

Recommendation 1791 (2007)¹

State of human rights and democracy in Europe

Parliamentary Assembly

I. The state of human rights in Europe

1. The Parliamentary Assembly refers to its [Resolution 1547 \(2007\)](#) on the state of human rights and democracy in Europe. It also recalls its previous resolutions and recommendations addressing specific human rights issues referred to in the report² and opinions upon which the resolution is based.
2. The Assembly recommends that the Committee of Ministers:
 - 2.1. call on all member states to give appropriate follow-up to human rights issues raised in [Resolution 1547 \(2007\)](#);
 - 2.2. fully and speedily implement the 2005 Warsaw Summit Declaration and Action Plan, in particular measures aimed at ensuring the continued effectiveness of the European Convention on Human Rights (ECHR) (ETS No. 5) and those aimed at protecting and promoting human rights and the rule of law through other Council of Europe institutions and mechanisms;
 - 2.3. reinforce its own activities in the legal and human rights fields, in particular by strengthening the Council of Europe's awareness-raising activities as well as its co-operation and assistance programmes, notably legislative expertise, capacity-building and training programmes and its work on education for democratic citizenship and human rights;
 - 2.4. defend the position of the Council of Europe in the European institutional architecture and beyond, taking into account its outstanding achievements and vast experience in the area of the promotion and protection of human rights, especially with regard to the European Union;
 - 2.5. increase its efforts to ensure the swift accession of the EU/European Community to the ECHR and call on member states which are also members of the European Union to consider such accession as an urgent priority;
 - 2.6. strengthen its political support for the European Court of Human Rights by reaffirming its fundamental role, likewise for the Council of Europe's other supervisory and monitoring mechanisms in the area of human rights, strengthen its follow-up to their work, and increase current resources which are clearly insufficient;
 - 2.7. strengthen also its political support for the institution of the Commissioner for Human Rights of the Council of Europe by placing all the necessary means at its disposal, thus enabling it to effectively carry out its mandate.

1. . Assembly debate on 18 April 2007 (15th Sitting) (see [Doc. 11202](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Pourgourides; [Doc. 11203](#), report of the Political Affairs Committee, rapporteur: Mr Gross; [Doc. 11215](#), opinion of the Committee on Economic Affairs and Development, rapporteur: Mrs Pirozhnikova; [Doc. 11216](#), opinion of the Social, Health and Family Affairs Committee, rapporteur: Mr Glesener; [Doc. 11217](#), opinion of the Committee on Migration, Refugees and Population, rapporteur: Mr van Thijn; [Doc. 11218](#), opinion of the Committee on Culture, Science and Education, rapporteur: Mrs Melo; [Doc. 11219](#), opinion of the Committee on the Environment, Agriculture and Local and Regional Affairs, rapporteur: Mr Platvoet; and [Doc. 11220](#), opinion of the Committee on Equal Opportunities for Women and Men, rapporteur: Mrs Čurdová). Text adopted by the Assembly on 18 April 2007 (15th Sitting).

2. [Doc. 11202](#)



3. The Assembly considers that the most serious human rights violations demand particularly strong responses and priority treatment, as the lack of effective reaction to such violations by the Organisation's decision-making body threatens the Council of Europe's credibility and may encourage such abuses. The Assembly therefore strongly urges the Committee of Ministers, within six months of the present recommendation, to indicate the efforts undertaken and progress achieved to eradicate:

3.1. enforced disappearances, including efforts it has taken to encourage member states to sign and ratify the new United Nations Convention for the Protection of All Persons from Enforced Disappearances;

3.2. extrajudicial killings, torture and ill-treatment, and to ensure that member states fully co-operate with the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and systematically make its reports public;

3.3. secret detentions and unlawful inter-state transfers that have taken place in Europe or elsewhere under the responsibility of European states, as well as to indicate follow-up given to specific proposals made by the Secretary General of the Council of Europe subsequent to his inquiry under Article 52 of the ECHR on this subject, and by the Parliamentary Assembly in [Resolution 1507 \(2006\)](#) and [Recommendation 1754 \(2006\)](#) on alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe member states.

4. Impunity is a major threat to the rule of law in Europe. Therefore, the Assembly recommends that the Committee of Ministers envisage, in particular, the preparation of a set of guidelines (see the Guidelines on human rights and the fight against terrorism), drawing from, inter alia, the case law of the European Court of Human Rights, the work of the CPT and that of the United Nations on this issue.

5. In view of the need to support defenders of human rights in Europe and to ensure the existence of effective mechanisms of protection in urgent cases, the Assembly recommends that the Committee of Ministers give priority to speedy completion of the work being undertaken on this matter within the Council of Europe.

6. Furthermore, the Assembly recommends that the Committee of Ministers pay increased attention to the human rights situation in Belarus and in areas within Council of Europe member states where obstacles exist to the effective implementation of the ECHR (in particular the "black holes") and that the Organisation devise ways and means of ensuring that persons in such areas can effectively benefit from protection of their rights.

