prosecutor. This draft, which is very much supported by the Prosecutor General, reportedly does not address the concerns of the Venice Commission expressed on an earlier version of this draft[20]. During their last visit to Ukraine in April 2009, the co-rapporteurs were informed that the Minister of Justice had suggested to the Speaker of the Verkhovna Rada to submit the draft law to the Venice Commission for opinion before the law is considered in a second and third reading. The co-rapporteurs very much supported this proposal and insisted that no law should be adopted without being reviewed by the Venice Commission and any possible concerns addressed. The co-rapporteurs further noted that one of the main concerns with regard to the Public Prosecutor's Office is the general supervisory function, which is not in line with European standards. However, with the 2004 Constitutional amendments, this general oversight function was enshrined into the Constitution of Ukraine. This had already then been considered by the Venice Commission as a step backward not in line with the historical traditions of the procuracy in a state subject to the rule of law[21]. The first step in the reform of the Public Prosecutor's Office, before a new law can be adopted that is in line with European standards, should therefore be the adoption of constitutional amendments to remove this oversight function from the Constitution[22].

2.2. Right to a fair trial within a reasonable time

18. The violations of the right to a fair trial within a reasonable time are often due to a number of systemic problems in the functioning of the judiciary, in particular the non execution of domestic final judicial decisions.

19. The non execution of final domestic judicial decisions is an element of concern in **Albania**. In the preliminary draft report on the honouring of obligations and commitments by Albania[23], the Committee co-rapporteurs noted that, since January 2007, seven judgments were delivered by the Strasbourg Court against Albania. In six of them the Court found a violation. Most of the cases are related to the right to a fair trial due to the failure to enforce a final judicial decision[24].

20. In **Bosnia and Herzegovina**, the execution of domestic final judicial decisions is seen as a major problem, at all levels of jurisdiction. The backlog of cases is also huge, as there are more than 1,9 million cases pending before the courts, of which around 160 000 are criminal cases. The cantonal court in Sarajevo for example is suffocating under 80 000 cases concerning non payment of utilities bills. In this situation, the courts cannot guarantee the effective implementation of the right to a fair trial within a reasonable time and provide effective judicial remedies against human rights violations. In 2008, the Strasbourg Court issued 3

19. See Doc. AS/Mon(2009)24.
20. CDL-AD(2004)038.
21. CDL-AD(2003)19.
22. See Doc. AS/Mon(2009)24.
23. See Doc. AS/Mon(2009)03 rev.
24. See for example *Driza v. Albania* (33771/02) and *Ramadhi and Othersv. Albania* (38222/02), judgments of 13 November 2007.

judgments with respect to Bosnia and Herzegovina; the violation of the right to a fair trial and of the right to an effective remedy was found in one case (*Kudić v. Bosnia and Herzegovina*, application n° 28971/05). The Court found that this case was practically identical to the cases of *Jeličić and Pejaković and Others v. Bosnia and Herzegovina*, in which the Court found a violation of Article 6 ECHR as well as a violation of Article 1 of Protocol No. 1 to the ECHR (so-called cases of former foreign currency savings). The violation of Article 6 included the non-execution of a judicial decision for a considerably long period (almost five years after the date of ratification of the ECHR by Bosnia and Herzegovina). Therefore, there are reasons to believe that this case is symptomatic of a serious systemic problem in Bosnia and Herzegovina's legal order.

21. In **Russia**, the Committee co-rapporteurs noted in their information note on the state of the monitoring procedure with respect to Russia[25] that the functioning of the judiciary was highly affected by three main structural problems, which are the non-execution of final domestic judicial decisions against the state (reportedly, 70% of domestic final judicial decisions are not executed), the quality of domestic judicial remedies compelling the higher courts to overrule final judgments through supervisory review ("*nadzor*") proceedings, as well as the length of pre-trial detention. These problems have a direct impact on the functioning of the European Court of Human Rights, as around 70-80% of all judgments delivered against Russia so far, and of the potentially admissible pending cases, deal directly with these issues. That said, it appears that the Russian authorities are working towards solving these structural problems by amending the civil and criminal procedure legislation. In December 2007, a set of amendments to the Civil Procedure Code was adopted that modified the "supervisory review" procedure ("*nadzor*") in civil litigation. According to the new rules, appeals under the supervisory review procedure can be brought only by the parties to the proceedings within six months (instead of one year, as was the case before). The number of supervisory review instances was brought down to three. A case can be challenged under supervisory review only if all ordinary judicial remedies have been exhausted. A final judicial decision can be quashed under supervisory review only if there were violations of procedural or material law, which have affected the consideration of the case and made it impossible to establish or protect individual rights and freedoms, as well as legal private and public interests. In criminal procedure, the "*nadzor*" appears to be less problematic because the Criminal Procedure Code prohibits *reformatio in peius* (i.e. change of the sentence in appeal proceedings to a more severe one). In line with a 2005 ruling of the Supreme Court, the provisions of the Criminal Procedure Code on *reformatio in peius* are now being reviewed, also to satisfy the requirements of the case law of the Strasbourg Court. The relevant amendments were adopted by the State Duma on 25 February 2009, and aim at allowing the sentence to be changed in appeal proceedings to a more severe one, under the "*nadzor*" procedure and at the request of the prosecutor, in case of fundamental violations of the procedural law.

22. That said, the problem of the non-execution of final decisions of courts of law against the state still remains unresolved in Russia. In this respect, the Committee co-rapporteurs welcomed the tabling, in September 2008, of a draft law on the "Compensation of damage occurred as a result of the violation of the right to fair trial within reasonable time and of the right to the execution of final decisions of courts of law, within reasonable time". However, they expressed concern about the fact that the government gave a negative opinion on this draft law, claiming that it would introduce additional costs to the state budget. They therefore urged the government to reconsider its position and support this draft law, as it would help resolve a major systemic problem of the Russian judicial system and relieve the European Court of Human Rights of its heavy burden of considering cases of non-execution of final domestic court decisions emanating from Russia. In 2008, out of 244 judgments delivered against Russia, the Court found 159 violations of the right to a fair trial and 20 cases of excessive length of proceedings. A great number of cases of non-execution of final judicial decisions are now pending before the Committee of Ministers within the framework of the supervision over the execution of judgments[26].

23. In **"the former Yugoslav Republic of Macedonia"**, the judiciary is still facing problems with regard to delays in legal proceedings[27]. This problem appears to be of a systemic character, as it transpires that appeal courts, acting in second instance proceedings, simply send cases back to first instance courts in the event of factual mistakes or inappropriate application of the law, instead of taking the decision themselves, as is the case in other legal systems. This practice of "delayed justice" is not in line with the right to a fair trial, as defined in the ECHR and the case law of the Court. In 10 out of 15 judgments delivered by the Court against "the former Yugoslav Republic of Macedonia" during the year 2008, violations of the right to a fair trial within a reasonable time were found by the Strasbourg Court because of the excessive length of judicial proceedings. However, the authorities have taken some steps to tackle this problem. According to recently adopted

25. See Doc. AS/Mon(2009)09 rev.
26. See for example *Levin v. Russia*, application n° 33264/02 and others, *Timofeyev v. Russia*, application n° 58263/00 and others.
27. See Doc. AS/Mon(2008)31rev.

amendments to the procedural codes, appeal courts can annul lower courts' decisions and send them back for a new hearing only once. In addition, special committees have been created within the Supreme Court to deal with cases of "delayed justice" in first and second instance courts under an extraordinary appeal procedure. In my capacity as Chair of the Monitoring Committee and rapporteur on the post-monitoring dialogue with "the former Yugoslav Republic of Macedonia", I shall carefully study the effect of these measures, which, in my view, can only bring a temporary solution. A thorough and systematic revision of all judicial procedures is required, in my opinion, to solve the structural problems that the Macedonian judiciary has to face.

24. In **Ukraine**, courts are paralysed by the high volume of cases, leading to unreasonable delays in the examination of cases and issuance of judgments. Out of 110 judgements delivered by the European Court of Human Rights with respect to Ukraine, it found violations of the right to a fair trial in 61 cases, and excessive length of proceedings in 32 cases. Inter alia, some 238 cases concerning the failure or substantial delay by the administration or state companies in abiding by final domestic judgments are currently pending before the Committee of Ministers within the framework of the supervision over the execution of judgments[28]. Another 15 cases pending execution deal with the length of civil proceedings and absence of an effective remedy (See Svetlana *Naumenko v. Ukraine*, application n° 41984/98 and others.)

2.3. Ratification of Council of Europe human rights conventions[29]

2.3.1. Protocols to the ECHR

25. **Monaco** has not ratified yet Protocols No. 1 and 12 to the ECHR, contrary to the undertakings given at the time of accession, as set out in Opinion No 250 (2004). The authorities base their argument on the country's specific circumstances, given that the indigenous population is outnumbered by the foreign nationals living and/or working there[30].

26. **Russia** is the only Council of Europe member state which has not yet ratified Protocols No. 6 and 14 to the ECHR. In their note on the state of the monitoring procedure with respect to Russia, the Committee co-rapporteurs stated that, unfortunately, they could not report any progress as regards the position of the Russian authorities on the ratification of the two protocols. This issue remains a key stumbling block in the co-operation between Russia and the Council of Europe.

27. The non-ratification by Russia of Protocol No. 14further aggravates the operational difficulties that the Strasbourg Court is experiencing and deprives persons within its jurisdiction from benefiting from a streamlined case-processing procedure before the Court. The co-rapporteurs expressed deep concern at the fact that, since the failure of the adoption of the law on the ratification in December 2006, the State Duma has not taken any concrete steps to speed up the ratification process. While fully supporting the efforts made by their colleagues from the Legal Affairs and Human Rights Committee in the same direction[31], the Monitoring Committee co-rapporteurs raised the issue of the ratification of Protocol 14 in all their meetings, during both visits of April 2008 and March 2009. Stressing that the Russian Federation should urgently ratify Protocol 14 as part of its membership commitments, they urged the Russian authorities to urgently reconsider their position and stop being "the odd ones out" preventing other fellow Europeans from fully and effectively benefiting from the protection granted by the European Convention of Human Rights. Since the members of the Russian delegation to the Assembly, as well as the representatives of the Ministry of Justice at the highest level reassured them of their support for the ratification of Protocol 14, the co-rapporteurs expect the authorities to take some steps in this direction in the near future. They also encouraged the authorities to continue to strengthen the national judicial system in order to establish effective domestic legal remedies

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28. See *Zhovner v. Ukraine*, application n° 5684/00 and others.
29. As regards the signature and ratification of conventions related to the protection of minorities, see below the relevant section.
30. See Doc. AS/Mon (2009)01rev, Doc. 11299 and Resolution 1566 (2007); see also the ECRI report on Monaco, doc CRI(2007)25, adopted on 15 December 2006 and made public on 24 May 2007, and the report on Monaco by the Commissioner for Human Rights, Doc. Comm DH(2009)10.
31. The issue of non ratification of Protocol 14 by Russia is followed closely by the Assembly Committee on Legal Affairs and Human Rights, on the basis of the decision of the Bureau of 26 January 2007, subsequent to the current affairs debate on "Threat to the European Court of Human Rights: urgent need for Russia to ratify Protocol 14". Since then, this matter has been regularly on the agenda of the Legal Affairs and Human Rights Committee which held, on 10 November 2008, an exchange of views with the members of the State Duma on this issue. By its decision of 29 January 2009, the Committee on Legal Affairs and Human Rights made public extracts of the minutes of its meeting held on 10 November 2008 concerning this exchange of views with the State Duma.

against human rights violations[32]. In its recent debate on draft Protocol No. 14 *bis* to the European Convention for the Protection of Human Rights and Fundamental Freedoms[33], the Assembly once more "urge[d] the Russian State Duma to reconsider, without further delay, its refusal to provide assent for Russia to ratify Protocol No. 14" considering that its entry into force "would be the most effective way to improve the difficult situation in which the Court finds itself". For the Assembly, draft Protocol No. 14 *bis* is simply a "good interim solution" to bring into effect, quickly, the provisional application of two provisions extracted from Protocol No. 14 to the ECHR.

28. With respect to the abolition of the death penalty in law in Russia, the authorities informed the Committee co-rapporteurs that building consensus for the ratification of Protocol No. 6 is a substantially more difficult task. In their opinion, the society is still not ready to accept the abolition of the death penalty, especially in the light of the rise in criminal statistics[34]. This being said, the abolition of the death penalty is usually seen as an unpopular measure which requires political courage, but which the Russian political leadership should muster. In the opinion of the co-rapporteurs, it is not acceptable that the Russian Federation is the only Council of Europe member state which has not yet ratified Protocol No. 6, in clear contradiction with the principles of the Council of Europe and the commitments Russia entered into upon accession[35].

2.3.2. The Revised European Social Charter

29. **Bosnia and Herzegovina** ratified the Revised European Social Charter just a few days after the adoption by the Assembly of Resolution 1626 (2008). This is to be welcomed.

30. **Monaco** has not ratified yet the Revised European Social Charter despite undertaking to do so within one year of accession. The new case law of the European Court of Human Rights in the *Demir cet Baykara v Turkey* judgment put an end to the doubts of the Monegasque authorities regarding the extent of the European judges' power of interpretation, which was the main argument delaying ratification of the Social Charter hitherto. Nevertheless, the Monegasque authorities have decided to allow themselves further time for reflection before going ahead with ratification[36].

31. The recent adoption of the law on the ratification of the Charter by both chambers of the Parliament in **Russia** and by the National Assembly of **Serbia** is to be welcomed. The authorities of these states are now expected to deposit without delay the instrument of ratification.

32. Ratification of the Charter is now one of the outstanding commitments of **Montenegro** (see Opinion No. 261 (2007) on the accession of Montenegro).

2.3.3. The Convention on Action against Trafficking in Human Beings

33. It is to be welcomed that most member states under the monitoring procedure have signed and ratified the Convention on Action against Trafficking in Human Beings, which entered into force on 1 February 2008 and provides for a specific monitoring mechanism, the GRETA. Thus, the Convention is in force in Albania, Armenia, Bosnia and Herzegovina, Bulgaria, Georgia, Moldova, Montenegro, and Serbia. It has been signed but not yet ratified by Ukraine and two states involved in a post-monitoring dialogue, "the former Yugoslav Republic of Macedonia" and Turkey. The Convention has not been signed by Azerbaijan, Monaco, and Russia.

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32. See Doc. AS/Mon(2009)9 rev.
33. See Opinion No. 271 (2009) and Doc. 11864.
34. The Russian authorities said they feared that introducing legislation to ratify Protocol No. 6 could lead to the opposite effect of having the continuation of the Presidential Moratorium on the suspension of the application of the death penalty being publicly questioned. The co-rapporteurs could not support this argument, as on the basis of the 1999 ruling of the Constitutional Court, the death penalty cannot be legally applied in Russia before jury trials are introduced in all Subjects of the Federation, which is not the case at present (as there are no jury trials in the Chechen Republic). The Presidential Moratorium on the non-application of the death penalty was a symbolic political act. In their opinion, which is shared by the Chairmen of the Supreme and of the Constitutional Court, there are no legal obstacles to abolishing the death penalty in law in Russia.
35. See Doc. AS/Mon(2009)09 rev.
36. See Doc AS/Mon(2009)01rev.

2.4. Police, security services, army, prison staff and detention conditions

34. The Monitoring Committee's reports regularly refer to the work carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and call for the implementation of its recommendations and the publication of relevant reports by the authorities of the states under monitoring or post-monitoring.

35. In **Albania**, the use of excessive force and ill-treatment by police officers continue to be issues of concern, although these phenomena have reportedly decreased since the transfer of responsibility for pre-trial detention centres from the Ministry of Interior to the Ministry of Justice in 2007. Basic safeguards against ill-treatment during pre-trial detention are still not applied in a consistent and effective manner: detainees do not get timely access to a lawyer and are often not brought before a judge within the constitutional time periods. The failure to investigate and prosecute allegations of ill-treatment effectively and efficiently continues to foster a climate of impunity[37].

36. According to a report issued in February 2008 by the Albanian Ombudsman following the visit of the Council of Europe Commissioner for Human Rights, the main problems in Albanian prisons remain overcrowding, poor hygiene, and the detention of minors and the mentally ill in the same cells as other detainees. There has been some progress in the implementation of recommendations by the CPT, but more remains to be done. In 2008, new prisons in Vlore, Fushe Kruje and Korce, which also have pre-trial detention facilities, have been completed. Furthermore, in an attempt to solve overcrowding issues in prisons, new legislation was passed in 2008 to allow alternative measures to imprisonment and introducing the probation service[38].

