



Resolution 1676 (2009)¹

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

Parliamentary Assembly

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 following the 11 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 post-monitoring dialogue.

2. The Assembly welcomes the initiative of the Monitoring Committee to contribute to the 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 monitoring 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 that raised 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 during 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](#) 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 procedures have honoured their formal commitments relating to the ratification of several Council of Europe human rights conventions and the revised European Social Charter (ETS No. 163):

4.1. the most notorious exception remains the non-ratification by Russia of Protocol No. 6 to the European Convention on Human Rights (hereinafter “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 (CETS No. 194). Russia being the only member state which has not yet ratified these two important

1. *Assembly debate* on 24 June 2009 (23rd Sitting) (see [Doc. 11941](#), report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), rapporteur: Mr Holovaty). *Text adopted by the Assembly* on 24 June 2009 (23rd Sitting).



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* (CETS No. 204) 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, Russia and Turkey. Bulgaria has neither signed nor ratified Protocol No. 12;

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 Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197), which entered into force on 1 February 2008 and led to the setting up of a new specific monitoring mechanism, the Group of Experts on Trafficking in Human Beings (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 can find justice before an independent and impartial 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, such as Albania, Russia and Ukraine. As regards in particular the issue of extra-penal functions exercised by prosecutors in some countries, the Assembly underlines the importance of ensuring that these functions respect the principle of separation of powers and the role of courts in the protection of human rights, and that they are carried out on behalf of society and the public interest, to ensure the application of the law while respecting fundamental rights and freedoms. These principles should guide further the reform of the prosecutor general's office, with a view to replacing its legal oversight powers with effective legal remedies granting human rights victims direct access to a court.

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 period of 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 procedures, 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 two 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 procedures, 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. The Assembly reiterates its view that it is regrettable that Russia has yet to authorise the publication of reports of the CPT's visits.

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. The Assembly is also concerned that a number of peaceful protestors have been charged with criminal offences in Moldova and urges the authorities to make a distinction between those suspected of having committed criminal acts and those who have peacefully exercised their rights to freedom of expression and assembly.

11. 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 but reiterate its call for their immediate release.

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

12.1. 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, were specifically demanded by the Assembly when reacting to post-electoral crises in the two countries;

12.2. 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 continued 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 against Russia. The supervision of the execution of 175 judgments and decisions of the Court concerning similar violations committed by the security forces in Turkey has recently been closed following the adoption of a number of measures by the Turkish authorities;

12.3. 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;

12.4. 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.

13. As regards freedom of expression:

13.1. 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, Bosnia and Herzegovina, Bulgaria, Moldova, Russia, Serbia and Ukraine;

13.2. 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;

13.3. in Russia, media pluralism has declined in the past two years. The self-censorship that exists in many forms of media is an obstacle to freedom of expression. The Assembly welcomes the preparation of a new draft law, which provides, *inter alia*, for a clear list of the rights of journalists and recommends that the competent governmental authorities in Russia consult the Council of Europe on the new draft media law;

13.4. in Turkey, the reform of Article 301 of the Criminal Code has by no means lifted all the restrictions on the freedom of expression. The Committee of Ministers continues to supervise the execution of 82 judgments of the European Court of Human Rights in which it found violations of freedom of expression.

14. 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:

14.1. freedom of association and harassment of non-governmental organisations (NGOs) have been main issues of concern in Russia, especially since the entry into force of new legislation (hereinafter the "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;

14.2. 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 have already been subjected to harassment; the Assembly is particularly concerned by additional amendments proposed in June 2009 that, if adopted, could be used to further restrict the professional activity of civil society and local media and effectively prevent foreign organisations from working in Azerbaijan;

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

14.4. the execution of the judgment of the European Court of Human Rights 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;

14.5. 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. In the meantime, the Assembly expects any judicial decisions on pending cases of party dissolution to be fully compliant with Article 11 of the Convention.

15. 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 were 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 on 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 Chişinău 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.

16. As regards freedom of religion and of conscience:

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

16.2. in Russia, the law on countering extremist activities has been used abusively to restrict the right to freedom of association, including of religious groups;

16.3. 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";

16.4. legislation on alternative civil 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.

17. 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 relating to the Status of Refugees. Turkey should introduce domestic legislation in line with its international obligations, including the principle of *non-refoulement*. Alarming practices regarding the removal of refugees and asylum seekers in Ukraine were documented by the United Nations High Commissioner for Refugees in 2008. The Assembly also refers in this respect to its [Recommendation 1877 \(2009\)](#) on Europe's forgotten people: protecting the human rights of long-term displaced persons.

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

18.1. discrimination and violence against women are persisting problems in many countries under monitoring or post-monitoring procedures. In particular, the legislation to combat gender-based violence must be strengthened. Its implementation must be evaluated by parliaments, in accordance with Assembly [Resolution 1635 \(2008\)](#) on combating violence against women: towards a Council of Europe

convention. Legislative measures taken by the Albanian authorities to fight these phenomena are to be welcomed but have yet to prove their effectiveness in practice. Armenia should prioritise the adoption of a law on domestic violence, its prevention and provision of support for the victims;

18.2. discrimination and violence against lesbian, 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;

18.3. 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.

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

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

19.2. 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;

19.3. 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;

19.4. notes the problems faced by the Roma community, including lack of personal identity documents, low school enrolment rates, and obstacles in access to or discrimination in employment, education and housing in several countries under the monitoring or post-monitoring procedure (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.

20. 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.

21. The Assembly urges all states currently under monitoring or engaged in 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.

22. 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.

23. 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):

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

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

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

23.4. the Czech Republic has ratified the European Charter for Regional or Minority Languages (ETS No. 148).

24. 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:

24.1. 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);

24.2. 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);

24.3. 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);

24.4. France to sign and ratify and Belgium to ratify the Framework Convention;

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

24.6. Estonia and the Czech Republic to sign and ratify and Andorra, Germany and Finland to ratify the Convention on Action against Trafficking in Human Beings (CETS No. 197).

25. 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:

25.1. use these periodic reports as the basis for a debate on their country's record with regard to the fulfilment of their statutory obligations as member states of the Council of Europe, as well as obligations stemming from Council of Europe conventions;

25.2. 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.

26. 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.