7. The Assembly also reiterates its recommendation that the Committee of Ministers improve the Council of Europe's ability to react rapidly and effectively to allegations of systematic human rights abuse involving several member states, and in particular to consider, together with the Assembly, how a specific mechanism with appropriate investigative powers akin to those provided to parliamentary inquiries in member states could be set up within the Assembly.

8. Terrorism is a key challenge for Europe's open societies. The Assembly urges the Committee of Ministers to ensure that the fight against terrorism does not serve as a pretext to undermine or reduce the scope of fundamental human rights embodied in the ECHR as interpreted by the European Court of Human Rights, and as reiterated in the Committee of Ministers' 2002 Guidelines on human rights and the fight against terrorism. The Assembly also urges the Committee of Ministers to take steps to monitor on a regular basis member states' legislation and practice.

9. Diversity in Europe needs to be better accepted and respected. The Assembly invites the Committee of Ministers to strengthen its political support for activities related to cultural diversity and intercultural dialogue (including the religious dimension), for action by the European Commission against Racism and Intolerance (ECRI) and for the work under the Framework Convention for the Protection of National Minorities (ETS No. 157) and the European Charter for Regional and Minority Languages (ETS No. 148), in order to reinforce its activities in the fight against all forms of discrimination, as well as its activities related to the protection of the rights of persons belonging to minorities and the integration of minority groups into society.

10. There is also a need to build a more human and inclusive Europe in which the fundamental social and economic rights to, inter alia, education, housing, health care, employment, minimum income, social benefits and pensions are guaranteed. Therefore, the Assembly invites the Committee of Ministers to urge all member states to sign and/or ratify the revised European Social Charter (ETS No. 163), to accept the charter's collective complaints procedure and to engage active consideration of European Union accession to the above-mentioned charter.

11. The Assembly calls on the Committee of Ministers to pay increased attention to persons in particularly vulnerable situations, notably those deprived of their liberty, refugees and internally displaced persons, missing persons and members of their families, asylum seekers and migrants, children, the elderly, persons with disabilities and socially excluded persons.

12. Given the complex challenges posed by migratory flows, the Assembly reiterates its recommendation to the Committee of Ministers to create a European migration observatory to monitor all aspects of migration and the situation of migrants, and to engage, where necessary, in a dialogue with relevant non-member neighbouring countries. In addition, the Assembly considers that the rights of migrants are not sufficiently protected by Council of Europe instruments and invites the Committee of Ministers to examine gaps, such as those relating to the rights of irregular migrants, with a view to completing the Organisation's legal arsenal.

13. The Assembly also asks the Committee of Ministers to take stock of the Council of Europe campaign to combat violence against women, including domestic violence and, in the light of the results, take the necessary measures to step up the fight against this scourge. Concerning forced marriages and child marriages, the Assembly invites the Committee of Ministers to develop an effective strategy to eliminate these practices. It also invites it to instruct the relevant intergovernmental committee to follow the Assembly's recommendations on forced marriages and child marriages when reviewing all the legal instruments elaborated by the Council of Europe in the field of family law, in order to identify those instruments which require revision or any new instruments that may need to be drawn up.

14. The Assembly also recommends that the Committee of Ministers invite the governments of the member states to take measures to ensure the right to a healthy, viable and decent environment and to promote the role and responsibilities of local and regional authorities with respect to sustainable development matters.

15. More generally, the Assembly considers that, in many cases, the effectiveness of Council of Europe conventions in the human rights field is considerably reduced not only by failure to ratify, but also by reservations or restrictive interpretative declarations made by member states at the time of signature or ratification, or by avoiding the acceptance of optional provisions. Consequently, the Assembly calls on the Committee of Ministers to encourage member states to sign and/or ratify all the Council of Europe's main legal instruments in the field of human rights, without reservations or restrictive interpretative declarations, and to withdraw those which have been made. The Assembly urges the Committee of Ministers to undertake a major review of this subject.

II. The state of democracy in Europe

16. The Parliamentary Assembly refers to its [Resolution 1547 \(2007\)](#). It also recalls its previous resolutions and recommendations addressing specific issues of democracy referred to in the report³ and opinions upon which the resolution is based.

17. The Assembly recommends that the Committee of Ministers draw up guidelines on the elimination of deficits in the functioning of democratic institutions, taking into account existing Council of Europe legal instruments and engaging member states to take measures to remedy problems identified in [Resolution 1547 \(2007\)](#), and in particular to:

1. ensure that any restrictions on the freedom of expression are in accordance with the ECHR and the case law of the European Court of Human Rights, ensuring pluralism of the media and that measures are taken to prevent and dismantle media concentration;
2. remove any bureaucratic obstacles and unjustified taxation restricting freedom of association and the right of association to certain professional groups, as well as the right to found political parties;
3. keep national legislation on the minimum voting age under review;
4. take all necessary measures to eliminate "family voting";
5. review different forms of distance voting, including electronic voting, with a view to eliminating possible misuse;
6. consider granting the right to vote to lawfully resident immigrants, at least at local and regional levels;
7. consider granting a passive and active right to vote in regional and local elections to nationals of Council of Europe member states and persons who have lost their nationality involuntarily although lawfully residing in their territories;