37. Following the events of 1 and 2 March 2008 in **Armenia**, the Assembly expressed its concern about the excessive use of force by the police during the clashes with the demonstrators as well as the ill-treatmentof detainees during their arrest and transport to the police stations[39]. In Resolution 1609 (2008), the Assembly stated that arbitrary arrests and detentions, as well as the ill-treatment of detainees, in particular during police custody, should be stopped and called on the Armenian authorities to ensure that an effective public control mechanism over the police be guaranteed both in law and practice. Three of the 10 fatalities as a result of the clashes on 1 and 2 March 2008 were the result of tear gas canisters that were fired by the police at the protesters at close range, raising questions about the guidelines regarding the use of force by law enforcement agencies. The Assembly therefore called for an independent, transparent, and credible inquiry into the events of 1 and 2 March 2008, including the excessive use of force by the police and the precise circumstances leading to the fatalities. While acknowledging the problems, the authorities have not yet announced concrete measures to combat excessive and disproportionate use of force by law enforcement agencies. In the court proceedings against the 7 opposition members who are considered the "ring leaders" by the authorities, several prosecution witnesses alleged they had been pressured by the police to provide false testimony against the accused. This led the Human Right Defender of Armenia to issue a statement, on 7 May 2008, in which he expressed his strong concern about the numerous complaints that his office received according to which the police obtained "evidence" by applying pressure and duress on potential witnesses.

38. In **Azerbaijan**, numerous cases of ill-treatment and allegations of torture by law enforcement officials during police custody or pre-trial investigations, as well as in the army, for the purpose of extracting confessions or obtaining incriminating statements from witnesses, continue to be reported, and investigations into such behaviour have rarely led to the prosecution of the officers who have committed such abuses.[40] Unfortunately, the only CPT report on Azerbaijan that has been published to date concerns the first periodic visit in 2002. The CPT's most recent visit to Azerbaijan took place in November 2006. The report on this visit, which was transmitted to the authorities in July 2007, has not yet been made public.

39. With regard to the issue of alleged political prisoners in Azerbaijan,[41] Natiq Efendiyev, Ruslan Bashirli, Akif Huseynov and Telman Ismayilov, as well as the imprisoned opposition journalists Ganimat Zahidov and Eynulla Fatullayev, remain in prison following judicial investigations and proceedings characterised by a lack of transparency and equity.

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37. See Doc. AS/Mon(2009)03 rev; see also: Report by the Commissioner for Human Rights, Mr Thomas Hammarberg, on his visit to Albania, 27 October-2 November 2007, Strasbourg, 18 June 2008, CommDH(2008)8; Amnesty International 2009 Annual Report.
38. See Doc. AS/Mon(2009)23.
39. Doc. 11579 (2008); see also the report by the Commissioner for Human Rights in Doc. CommDH (2008)11Rev; see also Human Rights Watch report of 25 February 2009, Democracy on Rocky Ground: Armenia's Disputed 2008 Presidential Election, Post-Election Violence, and the One-Sided Pursuit of Accountability.
40. See Doc. 11627, Resolution 1614 (2008) and Doc. AS/Mon(2009)19

40. In its Resolution 1626 (2008) on **Bosnia and Herzegovina**, the Assembly asked the authorities of Bosnia and Herzegovina to take further steps to harmonise the entity-level legislation and practice in the field of prison administration, in particular with regard to execution of criminal sentences, juvenile delinquency,and the mentally ill, as well as to step up the construction of a state-level high-security prison. Sharing the concerns expressed by the CPT and the United Nations Human Rights Committee as regards the conditions in the Zenica Prison Forensic Psychiatric Annex, the Assembly asked the authorities to move all patients held in that facility to another adequate facility where they would receive the required treatment as agreed in the friendly settlement in the *Hadžić* case brought before the European Court of Human Rights.

41. In **Bulgaria**, although human rights' training is mandatory at the police academy and officers' schools, human rights abuses by the police continue. Impunity remains a problem, as the lack of accountability inhibits government attempts to address such abuses[42]. In its last report, the CPT highlighted the important role played by judges and prosecutors, but also by staff working at Investigation Detention Facilities and other competent authorities, in preventing ill-treatment by law enforcement officials through the diligent examination of all relevant information regarding possible ill-treatment which may come to their attention, whether or not that information takes the form of a formal complaint. Human rights groups claim that medical examinations in cases of police abuses are not properly documented, that allegations of police abuse are seldom investigated thoroughly, and that offending officers are very rarely punished. The fact that the Criminal Procedure Code was modified in December 2008, just after my visit to Bulgaria, abolishing the obligation for civilians to file lawsuits against police in military courts, is a welcome development which could help put an end to police impunity.

42. As concerns the situation in Bulgarian prisons, NGO prison monitors report that brutality by prison guards against inmates, as well as brutality among inmates, continue to be serious problems. Corruption also continues to plague the system. Prison overcrowding remains a problem, although the Ministry of Justice reported a slight decrease in the prison population following the introduction of a probation system.

43. In **Georgia**, the police reform, which has remarkably reduced petty corruption, has been considered as a major achievement. A Main Office for the Protection of Human Rights and Monitoring has been established within the Ministry of Interior and carries out internal monitoring in the law enforcement agencies and pre-trial detention centres. The Unit co-operates closely with the Public Defender and NGOs. However, impunity remains a serious problem in the police force. Though the crime rate has considerably decreased in the last years and despite the adoption of a Code of Ethics for the police in June 2006, members of the police are still reported to be involved in a number of human rights abuses, which mainly include disproportionate use of force, in particular in police stations and during special police operations, torturing of detainees and other forms of abuse. Despite efforts being made in the right direction, there is still a serious lack of adequate initial and continuous training for police, including the criminal police, which should be effectively addressed, in co-operation with the Council of Europe[43].

44. Despite the opening of new and remodeled facilities and the efforts made by the Ministry of Justice, prison overcrowding and poor conditions in prison and pre-trial detention facilities, especially in temporary detention isolators, continue to be among the major human rights concerns in Georgia. In its Resolution 1603 (2008) on Georgia, the Assembly asked the Georgian authorities to fully implement the CPT recommendations, continue to address the issue of overcrowding in prisons and pre-trial detention centres and consider supplementary measures, where appropriate. The Assembly also asked the authorities to secure prompt, independent, and thorough investigation of all allegations of ill-treatment and apply a policy of zero tolerance to impunity.

45. Following a debate under urgent procedure on 29 April 2009 on the functioning of democratic institutions in **Moldova**, the Assembly expressed its strong concerns about acts of violence that were committed in Chisinau by the police during the events that followed the parliamentary elections of 5 April. More than 300 people were arrested of whom 9 are still being held in detention. At least 3 people are reported to have died during the post-electoral events. Human rights violations, including cases of beating and ill-treatment by the police, were reported by numerous international and domestic non-governmental organisations[44], the Council of Europe Commissioner for Human Rights[45], as well as by the National Prevention Mechanism against Torture, established under the Optional Protocol to the United Nations

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41. See Doc. 11627, Resolution 1614 (2008) and Doc. AS/Mon(2009)19; see also Resolution 1545 (2007) and Doc. 11226.

42. See my information note, Doc. AS/Mon(2008)35 rev and the comments by the Bulgarian authorities in Doc. AS/Mon(2009)12. See also Report to the Bulgarian Government on the visit to Bulgaria carried out by the CPT from 10 to 21 September 2006, Doc. CPT/Inf (2008) 11

43. See Doc. 11502 rev. See also Human Rights Watch World Report 2009.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Assembly urged that an independent and thorough investigation of all these allegations of violence be started immediately, and that those responsible for these violations be brought to trial (see Resolution 1666 (2009) and Doc. 11878)[46].

46. Reiterating previous recommendations made in its Resolution 1572 (2007) on Moldova's regular monitoring, the Assembly also urged the Moldovan authorities to further reform the police; create effective remedies against excessive force and violence by members of the police; set up training for members of the police; ensure that all cases of police ill-treatment are subject to prompt, thorough, independent, and impartial investigations and subsequent prosecution where appropriate, and implement fully the recommendations of the CPT. The Assembly also urged the Moldovan authorities to considerably improve conditions of detention to bring them fully into line with European standards and transfer responsibility for pre-trial detention from the Ministry of Internal Affairs to the Ministry of Justice, in accordance with a long-standing accession commitment. It also asked the authorities to facilitate the access of human rights defenders to all detention places, including those still administered by the Ministry of Internal Affairs.

47. With respect to **Russia**, the Committee of Ministers is currently supervising the execution[47] of an important number of judgments of the European Court of Human Rights regarding cases of unjustified use of force by members of the Russian security forces during anti-terrorist operations in Chechnya in 1992-2002, disappearances, unacknowledged detentions, torture and ill-treatment, unlawful search and destruction of property, lack of effective investigations and continuing shortcomings in domestic remedies in this respect (violations of Articles 2, 3, 5, 6, 8 and 13 ECHR and of Article 1 of Protocol No. 1 to ECHR)[48]. The Committee co-rapporteurs will examine in detail the situation concerning the investigation of cases of the above-mentioned human rights violations in the North Caucasus and, in particular, in the Chechen Republic on the occasion of their forthcoming visit to the country, after the visit to the region of Mr Dick Marty, Rapporteur for the Committee on Legal Affairs and Human Rights on "legal remedies for human rights violations in the North Caucasus region".

48. The issue of hazing in the Russian armed forces has been one of the long-standing areas of attention for the Monitoring Committee[49]. The representatives of the Ministry of Defence informed the co-rapporteurs during their last visit, in March 2009 that, as a result of the move towards fully professional armed forces, a large part of the armed forces now consists of professional soldiers, which has purportedly reduced the problem of hazing. The decision to have conscript soldiers serving in the reserve forces, which are generally better trained and less prone to committing abuse, has also contributed to combating hazing in the armed forces. However, in contrast to the overall positive assessment given by the Ministry of Defence, several NGOs working in this field were of the opinion that hazing still occurs widely in the armed forces, despite the measures taken by the authorities. A Public Council was set up in October 2006 to provide public control over the recruitment boards and human rights situation in the armed forces in general. This Council consists of 51 members, none of whom are related to the Ministry of Defence. Parent committees were also set up as an instrument to report and address possible cases of hazing. However, their exact functioning is not entirely clear, given the policy that recruits serve outside the territory of the Subject of the Federation in which they are resident.

49. In **Serbia**, new mechanisms of democratic oversight over the activities of the armed and security forces, as well as the police, were introduced by the new Constitution and relevant legislation. The Assembly welcomed their introduction in its recent Resolution 1661 (2009)[50]. In the case of the police, for instance,

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44. During the events of 7-8 April and immediately after, the Monitoring Committee received a great number of appeals from civil society organisations, opposition leaders as well as international organisations. Some of the appeals, in particular, those circulated by the Mayor of Chisinau and Deputy Chairman of the LP, Mr Dorin Chirtoaca, included information about cases of individual people beaten up and tortured in police custody, which was supported by individual testimonies and photographic evidence. A significant number of cases of ill-treatment, torture and detention in inhuman and degrading conditions have been identified and confirmed by Amnesty international and the OSCE Mission in Moldova. See Doc. 11878 and the Memorandum of 17 April 2009 by Amnesty International.

45. See the statement issued by the Commissioner following his visit to Moldova; see also the report of the visit of the Director General of Political Affairs to Moldova (16-17 April 2009), Doc. DPA/Inf(2009)18.

46. See also the European Parliament Resolution of 7 May 2009 on the situation in the Republic of Moldova.

47. See the site of the execution of the judgments of the Court against Russia.

48. See *Khashiyev v. Russia*, application no. 57942/00 and others.

49. On 19 October 2004, Human Rights Watch issued an in-depth report entitled The Wrongs of Passage: Inhuman and Degrading Treatment of New Recruits in the Russian Armed Forces, which, based on three years of field research, details the human rights violations associated with the longstanding practice *dedovshchina*, or the hazing of first year military recruits in the Russian armed forces.

theDirector of the Police submits reports on the activities of the Police to the National Assembly's Committee on Defence and Security every 6 months. The Committee organises public discussions in the process of consideration of such reports.

50. The conclusions of the last CPT report on **"the former Yugoslav Republic of Macedonia"** are extremely alarming[51]. In particular, the CPT noted that: *"Ten years after it first visited "the former Yugoslav Republic of Macedonia", the quality of the CPT's relationship with the national authorities remains, in many respects, profoundly unsatisfactory. Firstly, the Committee cannot rely on the information provided to it by the national authorities. Yet the provision of reliable information represents the bedrock for co-operation. Secondly, no visible improvements have been made to the situation, in the light of the CPT's numerous recommendations. The stark conclusion is that the national authorities do not appear to take seriously their fundamental obligation to provide protection for persons deprived of their liberty."*[52] In my capacity as rapporteur for the post-monitoring dialogue with this country, I will follow closely this important matter.[53]

51. In my recent information note on **Turkey**, I referred to the fourth Interim Resolution adopted last year by the Committee of Ministers[54] on the execution of the judgments of the European Court of Human Rights, the progress made and outstanding issues regarding the Court's 175 judgments and decisions relating to Turkey delivered between 1996 and 2008, which mainly concern deaths resulting from the excessive use of force by members of the security forces, the failure to protect the right to life, the disappearance and/or death of individuals, ill-treatment and the destruction of property. During our meeting last November, the Interior Minister reiterated the authorities' commitment to the protection of human rights and pointed out that there was a specialised unit within his ministry whose objective was to promote respect for human rights in the police and gendarmerie. He also explained that, in addition to their initial training and the various training programmes on human rights, the members of the security forces were given specific training on the implementation under domestic law of the judgments of the European Court of Human Rights.[55] Nonetheless, NGO representatives reported several cases of violence committed last year by the security forces. Amnesty International[56] and Human Rights Watch[57] speak of many cases of excessive use of force, ill-treatment, and torture in the prisons and by the police[58]. In June 2008, parliament amended the Law on the Rights and Duties of the Police, extending police officers' rights to resort to lethal force and authorising them to fire on any suspect who ignores a warning to stop. Noting an obvious contradiction between the government's stated "zero tolerance" policy aimed at the total eradication of torture and other forms of ill-treatment, and the different testimonies given, I have urged the national authorities to make considerable efforts to guarantee that proper investigations are carried out into allegations of abuses by members of the security forces and that perpetrators are effectively punished.

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50. See also Doc. 11701.

51. See my information note on "the former Yugoslav Republic of Macedonia", Doc. AS/Mon (2008) 31rev; see also Report to the Government of "the former Yugoslav Republic of Macedonia" on the visit to "the former Yugoslav Republic of Macedonia" carried out by the CPT from 30 June to 3 July 2008. CPT/Inf (2008) 31, 4 November 2008.

52. See also Amnesty International 2009 Annual Report, which notes that domestic NGOs reported of cases of torture and ill-treatment of arrestees and detainees that were not properly investigated.

53. I have asked the authorities to provide me with information about the measures which are being taken to implement the CPT's recommendations with respect to prisons conditions, as well as about the functioning of the Sector of Internal Control and Professional Standards (including the most up-to-date statistics and concrete examples of recently investigated cases) and the legal basis for the operation of the so-called "ALPHA" Special Mobile Police Unit and the rules governing their work.

54. See Doc. AS/Mon (2009) 10 rev and CM/ResDH(2008)69.

55. See also the report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 22 November to 4 December 2006, CPT/Inf (2009)17 and the response of the Turkish Government to the report, CPT/Inf (2009)18.

56. See Amnesty International 2009 annual report on Turkey; see also Amnesty International press release of 22 October 2008, Turkey: One Dead and Scores Injured as Police Breakup Demonstrations.

57. In a 80-page report entitled Closing Ranks against Accountability: Barriers to Tackling Police Violence in Turkey, released 5 December 2008, Human Rights Watch documents 28 cases of police abuse against members of the public since the start of 2007, and examines official investigations of police conduct in those instances. The cases include fatal and non-fatal shootings by the police; ill-treatment and excessive use of force by police against demonstrators; and ill-treatment during or following identity checks. Those who file complaints against the police often find themselves put on trial for having "forcibly resisted" the police.

58. As regards the case of Engin Ceber, a young man of 29 who died on 10 October 2008 as a result of the torture allegedly inflicted on him by police officers, prison staff and members of the gendarmerie following his arrest on 28 September 2008 during a demonstration and press conference in Istanbul's Sariyer district, see the 10 October 2008 statement issued by Amnesty International, as well as the information provided by the Turkish authorities and included in my information note, Doc. AS/Mon(2009)03 rev. The trial opened on 21 January 2009 on the Ceber case, involving 60 suspects, including police officers, prison governors and prison staff, as well as a prison doctor, is on-going.

