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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 the state of the Monitoring Procedure with regard to Russia[1]

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[1] This information note has been made public by decision of the Monitoring Committee dated 30 March 2009.

I. Introduction

1. The last report on the honouring of obligations and commitments by the Russian Federation was debated at the 2005 June part-session. Since then, the co-rapporteurs visited the Russian Federation from 3 to 5 April 2006 and from 26 to 29 March 2007. On 28 June 2007, the Monitoring Committee adopted a public statement on the honouring of obligations and commitments by the Russian Federation. In addition, Mr Van den Brande visited the Russian Federation in November 2006, jointly with Mr Mátyás Eörsi, co-rapporteur of the Monitoring Committee with respect to Georgia, in the framework of the deteriorating relations between the Russian Federation and Georgia at that time. Most recently, we visited Moscow on 20-23 April 2008 and 9-11 March 2009.

2. Since our April 2008 visit to Moscow, the monitoring procedure with respect to Russia had been overshadowed by the August 2008 war between Georgia and Russia and its immediate consequences. This seriously interfered with the regular monitoring procedure in the second half of 2008. However, the co-rapporteurs made several visits to Russia in the framework of the Assembly's efforts to address the consequences of this war.

3. The consequences of the war and their implications for the Assembly are dealt with in a separate report prepared under a separate mandate by one of the co-rapporteurs with respect to Russia, Mr Luc van den Brande, and one of the co-rapporteurs with respect to Georgia, Mr Mátyás Eörsi. Within the framework of this process, both co-rapporteurs closely followed the activities of the Council of Europe Commissioner for Human Rights, Mr Thomas Hammarberg, relating to the human rights and humanitarian consequences of the war[2].

4. While it is clear that the consequences of the war have a direct impact on the monitoring procedure, we are strongly convinced that the regular monitoring procedure with respect to Russia and the latter's co-operation with the Assembly with a view to honouring its commitments and obligations as a member state of the Council of Europe should not be sidelined as a result of the work on the consequences of the war. Indeed, we would like to recall that in both Resolutions 1633 (2008) and 1647(2009) the Assembly requested the Monitoring Committee to "step up" and enhance its monitoring procedure with respect to both Russia and Georgia.

5. It is against this background that we visited Moscow again on 9-11 March 2009. The purpose of our visit was to follow up the issues we had raised during our visit of 20-23 April 2008, as well as to gain an understanding about the priorities to be fixed and the roadmap to be drawn for an enhanced monitoring procedure, as requested by the Assembly.

6. It had been our original intention to submit our report on the honouring of obligations and commitments by the Russian Federation to the Assembly for debate in spring 2009 or summer 2009 at the latest. However, as explained above, this timeframe is no longer realistic. We now intend to submit our preliminary draft report to the Monitoring Committee in the second half of this year.

7. Our visit of 9-11 March 2009 built upon the findings of our visit to Moscow on 20-23 April 2008. The latter, as outlined in document AS/Mon(2008)21 have, for reasons of clarity, been integrated into the present report. Since the last report of the committee was presented to the Assembly in 2005, we strongly recommend to the committee that the present note should be declassified, as it contains an up-to-date overview of the current state of affairs with regard to the monitoring procedure for Russia.

8. During our visits of April 2008 and March 2009, we met with the members of the competent committees of the State Duma and of the Council of the Federation; the representatives of the Ministries of Foreign Affairs, Justice, Defence and of the Federal Agency for Press and Mass Communications; the Chairman of the Central Election Commission; the Presidents of the Constitutional Court and of the Supreme Court; the representatives of the Prosecutor's General Office and of the Investigation Committee at the

[2] Doc. CommDH(2008)22 on "Human Rights in Areas Affected by the South Ossetia Conflict. Special Mission to Georgia and Russian Federation"; Doc. CommDH(2008)30 on "Special Mission to Georgia including South Ossetia. Summary of Findings"; Doc. CommDH(2008)33 on "Special Follow-Up Mission to the Areas Affected by the South Ossetia Conflict: Implementation of the Commissioner's six principles for urgent human rights and humanitarian protection", Doc. CommDH(2008)37 on "Special Follow-Up Mission to the Areas Affected by the South Ossetia Conflict: Implementation of the Commissioner's six principles for urgent human rights and humanitarian protection (12-14 November 2008, Tbilisi, Tskhinvali and Gori)".

