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

Honouring of obligations and commitments by the Russian Federation

Information note by the co-rapporteurs on their fact-finding visit to Moscow and Kazan (18-21 January 2011)¹

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¹ This information note has been made public by decision of the Monitoring Committee dated 11 April 2011.

I. Introduction

1. We visited the Russian Federation from 18 to 21 January 2011. This was the third visit since our appointment in January 2010, and it followed two previous visits which took place in March and July 2010.²
2. With regard to the monitoring procedure, we would like to recall that the last report on the honouring of obligations and commitments by the Russian Federation was debated in the Parliamentary Assembly in 2005.³ Since then, the monitoring procedure has been overshadowed by the conflict between Russia and Georgia, and its consequences. This question has been dealt with under a specific mandate in a series of reports.⁴
3. Our intention is to submit to the Committee a full monitoring report before the end of the year in order to allow for the debate in the Assembly after the parliamentary elections foreseen in December 2011, but before the presidential election scheduled for mid-2012.
4. Since our first visit, we have structured our dialogue with the Russian authorities in order to achieve a common understanding of the priorities in the fulfilment of obligations and commitments as specified in Opinion No 193 (1996) and other relevant resolutions adopted by the Assembly thereafter. Our objective is to elaborate a list of outstanding concerns and reach a consensus on the measures which the Russian authorities will undertake in order to remedy the situation.
5. Consequently, the discussions during our visit focused on the state of fulfillment of the commitments, and on the possible way forward. We met Mr V. Lebedev, Chairman of the Supreme Court, Mr A. Konovalov, Minister of Justice, Mr A. Grushko, Deputy Minister for Foreign Affairs and Mr A. Reimer, Director of the Federal Service for Execution of Sentences. In the State Duma, we had a meeting with Mr P. Krashennnikov, Chair of the Legal Affairs Committee, as well as with the leaders of political parties represented in the Duma and the Council of Federation.
6. In order to have a better understanding of the shortcomings and deficiencies in the functioning of democratic institutions in Russia, we held meetings with representatives of the civil society, and in particular with a well-known human rights defender, Ms Ludmila Alexeeva from the Moscow Helsinki Group, legal experts from the Independent Council of Legal Expertise, Mr Victor Erofeev, writer, and Mr Boris Nemtsov, former deputy Prime Minister and one of the leaders of the extra-parliamentary opposition movement, the Union of Right Forces.
7. During our visit to the Moscow detention centre Mattrovskaya Tishina, we spoke to Mr Mikhail Khodorovsky, awaiting the result of his appeal against the recent court judgment in which he was found guilty, together with his partner Mr Platon Lebedev, of charges of embezzlement and money laundering.
8. We held a number of very interesting and informative meetings in Kazan with Mr R.N. Minnichanov, President of Tatarstan and other representatives of local and regional authorities, as well as the leaders of national and religious communities and non-governmental organisations.
9. In the present note, we are not going to repeat the information already contained in the previous Notes, nor attempt to give an overview of the state of democracy in the Russian Federation. Our intention is to focus on specific issues relating to the fulfilment of commitments and obligations raised during the visit.
10. We wish to express here our gratitude to the Russian parliamentary delegation for the excellent organisation and support provided to our delegation during the visits in Moscow and in Kazan.

II. Signature and ratification of international instruments

11. The most outstanding concern in this category of commitments is, in our view, the non-ratification of Protocol No 6 to the European Convention on Human Rights on the abolition of death penalty in time of peace. Upon accession, Russia agreed to sign it within one year, and ratify within three years, and to put into place a moratorium on executions with effect from the day of accession.

² See information note on the visits (AS/Mon (2010)28 rev)

³ See Doc. 10568

⁴ See Docs. 11724, 11800, 11876, 12010. Already after our last visit, the Committee decided that this file would be followed by the respective co-rapporteurs for Georgia and Russia in the framework of the ongoing monitoring procedures for both countries. For obvious reasons, the question of the conflict was not raised in our discussions during the visit.