52. The post-monitoring dialogue between the Assembly and **Turkey** also covers the issue of the state of health of Mr Abdullah Öcalan[59]. The latter is being monitored by the CPT, whose report (which contains an addendum on the allegations of poisoning by heavy metals) was made public with the agreement of the Turkish authorities in March 2008[60]. The findings of the experts appointed by the CPT indicate that the prisoner had not been the subject of intoxication by heavy metals. However, the CPT clearly criticised the reclusion of Mr Öcalan and continues to co-operate with the Turkish authorities under the European Convention for the Prevention of Torture[61].

53. In **Ukraine**, torture and other forms of ill-treatment in police custody and detention facilities continue to be widely committed and the situation regarding human rights in the prison system has significantly deteriorated over the last four years[62]. Reports have emerged about extremely brutal searches in the name of preventing terror – in utter disregard for inmates' basic human rights. The lack of an effective complaint system and inaction by the penitentiary administration and the central authority (State Department on Execution of Punishments) has resulted in several cases of mass self-inflicted mutilations of inmates and disobedience. Also, there is practically no external control over the prison system. This is accompanied by alleged serious financial violations in the system and incompetent management. The Monitoring Committee has urged the Ukrainian authorities to implement reforms in the prison system as soon as possible and ensure respect for the human rights of inmates. All cases of alleged violations of rights of inmates should be investigated. Also, the May 2006 decision of the Government to include the State Department on Execution of Punishments within the structure of the Ministry of Justice should be implemented through relevant changes in the law on the prison system in order to put the prison system under the effective control and supervision of the Ministry of Justice, in line with Ukraine's accession commitments[63]. The CPT report on its ad hoc visit to Ukraine in December 2007, which was made public on 19 May 2009 together with the Ukrainian authorities' response, examines the situation of foreign nationals detained under aliens legislation and contains recommendations aimed at strengthening the safeguards for persons detained under aliens legislation and developing specialised training for Border Guard staff working in detention facilities for foreign nationals[64].

2.5. Freedom of expression

54. Defamation is still a criminal offence in **Albania**. The Albanian Criminal Code creates offences of defamatory expressions and "insults". The Civil Code lacks a proper civil defamation framework. However, for more than two years, there have been no criminal defamation cases against journalists. Draft laws modifying the criminal and the civil code in this respect were approved by parliament's Laws Committee in February 2007, but have not yet been presented to the Assembly. Existing legislation covering relations between journalists and their employers is weak. The overwhelming majority of journalists are still working without contracts. The Albanian Labour Code is not respected in practice in the media sector[65].

55. In **Armenia**, freedom of expression remains a point of concern, although limited progress on this issue has been achieved. During the state of emergency declared in the wake of the events on 1 and 2 March 2008, severe limitations were placed on the freedom of the media to report and cover the events. In addition, the dissemination of political propaganda without the permission of the relevant state bodies was prohibited.

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59. A motion for a resolution on the state of health of Mr Abdullah Öcalanwas presented by Lord Russell Johnston and others in April 2007 (Doc. 11271, 24 April 2007). On 15 April 2008, the Committee on Legal Affairs and Human Rights, which was asked to draft an opinion on the appropriate follow-up to be given to this motion, considered that it was not necessary to appoint a special rapporteur on Mr Öcalan's state of health. As regards the follow-up to the recommendations of the CPT – fully endorsed by the committee – concerning the effects of Mr Öcalan's long-term seclusion, the post-monitoring dialogue between the Assembly and Turkey should provide enough opportunities to monitor developments in the situation. For more details, see Doc. As/Mon(2009)10 rev. Doc. 11271, 24 April 2007.

60. See Addendum to the report on the visit to Turkey carried out by the CPT from 19 to 22 May 2007, CPT/Inf(2008)13 Addendum.

61. Applications Nos.24069/03, 197/04, 6201/06 and 10464/07.

62. See Doc. AS/Mon(2008)06 rev. See also Amnesty International, 2009 Annual report for Ukraine; Human Rights Watch, World Report 2009.

63. See Doc. AS/Mon(2008)06 rev. and accession Opinion No. 190 (1995) paragraph 11.vii. See also Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Conclusions and recommendations of the Committee against Torture: Ukraine, CAT/C/UKR/CO/5, 03.08.07, §§ 10 & 11, in which the UN Committee against Torture (CAT) has expressed concern about the fact that law enforcement officials in Ukraine enjoy impunity for acts of torture.

64. The CPT's visit report and the response of the Ukrainian authorities are available on the Committee's website http://www.cpt.coe.int. As part of its programme of periodic visits in 2009, the CPT has already indicated its intention to carry out a new visit to Ukraine.

65. See Report by the Council of Europe Commissioner for Human Rights, Mr Thomas Hammarberg, on his visit to Albania, 27 October- 2 November 2007, Strasbourg, 18 June 2008, CommDH(2008)8

These restrictions were lifted on 20 March 2008. The co-rapporteurs, in their report on the functioning of democratic institutions in Armenia of 15 April 2008, expressed their concern about the harassment by the tax authorities of opposition electronic and print media outlets[66]. In its judgment in the case of *Meltex LTD and Mesrop Movsesyan v. Armenia*, the European Court of Human Rights ruled, on 17 June 2008, that there had been a violation of Article 10 ECHR and stated that "a licensing procedure whereby the licensing authority does not give reasons for its decisions does not provide adequate protection against arbitrary interferences by a public authority with the fundamental right to freedom of expression". Following that decision, the Assembly called upon the authorities now to ensure an open, fair and transparent licensing procedure. However, on 9 September 2008, the National Assembly adopted an amendment to the Law on Television and Radio that cancels all tenders for broadcasting frequencies until 2010, when the introduction of digital broadcasting in Armenia will have been completed. That issue is currently under discussion between the authorities and the relevant Council of Europe departments. The OSCE representative for freedom of the media, as well as the Armenian Human Rights Defender, have expressed their serious concern about the worrying pattern of attacks against journalists by unknown assailants. The lack of results in the police investigations of these attacks raises fears of the establishment of a climate of impunity for such attacks that would have serious repercussions on freedom of expression. In a welcome development, Articles 225 and 300 of the Criminal Code, which were considered problematic as they "failed to give clear guidance on the dividing line between legitimate expressions of opinion and incitement to violence", were amended by the National Assembly of Armenia in line with Venice Commission recommendations.

56. Defamation is still a criminal offence in **Azerbaijan**. The situation of the media has constantly deteriorated since the murder of Elmar Huseynov, chief editor of Monitor Magazine, who was shot dead in March 2005[67]. Despite the release of two journalists in April 2009[68], restrictions on freedom of expression and the harassment and intimidation of opposition journalists through defamation proceedings, imprisonment, physical assaults, and threats are frequently reported by human rights NGOs, media representatives, and representatives of opposition parties[69]. On 6 March 2009, the Azerbaijani parliament adopted amendments to the law on the media, regulating, inter alia, the suspension or termination of the production or distribution of media. The Council of Europe expert who assessed the previous law on the media had concluded that some key provisions failed to comply with Article 10 of the ECHR. The new amendments make the situation even worse as they broaden the scope of these far-reaching measures[70].

57. **Bosnia and Herzegovina** has an advanced legal regime governing freedom of the media. Laws decriminalising libel and defamation have, for instance, been in force in the Republica Srpska since June 2001 and in the Federation of Bosnia and Herzegovina since November 2002.

58. Defamation, insult and libel are punishable in **Bulgaria** under Articles 146 to 148 of the Criminal Code. Recent reports of murders, physical assaults, threats, and harassment of journalists, including investigative journalists, raise a major problem. As rapporteur for the post-monitoring dialogue with Bulgaria, I have asked the authorities to thoroughly investigate cases of violence and harassment against journalists. The law provides only for financial penalties (fines) and excludes imprisonment. However, those convicted acquire a criminal record which can hinder their professional life.

59. In **Georgia**, the Law on Freedom of Speech and Expression, adopted in June 2004, is widely considered as one of the most democratic and liberal of its kind in Europe. The Law took libel out of the criminal code and relieved journalists of legal criminal responsibility for revealing state secrets. There have

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66. Doc. 11579 (2008).
67. See Doc. 11627, Resolution 1614 (2008) and Doc. AS/Mon(2009)19; see also Amnesty International public statement of 20 June 2008, Azerbaijan: Amnesty International condemns beating of media watchdog Emin Hüseynov.
68. The journalist and poet Mirza Zakit benefited from the Amnesty Act passed by the Azerbaijani parliament on 17 March 2009 and was released on Tuesday 9 April 2009, after 34 months' imprisonment, two months before the end of his prison term. Mirza Zakit had been on the list of imprisoned journalists mentioned in several Assembly resolutions, calling for their release. On 11 April 2009, Ali Hasanov, chief editor of the newspaper Ideal, was also released.
69. See Amnesty International 28 February 2008 report, Azerbaijan: Mixed messages on freedom of expression; the US Department of State, 2008 Country Reports on Human rights Practices: Azerbaijan, published on 25 February 2009; Human Rights Watch World Report 2009; and Reporters without Borders World Report 2009.
70. For example, they allow the courts to suspend or stop the activity of a print media outlet for two months in the following cases: if the chief editor is a foreigner, or does not have higher education qualifications; if the publication fails to send copies of an issue to the departments provided for by law within 10 days; if a journalist has been brought before the courts twice in one year for failing to respect his/her duties or abusing media freedom. There are strong doubts about the legitimacy, from the point of view of Article 10 of the ECHR, of prohibiting foreigners or persons who do not possess higher education qualifications from becoming chief editor and of the possibility for the courts to suspend or close down media for non-compliance with this provision.

been no reported cases of excessive fines in the last years[71]. Although there is no direct government pressure or influence since the Rose Revolution, part of the media has proved vulnerable to behind-the-scenes pressure from the government. NGOs and independent media analysts sometimes accuse high-ranking government officials of exercising undue influence over editorial and programming decisions through their personal connections with news directors and media executives[72]. This has much to do with the fact that many of today's media owners used to be in opposition, but with the change of government have automatically become close to the government and other authorities. This has contributed to a certain degree of self-censorship. Weak editorial independence, using media outlets to promote the political interests of owners, and low professional standards thus constitute major concerns in the media field. The events of November 2007, when two opposition-controlled television stations were temporarily closed by the authorities and the subsequent declaration of a state of emergency affected the media environment and its pluralism, with some journalists seemingly more willing – at least temporarily – to apply self-censorship than before[73]. In its Resolution 1603 (2008), the Assembly asked the Georgian authorities to eliminate obstruction of access to information for political or administrative reasons and ensure the best quality of training for media professionals.

60. In the wake of the events of 7 April 2009, which followed the parliamentary elections in **Moldova**, the Monitoring Committee received numerous reports on disproportionate restrictions imposed on freedom of access to information and journalistic freedom. Police were seen attacking and threatening journalists, as well as destroying filming equipment and tapes. At least three journalists were detained and later released. Reportedly, 20 Romanian journalists and three Georgian TV crews travelling to report from Chisinau were prevented from entering Moldova. At least five Romanian journalists already reporting from Moldova were told to leave the country after the introduction of the visa regime for Romanian nationals on 9 April 2009. Internet access in Chisinau via the network of the national provider Moldtelecom was interrupted on 7 April and in the morning of 8 April, and other websites, including opposition-leaning news sites, were temporarily inaccessible on 11 April. The report by the Monitoring Committee condemned the above-mentioned restrictions and violations of the freedom of the media, which are unacceptable in a Council of Europe member state, and called on the authorities to take all the necessary steps to eliminate the consequences of these violations[74].

61. In **Monaco**, communication by the National Council remains under the control of the Government via its press centre, which manages broadcasts on state television, thus limiting *de facto* the parliamentary institution's press freedom and independence vis-à-vis the executive[75].

62. In a recent information note on their last two visits to Moscow in April 2008 and in March 2009, the co-rapporteurs for **Russia** informed the Monitoring Committee that the general feeling of the journalists they met was that media pluralism in Russia had declined in the past couple of years[76]. Some journalists complained about the existence of the so-called "Stop List", which is an informal list of persons, mostly opposition figures or persons expressing views that do not coincide with those of the authorities, who are barred from television news and information programmes. While the authorities denied the existence of such a "Stop List", we noted that all journalists we met expressed concerns about the policy of "self-censorship" which exists in many media outlets. Distribution of print media, especially outside the large cities, is one of the key concerns of the independent journalists and of the authorities. Distribution of print media is performed, via the postal system, by some 5 private distribution networks. The Federal authorities appear to be working on improving the distribution of print media by extending the network of the post offices and providing assistance to municipal governments in the establishment of the so-called "media centres" in major cities. At the same time, independent media outlets continue to complain about unequal access to the distribution networks, as well as the lack of effective possibilities to create alternative networks for the distribution of their own production. In

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71. See Doc. 1502 rev. The new Law holds people liable only for false statements that seriously damage a person or his or her reputation, and not for a mere mistake. Moreover, the law distinguishes between public and private persons in defamation proceedings. According to the Law, the court can only hold the owner of a media outlet liable when a defamatory statement is aired or published. A journalist or editor can never bear individual responsibility for the publication of a defamatory statement. This provides important legal protection to journalists. It eliminates the possibility that, in the case of a libel accusation, a journalist would be forced personally to hire expensive lawyers, or pay damages that he or she may not be able to afford.
72. See Doc. 1502 rev.
73. See Doc. 1502 rev and Doc. 11628.
74. See Doc. 11878. See also: the statement issued by Mr Andrew McIntosh, (United Kingdom, SOC), Chair of the Assembly Sub-Committee on the Media, on 17 April 2009; Report on abuses against journalists following protests on 6-10 April 2009 by the Independent Center of Journalism in Moldova.
75. See Doc AS/Mon (2009)01rev.
76. See Doc. AS/Mon(2009)09 rev. See Amnesty International report of 26 February 2008 Russian Federation: Freedom limited -- the right to freedom of expression in Russia.

this context, electronic media, especially television, are the main source of information for the majority of people. However, most, if not all, television broadcasters, especially those with a nation-wide outreach, are controlled by the government or by people supported by the current authorities. As a result, information and news programmes are considered to be generally one-sided and plurality of views is limited in the broadcast media[77]. A new draft law on the media, which is being prepared to replace the existing law adopted in 1993, provides inter alia for a clear list of the rights of journalists and a regulatory framework for the Internet. As media legislation reform is an area where the Council of Europe has a wealth of expertise to contribute, the co-rapporteurs recommended that the State Duma and the competent governmental authorities consult the Council of Europe on the new draft media law.

63. In **Serbia**, the provisions of the new Constitution governing freedom of expression and freedom of the media are in line with European standards. However, despite a protective Constitutional framework, journalists do not feel secure in Serbia. The Monitoring Committee is concerned about the increase of violence against journalists, especially, those engaged in investigatory work, and strongly condemns any cases of such violence[78]. In its Resolution 1661 (2009), the Assembly asked the Serbian authorities to investigate and prosecute all cases of violence and harassment against journalists and take positive steps to ensure their protection.

64. In **Turkey**, 2008 has reportedly been a troublesome year with regard to freedom of expression. Amnesty International believes that freedom of expression is not guaranteed given the various articles of the Criminal Code that restrict it. For example, 1,300 websites are said to have been closed down by the authorities in 2008[79]. The reform of Article 301 of the Criminal Code by no means lifted all the obstacles to freedom of expression[80].

65. The Committee of Ministers of the Council of Europe is currently supervising the measures taken and envisaged by the Turkish authorities in the execution of 82 judgments of the European Court of Human Rights and 9 friendly settlements concerning freedom of expression. In the judgments concerned, the applicants' right to freedom of expression had been violated as a result of his or her conviction by the state security courts following the publication of articles, drawings, or books, or the drafting of messages for public consumption. In some other cases, the violations were due to the seizure of publications[81]. The other legal provisions restricting freedom of expression, such as Articles 215, 216, and 217 of the Turkish Criminal Code, remain problematic insofar as they penalise breaches of public order and are used, together with the Anti-Terrorism Act, in proceedings against individuals who express their opinions on the Kurdish issues in a non-violent way, with judges and prosecutors adopting a broad interpretation of the provision on "incitement to violence" or "public interest".

66. In **Ukraine**, as the Gongadze case has demonstrated, journalists and political opponents are at great risk of being threatened or actually harmed. Although three former Ministry of Interior police officers have been convicted by the Kyiv City Court of Appeal for the brutal murder of investigative journalist, Georgy Gongadze, on 15 March 2008, no progress has been made in bringing to justice those individuals who are responsible for

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77. Existing concerns regarding media pluralism and freedom of the media in Russia were highlighted prior to and during the parliamentary elections of December 2007 and the presidential elections of March 2008, which the Assembly observed. This was evident from the one-sided news coverage of the elections in all electronic media, which were dominated by the parties and candidates supported by the authorities. See Doc. AS/Mon(2009)09 rev and the Assembly Ad Hoc Committee reports on the observation of the parliamentary and presidential elections respectively in Doc. 11473 and Doc. 11536.