Prosecutor's General Office, as well as representatives of the mass media, civil society and international community, including Ambassadors of Council of Europe member States based in Moscow.

9. We are grateful to the delegation of the Russian Federation to the Parliamentary Assembly for the programme and support provided to our delegation during both visits. In addition, we would like to thank the Delegation of the European Commission to Russia for their kind hospitality, and the members of the diplomatic community in Moscow for the invaluable information they have shared with us.

II. Strengthening pluralist democracy

i. Electoral framework

10. Parliamentary elections were held in the Russian Federation on 2 December 2007, and presidential elections were organised on 2 March 2008. Both elections were observed by Ad Hoc Committees from the Parliamentary Assembly.[3] The reports of these Ad Hoc Committees were similar in their conclusions: while the outcome of the elections overall reflected the political will expressed by the Russian voters and the technical organisation of the proceedings on Election Day were lauded, significant shortcomings resulted in an election process that undermined political pluralism and did not fully comply with Council of Europe standards for democratic elections.

11. The concerns noted with regard to these elections, especially those related to the limited political pluralism are, *inter alia*, the result of shortcomings in the recently amended legal framework for elections and party registration. In order to qualify for registration, a political party needs to have at least 50,000 members and branches of at least 500 members in more than half (50% +1) of the Subjects of the Russian Federation (the so-called double threshold). The minimum number of members to establish a regional branch in a subject of the Russian Federation is 250. In addition, in order to register for parliamentary elections, parties not represented in the Duma must either pay a deposit of 60 million roubles or collect 200,000 supporting signatures of which less than 10,000 can come from one and the same region. Moreover, in order to compete in a presidential election, candidates not nominated by a registered party must submit to the Central Electoral Commission (CEC), in support of their registration, 2 million signatures, with not more than 50,000 coming from the same Subject of the Federation.

12. In addition to these excessive – in our opinion – registration requirements, the threshold to enter parliament was raised from 5% to 7%, the formation of electoral blocs was forbidden and a "party-administered" mandate for deputies was introduced. The combined effect of these provisions is to undermine political pluralism and make the participation of new and/or small parties in the democratic process extremely difficult.

13. Registered parties whose membership numbers fall below the registration requirements, and which have no members in parliament, can be closed by court order. In addition, the potential for dissolution of political parties under the anti-extremism legislation – whose wide scope and possibility for arbitrary application could be seen as infringing on the principles of freedom of association and freedom of assembly – is a point of concern.

14. Just before our visit in March 2009, local and regional elections were organised in a number of Subjects of the Russian Federation. According to Russian law, regional and local elections take place on so-called Uniform Election Days (UED), which are held twice in a calendar year.[4] The first 2009 UED took place on 1 March 2009, while the next one is scheduled for 11 October 2009.

15. The ruling majority party "United Russia" came first in all elections to the regional legislative assemblies, which were held in 9 Subjects of the Federation (i.e. Republic of Kabardino-Balkaria, Republic of Karachaevo-Cherkessiya, Republic of Tatarstan, Khakas Republic, Arkhangelsk Region, Briyansk Region, Vladimir Region, Volgograd Region and Nents Autonomous District). However, in all of them, the performance of "United Russia" was lower than that in the 2007 State Duma elections, with the differences ranging from approximately 2% (in Tatarstan and Khakassia) to 23-24% (in the Republic of Kabardino-Balkaria and the Republic of Karachaevo-Cherkessiya). Moreover, the voter turnout decreased in comparison with the most recent national elections of December 2007 and March 2008 (with the differences ranging from 7% to 26%). At municipal level, in some regional capitals, "United Russia" failed to secure

[3] See Doc. 11473 and Doc. 11536

[4] Federal elections are called depending on the expiration of the term of office of the State Duma and of the President of the Russian Federation.

comfortable majorities in city assemblies and the candidates supported by "United Russia" lost mayoral elections against independent candidates.