12. Protocol No 6 was signed by Russia on 28 February 1996, and submitted by the Government to the State Duma for ratification on 6 August 1999. In the meantime, on 16 May 1996, Presidential Decree No 724 “on the phased reduction in the use of death penalty in connection with Russia joining the Council of Europe” was issued. A *de facto* moratorium on death penalty was established in August 1996, and it was confirmed by the decision of the Constitutional Court on 2 February 1999. On 19 November 2009, the Constitutional Court ruled that the death penalty could not be imposed in the Russian Federation because of its international commitments.

13. This Constitutional Court ruling, unlimited as to time, cannot be perceived as just a technical extension of the moratorium. It is an important step on the way to legal endorsement of the abolition of the death penalty. Ratification of Protocol No 6, however, is still pending.

14. During our visit, we raised this question with a number of interlocutors, in particular in the State Duma. Everytime we heard that public opinion in Russia is not ready to accept formal abolition of the death penalty mainly due to the seriousness of terrorist threats in the country. In consequence, the attempt to have the Protocol ratified in the Duma might turn out to be counterproductive. In our view, however, this explanation does not justify the lack of progress towards compliance with this important commitment. In most Council of Europe member states, the public opinion in its majority had originally been in favour of the death penalty, and it was the task and duty of the political class to influence this attitude and change it in the right direction. It implied educational and informative work, required public debates and open discussions, but proved to be successful in 46 countries. We do not see any reason why Russia should remain an exception.

15. Another Council of Europe instrument which was signed but – contrary to the commitment entered into upon accession – not ratified within a year, is the European Charter for Regional and Minority Languages. The Charter was signed on 10 May 2009, but to date it has not been submitted by the Government to the State Duma for ratification. We were told during our visit that the procedure is underway and that ratification may be even accomplished by the present Duma.

16. We urge here the members of the Duma – as we did during our meetings in Moscow – to accomplish this task without delay, especially since this question does not seem to be problematic. Indeed, during our visit in Kazan, we had an opportunity to speak to representatives of different language communities present in the Republic of Tatarstan, and we could establish that the overall situation with regard to minority languages is satisfactory.

17. The European Convention on Citizenship was signed on 6 November 1997, and submitted for ratification to the State Duma on 30 November 1998, but no progress since then has been noted. We were informed that the problem consists in Article 20 of the Convention, which uses the term “non-nationals”. In the opinion of the relevant Duma committees, the use of this concept, which is unknown in Russian law, illustrates the incompatibility of the Convention with the Russian Constitution. In our view, the legal expertise of the European Commission for Democracy through Law (Venice Commission) should be sought in this case.

18. The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism was signed by the Russian Federation on 26 January 2009, and submitted to the State Duma, where it is being examined with a view to ratification.

19. Last but not least, the Civil Law Convention on Corruption has not been signed nor ratified yet, but we were informed that the consultation between relevant ministries had been successfully completed and that the Ministry of Justice is preparing the documentation for signature. We hope that this will be done without any further delay.

20. In all, the Russian Federation is a party to fifty six Council of Europe Conventions. It has acceded to eight of them since the last debate in the Assembly on the honouring of obligations and commitments by this country, in 2005.

III. Bringing legislation in line with Council of Europe principles and standards

21. Since its accession, Russia has accomplished impressive work of bringing its legislation in line with Council of Europe standards. We invite those interested to consult the note that we submitted to the Committee after our previous visit⁵, in which we gave an account of the legislative work in different areas

⁵ See AS/Mon(2010)28rev

completed over the last years. Here we will focus on several outstanding issues which, in our view, should be given more attention.

22. On 23 October 2009, the State Duma adopted the law on amendments to the 1996 Federal Law on Defence. On 17 March 2010, the Monitoring Committee requested the opinion of the Venice Commission on this law as amended. The Venice Commission adopted its opinion on 17-18 December 2010.

23. The 2009 amendments provide for four legal grounds on which Russian armed forces may be dispatched abroad. They raise two types of issues: the first relates to the conformity with international law of the four cases of use of force by the Russian Federation outside its territory, and the second relates to the level of compliance of the decisional powers of the executive with the need for democratic control over the armed forces.