78. See Doc. 11701 with further references to the case of a murder attempt against the *Vreme* journalist Dejan Anastasijević and to the lack of satisfactory progress in the investigation in the deaths of 3 journalists. See also "Political Violence in Serbia", publication by the Youth Initiative for Human Rights with the support of the Swedish Helsinki Committee for Human Rights, Belgrade, 2007.

79. See my information note on Turkey, Doc. AS/Mon (2009) 10 rev. See also the Resolution adopted on 12 March 2009 by the European Parliament on the Turkey 2008 Progress Report in which the MEPs expressed their regret that freedom of expression and freedom of the press were still not fully protected in Turkey.

80. The Assembly has on several occasions expressed its concern over Article 301 of the Criminal Code, which punished anyone who insults government institutions or offends the concept of "Turkishness". Recent amendments have replaced the offence of denigrating "Turkishness" by that of insulting the "Turkish Nation" and lowered the maximum sentence from three to two years' imprisonment. The Minister of Justice now has to authorise the initiation of investigations under Article 301. See Human Rights Watch World Report 2009, which deems the amendments made to Article 301 as "cosmetic" and notes that the Ministry of Justice granted permission for investigations under Article 301 on several occasions during 2008.

81. See Memorandum CM/Inf/DH (2008)26 on Freedom of expression in Turkey: Progress achieved – Outstanding issues, General and individual measures required by the judgments of the European Court of Human Rights – Follow-up to Interim Resolutions ResDH(2006)79, ResDH(2001)106 and ResDH(2004)38, prepared by the Directorate General of Human Rights and Legal Affairs.

instigating and organizing this crime[82]. Welcoming the unequivocal language employed by the European Court of Human Rights holding violations of Articles 2, 3 and 13 of the ECHR, the Assembly, in its Resolution 1645 (2009), stressed the importance of the timely and comprehensive execution of this judgment, which must include carrying out, without further delay, those investigations the authorities had failed to perform. As long as Gongadze's murder is not properly investigated and those who instigated and ordered the killings are not brought to justice, freedom of expression in Ukraine is at stake.

2.6. Freedom of assembly and of association[83]

67. In **Azerbaijan,** the government has taken a number of measures regulating the activities of political parties, religious groups, legal persons and NGOs, which led in practice to restrictions on freedom of association, including a requirement that all organisations register either with the Ministry of Justice or the State Committee for relations with religious organisations. A number of NGOs have challenged registration refusals or delays in the courts[84]. During election campaigns, for the presidential elections in October 2008 and the referendum in March 2009, the opposition parties complained that they had been systematically refused suitable places for holding political meetings, despite appeals to the courts. Human rights organisations denounced an increase in repression, arbitrary judicial decisions, and violence against civil society activists during the run-up to the referendum[85].

68. The handling of the post–electoral protests in **Armenia** raised concerns about the respect of the principle of freedom of assembly[86].Controversial amendments, adopted on 17 March 2008, to the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations, which placed undue restrictions on freedom of assembly, were revoked, in line with Venice Commission recommendations, following a demand by the Assembly. However, requests to organise rallies are still often rejected on technical grounds, or undue restrictions are placed on them, by the authorities. Regrettably, these decisions by the authorities are often not appealed in court, foreclosing a possibility of obtaining a decision by the European Court of Human Rights on this issue. In Resolution 1620 (2008), the Assembly called on the Armenian authorities to ensure that the principle of freedom of assembly is also respected in practice.

69. In **Bulgaria**, the execution of the judgment of the European Court of Human Rights in the case of the *United Macedonian Organisation Ilinden – Pirin and others* is still pending. The case concerns the dissolution of a political party aimed at achieving "the recognition of the Macedonian minority in Bulgaria" and relates to freedom of association of groups of people standing for such recognition. In its judgment of 20 October 2005*,* the Strasbourg Courtfound that the dissolution of the political party Umo Ilinden-Pirin in 2000 violated Article 11 of the ECHR as nothing in the party's programme or in the declarations of its leaders had challenged the principles of democracy. Two re-registration attempts by the political party – with the same name and statutes as that unjustifiably dissolved – have failed notwithstanding the Court's judgment. A third one is currently under consideration. The Committee of Ministers is following closely this particular case[87].

70. In its Resolution 1603 (2008) on **Georgia,** the Assembly deplored the events which preceded the pre-term presidential elections in Georgia and in particular the violent dispersal of peaceful demonstrations on 7 November 2007, the subsequent temporary silencing of two opposition-controlled television stations and, finally, the decision to declare a state of emergency[88]. Although the escalation of the tensions was halted by the decision to end the crisis by holding early presidential elections in January 2008, together with a plebiscite asking the people to choose the date of the next parliamentary elections, these actions have tarnished the reputation of the Georgian Government both in the eyes of its own population and abroad. One year and a

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82. See also the *Gongadze v. Ukraine*, judgment, Application no. 34056102, 08.11.05, final on 08.02.06, § 169, in which the European Court of Human Rights held that the Prosecutor General's Office response to Mr Gongadze's repeated requests for assistance before his death was "blatantly negligent". The Court also held that after Mr Gongadze's body was discovered, "the State authorities were more preoccupied with proving the lack of involvement of high-level State officials in the case than with discovering the truth about the circumstances of [his] disappearance and death."

83. See also Resolution 1660 (2009) on the situation of human rights defenders in Council of Europe member states and Doc. 11841.

84. See Doc. 11627, Resolution 1614 (2008) and Doc. AS/Mon(2009)19.

85. On 13 December 2008 Interior Minister Usubov opened judicial proceedings against Ms Leyla Yunus, Director of the Institute for Peace and Democracy in Azerbaijan, for slanderous statements causing "moral damage" and "attacking the honour and dignity" of the police and of the Interior Minister. The case was dropped by Mr Usubov on 2 March 2009.

86. Doc. 11579 (2008); see also the report by the Commissioner for Human Rights in Doc. CommDH(2008)11Rev.

87. See also Doc. AS/Jur(2008)24 on implementation of judgments of ECtHR, introductory memorandum by the rapporteur, Mr Christos Pourgourides, Cyprus, EPP/CD.

88. See Human Rights Watch report of 19 December 2007, Crossing the Line: Georgia's Violent Dispersal of Protestors and Raid on Imedi Television.

half later, as of 9 April 2009, opposition parties have organised a series of protest rallies in order to force the authorities to call early parliamentary elections. Despite publicly stated intentions from both the authorities and organisers of the rallies that they would respect the law and constitution, both sides also expressed their concern and fear that provocations could take place and that the protests could escalate into violence. In a recent information note on their fact-finding visit to Georgia in March 2009, the co-rapporteurs expressed their concern about reports that protesters had been attacked by unknown assailants in the vicinity of the rally venues. They thus called upon the Georgian authorities to fully investigate all these attacks and fully ensure the safety of the participants in those demonstrations[89].

71. In its Resolution 1666 (2009) on **Moldova,** the Assembly deplored the fact that the peaceful protest in front of the buildings of the presidency and the parliament which began on 6 April 2009, mainly at the initiative of young people who did not accept the results of the elections, degenerated on 7 April 2009 into a violent attack on, and destruction of, the buildings of the parliament and the presidency, as well as the destruction of several public buildings. The Assembly considered that, whereas the right to demonstrate is essential in a democracy, it is also a government's duty, and the duty of the authorities concerned, to ensure its citizens' right to security when public order is disturbed. The Assembly firmly condemned the acts of violence, which must never be used in a democratic society as a vehicle to express political opinions. At the same time, the Assembly disapproved the statements made by the Moldovan authorities immediately after the outbreak of violence, in which officials at the highest political level, without first having conducted a thorough investigation, accused the opposition of staging the violent protests in an attempt to organise a *coup d'état*. The Assembly insisted that an independent, transparent and credible inquiry into the post-electoral events and into the circumstances which led to them must be held immediately, in addition to the independent investigation into all the aforementioned allegations of human rights violations committed by the police[90].

72. The enactment of law No 1355 on associations and federations of associations in December 2008, enabled **Monaco** to fulfil the undertakings given at the time of its accession regarding domestic law, as set out in Opinion 250 (2004). The question of financial supervision of subsidised associations not having been raised in the new law, this issue is still outstanding, and legislative reforms should be undertaken to ensure maximum transparency in public finances[91].

73. Freedom of association in **Russia**, especially after the so-called "NGO Law"[92] came into effect in April 2006, has been one of the main issues of concern for the Monitoring Committee over the last years. Provisions in the 2006 law require NGOs to file yearly reports on their activities as well as on their sources of funding. Failure to do so, as well as violating any of the strict requirements and conditions set out in this law, can lead to closure by the authorities of the NGO in question[93]. The NGO community, including the Public Chamber, complains that the reporting process established by law is complex and cumbersome and, compounded in many cases by official lengthy inspections, which can paralyse the work of many NGOs. In the first two years since the adoption of the law, approximately 6,600 NGOs have reportedly been closed by the authorities, 1,200 for violations of the law and 5,400 for alleged "inactivity". In addition, 11,000 new NGOs were denied registration[94]. In this respect, the recent ruling by the Supreme Court that NGOs could not be liquidated on formal grounds, e.g. for administrative errors in their reporting, has been welcomed by the NGO community. Since the entry into force of the 2006 amendments, there have been no cases of closure of major NGOs, which have both the resources and knowledge to complete the reporting process and bring a case to

89. See Doc. AS/Mon(2009)16 rev. See also reports by the Public Defenders' Office of Georgia and the Public Advocacy NGO Coalition. In a letter addressed on 7 May 2009 to the Georgian Ministers of Interior and Justice, the Director for Europe and Central Asia of HRW, Ms Holly Cartner, expressed the Organisation's profound concern about the growing number of physical attacks on opposition activists and peaceful demonstrators which follow a "striking pattern in which unidentified men in civilian clothes, often armed with rubber truncheons and wearing masks, beat and threatened demonstrators late at night as they were leaving protests sites". She asked the Ministers to take immediate steps to conduct comprehensive investigations into all allegations of attacks against peaceful demonstrators which will lead to the identification and prosecution of the perpetrators so as to demonstrate the government's commitment to justice and prevent any attempts to attack freedom of assembly.

90. See also Doc. 11878 and section on police above.

91. See Doc. AS/Mon (2009)01rev.

92. Formally the "Law On Introducing Amendments to Certain Legislative Acts of the Russian Federation", which amended four existing laws: the Civil Code, the Law on Public Associations, the Law on Non-commercial Organisations, and the Law on Closed Administrative Territorial Formations.

93. See Doc AS/Mon(2009)09 rev. See also Human Rights Watch report of 18 February 2008, Choking on Bureaucracy: State Curbs on Independent Civil Society Activism; see also Amnesty International report of 26 February 2008, Russian Federation: Freedom limited -- the right to freedom of expression in Russia.

94. It should be noted that the total number of NGOs registered in Russia is approximately 120,000.

the court if need be. However, medium and, especially, small scale NGOs are overwhelmed by the reporting requirements and, therefore, could face the risk of closure. In addition, the registration and reporting requirements are viewed as a serious barrier for the formation of new NGOs and social movements.

74. During the last visit of the co-rapporteurs to Moscow in March 2009, the authorities themselves recognised the problems created by the NGO law and said that, as a result, the number of inspections had decreased over the last couple of months and far fewer NGOs received official warnings for errors in their reports. The co-rapporteurs stressed, for their part, that the shortcomings in the current legislation and the concerns expressed by civil society and the international community could not be satisfactorily addressed by changes in the implementation procedures alone and that the legislation had to be considerably reformed. The co-rapporteurs recommended that the authorities should seek co-operation with the relevant Council of Europe departments, including with the Venice Commission, to reform the current legislation[95]. In a recent welcome development, President Medvedev has just set up a working group to draft changes to the NGO law. The working group, composed of representatives of the presidential administration, the Ministry of Justice, the Duma and Federation Council, and civil society, is to submit proposals within three weeks as of 8 May. The President's decision, which is the first step toward bringing the NGO law into line with international standards, followed a meeting with the members of the Presidential Council for Civil Society Institutions and Human Rights on 15 April, during which the President acknowledged the difficulties faced by NGOs, including restrictions "without sufficient justification" and the fact that many government officials view NGOs as a threat[96].

75. In addition to the effects of the NGO legislation, civil society representatives in Russia continue to complain about interference and, in some cases, direct harassment, by various state bodies. For some organisations, random tax and building inspections, inspections on the use of pirated software, criminal investigations against NGO leaders, as well as the use of anti-extremism legislation, have become common practice. Another issue of concern for the Monitoring Committee relates to the mechanisms for interaction between the authorities and civil society. The co-rapporteurs strongly support any initiative to strengthen the dialogue between the civil society and the authorities, but consider that such mechanisms can only be effective if their work and decision-making are fully transparent and their composition is a genuine reflection of the civil society existing in Russia today. While welcoming the intention of the authorities to establish a constructive dialogue between government and civil society, they have recommended that the appointment and decision-making procedures of the Public Chamber, as well as of Public Councils – the two formal mechanisms for interaction currently available – be changed with a view to making them fully transparent and democratic and to ensure that their composition can be truly representative of the wide range of NGOs existing in Russia.

76. In **Serbia**, the co-operation between the authorities and the NGO sector has substantially improved since the establishment of the new government. In its recently adopted Resolution 1661 (2009), the Assembly welcomed the development of new legislation on the freedom of association in Serbia, in co-operation with the Council of Europe. The Assembly, however, regretted that this draft law was, once again, taken off the agenda of the parliament in December 2008. The government withdrew the draft law in order to provide more time for the debate on the budget law, to make sure that the latter was adopted on time for the beginning of the new financial year. The adoption of the law on associations is one of the long-standing commitments of Serbia which has not been fulfilled yet. The Assembly thus called upon the Serbian authorities to enact urgently the Law on Associations, taking into account all recommendations of the Council of Europe experts.

77. In **Turkey,** the restrictions on freedom of association mainly relate to political parties. The country is notorious for the many dissolutions of political parties, the most recent instances being the attempt to dissolve the ruling AKP party in 2008 and the political crisis that ensued, as well as the on-going proceedings for the closure of the DTP party (pro-Kurdish)[97]. The last year crisis gave rise to an Assembly debate under urgent procedure on "the functioning of democratic institutions in Turkey: recent developments" during the June 2008 part-session and led to the adoption of Resolution 1622, on the basis of a report prepared by the Monitoring

95. See Doc. AS/Mon(2009)09 rev. A recent review of Russia's NGO legislation by the Council of Europe's Expert Council on NGO Law, established to evaluate the conformity of member states' NGO laws and practices with Council of Europe standards and European practice, criticised Russia's NGO registration procedure, concluding that it "needs to be seriously simplified and built on straightforward bases."

96. See the statement issued by Human Rights Watch on 13 May 2009. A coalition including Human Rights Watch and Russian human rights organisations urged the working group to adopt proposed reforms in order to guarantee the right to freedom of association.

97. Anticipating a verdict closing down the party, 42 Kurdish politicians with links to the DTP have applied to set up a new party to be known as the Peace and Democracy Party. This almost systematic circumvention of the problem of banning parties only underlines the perverse effects of the existing legal framework.

Committee[98]. The Committee recalled that in almost all the cases concerning the dissolution of political parties by the Constitutional Court between 1991 and 1997, the European Court of Human Rights had concluded that the sanction was disproportionate and was thus a violation of the right to freedom of association enshrined in Article 11 of the ECHR. Although the 1995 and 2001 constitutional reforms and the 2003 amendments to the Political Parties Act had strengthened the requirement of proportionality for any state interference in the freedom of association enjoyed by political parties and an amendment to Article 90 of the Constitution in 2004 had provided that international human rights treaties take precedence over any incompatible domestic legislation, the recent cases involving the closing down of the AKP and the DTP illustrated the fact that the legislation currently in force does not provide politicians with sufficient protection against state interference in their freedom of association and expression. In its Resolution 1622 (2008), the Assembly asked the Monitoring Committee to intensify its post-monitoring dialogue with Turkey, closely follow the development of the democratic functioning of its state institutions and, in particular, the constitutional drafting process, and if necessary seriously consider the possibility of re-opening the monitoring procedure for Turkey.