3. [Doc. 11203](#)

8. eliminate obsolete provisions which disenfranchise certain categories of the population (such as certain categories of detainees);
 9. strengthen national mechanisms to promote the balanced participation of women and men in decision making, with a view to achieving a threshold of at least 40% of representatives of either sex in all political bodies, be they local, regional, parliamentary or governmental, by 2020;
 10. consider decreasing thresholds over 3% for parliamentary elections and to consider the balance between fair representation and effectiveness in parliament and government;
 11. consider the introduction of elements of direct democracy, such as the right of citizens to ask for referenda and propose legislative initiatives;
 12. consider the introduction of recall ballots in respect of individually elected representatives;
 13. examine whether national procedures for inheriting executive or legislative positions remain democratically appropriate;
 14. examine whether national procedures for appointment to executive or legislative positions remain democratically appropriate;
 15. examine whether national legislation on the length of term of office of the executive and legislature remains democratically appropriate;
 16. examine whether national legislation on the number of consecutive terms of elective office for individual representatives remains democratically appropriate;
 17. examine whether national legislation intended to ensure the secrecy and integrity of elections is sufficiently robust and independent;
 18. examine whether the national constitution has sufficiently robust arrangements for monitoring, and whether control of the executive remains democratically appropriate;
 19. examine whether the current constitutional arrangements are democratically appropriate;
 20. examine whether the current national arrangements for changing the constitution require a sufficiently high approval level to prevent abuses of democracy;
 21. draft, at the earliest opportunity, a charter for electoral equality to foster the balanced participation of women and men in decision making by inviting member states to foresee in their constitution, in accordance with the principle of equality, the possibility of taking special measures to promote equal access for women and men in decision making;
 22. genuinely apply the principles of the European Charter of Local Self-Government (ETS No. 122) and endow local and regional authorities with all the powers, responsibilities and resources necessary to enable effective implementation of sectoral policies in full accordance with the principles of subsidiarity and good governance and for the benefit of Europe's citizens;
 23. comply with commitments entered into upon accession and follow up recommendations and resolutions of the Assembly aimed at eliminating deficits in democracy and improving the quality of democracy;
 24. introduce a comprehensive legal framework for the fight against corruption and ensure its enforcement, as well as effective prosecution of offenders and the continuous adaptation of institutions in order to better withstand economic crime;
 25. introduce and/or review legislation on lobbying, with a view to ensuring transparency and accountability, and to protect public interest against the undue influence of lobbies.
18. Moreover, the Assembly calls on the Committee of Ministers to:
1. reinforce its own activities in the field of democracy, in particular by reacting to identified deficits of democracy in member states, elaborating legal instruments and policy guidelines as required, and stepping up projects and co-operation programmes;
 2. pursue its work on a new framework policy document on education for democratic citizenship and human rights education;
 3. strengthen its own monitoring procedures and those of other bodies and mechanisms of the Council of Europe aimed at the promotion of democracy, in particular the Congress of Local and Regional Authorities of the Council of Europe and the European Commission for Democracy through Law (Venice Commission);

4. ensure provide the necessary resources and means to ensure that the Forum for the Future of Democracy can be used as an effective tool for the further development of democracy in Europe;
 5. ensure follow-up within the relevant intergovernmental bodies to the Assembly's recommendations proposing measures aimed at improving democracy and eliminating its deficits, and in particular:
 1. reintroduce in its programme of activities the work on nationality law, including the promotion of acquisition of citizenship, in accordance with the Action Plan adopted at the 3rd Summit;
 2. begin developing a legally-binding instrument in the field of democratic elections, as advocated by the Assembly, notably in [Recommendation 1756 \(2006\)](#) on the implementation of the decisions of the 3rd Summit of Heads of State and Government of the Council of Europe;
 3. continue its work on democracy and good governance in the information society and evaluate the implementation of relevant legal instruments with a view to reviewing them as appropriate;
 6. defend the Council of Europe's role in the European family of independent nation states as the primary defender, supporter and developer of democracy, human rights and the rule of law, and, to this end, oppose all attempts by the European Union to duplicate or interfere in this work;
 7. defend the Council of Europe position in the European architecture as the Organisation with an area of excellence in democracy, inter alia. In this context, promote co-operation with the European Union with a view to concluding the memorandum of understanding properly reflecting the role assigned to the Council of Europe and implementing it accordingly.
19. The Assembly also invites the Committee of Minister to establish a specific mechanism on freedom of expression and the media, with the specific mandate to monitor the situation of freedom of expression and of the media in Council of Europe member states, and to suggest corrective measures.
20. The Assembly asks the Committee of Ministers to draft a charter on democratic principles.