24. According to the Venice Commission, three out of four grounds for the deployment of armed forces abroad are in conformity with the international law, subject to their correct interpretation. As regards the provisions concerning the protection of a state's citizens on the territory of a third state, the Commission finds them problematic as it is mainly a responsibility of this third state. If the latter is unable to prevent genocide, ethnic cleansing or other serious human rights violations, protection becomes a responsibility of the international community on the basis of a relevant resolution of the United Nations Security Council. The protection of a state's own nationals cannot be used as a pretext for military intervention and cannot have as a consequence the stationing of troops in order to ensure the continued protection of the citizens in question.

25. As regards the issue of compliance of the executive power of sending troops abroad with the need for democratic oversight over the armed forces, the 2009 amendments suppressed the parliament's power of prior approval even where there is no emergency situation. Whereas this may not conflict with international standards, it represents a step backwards in terms of democratic control of the armed forces.

26. The Law on security services (FSB) was adopted on 19 July 2010. It gives security services additional powers in the field of prevention of crimes including questioning and issuing warnings to people suspected of planning crimes. The bill also allows for fines or short jail sentences to be imposed on anyone who obstructs the work of FSB agents. The opposition claims that it may be used as an instrument to threaten anyone who is in opposition or simply criticizes the authorities, as well as journalists investigating sensitive stories.

27. Another concern is raised by the Law on police which is undergoing the legislative procedure. The draft prepared by the Ministry of the Interior was open for public discussion between August and October 2010. On 27 October, it was transmitted to the State Duma. It was planned that it would enter into force on 1 March but so far there has been no discussion on it.

28. The Russian authorities have never asked the Venice Commission or the legal department of the Council of Europe for an opinion on the draft, although they have been invited to do that by the Secretary General. The original draft submitted in August for public discussion raised a considerable amount of criticism because of its non-compliance with European standards. The revised draft which was submitted to the Duma was improved in several ways, although there remain several provisions which are of concern, in particular those relating to the rights of detainees in custody and the search warrant.

29. The Law on fighting extremist activity (the Extremism law) continues to raise concern. It was adopted in 2002, but over the last years it has allegedly been increasingly used by the authorities to harass NGOs, journalists, human rights groups, and, in particular some religious groups. We were approached by the representatives of the Jehovah's Witnesses who presented us with a number of documented cases of disruption of religious meetings and other forms of harassment.⁶ Criticism about the law stems mainly from the vague definition of key words such as extremism, terrorism and social groups, thus giving enforcement authorities broad latitude in determining which organisations, individuals, and activities are covered by the law.

30. In view of the forthcoming parliamentary elections, we would like to reiterate the position of the Parliamentary Assembly on the representativity of elected bodies which implies that electoral thresholds do not exceed 5%. For that reason, we believe that the changes introduced to the electoral code last year are insufficient. We strongly urge our Russian Colleagues to come back to this question in time for the December elections in order to allow for a variety of political forces to be meaningfully involved in the political process.

⁶ See also the judgment of the European Court of Human Rights in the case of Kuznetsov and others v. Russia, 11 January 2007

IV. Pluralist democracy, rule of law, human rights and basic freedoms

31. When speaking of representative democracy, its good functioning and the efficiency of the democratic process, one cannot avoid the question of the opposition. It is a matter of concern that a large part of Russian opposition remains outside the Duma and is not involved in the political dialogue. Such a situation cannot be beneficial for the democratic system as a whole.

32. We are of course aware of the recent initiatives of President Medvedev aimed at increasing the role of the opposition within the Parliament and liberalising the electoral system.⁷ However, meaningful progress in this respect requires considerable improvements in the political environment which would allow for the opposition forces to be genuinely competitive in the electoral process and for the establishment of a genuine multi-party system.

33. Freedom of expression remains a matter of concern in Russia. Although a number of major print media outlets maintain their editorial independence and express opposition views, and there is also dynamic growth in electronic publications, pressure on independent outlets nevertheless remains considerable. During our visit, we heard reports on the selective use of bureaucratic regulations, intimidations and harassment, and, in some instances, politically motivated criminal investigations against critical journalists.

34. The insecurity of journalists remains a real danger to press freedom in Russia. Cases of physical assault on well-known journalists – Oleg Kashin is just one of the most recent examples – as well as the failure to carry out credible and effective investigations and to punish those responsible for beatings and killings of journalists, including the investigative reporter Anna Politkovskaya, is believed to force many to practice self-censorship.