78. In the Opinion adopted upon the request of the Monitoring Committee in March 2009 on the relevant constitutional and legal provisions concerning the banning of political parties in Turkey, the Venice Commission[99] held that the provisions in Article 68 and 69 of the Constitution and the relevant provisions of the Political Parties Act together form a system that as a whole is incompatible with Article 11 ECHR, as interpreted by the European Court of Human Rights, and with the criteria adopted in 1999 by the Venice Commission and since endorsed by the Parliamentary Assembly. Further reform is necessary in order to raise the general level of party protection in Turkey to that of the Convention and the common European democratic standards, both on the substantive and the procedural side. Any reform to the Turkish rules on party closure will require constitutional amendment. I have urged the Turkish authorities to carry out a serious in-depth revision of the Constitution and the legislation on the political parties in order to bring the provisions in line with European standards, as repeatedly recommended by the Assembly[100].

79. As regards the Law on Foundations, amendments passed in February 2008 were a step forward in improving the statutory framework aimed at guaranteeing freedom of association and religion. The scope of the new law extends to all existing foundations, including those of the non-Muslim communities. Representatives of the various communities organised as foundations I met during my visit in November 2008 supported this law and said they were satisfied with it, stressing at the same time that the true test of the progress represented by this law remains its implementation by the various authorities concerned and its interpretation by the courts[101].

80. In **Ukraine**, despite its accession commitment to enhance protection through a law governing peaceful assemblies, no progress has been made in this area. Troubling reports have emerged on systematic abuse of this freedom in 2008.[102]

2.7. Freedom of religion and of conscience

81. **Albania** continues to provide a valuable example of religious harmony in the region. However, religious communities remain adversely affected by the authorities' failure to provide for full restitution of properties and other belongings[103].

82. In **Armenia**, the National Assembly has prepared a draft law on amendments to the law on freedom of conscience and on religious organisations, as well as to related articles in the Criminal Code. In its draft opinion, the Venice Commission stated that some amendments constitute improvements as regards the

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98. See Doc. 11660 (Rapporteur: Mr Van den Brande, Belgium, EPP).
99. CDL (2009) 014. The Venice Commission declared its readiness to assist the Turkish authorities should they so wish in amending the rules on party prohibition, as a separate process or as part of broader constitutional reform.
100. See AS/Mon(2009)10 rev.
101. See also the concerns expressed by Mr Hunault in his report on freedom of religion and other human rights for non-Muslim minorities in Turkey and for the Muslim minority in Thrace (Eastern Greece), Doc. 11860. The new law also fails to (a) settle the question of return of property which belonged to foundations of minorities ("*vafks*") and, following expropriation, was sold to third parties, and (b) provide for compensation when property cannot be returned.
102. See Doc. AS/Mon(2008)06 rev. Also, the 'Respublica' Institute, a civic organisation which monitors observance of freedom of assembly, claims that this right was infringed by representatives of the Presidential Secretariat, the local authorities, the Ministry of Internal Affairs and the courts through unwarranted bans on rallies, pickets and demonstrations, or obstructions to these, see UHHRU news item, "Respublica" Institute speaks of systematic abuse of freedom of assembly", 29.07.08.
103. See Doc. AS/Mon(2009)03 rev.

provision and the range of human rights guarantees in the law. However, it also expressed its concern about a number of proposed changes, notably with respect to the scope of freedom of conscience, religion or belief, the requirements for registration of religious organisations, as well as the definition of the offence of *proselytism*[104]. In Resolution 1532 (2007), the Assembly considered that the current law on alternative service still does not offer conscientious objectors any guarantee of "genuine alternative service of a clearly civilian nature, which should be neither deterrent nor punitive in character".

83. The establishment of an alternative civilian service is one of the obligations undertaken by **Azerbaijan** when it joined the Council of Europe in 2001. The National Action Plan for the protection of human rights, which envisages the preparation of a draft law on alternative service by a task force including Council of Europe experts, has still not resulted in the introduction of legislation on a civilian alternative to military service[105].

84. In their recent information note of March 2009[106], the co-rapporteurs for **Russia** informed the Monitoring Committee about several reports, notably from the Jehovah's Witnesses, about the abusive use of administrative and fiscal inspections against the Central office of the Organisation and its regional branches. They also informed the committee that, in some regions, the Procuratura initiated cases against regional branches of Jehovah's Witnesses on the grounds that the literature they disseminate could be considered of "extremist character", on the basis of the law on countering extremist activities. Moreover, the issue of alternative service in Russia has been one of the long-standing areas of attention for the Monitoring Committee. It is the stated intention of the Russian authorities, in the long term, to transform the armed forces into a fully professional service and to abolish conscription. Following the reduction in 2007 of the length of service from 24 months to 12 months for recruits drafted after 1 January 2008, the length of alternative service was changed from 42 months to 21 months for those recruited after 1 January 2008 (and from 36 to 18 months for those who perform civil functions in the armed forces as alternative service). The co-rapporteurs consider that the disproportionate difference in duration between military service and alternative service in Russia makes the latter clearly a less attractive alternative. This seems to be confirmed by the statistics given to us, which indicate that, in the first 3 months of 2008, only 439 requests were made for alternative service of which 400 were granted [107].

85. In **Serbia**, the Law on Churches and Religious Communities and its implementation do not allow all religious communities living in Serbia to enjoy fully their right to freedom of thought, conscience and religion enshrined in Article 9 of the ECHR[108].

86. The issues related to the freedom of religion and the rights of non-Muslim minorities in **Turkey** have been dealt with in the report Mr Michel Hunault has prepared for the Assembly's Committee on Legal Affairs and Human Rights[109]. For my part, as rapporteur for the post-monitoring dialogue with Turkey, I met members of the religious minorities in Turkey who said they were free to exercise their religion but emphasised the problem that they do not have legal personality and that this has direct consequences in terms of property rights and asset management[110]. In my interview with him, His Holiness the Ecumenical Patriarch Bartholomew I, also mentioned the difficulties encountered, particularly with respect to his "Ecumenical" title and the field of education, as regards the issue of the closure of the Greek Orthodox theological college in Heybeliada (Halki seminary)[111]. Therefore, upon my proposal, the Monitoring Committee asked the Venice Commission to assess the compatibility with European standards of the lack of

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104. See Amnesty International report of 16 January 2008, Armenia: Fear of the freedom of conscience and religion; violations of the rights of Jehovah's Witnesses, which expresses concern over the practice of imprisoning conscientious objectors, most of whom are Jehovah's Witnesses.
105. See Doc. 11627, Resolution 1614 (2008) and Doc. AS/Mon(2009)19.
106. See Doc. AS/Mon(2009)09 rev.
107. *Idem*. See also the Committee of Ministers' Recommendation (87) 8 of 9 April 1987 Regarding Conscientious Objectors to Compulsory Military Service, according to which alternative service must not be of punitive nature and its duration should, in comparison with the military service, remain within reasonable limits.
108. See Doc. 11701; see also the section on non-discrimination.
109. Report on freedom of religion and other human rights of non-Muslim minorities in Turkey and the Muslim minority in Thrace (eastern Greece), Doc. 11860, to be debated by the Assembly at one of its next part-sessions. See also the 2003 report of the Commissioner for Human Rights on his visit to Turkey, Doc. CommDH (2003)15 (19 December 2003). See also below the section on protection of minorities and the fight against racism and intolerance.
110. *Idem*. See also for details my information note, Doc. AS/Mon(2009)10 rev.
111. See also the Concluding Observations on […] Turkey of the seventy-fourth session of the UN Committee on the Elimination of Racial Discrimination, 6 March 2009, which called upon Turkey "to redress such discrimination and to urgently take the necessary measures to reopen the Greek Orthodox theological seminary in the island of Heybeliada, to return confiscated properties and to promptly execute all relevant judgments by the European Court of Human Rights in that respect."

recognition of legal personality for the religious communities in Turkey and examine, in this context, the question of the right of the Greek Orthodox Patriarchate of Istanbul to use the adjective "Ecumenical". I also met the President of the Alevi-Bektashi Foundation. Alevism, as one of the branches of Islam, is the second most important religious belief in Turkey after Sunnism, and has between 15 and 20 million believers, equivalent to a third of the Turkish population. As the Alevis do not recognise mosques as places of worship or the Five Pillars of Sunni Islam, they are calling for recognition of their faith and, especially, the abolition of compulsory (Sunni) religion classes, the abolition of the Religious Affairs Directorate, which functions as the state's religious body even though the state is constitutionally secular, and the statutory recognition of their place of worship, the "Cem houses". They have also asked the authorities to allow them to turn a hotel in Sivas, where 33 Alevis died in a tragic arson attack in 1993, into a museum[112].

87. Moreover, the obligation of the Turkish authorities to "[…] recognise the right of conscientious objection and establish an alternative civilian service" is one of the 12 issues which fall within the scope of the post-monitoring dialogue between Turkey and the Assembly in accordance with Resolution 1380 (2004). Regrettably, the legislation in this area has not yet been amended to this effect. In a recent case, *Ülke v. Turkey*[113], the Court concluded that the many convictions and prison sentences imposed on the applicant for refusing to do his military service constituted degrading treatment in violation of Article 3 of the ECHR. The Court held that the existing legal framework was insufficient as Turkish law contained no specific provision regulating the sanctions provided for in the case of individuals who refuse to do their military service on grounds of conscience or religion and that the only rule applicable in this area seemed to be the rules of the Military Criminal Code that provide for punishments in general terms for disobeying the orders of a superior. In its Interim Resolution CM/ResDH(2007)109[114], the Committee of Ministers urged the Turkish authorities to take without further delay all necessary measures to put an end to the violation of the applicant's rights under the ECHR and to adopt rapidly the legislative reform necessary to prevent similar violations of the Convention. It also called on the Turkish authorities rapidly to provide the Committee with information concerning the adoption of the measures required by the judgment. On 19 March 2009, the Committee of Ministers adopted a second Interim Resolution on the *Ülke v. Turkey* case (Interim Resolution CM/ResDH(2009)45). It is worth noting that, by virtue of Article 90 of the Turkish Constitution, the ECHR takes precedence over Turkish law. However, despite this legal provision the applicant continues to be imprisoned on the basis of a previous conviction. Moreover, conscientious objectors continue to be prosecuted and frequent allegations of their ill-treatment in prison are reported. Furthermore, public statements calling for the right to conscientious objection have led to convictions. The authorities have confirmed that a reform of the Military Criminal Code and the law on military service is under consideration in the Grand National Assembly. According to the Interior Minister, Mr Atalay, the reform will amend the law on citizenship. Turkish citizens living abroad who do not perform their military service would no longer have their citizenship removed. According to Mr Atalay, the idea of a professional military service is also being considered but such reforms require a change in mentalities and take a great deal of time[115].

88. In **Ukraine,** enhancing the legislation on religious organisations and freedom of religion was one of the accession commitments. In 2006 the Ministry of Justice started drafting new wording of the relevant law. The draft law was examined by the Venice Commission but the process has stalled since then[116].

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112. In the case *Hasan and Eylem v. Turk*ey (Application no. 1448/04), brought before the Strasbourg Court by an Alevi student and her father, the Court found a violation of the applicants' right to education under Article 2 of Protocol No. 1 to the ECHR. This violation originated in a problem with the implementation of the religious instruction syllabus in Turkey and the absence of appropriate methods to ensure respect for parents' convictions. The Court held that Turkey, in executing this judgment, should bring its education system and domestic legislation into conformity with Article 2 of Protocol No. 1 and this would also represent an appropriate form of compensation for the applicants. The judgment became final on 9 January 2008 and should now be executed. In its Turkey 2008 Progress Report, the European Commission also looks in some detail at the situation of the Alevis in Turkey. Although the report's authors welcome the recognition by a municipality for the first time that a Cem house is a place of prayer and are pleased that the Council of State has recognised the right of children of Alevi families to be exempt from religious education classes, they note that the general situation is far from being satisfactory, especially regarding the status of places of worship and the issue of religious education classes, which are compulsory under Article 24 of the Constitution.

113. Application No.39437/98, judgment of 24 January 2006.

114. Adopted by the Committee of Ministers on 17 October 2007 at the 1007th meeting of the Ministers' Deputies.

115. See Doc. AS/Mon(2009)10 rev.

116. See Doc. AS/Mon(2008)06 rev.

2.8. Property rights

89. In **Albania**, registration and restitution of property confiscated during the communist regime is one of the problems still awaiting a solution in compliance with the constitutional guarantee of the right to property. According to the director of the Agency for the Return and Compensation of Property, the combined 2007-08 budget allocated by the government for property compensation was approximately $11 million. The total cost for the compensation of owners across the country was estimated at $3.5 billion. After the judgment of the European Court of Human Rights in the case *Beshiri and others v. Albania*, in which the Albanian government was found in violation of Article 6 of the ECHR for taking an excessive time (more than 5 years) to execute the final decision of the national court on the financial compensation of the applicant, an Intergovernmental Committee has been set up, but it is not yet clear what steps the Albanian government will take to speed up the process.

90. In its Resolution 1626 on **Bosnia and Herzegovina**, the Assembly asked the authorities of Bosnia and Herzegovina to urgently find an appropriate and country-wide solution to the problem of repayment of the funds from citizens' foreign currency saving accounts which were frozen after the dissolution of the Federal Republic of Yugoslavia. Around 500 applicants have complained before the European Court of Human Rights because they cannot withdraw their "old" foreign-currency savings. For those who have obtained a final domestic judgment ordering a bank to release their savings, the leading case is the *Jeličić* judgment of 31 October 2006 (the first judgment of the Court against Bosnia and Herzegovina); for those "old" foreign-currency savers who have not obtained a final domestic judgment, the leading case is Suljagić, declared admissible on 20 June 2006.

2.9. Protection of vulnerable groups and action against trafficking in human beings

2.9.1. Refugees, internally displaced persons (IDPs) and asylum seekers[117]

91. The return of over a million refugees and IDPs to **Bosnia and Herzegovina**, of which some 450 000 so-called minority returns, has often been hailed as one of the major successes of the Dayton Peace Agreement. The reality, however, looks slightly different. Accurate figures on refugee returns to Bosnia and Herzegovina are not often available, especially since local authorities are sometimes misrepresenting or inflating the numbers in order to attract additional subsidies. More than 10 years after the war, although laws restoring property to pre-war owners, occupants, and tenants have been enforced and repossession claims resolved, the number of returnees to the Republica Srpska is still very low. The vast majority of those who have returned are elderly and retired, and many of these receive pensions or entitlements for the disabled or for war veterans from the country's other entity, the Federation of Bosnia and Herzegovina. In the Republica Srpska, so-called "occasional returns" appear more common than lasting, sustainable returns. To support sustainable returns further, the Monitoring Committee has invited the authorities to intensify efforts aiming at reconstructing the utility infrastructure in areas destroyed by the war as well as providing employment opportunities to the returnees (see Doc. 11700).

92. In its Resolution 1603 (2008) on the regular monitoring of **Georgia**, adopted in January 2008 prior to the outbreak of the war between Georgia and Russia, the Assembly deplored that the hundreds of thousands of refugees and IDPs from Abkhazia, victims of the ethnic cleansing in the early 1990s, were still deprived of the possibility of returning safely to their homes. The Assembly called upon the de facto authorities to provide secure conditions for the return of IDPs and to respect the inalienability of property rights in the conflict zones, in accordance with the recent resolution of the UN Security Council. The Assembly further called on the Georgian authorities to do their utmost to alleviate the difficult social conditions of the IDPs, integrate them within the mainstream Georgian society without prejudice to their right to return, and ensure the equal rights of IDPs.

93. With the outbreak of the war in August 2008, the issue of refugees and IDPs from South Ossetia and Abkhazia has been at the core of the main Assembly concerns. In parallel to specific opinions or reports prepared by the Committee on Migration, Refugees and Population,[118] the Monitoring Committee has paid particular attention to fact that some 192 000 persons were displaced as a consequence of the war. In its Resolution 1633 (2008) on the consequences of the war between Georgia and Russia, the Assembly expressed its concern that a total of 31 000 displaced persons (25 000 from South Ossetia and 6 000 from Abkhazia) were considered to be "permanently" unable to return to their original places of residence. The

117. See also Resolution … on protecting the human rights of long-term displaced persons in Europe
118. See Docs 11730, 11789, 11859, as well as Resolutions 1648 (2009) on the humanitarian consequences of the war between Georgia and Russia and 1664 (2009) on the follow-up given to Resolution 1648 (2009).