16. The elections of 1 March 2009 were not observed by the Council of Europe, but we noted that the opposition parties, as well as independent observers, expressed reservations in relation to the election process, especially with regard to the possibility for all contestants to participate on an equal basis in the electoral process. The abuse of the so-called "administrative resources" was, yet again, the most common criticism.

17. Of course, a direct comparison between national, regional and municipal elections cannot be made. However, in our opinion, the results of the 1 March regional and local elections show that the voters are looking for new alternatives at regional level to parties represented in the State Duma and confirm our concerns about the lack of political pluralism in Russia. This problem is partially rooted in the legislation which prevents a wide array of political actors from participating in the political process due to stringent formal requirements. From our discussions in Moscow, we gained the impression that the authorities themselves are aware of the weaknesses of the electoral legislation and agree with the need to improve it further, in line with Council of Europe standards. However, it was clear to us that the exact nature of these weaknesses is an area of considerably diverging views.

18. Naturally, a fair and democratic election requires more than just good legislation. The whole electoral process should be genuinely competitive to give all political actors an effective possibility to participate. That said, the improvement of the legislation governing elections is crucial to ensure a truly democratic and pluralist electoral process.

19. In this respect, we took note of a number of recent legislative initiatives taken by the Russian authorities. Following President Medvedev's address of 5 November 2008 to the Federal Assembly of the Russian Federation, several draft laws were introduced in parliamentary procedure. The proposed draft laws aim, *inter alia*, at: introducing "reserved seats" for parties which would obtain between 5 and 7% of the votes in the elections to the State Duma (2 seats would be reserved for parties which would reach between 6 and 7% of votes and 1 seat – for parties which would reach from 5 to 6% of votes); lowering the mandatory membership of political parties from the current 50,000 members down to 40,000 members over a period of 2010-2012; abolishing the electoral deposit for the registration of party lists for political parties not represented in the State Duma; decreasing the number of signatures necessary for registering a party list for the elections to the State Duma from the current 200,000 signatures down to 150,000, for the next parliamentary elections (to be held normally in 2011), and to 120,000 for all subsequent elections. Moreover, parties that are represented in more than 1/3 of the legislative assemblies of the Subjects of the Russian Federation are no longer required to collect signatures in order to register for a federal election, as was already the case for parties represented in the Federal parliament.

20. While we welcome the initiatives of the authorities aimed at liberalising the electoral legislation, we believe that further improvements should be made in order to ensure that the electoral system is genuinely pluralist. Further legal reform is therefore necessary. In particular, the transitional period for lowering the number of signatures necessary to register a party list could, in our opinion, be completed earlier and in time for the next parliamentary elections to be held in 2011. Moreover, the legislation on political parties could, in our view, be further liberalised, especially with respect to mandatory membership criteria (double threshold), to open the door for the creation of more (and smaller) political parties since, currently, only 6 parties qualify to participate in elections. In addition, while recognising that there are no clear European standards with regard to the threshold, the current threshold should be reconsidered with a view to ensuring that it does not undermine a genuinely pluralist representation in the Federal parliament that fully reflects the wide range of political views existing in the Russian society.[5]

21. Electoral reform is an area where close co-operation between the Russian authorities and the Council of Europe could be most beneficial for the electoral process in the country. In this context, we recommended that the Russian authorities ask for an opinion of the Venice Commission on the different laws that govern

[5] See the *Yumak and Sadak v. Turkey* judgment of the European Court of Human Rights of 8 July 2008, Application no. 10226/03. See also Assembly Resolution 1547 (2007) on the state of human rights and democracy in Europe, in which the Assembly declared that "in well-established democracies, there should be no thresholds higher than 3% during the parliamentary elections" , as well as Assembly Resolution 1616(2008) on the state of democracy in Europe: functioning of democratic institutions and progress of the Assembly's monitoring procedure.

the election process – including the law on political parties. This opinion should then be the basis for further and close co-operation between the authorities and the Venice Commission, as well as other relevant Council of Europe departments, to formulate proposals for further changes to the electoral legislation.