35. Furthermore, freedom of expression for human rights defenders, lawyers and civil society activists remains limited. Not a single killing of well-known human rights activists – Stanislav Markelov, Anastasia Baburova, Natalia Estemirova, Maksharip Aushev, Zarema Sadulava or Alik Dzhabraïlov – to recall only those assaulted over the last two years – has been brought to a conclusive end and resulted in conviction of the relevant perpetrators. Human rights defenders and civil society activists are also frequently subjected to intimidation, administrative harassment and physical attacks.

36. Until October 2010, arbitrary restrictions were imposed on the right to freedom of assembly. No authorisations were granted, and police continued to disperse, sometimes violently, the public rallies held in large cities on the thirty first day of the month in support of Article 31 of the Constitution, which guarantees freedom of assembly. The year 2010 started with the detention of Mrs Ludmila Alexeeva from the Moscow Helsinki Group, a well-known human right defender, then aged 82, at a Moscow rally on New Year's Eve. Another prominent activist, Mr Lev Ponomarev, was detained twice in 2010 for participating in unauthorised rallies.

37. In October 2010, the authorities authorised a rally which gathered at least 1000 peaceful protesters in Moscow alone. However, the next rally, on 31 December, although authorised, resulted in the arrest of approximately 120 protesters including some leading opposition figures like Mr Nemtsov, Mr Ilia Iashin and Mr Konstantin Kosiakin, who were sentenced, on 2 January 2011, to fifteen, five and ten days of administrative detention respectively on the charges of "disobeying police instructions", despite eyewitness reports that they had not obstructed police officers.

38. On 31 December, Mr Eduard Limonov, an opposition writer and leader of the radical National Bolshevik Party, was arrested in Moscow an hour before the rally and sentenced to 15 days for insulting police during his detention.

39. A number of issues raise our concern in connection with these events. Firstly, we find it unacceptable that people are detained in FSB pre-trial detention centres in conditions which do not meet basic humanitarian standards. We were told by Mr Nemtsov that he had been kept for 48 hours in a room without a window, light and bed.

40. Secondly, it is highly controversial that this type of charge is dealt with under criminal and not administrative procedure and punished by prison sentences instead of fines.

41. As regards the substance, we wish to express our concern at reports indicating that the trials failed to meet European standards of fairness. At the trial of Mr Boris Nemtsov, the judge did not grant his defence

⁷ See As/Mon(2010)28rev

lawyers' request to use video evidence, and the court based its guilty verdict on the statements of the two police officers, ignoring the statements of thirteen defence witnesses.

42. The use of law enforcement agents' testimonies in similar cases as the sole proof of guilt seems to be a rule in Russian courts. And yet, according to the proceedings of the trial published in *Novaya Gazeta* of 7 February 2011, the policeman whose testimony contributed to the conviction of Mr Ilia Iachine, when confronted with contradictions in his declaration, admitted that he had made the statement on the orders from his superiors.⁸

43. This leads us to a more general question of independence of the judiciary. The widely commented case of Mr Mikhail Khodorovsky, a Russian prominent businessman is emblematic of alleged political pressure on courts.⁹ On 27 December 2010, he was found guilty – together with his business partner, Mr Platon Lebedev – of the charges of embezzlement and money laundering and was sentenced to 14 years including time already served. Both of them had already been found guilty of fraud and sentenced to 9 years in prison in 2005 (the sentence was later reduced to 8 years). The legal process was widely criticized as being unfair and politically motivated, and numerous breaches of legal procedure were reported. The appeal is underway and we strongly believe that the situation should be remedied.

44. Another example of serious deficiencies of the Russian judiciary is the case of the death in prison of the anti-corruption lawyer, Mr Sergei Magnitsky, in November 2009, and the failure of the judicial authorities to carry out an effective investigation. On 16 December 2010, the European Parliament adopted a resolution that opens the door for EU member states to introduce a visa ban and freeze the bank accounts of the 60 officials accused of involvement or dereliction of duty in the death of Mr Magnitsky.