Assembly called on all parties to the conflict, namely Georgia, Russia, and the de facto authorities in South Ossetia, to ensure that all persons displaced by the conflict have the right to return on a fully voluntary basis and to refrain from using displaced persons as political pawns when tackling the issue of return, as well as to ensure that all IDPs have the right to return in safety and dignity, or to resettle voluntarily or integrate locally[119]. In its Resolution 1647 (2008) on the implementation of Resolution 1633, the Assembly, on the basis of a report by its Monitoring Committee, reiterated its call upon Russia and the de facto authorities to fully ensure the right of return of all IDPs to the areas under their effective control.

94. As regards the question ofrepatriation of the Meskhetian population in Georgia, the Law on Repatriation of Persons Forcefully Sent into Exile from Georgia by the former Soviet Union in the 1940s was adopted in July 2007, with a view to ensuring fulfilment of the relevant accession commitment, which required that the repatriation process should be completed by 2011. The content of the draft law as adopted has been widely criticised[120]. With many of the issues worded in an ambiguous way or not touched upon at all, the adopted law will need to undergo further revision in the future so that the deadline of 2011 for the completion of repatriation be met. In its Resolution 1603 (2008), the Assembly asked the Georgian authorities to pursue the work of the state commission on repatriation, seek actively international assistance, create conditions for the repatriation process with a view to its completion by 2011 and implement fully the recommendations set forth in Assembly Resolution 1428 (2005) on the situation of the deported Meskhetian population.

95. The Monitoring Committee is closely following the situation of refugees and IDPs in **Serbia**. In its recent report (Doc. 11701), the Committee has noted that, during the past couple of years, the Serbian authorities have made considerable efforts to improve the situation of refugees and IDPs, by removing several obstacles to durable solutions. As a result, the number of refugees in Serbia has been substantially reduced. Additional efforts should be deployed, however, to create an environment conducive to sustainable return, as well as to enable the full integration of those refugees choosing to remain. Eight years after the end of the armed conflict in Kosovo, the IDPs in Serbia remain stuck between uncertain return prospects and the lack of local integration perspectives, and they are faced with many obstacles in the full enjoyment of their basic rights as citizens. In its Resolution 1661 (2009), the Assembly asked the Serbian authorities to 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.

96. In its Resolution 1661 (2009), the Assembly asked the Serbian authorities to 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). Although no official data is available, the UN High Commissioner for Refugees (UNHCR) estimates that there are about 17,000 stateless persons living in Serbia. Complicated, long and sometimes unsuccessful administrative procedures for civil registration and residence registration is an issue of concern especially as full access to civil, political, social and economic rights is possible only for citizens holding a valid ID card (*lična karta)* and who have thus undergone civil registration and registered an officially recognised residence. This problem is particularly serious for the IDPs who, for this purpose, need personal documents that must be extracted from registry books. These may have been destroyed or gone missing or been relocated in one of the seven municipalities in Southern or Central Serbia[121].

97. In **Turkey**, the obligation of the authorities to "[…] lift the geographical reservation to the 1951 Geneva Convention relating to the Status of Refugees and implement the recommendations of the Council of Europe Commissioner for Human Rights on the treatment of refugees and asylum seekers" is one of the 12 issues that are covered by the post-monitoring dialogue with the Assembly in accordance with Resolution 1380 (2004). This geographical reservation excludes non-European citizens from the scope of the Geneva Convention[122]. Despite the excellent co-operation between the UNHCR and the Turkish government, there are several issues of concern in this field. The Turkish authorities have introduced a new procedure for allowing access to persons in detention pending the consideration of their asylum applications. The UNHCR is

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119. The Assembly also asked all parties to the conflict to take a number of other concrete measures including those required to fully and effectively implement the Council of Europe Commissioner for Human Rights' six principles for urgent protection of human rights and humanitarian security drawn up after his August 2008 visit to the region.

120. See Doc. 11502 rev which summarises the main criticisms of the law, including: its often vague wording, the short deadlines (the law allows the receipt of applications only between 1 January 2008 and 1 January 2009), the ambiguity on the question of citizenship, the failure to mention the order and procedures of resettlement to Georgia and the rights and duties of the repatriates coming to Georgia, as well as the lack of clarity concerning issues of property, taxation or social security for repatriates.

121. It appears that Roma, Ashkalie and Egyptian IDPs are further at risk as many persons among them have never been registered in birth and citizenship records. However, we were informed that the Law on Registration Books and the Guidelines on Keeping Registration Books allow birth registrations to be made at a later stage.

not permitted access to people who wish to make such an application or who are trying to leave Turkey illegally. The majority of these individuals are said to be held in prolonged detention in Edirne, Kirklareli or Kumkapi. The absence of a host country agreement between Turkey and the UNHCR, the lack of co-ordination in the organisation of assistance, the vexed question of the Iranian refugees and the necessary lifting of the geographical reservation to the 1951 Geneva Convention are at the heart of the co-operation between the UNHCR and the Turkish government[123].

98. In **Ukraine**, many sources, including the UNHCR, have documented alarming practices regarding the removal of refugees and asylum seekers in 2008[124]. Ukraine continues to deny asylum seekers protection and frequently refuses to grant refugee status on the basis of procedural grounds[125]. As the UNHCR has warned, refugees or asylum seekers may not have access to a fair and efficient refugee status determination procedure or not be treated according to international standards governing refugees. Responding to Ukraine's fifth periodic report, the UN Committee against Torture expressed concern at the fact that Ukraine's indiscriminate return-policy included countries where, upon return, people may be in danger of being subjected to torture[126]. The UNHCR has proposed amendments to the draft Law on Refugees, which would enhance complementary and temporary forms of protection, and address existing gaps in the current legislation[127]. If the Ukrainian government approves the draft legislation for free legal aid, the UNHCR estimates that it may come into effect in 2010.

2.9.2. Children

99. In **Albania**, child labour, low school attendance and domestic violence against children continue to be issues of serious concern. In April 2008, parliament voted amendments to the Penal Code to protect children from physical or psychological abuse. The provisions also include the prohibition of using children for the production of pornographic materials and forcing them to work or beg. Education in Albania is free and compulsory between the ages of 6 -14 years, and is free up to the age of 18. However, according to most recent statistics, although there appears to be a trend of increasing enrolment throughout all levels of education, attendance rates remain low, particularly for children living in poverty[128]. Many children reportedly leave school early and engage in child labour. Although Albanian legislation reflects international norms for the minimum working age, these laws seem to have little practical impact in the minds of those employing children in Albania – particularly in relation to agricultural work and begging. Registration of all children immediately after birth has yet to be achieved. The problem appears greatest among those living in poverty.

100. The government is addressing the issue of domestic violence against children with specialised training for police officers and the reorganisation of regional police directorates establishing separate units for the protection of minors and dealing with domestic violence. Regional police directorates have been provided with psychologists supporting the work of these units.

101. In 2003, **Armenia** adopted a 10 year National Plan of Action for Protection of Children's Rights, which is an integral part of the Poverty Reduction Strategy Paper.

102. In **Bosnia and Herzegovina**, although there seems to be no case in which the registration of a Roma child has been denied, the government has not so far taken an active approach to ensure that Roma children are registered. The Monitoring Committee has thus called on the authorities of Bosnia and Herzegovina to adopt a pro-active policy towards registration of Roma children by launching awareness raising campaigns with the Roma population and the municipal authorities responsible for registration.

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122. See Amnesty International report of 22 April 2009, Stranded: Refugees in Turkey Denied Protection. AI notes that in the absence of primary domestic legislation governing the Turkey's conduct toward refugees and asylum seekers, the actions of state officials with respect to such persons are governed by secondary regulations that are unfairly and arbitrarily applied. As a result, the ability of individuals in need of international protection to access their internationally recognised rights is significantly weakened. AI is concerned that such individuals are forcibly returned to countries where they are threatened by persecution.

123. See Doc. AS/Mon(2009)10 rev.

124. UNHCR Global Appeal 2009 Update, November 2008, p. 316.

125. See Human Rights Watch World Report 2009. According to HRW, a fundamental problem is the fact that Ukraine does not have a clear migration policy. In addition, in detention, migrants and asylum seekers are often deprived of their fundamental rights, including, access to a lawyer, to be informed of their rights, and the right to a fair trial.

126. See UN CAT report, § 19.

127. UNHCR Global Appeal 2009 Update, p. 316.

128. See Doc. AS/Mon (2009) 03rev and further references to UNICEF statistics according to which the net primary school enrolment ratio from 2000-2005 was 96% for boys and 95% for girls whereas the net primary school attendance ratio from period 1996-2005 was 54% for boys and 50% for girls.

103. In **Serbia**, the decision of the Ministry of Education of Serbia to provide every child with elementary education, irrespective of whether he or she has a citizenship certificate, has been commended by the Monitoring Committee.

2.9.3. Trafficking in human beings[129]

104. Trafficking in human beings has been an issue of major concern with respect to **Albania**. Once a major source and transit country for trafficking in human beings, Albania has undertaken significant efforts in recent years to fight this crime more effectively. It has created a legislative and operational framework covering the areas of investigation and prosecution, protection and prevention. Albania has ratified the Council of Europe Convention on Action against Trafficking in Human Beings and its Penal Code criminalises trafficking in human beings. Trafficking in children and women can carry penalties of up to 20 and 15 years of imprisonment respectively. Cross-border co-operation with neighbouring countries has improved with the signing of a number of bilateral agreements, mainly in the fields of law enforcement and border control, including a bilateral abolition of child trafficking agreement with Greece. However, generally, the government's efforts to protect and reintegrate victims of trafficking remain modest and Albania is still a transit country of women trafficking[130].

105. In **Ukraine**, although the Cabinet of Ministers adopted the National Anti-Trafficking in Persons Programme, it appears that the Programme lacks sufficient performance indicators and is underfunded[131]. According to the US Department's Trafficking in Persons Report, despite the existence of widespread reports of trafficking-related corruption, "the government of Ukraine does not fully comply with the minimum standards for the elimination of trafficking", important shortcomings being Ukraine's failure to adequately investigate, prosecute, and convict traffickers, notably government officials, who are frequently complicit in trafficking[132].

2.10. Non-discrimination and promotion of equality

106. In **Albania**, the equal rights of all citizens are guaranteed by the Constitution. However, direct and indirect discrimination against women remains a persistent problem. The Law on Gender Equality in Society, adopted in April 2008, requires inter alia that at least 30% of appointed positions are allocated to the under-represented gender and 30% of all candidates in general and local elections are from the under-represented gender. Albania is essentially a patriarchal society with a history of silence regarding violence against women. The Law on Measures against Violence in Family Relations, which entered into force on 1 June 2007, provides the first firm protection mechanism for victims of domestic violence. The law includes protection measures and penalties for breaches of protection orders and encourages victims to report domestic violence. However, it does not make domestic violence a specific offence.

107. A draft anti-discrimination law has been submitted to the Albanian parliament. Its provisions address inter alia equal opportunities for all, irrespective of sexual orientation. If adopted and properly implemented, the new law should bring an end to the reported continuing arbitrary arrests and police abuse of homosexuals[133]. It would ensure compliance with the Assembly's recommendation to "counter all forms of discrimination"[134]. Although the Ombudsman is entitled to consider complaints about discrimination or mistreatment by state authorities including the police, there is no opportunity to complain against sexual discrimination in employment.

108. In **Bosnia and Herzegovina,** the so-called "Others" should be given an effective opportunity to participate fully in political life by running in the election for members of the presidency and participating in the designation of delegates to the House of Peoples. In its Resolution 1626 (2008), the Assembly asked the BiH authorities to ensure, in parallel with the implementation of Annex VII of the Dayton Peace Agreement and of the decision of the Constitutional Court of Bosnia and Herzegovina on the constituent status of peoples, that **all** citizens of Bosnia and Herzegovina have equal access to government structures at all levels.

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129. See above section 2.3, as regards the record of signatures and ratifications of the relevant CoE Convention.
130. As concerns the problem of trafficking in human organs in Kosovo, a report is being prepared by the Committee on Legal Affairs and Human Rights. See also Amnesty International Annual Report 2009.
131. See Amnesty International Annual Report 2008.
132. US Department of State, *Trafficking in Persons Report*, 2008.
133. A report is being prepared by the Committee on Legal Affairs and Human Rights on discrimination on the basis of sexual orientation and gender identity (Rapporteur: Mr Andreas Gross, Switzerland, SOC)
134. See Resolution 1538 (2007) on the honouring of obligations and commitments by Albania.

109. In its Resolution 1626 (2008)on **Bosnia and Herzegovina,** the Assembly condemned the discrimination and violence against lesbian, gay, bisexual and transgender (LGBT) people and the attacks against organisers and participants of the Sarajevo Queer Festival and journalists (see also Doc. 11700). The Assembly also asked the authorities of Bosnia and Herzegovina to ensure the protection of LGBT people as well as others who are promoting their rights and; and promptly and thoroughly investigate any attacks against them and bring those responsible to justice.

110. "Ethnic segregation" in primary and secondary schools continues to be a matter of concern in **Bosnia and Herzegovina**. Over the past twelve years, the fact that young Bosniac, Croat, and Serb students have largely sat – and continue to sit – in classrooms populated by members of the same ethnic group, has helped separate the three so-called constituent peoples from one another, instead of promoting post-conflict reconciliation. At present, there are three distinct school curricula in Bosnia and Herzegovina. This supports and codifies ethnic segregation. The development of a common core curriculum for all schools, which would be complemented by a set of culturally specific subjects, could be a solution to the problem. In this respect, in Resolution 1626 (2008), the Assembly called upon the authorities of Bosnia and Herzegovina to put an end to the practice of "ethnic segregation" in primary and secondary schools as a matter of urgency and fully implement the 2003 primary and secondary education reform.

111. In **Moldova**, the prohibition on people holding multiple citizenship from exercising high public functions, including becoming members of parliament, is a matter of serious concern for the Monitoring Committee. According to Article 75, paragraph 3, of the Electoral Code, a person may stand as a candidate with multiple citizenship, provided that, if elected, he/she denounces citizenships other than Moldovan. 22 persons elected to parliament during the last elections hold multiple citizenship and are thus directly concerned by this ban. In the case of *Tanase and Chirtoaca v. Moldova* (Judgment of 18 November 2008, application No 7/08), the ECHR found such a requirement contrary to Article 3 of the Additional Protocol to the European Convention of Human Rights (ECHR), as well as to the European Convention on Nationality, which Moldova ratified on 30 November 1999. An appeal by the Moldovan authorities is now pending before the Grand Chamber. In its Resolution 1666 (2009), the Assembly urged the Moldovan authorities to suspend the application of the articles of the Electoral Code prohibiting people holding multiple citizenship from exercising high public functions, while awaiting the judgment of the Grand Chamber of the Court in the above-mentioned case.

112. **Monaco** has still not ratified Protocol 12 to the ECHR (the latter containing a general non-discrimination clause), contrary to the undertaking given at the time of accession, as set out in Opinion No. 250 (2004). The authorities base their argument on the country's specific circumstances, given that the indigenous population is outnumbered by foreign nationals living and/or working there. Despite a law on the statement of grounds for administrative decisions, enacted in accordance with the undertakings given at the time of accession, Monegasque nationality is still granted by the Sovereign Prince alone and applicants are not informed of the reasons for a refusal. The Principality still has to adopt anti-discrimination measures in the field of civil and administrative law. Safeguards are also required with regard to the preferential rules applying to Monegasques, among others, in the employment sector. This will serve to protect workers who do not benefit from such rules against any discrimination in the application of the system[135].

113. In Monaco, draft legislation tabled by a group of members of parliament from the majority was approved by the National Council on 28 April 2008 and included measures to offer protection from, and establish penalties for, domestic violence between couples, whether or not married or of different sexes. The bill inserted a part V entitled "unmarried cohabitation" and a new Article 196-1 into Book 1 of the Monegasque Civil Code, worded as follows: "Unmarried cohabitation consists in a *de facto* union, characterised by a shared life of a stable and continuing nature between two persons of different sex living as a couple." After examining this proposed wording, the committee on the rights of women and the family considered it necessary to delete the words "of different sex" to avoid any discrimination based on sexual orientation. After a stormy debate the proposal, as amended, was approved by the National Council, against the advice of the Minister of State. The co-rapporteurs were shocked to discover that in the course of this debate in the National Council, homophobic views were held by senior public authorities[136].