22. During our visit to Moscow, the Chair of the Central Election Commission, Mr Vladimir Churov, and the Chair of the State Duma Committee on constitutional legislation and state-building, Mr Vladimir Pligin, confirmed that they would welcome co-operation with the Venice Commission on the improvement of the electoral legislation and that they would request a Venice Commission opinion on the current electoral legislation shortly. However, if such a request does not come from the authorities within a reasonable time, the Monitoring Committee should then ask for an opinion of the Venice Commission for the purpose of providing us with an expert assessment of the existing legislation, within the framework of the preparation of our report.

ii. Media pluralism and freedom of the media

23. The parliamentary elections of December 2007 and the presidential elections of March 2008, which the Assembly observed, highlighted existing concerns regarding media pluralism and freedom of the media in the Russian Federation. 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. During our visit of March 2009, we met with several media representatives, as well as with the representatives of the Federal Agency for the Press and Mass Communications.

24. There is a wide range of print media in Russia that, taken together, present an equally wide and diverse range of views to the public. The media representatives we met generally felt that little or no restrictions were placed on the press and asserted that the changes in the ownership of the media outlets had no effect on the editorial policy. However, print media have often a limited circulation and lose some of their topicality as a result of distribution delays, especially outside the large cities. Distribution is one of the key concerns of the independent journalists and of the authorities. We were informed that, at the moment, distribution of print media is performed, besides 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.

25. In 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.

26. The general feeling of the journalists we met was that media pluralism in Russia has declined in the past couple of years. 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. In this context, we feel that the authorities should work more on developing a genuinely pluralist media environment in the country, which is an essential condition for the consolidation of democracy. The establishment of a genuinely independent public broadcaster, as well as further efforts to ensure the independence of the regulatory body for the media are obviously important steps in this direction and we urge our Russian colleagues to address these issues promptly.

27. On the legislative side, we learned that the authorities are currently working on a new draft law on the media which should replace the existing law adopted in 1993. The draft has been reportedly sent to key stakeholders for final consultations and should be soon introduced into the State Duma. Among the novelties of the law, a clear list of the rights of journalists and a regulatory framework for the Internet were highlighted. Media legislation reform is another area where the Council of Europe has a wealth of expertise to contribute. We, therefore, recommend, that the State Duma and the competent governmental authorities consult the Council of Europe on the new draft media law.

28. The authorities informed us that a draft law on “Guarantees of equal coverage of the activities of parliamentary parties on State TV and Radio” was introduced into the State Duma. This draft law would give

to the Central Election Commission the responsibility to monitor the coverage of the activities of political parties represented in the State Duma on State TV and Radio Stations. While welcoming this initiative, in order to enhance pluralism, we would recommend extending the monitoring to political parties not represented in the Parliament as well.

iii. Civil society

29. Freedom of assembly, especially after the so-called "NGO Law"[6] came into effect in April 2006, was one of the main issues during our discussions with the representatives of the civil society during both visits. Provisions in this 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.

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

31. The NGO community, including the Public Chamber, complain that the reporting process established by law is complex and cumbersome. The reporting process, compounded in many cases by official inspections, which reportedly can last up to several months, take up considerable resources and paralyse the work of many NGOs. Despite their efforts, many NGOs received official warnings about errors in their reporting, which could potentially lead to their closure. 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, was welcomed by the NGO community.

32. Most of the larger and well-known NGOs do not fear the possibility of closure as a result of the reporting requirements, as they have both the resources and knowledge to complete this process or, if needed, fight a warning or decision of closure in court. It has to be noted that, since the entry into force of the 2006 amendments, there were no cases of closure of major NGOs. However, it was noted that 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 were viewed as a serious barrier for the formation of new NGOs and social movements. All NGOs reported that the reporting cycles and inspections diverted scarce resources and time, which significantly affected their normal work, often up to the level of complete paralysis.