45. On a more positive side, we would like to express our satisfaction at some visible progress in the execution of the European Court's judgments.¹⁰ In particular, the adoption, in May 2010, of the law on the compensation for victims of excessive length of procedures addresses a longstanding concern.

46. Amendments to the Law on the Code of Civil Prosecution, currently considered in the Duma, also address also the problem of execution of national court judgments.

V. Other outstanding commitments

47. A number of other outstanding commitments as enlisted in Opinion No 193 (1996), at different stages of fulfilment, need closer examination. They include:

- settlement of outstanding international border disputes;
- negotiating claims for the return of cultural property to other European countries;
- return of the property of religious institutions;
- settlement of all issues related to the return of property claimed by Council of Europe member States, in particular the archives transferred to Moscow in 1945;
- ratification of the Agreement of 21 October 1004 between the Russian and Moldovan Governments;
- fulfillment of obligations under the Treaty on Conventional Armed Forces;
- denouncement as wrong of the concept of two different categories of foreign countries (near abroad).

We will deal with these during one of our next visits.

⁸ AFP, 7 February 2011

⁹ See report of the Committee on Legal Affairs and Human Rights Doc.

¹⁰ See report of the Committee on Legal Affairs and Human Rights Doc.

APPENDIX

Programme of the fact-finding visit to Moscow and Kazan (18– 21 January 2011)

Mr György FRUNDA, Senator
Mr Andreas GROSS, National Councilor
Ms Agnieszka NACHILO, Deputy to the Head of Department of the Monitoring Committee

Tuesday, 18 January 2011

- 10:00-11:00 Meeting with Mr V. LEBEDEV, Chairman of the Supreme Court of the Russian Federation
- 11:00-12:00 Meeting with Mr Pavel KRASHENINNIKOV, Chair of the Legal Affairs Committee of the Duma
- 12:00-14:00 Meeting with members of the Russian delegation to the PACE and the leaders of political parties represented in the State Duma and the Council of Federation
- 15:00-16:00 Meeting with Mr A. GRUSHKO, Deputy Minister for Foreign Affairs of the Russian Federation
- 16:30 Meeting with Mr Victor EROFEYEV, writer
- 17:30 Meeting with NGOs (Moscow Helsinki Group, Independent Council of Legal Expertise)
- 19:00 Meeting with Mr Boris NEMTSOV, one of the leaders of the Union of Right Forces

Wednesday, 19 January 2011

- 11:00-12:30 Meeting with Mr A. KONOVALOV, Minister of Justice of the Russian Federation, and Mr A. REIMER, Director of the Federal Service for Execution of Sentences
- 12:30- 15:00 Visit to detention center Mattrovskaya Tishina
- Meeting with Mr Mikhail KHODORKOVSKY
- 20:40 Departure to Kazan

Thursday, 20 January 2011

- 09:30-10:30 Visit to the Republican Youth Sports Center "Patriot"
- 11:00-11:40 Meeting with Mr I. METSHIN, Mayor of Kazan
- 12:00-12:50 Meeting with Mr K. AMIROV, Prosecutor of the Republic of Tatarstan
- 13:00-14:50 Meeting with the members of the State Council of the Republic of Tatarstan
- 15:00-15:50 Visit to the Kremlin of Kazan, to the Mosque of Kul Sharif, and to the Annunciation Cathedral
- 16:00-16:40 Meeting with Mr R.N. MINNICHANOV, President of the Republic of Tatarstan
- 17:00-17:40 Meeting with Mr G.M. BARANOV, President of the Supreme Court of the Republic of Tatarstan
- 18:00-19:00 Meeting with the leaders of national and cultural autonomies of the Republic of Tatarstan

Friday, 21 January 2011

- 09:00-09:50 Visit to the Spiritual Administration of Muslims of the Republic of Tatarstan
- 10:00-10:40 Visit to a synagogue

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10:50-14:00 A visit to a detention centre

14:00-15:00 Meeting with the Ombudsperson of the Republic of Tatarstan

15:00-16:30 Visit to the Raif Bogoroditsky Monastery

Meeting with the Orthodox clergy and isit to the orphanage

16:45-17:15 Meeting with the Head of the Public Chamber of the Republic of Tatarstan

17:20-19:00 Meeting with NGOs