114. In **Serbia,** the adoption of the anti-discrimination law in March 2009 was welcomed by the Assembly in its Resolution 1661 (2009). However, regrettably, the discussion on this law was marked by the strong opposition to its adoption by the religious communities. Reportedly, the leaders of the religious communities

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135. See doc AS/Mon (2009)01rev, Doc. 11299 and Resolution 1566 (2007); see also the ECRI report on Monaco, doc CRI(2007)25, adopted on 15 December 2006 and made public on 24 May 2007, and the report on Monaco by the Commissioner for Human Rights, Doc Comm(2009)10. See also above, section 2.3.
136. See Doc. AS/Mon (2009)01rev.

objected to the provisions of this law which concern the freedom of religion and the prohibition of discrimination on the grounds of gender identity and sexual orientation. While welcoming the fact that the authorities resisted the pressure from the religious communities and adopted the law, without any substantial changes, the Monitoring Committee is concerned by the fact that the issues of freedom of religion, gender identity and sexual orientation continue to be a factor of division in Serbian society, as the opposition parties proposed some 450 amendments to the draft law during the parliamentary procedure. The Committee is also concerned by the fact that LGBT activists in Serbia often experience harassment, intimidation, threats and violence. Although the authorities have always condemned violence against LGBT persons, it is believed that the law enforcement agencies and the courts are reluctant to deal with these cases and only a few perpetrators of attacks have actually been brought to justice and punished. In the view of LGBT organisations, a general law on gender equality needs to be adopted.

115. In its Resolution 1661 (2009) on Serbia, the Assembly, on the basis of the report of the Monitoring Committee (Doc. 11701 and Addendum), asked the Serbian authorities to develop a comprehensive anti-discrimination policy to eliminate all forms of discrimination, including against sexual minorities. It also asked the Serbian authorities to investigate and prosecute all cases of violence and harassment against all human rights activists – including those dealing with the rights of the LGTB population – and take positive steps to ensure their protection.

116. In **Ukraine**, discrimination in employment is an issue which adversely affects women. Despite the fact that Ukraine has adopted legislation to ensure gender equality in employment, including the Law on Equal Rights and Opportunities for Men and Women and amendments to the Labor Code prohibiting gender discrimination in employment and pay, in practice, women are discriminated upon both in the private and public sectors. As a result, women are frequently forced to accept low-paying jobs in the unregulated informal economy[137]. Current legislation does not adequately address domestic violence against women. Amendments to a new draft law with a view to improving the legislation of Ukraine to counteract violence in the family were discussed in the Verkovna Rada and further changes were recommended. According to Amnesty International, the proposed amendments to the Law on the Prevention of Violence in the Family and other relevant articles of the Administrative Code, although an improvement, do not ensure adequate short- and long-term alternative housing for victims of domestic violence. Regrettably, no progress has been made as of yet on this issue.

2.11. Protection of minorities and the fight against racism and intolerance

117. A climate of respect and tolerance generally prevails regarding minority groups in **Albania**. Today, Albania recognises three national minorities (Greek, Macedonian and Serbian-Montenegrin) and two ethno-linguistic minorities (Aromanian and Roma). Albania has made efforts to enhance the implementation of the Framework Convention on the protection of national minorities since the adoption of the first Opinion of the Advisory Committee[138]. The latter notes that affording Bosniacs protection as a national minority covered under the Framework Convention would allow their specific needs to be met[139]. Representatives of the Greek minority in Vlora, whom the co-rapporteurs met during their visit to the country, confirmed the climate of tolerance in which they live. However, the legal guarantees regarding the use of minority languages with administrative authorities and place names were not sufficiently clear. Further action is required to overcome problems faced in providing education in minority languages. Albania has not signed the European Charter for Regional and Minority Languages (ETS n° 148), arguing that it cannot yet afford the relevant expenditure. This remains the only Council of Europe convention mentioned in the accession Opinion on Albania, which has neither been signed nor ratified, despite repeated calls by the Assembly to do so.

118. Albania has been participating in the 2005-2015 Decade of **Roma** Inclusion since July 2008. The National Strategy for the Improvement of the Roma Living Conditions is being implemented. Dialogue with the Roma community needs improvement. A number of Roma are still not included in the civil registry and continue to face obstacles in their access to employment, education, and housing[140]. The Roma minority still faces poverty, discrimination, extremely high illiteracy rates, and very difficult living conditions. Less than half

137. See Human Rights Watch World Report 2009.
138. See the Second Opinion on Albania of the Advisory Committee on the Implementation of The Framework Convention For The Protection Of National Minorities of 28 May 2008 ACFP/OP/II(2008)003 and comments of the government of Albania on the second opinion of the Advisory Committee on the implementation of the Framework Convention for the Protection of National Minorities by Albania (received on 4 November 2008) GVT/COM/II(2008)005.
139. *idem*.
140. See also Report by the Commissioner for Human Rights, Mr Thomas Hammarberg, on his visit to Albania, 27 October-2 November 2007, Strasbourg, 18 June 2008, CommDH(2008)8.

of all Roma children go to primary school, and only about 25% complete primary education. The Roma population's very low level of education and professional qualifications limit access to the formal labour market, which exacerbates poverty. The Roma often work in informal sectors, and begging is widespread among women and children. Many Roma families are not registered with the authorities. This excludes them from social assistance, impedes access to basic services, including education and health, and increases the risk of human trafficking.

119. In **Azerbaijan**, the law on national minorities has not yet been adopted and the European Charter for Regional or Minority Languages (ETS No. 148) has not been ratified, contrary to Azerbaijan's accession commitments[141].

120. In **Bosnia and Herzegovina**, the Roma are the largest and most marginalised minority group. The Monitoring Committee shares the concerns expressed by international organisations involved in work with the Roma community[142], including the Council of Europe, about the fact that the National Strategy for Roma contains little or no reference to specific actions, responsible authorities, deadlines or budgetary implications. The Committee has thus called upon the authorities of Bosnia and Herzegovina to develop a comprehensive Action Plan on the implementation of the Strategy. Four Action Plans were adopted in 2008. One of the most burning problems affecting the Roma is the lack of personal documents. This lack creates additional problems in the exercise of property rights for many Roma who reside in informal settlements, since it prevents them from seeking the residency status that may help them legalise their titles to property. One of the primary reasons for the inability of Roma to gain access to personal documents is that their names do not appear in birth registers. People without birth certificates in Bosnia and Herzegovina are unable to gain access to education, healthcare and social welfare. They are also unable to participate in civic life.

121. The increase in nationalist and ethnic rhetoric in **Bosnia and Herzegovina**, especially in the context of the campaign for the October 2008 local elections and in the wake of the adoption by the Kosovo Assembly of the unilateral declaration of independence, has been an issue of concern for the Assembly. In its Resolution 1626 (2008), the Assembly strongly urged all political stakeholders to refrain from statements and actions constituting an incitement to secession or calling the existence of the state based on entities into question. For the Assembly, the Kosovo case cannot be used as a precedent (see also Doc. 11700).

122. Bosnia and Herzegovina has yet to ratify the European Charter for Regional or Minority Languages (ETS No. 148) in accordance with the commitment taken upon accession.

123. In **Bulgaria,** all citizens are equal before the law under the Constitution, irrespective of ethnic, religious and linguistic status. A Protection from Discrimination Act is in force and a Commission for Protection from Discrimination has been functioning since 2005. The overall minority situation in the country is generally fairly satisfactory. Historically, ethnic Turks and the Roma were the two biggest groups subjected to discrimination. Since the 1990s, however, the situation of ethnic Turks has considerably improved and the Movement for Rights and Freedoms, a political party composed mostly of ethnic Turks, has now been in two consecutive government coalitions[143]. The Roma situation, on the contrary, continues to be of concern, in particular as regards cases of police violence against the Roma[144]. The Bulgarian authorities tend to be reluctant to recognise the distinct ethnic identity of the approximately 5,000 Macedonians living in Bulgaria. There have been reports of occasional infringements of the freedom of peaceful assembly and freedom of association of this ethnic group[145]. In its Resolution on the implementation of the Framework Convention for the Protection of National Minorities by Bulgaria[146], the Committee of Ministers concluded that "additional efforts are

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141. Novruzali Mammadov, a prominent member of the Talysh ethnic minority and chief editor of the Talysh Sedo newspaper, was arrested on 3 February 2007. According to his lawyer, Mr Mammadov was beaten while in custody. After a short release on 4 February, Mr Mammadov was rearrested the day after and sentenced to 15 days' administrative detention for resisting arrest. Mr Mammadov was subsequently charged with "high treason" and kept in pre-trial detention while the government investigated the charges. According to the available information, Talysh Sedo is the country's only newspaper published in the Talysh language. Domestic Talysh organisations considered Mr Mammadov's case an act of discrimination. He is on the list of political prisoners drawn up by the Federation of Human Rights Organisations of Azerbaijan. See Doc. 11627 and Doc. AS/Mon(2009)19.

142. These are OHCHR, UNICEF, UNHCR, the World Bank, IOM, SIDA, Save the Children Fund, the EC Delegation in Bosnia and Herzegovina, and the OSCE/Department of Human Rights.

143. The community is represented by 28 members out of 240in the National Assembly and is also adequately represented in local municipalities (12.5% of municipal mayors and 15.2% of municipal councillors).

144. See my information note on Bulgaria, Doc. AS/Mon (2008) 35 rev. with further references to the report on the situation of Roma in Europe (Rapporteur: Mr József Berényi, Slovak Republic, EPP/CD), being prepared by the Committee on Legal Affairs and Human Rights, and which will be debated in the Assembly in 2009. See also Amnesty International 2009 Annual Report.

145. See also section on freedom of assembly and of association.

expected from the State as regards teaching of and in the languages of persons belonging to minorities as well as in order to promote knowledge of the culture and identity of minorities and foster intercultural dialogue and tolerance through education".

124. **Bulgaria** has neither signed nor ratified the European Charter for Regional and Minority Languages. This question was raised with the national authorities but answers remained vague or evasive. I therefore have to ask the Bulgarian delegation to provide me with more information on the obstacles that impede the signing and ratification of the above-mentioned Council of Europe Charter.

125. In its Resolution 1603 (2008) on **Georgia**, the Assembly commended the ratification of the Framework Convention for the Protection of National Minorities (ETS No. 157), but regretted that the procedure for signing and ratifying the European Charter for Regional or Minority Languages had not progressed so far. During his visit to Armenia in July 2008, the President of the Assembly received complaints about the situation of the Armenian minority in Georgia. The co-rapporteurs for Georgia will report on this issue in their next regular monitoring report on Georgia.

126. **Monaco** has taken a number of measures to combat racism and intolerance, including the ratification of a large number of international legal instruments, one of which is the ECHR. Monaco has also made a declaration recognising the competence of the Committee for the Elimination of Racial Discrimination to examine complaints alleging violations of the rights set out in the International Convention on the Elimination of All Forms of Racial Discrimination. The Monegasque authorities have further enacted a law on freedom of public expression, which punishes incitement to racial hatred. The Principality has still to adopt criminal-law provisions which punish racist acts. The racist motivation of a crime is not regarded as an aggravating circumstance at the time of sentencing. Procedural safeguards are needed with regard to persons subject to a "refoulement" or deportation order[147].

127. The rights of national minorities are protected by the new Constitution in **Serbia**. In its Resolution 1661 (2009), the Assembly addressed a list of measures that the Serbian authorities should implement in the field of minority protection, including a specific reference to the Roma community. In particular, the Serbian authorities were asked to: further develop the minority rights policy by strengthening confidence and trust 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; 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 Legalization of Roma Settlements; enact a law on the Councils of national minorities, clarifying their competencies, election modalities, their role vis-à-vis the central government, as well as the methods of their financing; investigate and prosecute all cases of violence and harassment against all members of the national minority communities and take positive steps to ensure their protection; 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, an obligation that also applies to the authorities of the neighbouring states[148].

128. The Criminal Code is still too seldom applied in Serbia to persons who commit racist offences against national or ethnic minorities, religious minorities or antisemitic offences[149]. The situation of Roma, Ashkalis and Egyptians displaced inside the country remains precarious[150]. In its Resolution 1661 (2009), the Assembly asked the Serbian authorities to implement the recommendations of the European Commission against Racism and Intolerance (ECRI), adopted on 14 December 2007.

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146. ResCMN(2006)3, adopted by the Committee of Ministers on 5 April 2006 at the 961st meeting of the Ministers' Deputies; see also the Opinion of the Advisory Committee on Bulgaria, adopted on 27 May 2004 and made public on 5 April 2006, Doc. ACFC/OP/I(2006)001.

147. See Doc. AS/Mon(2009)01rev, Doc. 11299 and Resolution 1566 (2007); see also the ECRI report on Monaco, doc. CRI(2007)25, adopted on 15 December 2006 and made public on 24 May 2007, and the report on Monaco by the CoE Commissioner for Human Rights, Doc CommDH(2009)10.

148. Since a specific report on the situation of national minorities in Vojvodina and of the Romanian ethnic minority in Serbia (Doc. 11528) was presented to the Assembly in October 2008 by the Committee on Legal Affairs and Human Rights (Rapporteur: Mr Herrmann) and led to the adoption of Resolution 1632(2008), the report presented by the Monitoring Committee in April 2009 did not enter into a detailed analysis of the minorities issues in Serbia but referred to Mr Hermann's report.

129. In **"the former Yugoslav Republic of Macedonia**", the recent adoption of the law on the use of the Albanian language has been a major step towards the implementation of the Ohrid Framework Agreement (OFA). However, this law was regrettably adopted under urgent procedure, when the major opposition party (SDSM) and the numerically second ethnic Albanian party (DPA) were boycotting the Parliament, and thus the DPA representatives claim it does not satisfy all the interests of the Albanian community[151]. There are several municipalities where languages of minorities representing less than 20% of the country's population were introduced in official use (e.g. the municipality of Gostivar officially uses the Macedonian, Albanian and Turkish languages). The authorities are supporting programmes aimed at providing education in the mother tongue of the minorities. Currently, a special focus is being given to the equitable representation of minority representatives in the civil service. A competition for some 570 posts reserved for minority representatives was recently opened. In my information note of November last, I welcomed the setting up of an Agency for Human and Minority Rights to enhance the protection of minorities representing less than 20% of the country's population and called on the authorities to provide it with sufficient financial, human and material resources. Although there is progress, the full implementation of the OFA has yet to be achieved. Representatives of the minorities representing less than 20% of the population complain in particular of cases of hidden discrimination (especially, in the field of employment), "segregation" in the access to education and violations of the right to freedom of religion.

130. When closing the monitoring procedure and opening the post-monitoring dialogue with **Turkey**, the Assembly, in its Resolution 1380 (2004), called on the Turkish authorities to "pursue the policy of recognising the existence of national minorities living in Turkey and grant the persons belonging to these minorities the right to maintain, develop and express their identity and to apply it in practice." The Turkish authorities stick solely to the Treaty of Lausanne (signed on 24 July 1923), which grants the non-Muslim religious minorities in Turkey a number of rights (Articles 37 to 44) but identifies precisely neither the minorities concerned nor their geographical location. The authorities recognise the Jewish, Armenian, and Greek Orthodox minorities and have pointed out that they consider all Turkish citizens as having equal rights and not as individuals belonging to a minority or a majority. However, this should not prevent Turkey from guaranteeing, in accordance with European standards, specific rights to some Turkish citizens on the basis of their ethnic origin, religion or language in order for them to preserve their identity. During my visit to Turkey in November 2008 as rapporteur for the post-monitoring dialogue with Turkey, the Turkish authorities did not provide any new information on this subject and reiterated that the signing of the Framework Convention for the Protection of National Minorities and the Charter for Regional or Minority Languages is not on the Turkish government's agenda. However, the issue of cultural minorities, especially the Kurds, remains an important one[152]. During my discussions with representatives of the DTP (Democratic Society Party, pro-Kurdish) group in the Turkish Grand National Assembly, they voiced their regret that the rights of the Kurds did not form part of the Turkish identity even though they numbered 20 million people. In their opinion, the 10% threshold was introduced to prevent Kurdish representation in parliament and the current legal action against the DTP[153] was just one of many attempts to limit the expression of their political views. Contrary to what happened in the case of the AKP, they fear the Constitutional Court will order the party to be closed down, as it has already done on several occasions in the past. However, the launch of a public 24-hour television channel broadcasting in the Kurdish language on 1 January 2009 is to be welcomed.

131. The representatives of the Jewish community informed me that they were generally satisfied with relations between them and the Turkish government but expressed their concern at the rise in anti-Semitism and the various acts of vandalism against their community. They expressed their regret that the hate speech put out by extremist media, which made sweeping generalisations between Israel and Judaism, went

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149. See Human Rights Watch report of 3 November 2008, Hostages of Tension: Intimidation and Harassment of Ethnic Albanians in Serbia after Kosovo's Declaration of Independence, which details police complacency regarding acts of harassment and intimidation against ethnic Albanians in Serbia following Kosovo's Declaration of Independence on 17 February 2008. The report notes that although 221 incidents were officially registered, only ten individuals were convicted and fined for misdemeanours.