33. During our visit in March 2009, we were informed by civil society representatives that the authorities themselves have recognised that the current reporting requirements are over burdensome and do not serve their intended objectives, so that mostly small NGOs are forced to cease operations or small civil society initiatives do not seek to legalise their operations. 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. This appears to be confirmed by the statistics provided to us by the Ministry of Justice that show that, in 2008, only 4,640 NGOs (which represents about 2% of all registered NGOs in Russia) were subjected to checks (for comparison, in 2007, more than 13,000 NGOs, i.e. 13% of the total number of registered organisations, were checked by the Ministry of Justice). In addition, the authorities informed us that they were working, jointly with the Public Chamber, on a simplification of the reporting forms and reporting procedures.

34. At the same time, NGO representatives indicated during our visit in March 2009 that the implementation of the NGO law, as well as the response of the judiciary to appeals brought by civil society organisations against decisions by the authorities, are not uniform in the different areas of the Russian Federation. Moreover, the complexity of legal requirements and the length of the administrative procedures paralyse the work of civil society organisations.

35. For example, we were informed that, when an organisation is moving to new premises, the Ministry of Justice should be notified of the new legal address. On the basis of this notification, changes to the register have to be made for the NGO to be able to work with third parties and the authorities, because the statutory documents, duly registered, have to refer to the new legal address of the organisation. The updating of the registry (and the issuing of new registered statutory documents), in practice, can take considerably longer than the legally established deadline of 30 days. This puts an NGO in a precarious situation because it

[6] 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.

cannot function normally without duly registered statutory documents and, for example, change its bank details in order to continue to make payments for services. Moreover, reportedly, technical changes are used by the registration bodies to revisit other parts of the statutory documents such as mission statement and objectives. In the case of another NGO, the registration service failed on several occasions to issue an administrative decision about the non-registration of the statutory documents, while, at the same time, "suggesting" amendments to the draft statutes. In the end, the statutes were registered, with some changes introduced unilaterally by the registration service, however. These two examples illustrate how complex and cumbersome legal requirements can open the door for administrative abuse and, even, corruption.

36. It is clear to us that the shortcomings in the current legislation and the concerns expressed by civil society and the international community cannot be satisfactorily addressed by changes in the implementation procedures alone. A main problem is the nature of the NGO legislation itself, which is not strengthening civil society, as was its intended purpose, but instead seeks to establish controls over civil society and is punitive in character. A genuine democracy needs a vibrant civil society, and, in our opinion, the current legislation governing civil society needs to be considerably reformed to achieve the publicly stated objectives that were at the basis of its adoption in 2006. Given the experience of the Council of Europe in this field, we would recommend that the authorities should seek co-operation with the relevant Council of Europe departments, including with the Venice Commission, to reform the current legislation. We intend to discuss a concrete mechanism for this proposal with our colleagues in the Russian parliamentary delegation, as well as with the State Duma Committee on constitutional legislation and state building.

37. In addition to the effects of the NGO legislation, civil society representatives 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. This is an issue of continuing concern to us, which we intend to follow closely in the process of drafting our report to be presented to the Assembly.

38. We have some concerns with respect to the mechanisms for interaction between the authorities and civil society. Currently, two formal mechanisms for interaction are available: the Public Chamber and the Public Councils that are established by the different ministries and public services.

39. The Public Chamber, as discussed in detail in our previous reports, is an official public body set up to co-ordinate the interaction between the authorities and the civil society. It is boycotted by a considerable part of the NGO community, who regard the Chamber as an instrument of the authorities to control civil society. This view is supported by the composition of the chamber, which is based on a system of co-option and appointments by the authorities and, as a result, cannot be considered as representative of the overall NGO community.

40. The Public Councils established by the different government services are composed of civil society representatives appointed by the authorities themselves. This raises some questions with regard to their independence and representativity. Moreover, the NGO representatives we met indicated that, in some cases, they contain civil society organisations whose work and objectives have no relation with the subject area of the particular Public Council. We 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 is fully transparent and their composition is a genuine reflection of the civil society existing in Russia today.