150. See Amnesty International press release of 9 April 2009, Serbia: Roma Evictions Endanger Peoples' Lives, which reports on the forced eviction of 250 Romani people from a temporary settlement in New Belgrade on 3 April 2009.

151. In my information note of last November I have asked the majority coalition to give effective possibility to the opposition to table amendments on the laws adopted under urgent procedure. See Doc. AS/Mon (2008) 31rev.

152. In its Resolution of 12 March 2008 on the Turkey 2008 Progress Report, the European Parliament called on the Turkish government "to launch as a matter of priority a political initiative favouring a lasting settlement of the Kurdish issue, which initiative needs to address the economic and social opportunities of citizens of Kurdish origin, and to tangibly improve their cultural rights, including real possibilities to learn Kurdish within the public and private schooling system and to use it in broadcasting and in access to public services and to allow elected officials to use a second language apart from Turkish in communicating with their constituents."

153. See above section 2.5 on freedom of assembly and of association.

unpunished. The former Criminal Code actually contained a provision making incitement to hatred a criminal offence but under the new Criminal Code incitement to hatred must have a "real and immediate effect" if it is to be classified as a crime. Anti-Semitic acts reportedly go unpunished as the danger is not considered to be real and immediate. The various community representatives I met confirmed that there is a strong tendency in the Turkish press landscape towards extremist nationalist and overtly hostile positions towards minorities, whether religious or not.

132. Ethnic, religious and linguistic minorities in **Ukraine** suffer discrimination in a number of areas. For instance, Human Rights Watch reports that Crimean Tatars continue to endure discrimination, in areas such as allocation of land, employment opportunities, access to places of worship, and availability of education in their native language. In particular, Ukraine's treatment of minority languages has garnered concern.

133. Incidents of xenophobia and racism are commonplace in **Ukraine**. Disturbing reports by human rights groups (including Amnesty International) indicate that racism is on the rise in Ukraine[154]. Foreigners and members of religious or ethnic minorities are frequently subjected to xenophobic or racist attacks (unprovoked verbal or physical attacks) not just by members of the public at large but also by law enforcement officers. In particular, the UNHCR has documented a number of recent xenophobic and racist attacks, some of which resulted in deaths[155]. In Ukraine itself, there are no statistics on the number of racist attacks since most of these are considered to constitute 'hooliganism' by the police[156]. Human Rights Watch did report the creation of special criminal investigation units to fight racially motivated crimes, which have been employed in several Ukrainian cities, but more must be done at the legislative level. On a positive tone, the first meeting of the intergovernmental/institutional working group – mandated by the government to devise proposals for the effective fight against racism, xenophobia and discrimination – was held in April 2008.

2.12. Human rights violations committed in the context of the war between Georgia and Russia[157]

134. The outbreak of war in August 2008 between two member states of the Organisation, both of which are under the Assembly's monitoring procedure – **Georgia** and **Russia** – did not only imply the violation by both of them of their accession commitment to settle conflicts by peaceful means and in accordance with the principles of international law, it also posed one of the most serious challenges to the Council of Europe and its principles and values in recent times. It is clear that that there have been serious violations of the Statute of the Council of Europe, as well as principles of international law (such as the principles of state sovereignty, the right to, and respect for, territorial integrity as well as non-aggression), international humanitarian law and human rights. Immediately following the outbreak of the war, the President of the Assembly requested the co-rapporteurs from the Monitoring Committee for Russia and Georgia to visit the respective countries under their responsibility. The co-rapporteurs for Georgia visited Tbilisi and Gori from 18 to 21 August and one of the co-rapporteurs for Russia, Mr Luc van den Brande, visited Moscow and Vladikavkaz from 20 to 22 August. They have since visited the two countries on three more occasions, either in the context of the consequences of the war or in the context of the regular monitoring procedure.

135. In its Resolution 1633 (2008), the Assembly, on the basis of a report by its Monitoring Committee[158] debated under urgent procedure, strongly condemned the outbreak of the war and expressed its concern about the human rights and humanitarian law violations committed by both sides in the context of the war, such as the intentional or avoidable killing or wounding of civilians, as well as the destruction of property. In particular, the Assembly considered that the use of indiscriminate force and weapons by both Georgian and Russian troops in civilian areas could be considered as war crimes that need to be fully investigated. Noting that Russia bears full responsibility for violations of human rights and humanitarian law in the areas under its de facto control, including for acts committed at the behest of the de facto authorities in Tshkinvali, the Assembly held that Russia appeared not to have succeeded in its duty, under the 1907 Hague Convention (IV) on the Laws and Customs of War on Land, to prevent looting, maintain law and order and protect property in the areas under the de facto control of its forces. The Assembly expressed special concern about credible reports of acts of ethnic cleansing committed in ethnic Georgian villages in South Ossetia and the "buffer zone" by irregular militia and gangs that the Russian troops failed to stop. The Assembly urged the Russian and Georgian authorities to ensure effective respect for all human rights under the European Convention on

154. See Amnesty International report of 10 July 2008, Ukraine: Government must act to stop racial discrimination.
155. See various UNHCR Briefing notes at: http://www.unhcr.org/news/NEWS/484527ed2.html
156. See Amnesty International 2009 Annual Report.
157. As regards the issue of refugees and IDPs from the war, see above the relevant section.
158. See Doc. 11724, rapporteurs: Mr Van den Brande and Mr Eörsi; see also Doc. 11730, opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Pourgourides.

Human Rights and humanitarian norms under the 1949 Geneva Conventions and their additional protocols on the territories under their de facto control; investigate all allegations of human rights violations committed during the war and in its aftermath, and hold the perpetrators to account before the domestic courts; allow safe and unhindered access by the media to the conflict zone; make full use of available means of peaceful conflict resolution, including, as appropriate, the European Court of Human Rights, the International Court of Justice and the International Criminal Court, in order to resolve the underlying conflict situation.

136. In its Resolution 1647 (2009) on the implementation of Resolution 1633 (2008), the Assembly, on the basis of a second report by its Monitoring Committee[159] and in the light of the overwhelming evidence to the effect that both Georgia and Russia violated human rights and humanitarian law in the course of the war, welcomed the investigation launched by the Georgian Prosecutor General's Office into alleged human rights and humanitarian law violations committed by both sides in the course of the war and its aftermath, and called upon it to investigate, impartially, any alleged violations brought to its attention and ensure that the perpetrators are brought to justice. At the same time, the Assembly regretted that the Russian Prosecutor's Office had not yet started any investigation into alleged human rights and humanitarian law violations committed by Russian and allied South Ossetian forces. The Assembly called upon Russia to initiate such an investigation without further delay and to ensure that the perpetrators are brought to justice.

137. Evidence and witness testimonies reproduced in several reports by the OSCE and by organisations such as Amnesty International and Human Rights Watch give credence to the claims that both Russia and Georgia committed violations of human rights and international humanitarian law in the course of the war and that Russia closed its eyes to, and possibly abetted, violations of human rights and international humanitarian law by the de facto authorities during the aftermath of the war[160]. It is the responsibility of the state concerned to investigate violations of human rights and international humanitarian law committed by persons under its de facto jurisdiction. In its third report on the follow-up given by Georgia and Russia to Resolution 1633 and 1647, the Monitoring Committee, while understanding the difficulties encountered by the Georgian General Prosecutor's Office in the conduct of the investigations by the lack of access to the former conflict zone inside the break-away region of South Ossetia, expressed its hope that the investigation will be completed within a reasonable timeframe. The Investigative Committee of the General Prosecutor's Office of Russia has, for its part, finalised an investigation into genocide committed by Georgian troops against Russian citizens, as well as into crimes committed against the Russian military. During the visit of the co-rapporteurs for Russia's monitoring to Moscow on 9-11 March 2009, the Deputy Head of the Investigative Committee confirmed that the committee did not plan to open an investigation into alleged violations of human rights and international humanitarian law during the war by Russian citizens or Russian military forces. To date, neither the investigation of the General Prosecutor's Office of Georgia nor that of the General Prosecutor's Office of Russia have resulted in any persons being charged.

138. More than 3 300 applications have been filed with the European Court of Human Rights by ethnic South Ossetians against Georgia[161]. As of 18 March 2009, over 100 cases had been filed against Russia, involving approximately 600 Georgian applicants. Georgia has filed an inter-state application against Russia with the European Court of Human Rights and, on 12 August 2008, on a request of the Georgian authorities, the Court of indicated interim measures to both Russia and Georgia under Rule 39 of the Rules of the Court.

139. In its Resolution 1647 (2009), the Assembly called on both Georgia and Russia to implement the interim measures ordered by the European Court of Human Rights and the International Court of Justice, as well as any forthcoming judgments of these courts concerning alleged violations of human rights in the course of the conflict, and to co-operate fully and unconditionally with any possible investigation by the International Criminal Court. Considering it unacceptable that persons residing in Abkhazia and South Ossetia should not be effectively covered by the human rights protection mechanisms granted to them as citizens of a Council of Europe member state under the ECHR, as well as other relevant Council of Europe conventions, as a result of the consequences of the war between Russia and Georgia, the Assembly held that such a human rights protection black hole should not be allowed to exist within the Council of Europe area. The Assembly

159. See Doc. 11800, co-rapporteurs: Mr Van den Brande and Mr Eörsi; see also Doc. 11805, opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Pourgourides.
160. See Human Rights Watch report of 23 January 2009, Up in Flames: Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia; see also Amnesty International report of 18 November 2008 Civilians in the Line of Fire: The Georgia-Russia Conflict.
161. On 16 January 2009, the Court announced that it would urgently examine seven applications of South Ossetians against Georgia, which it considers to be representative of the over 3 300 similar applications that have been filed with it.

therefore invited the Secretary General of the Council of Europe to develop a comprehensive action plan to ensure that the rights guaranteed under the ECHR are effectively secured for persons residing in South Ossetia and Abkhazia[162].

140. The Monitoring Committee will continue to follow closely the implementation by Georgia and Russia of Resolutions 1633 (2008) and 1647 (2009), including as part of its regular monitoring procedure for both states. It is worth recalling that, as a consequence of the war, the Assembly has asked the Monitoring Committee **to** step up its monitoring procedure with respect to both Georgia and Russia. Moreover, its co-rapporteurs for both Georgia and Russia are members of the Ad Hoc Committee of the Bureau on promoting dialogue between the Georgian and Russian Assembly Delegations which held its second meeting in Valencia (Spain), on 30 March 2009, in the margins of the Monitoring Committee meeting, with the participation of both Russian and Georgian delegations. While fully supporting the work of this ad hoc Committee, the Monitoring Committee has considered that this should not be seen as a substitute for the Geneva negotiations, as well as for a regular assessment by the Assembly of the compliance of both countries with the demands made by the Assembly in Resolutions 1633 (2008) and 1647 (2009), but as complementary to them.

3. Conclusions

141. Throughout the reporting period, the Monitoring Committee has continued to accompany eleven countries currently under monitoring (Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Moldova, Monaco, Montenegro, the Russian Federation, Serbia, and Ukraine) and three countries engaged in a post-monitoring dialogue (Bulgaria, Turkey, and "the former Yugoslav Republic of Macedonia") through the process of enhancing the protection of human rights and respect for the principles of the rule of law.

142. The Committee has produced public assessments for all countries under monitoring (with the exception of Montenegro) and for all countries involved in a post-monitoring dialogue. It has increased its visibility by reacting quickly and efficiently to several urgent and critical situations raising serious human rights concerns, including the outbreak of war between two member states under the monitoring procedure.

143. It has developed synergies with the Commissioner for Human Rights as regards the handling of the war and of the post-electoral crises in Armenia and Moldova and has continued to benefit from the work carried out by other Council of Europe institutions and monitoring bodies. It has, in its turn, continued to promote their work.

144. The proposed draft resolution contains a number of conclusions drawn from the country specific reports of the Monitoring Committee with respect to main human rights issues raised in the states concerned. All states currently under monitoring or engaged in a post-monitoring dialogue are urged to step up their co-operation with the Monitoring Committee and implement all the recommendations contained in the country-specific resolutions adopted by the Assembly, as well as those issued by the Commissioner for Human Rights and other Council of Europe institutions and monitoring bodies. The Assembly stands ready to provide the necessary support through its parliamentary co-operation and assistance programmes.

145. In the states under periodic reporting, the national parliaments are urged to use the periodic reports appended to the present report as the basis for a debate on their country's record with regard to the fulfillment of their statutory and conventional obligations as member states of the Council of Europe. They should also promote execution of the judgments of the European Court of Human Rights and compliance with recommendations made by the Commissioner for Human Rights and other specific Council of Europe monitoring bodies, both by provoking and accelerating the necessary legislative initiatives and exercising their oversight role with respect to government action.

146. Finally, the European Union bodies are invited, as far as applicable, to make use of all types of country specific reports prepared by the Monitoring Committee and take into account the findings of the relevant Council of Europe human rights institutions and monitoring mechanisms, such as the judgments of the Court and the reports of the Commissioner for Human Rights, as well as the relevant resolutions and recommendations adopted by the Assembly.

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162. This could include the establishment of a field presence in the two break-away regions, as already demanded by the Assembly in Resolution 1633 (2008), including an ombudsperson who could examine individual applications in cases of human rights violations. In the absence of other credible investigations, this field presence should also investigate and document human rights violations committed during and in the aftermath of the war.

Reporting committee: Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

Reference to committee: Resolution No. 1115 (1997)

Draft resolution approved unanimously by the committee on 5 June 2009

Members of the committee: Mr Serhiy **Holovaty** (Chairperson), Mr György Frunda (1st Vice-Chairperson), Mr Konstantin Kosachev (2nd Vice-Chairperson), Mr Leonid **Slutsky** (3rd Vice-Chairperson), Mr Aydin Abbasov, Mr Avet Adonts, Mr Pedro **Agramunt**, Mr Miloš Aligrudić, Mrs Meritxell Batet Lamaña, Mr Ryszard Bender, Mr József Berényi, Mr Luc **van den Brande**, Mr Mevlüt **Çavuşoğlu**, Mr Sergej Chelemendik, Ms Lise Christoffersen, Mr Boriss Cilevičs, Mr Georges **Colombier**, Mr Telmo Correia, Mrs Herta Däubler-Gmelin, Mr Joseph Debono Grech, Mr Juris Dobelis, Mrs Josette Durrieu, Mr Mátyás Eörsi, Ms Mirjana Ferić-Vac, Mr Giuseppe Galati, Mr Jean-Charles **Gardetto**, Mr József Gedei, Mr Marcel Glesener, Mr Charles Goerens, Mr Andreas **Gross**, Mr Michael Hagberg, Mr Holger Haibach, Ms Gultakin **Hajibayli**, Mr Michael Hancock, Mr Davit **Harutyunyan**, Mrs Olha Herasym'yuk, Mr Andres **Herkel**, Mr Kastriot Islami, Mr Mladen Ivanić, Mr Miloš Jevtić, Mrs Evguenia Jivkova, Mr Emmanouil Kefaloyiannis, Mr Hakki Keskin, Mrs Katerina Konečná, Mr Jaakko Laakso, Mrs Sabine Leutheusser-Schnarrenberger, Mr Göran **Lindblad**, Mr René van der Linden, Mr Eduard **Lintner**, Mr Pietro Marcenaro, Mr Bernard **Marquet**, Mr Dick Marty, Mr Miloš **Melčák**, Mr Jean-Claude Mignon, Mr João Bosco Mota Amaral, Mrs Yuliya **Novikova**, Mr Theodoros Pangalos, Mr Alexander **Pochinok**, Mr Ivan Popescu, Ms Maria Postoico, Ms Marietta de Pourbaix-Lundin,Mr Christos Pourgourides, Mr John Prescott, Mrs Mailis Reps, Mr Andrea Rigoni, Mr Ilir Rusmali, Mr Armen **Rustamyan**, Mr Indrek Saar, Mr Oliver Sambevski, Mr Kimmo Sasi, Mr Samad **Seyidov**, Mr Sergey Sobko, Mr Christoph Strässer, Mrs Chiora **Taktakishvili**, Mr Mihai Tudose, Mrs Öslem **Türköne**, Mr Egidijus **Vareikis**, Mr José Vera Jardim, Mr Piotr **Wach**, Mr Robert Walter, Mr David Wilshire, Mrs Renate Wohlwend, Mrs Karin S. Woldseth, Mrs Gisela Wurm, Mr Boris Zala, Mr Andrej Zernovski.

N.B.: The names of the members who took part in the meeting are printed **in bold**

Secretariat of the committee: Mrs Chatzivassiliou, Mr Klein, Ms Trévisan, Mr Karpenko