41. While we welcome the intention of the authorities to establish a constructive dialogue between government and civil society, we would recommend that the appointment and decision-making procedures of the Public Chamber, as well as of Public Councils, 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.

42. While the authorities assured us that the freedom of religion is fully respected in Russia, we take note of 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. We were also informed 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.

III. Reform of Federalism and Local Self-Government

i. Strengthening of local self-government

43. The reform of federalism and local self-government has been a key challenge for democratic reforms in Russia. We were positively impressed by the comprehensive reforms the authorities have implemented in the last couple of years. According to the authorities, the reform has included the adoption of amendments to some 252 federal laws. The aim of the reform was two-fold:

- firstly, the reform aimed at harmonising the federal and regional legislative framework and, in particular, bringing regional constitutions and legislation in compliance with the federal constitution and laws;

- secondly, the reform aimed at clarifying the assignment of responsibilities to regional and local authorities as well as providing stable, objective, predictable and transparent allocation of revenues to different levels of government, with a view to avoiding the so-called "unfunded mandates" (i.e. devolution of competences without appropriate financial support) and equalising the financial capacity of various territorial authorities.

44. Substantial progress has been made in the realisation of these objectives. Regional constitutions and statutes were harmonised with the Federal legislation. The new legislation does not allow the delegation of competences to regional (and local) authorities without appropriate financial support. The new Budgetary Code has introduced a number of sound principles in the inter-budgetary relations. A new system of financial equalisation between the Subjects of the Federation was introduced. We welcome these developments.

45. That said, the reform is still far from being completed. We have learned from public sources that, in fact, in some respects, the reform has, paradoxically, led to increased centralisation of financial flows. For example, according to some analyses, the share of transfers in the consolidated budget of the Russian Federation grew from 44% in 1999 to 66% in 2007. Equally, the cornerstone principle of the Budgetary Code "one revenue – one budget" does not appear to be implemented effectively in practice: 80% of fiscal revenues of the Subjects of the Federation come from shared taxation (i.e. federal taxes whose revenues are re-distributed by the centre among the regions). Local authorities appear to be the most affected: according to the data of the Ministry of Finance for the year 2006, only 2% of the municipalities were financially self-sufficient, while 60% received more than half of their revenues from transfers and 36% of municipalities were in such dire straits that the Subjects of the Federation were obliged to finance their operation directly.[7] We nevertheless gained a clear impression that the Federal authorities were aware of these challenges and intended to take concrete action to remedy these problems.

46. During our visit in April 2008, we learned from the Deputy Minister of Regional Development, Mr Vitaliy Shipov, that special recovery mechanisms existed for local authorities in financial difficulty. Such mechanisms are necessary for the good functioning of decentralisation; they should not limit local authorities' autonomy however. In this respect, we would like to ask the authorities to provide us with additional information about the functioning of the mechanisms of financial recovery of local authorities.

47. Furthermore, we were informed by the Deputy Minister of Regional Development of the plans of his Ministry with respect to the implementation of a new system of performance measurement of the activities of the regional governors. This system consists of 43 indicators which are measured according to a comprehensive and complex methodology. Performance measurement and management programmes should be complemented by a new system of incentives to those regions which perform well. In particular, it is expected that the regions which are financially self-sufficient would be granted more autonomy in the management of their finance (especially, with respect to limitations on borrowing). A system of incentive grants is also foreseen. Deputy Minister Shipov informed us that, in future, this performance measurement and management system, as well as the incentive techniques, would be extended to cover local authorities as well. It would be interesting to know how this system operates now, in the times of economic crisis.

48. We welcome the Russian authorities' efforts aimed at improving the performance of regional and local authorities. At the same time, we consider that "top – down" mechanisms should be complemented by "bottom – up" efforts by regional and local authorities, who should commit themselves to constantly improving their standards of leadership, service provision, community engagement and public ethics.

[7] Federal structure. « Power » Magazine, No. 5, 11 February 2008. (Федеративное устройство. *Журнал «Власть» № 5(758) от 11.02.2008.)*

49. We shall closely monitor the developments in this field in the further stages of the monitoring process and encourage the authorities to provide us with updated information on the results the 2007 and 2008 performance evaluation cycle, as well as on lessons learnt.

ii. The Composition of the Council of the Federation

50. In its Resolution 1455 (2005), the Assembly urged the Russian authorities *"to improve the conditions for the normal functioning of pluralist democracy and, in this respect to: […] ii. review the recently adopted legislation on the election of regional governors inasmuch as it affects the composition and the independence of the upper house of the Russian Parliament, in order to ensure full compliance with the principle of the separation of powers".*

51. The authorities do not appear to be ready to change the existing modalities of appointment of the Governors. However, with the recent adoption, on 14 February 2009, of the Federal Law N° 21-ФЗ on "Amendments to individual legislative acts of the Russian Federation due to the change in the formation procedure of the Council of the Federation of the Federal Assembly of the Russian Federation", they seem to have partly responded to the above Assembly recommendation, as regards, in particular, the composition of the Council of the Federation. According to the amendments, each Subject of the Federation is entitled to designate 2 representatives to the Council of the Federation (one by the Executive and one by the Legislative Assembly) from among the members of the regional Legislative Assembly or municipal councils. The new system of designation of members should be effective as of 2011, when the legislative assemblies in most of the Subjects of the Federation will be re-elected. We welcome this change, as the members of the Council of the Federation will now all hold a direct elective mandate.

52. However, these amendments do not provide an adequate response to the concern of the Assembly and of the Venice Commission[8] with respect to the principle of the separation of powers, as half of the members of the Council of the Federation are still appointed by the Heads of the executive authorities of the regions, who are themselves appointed by the President. We recommend that the authorities should continue to work on reforming the system of appointment of the Heads of the executive authorities of the regions, by, for example, replacing the current system of appointment by an indirect election by the regional legislative assemblies or by returning to the original system of direct election of the Heads of the executive authorities of the regions.

IV. Legal Reforms and Ratification of Protocols No. 6 and 14

i. Reform of the Procuratura, remaining concerns

53. The reform of the Procuratura has been the major issue of concern in the relations between the Assembly and the Russian authorities in the implementation of accession commitments and statutory obligations. We addressed the issue of the reform of the Procuratura during all our visits to Moscow. We noted with satisfaction the positive changes the system of the Procuratura has undergone over the last decade. These have included the abrogation of the "general oversight" function, the restriction of the powers of the procurators to intervene in civil proceedings and, most recently, the separation of the investigation from the oversight function of the Procurator General's Office.

54. As far as the investigation function of the Procuratura is concerned, in June 2007, the State Duma adopted the Federal Law N° 87-ФЗ "On amendments to the Criminal Procedure Code and the Federal Law on the Procuratura in the Russian Federation" which established, *inter alia*, the Investigation Committee at the Procurator General's Office. The Investigation Committee's key function is to conduct pre-trial investigation of crimes which fall within the competence of the Procuratura under the Criminal Procedure Code. The Investigation Committee is headed by the First Deputy Procurator General, who is appointed in the same manner as the Procurator General of the Russian Federation (i.e. by the Council of the Federation upon the proposal of the President). There is no hierarchical subordination between the Procurator General and the Head of the Investigation Committee. The procurators responsible for "legality oversight" cannot give mandatory instructions to the investigators. However, they exercise "oversight over the implementation of the legislation" by the Investigation Committee.

55. We welcome the establishment of the Investigation Committee as an independent body responsible for conducting pre-trial investigation. The statistics on the operation of this body appear to be encouraging. We were informed that, since the establishment of the Investigation Committee, the number of acquittals due

[8] http://venice.coe.int/docs/2004/CDL-AD(2004)042-e.pdf

to lack of evidence provided by the prosecution fell by 32%. In the year 2008, the number of solved crimes has increased, by 3% for murder, 3% for rape, and 30% for corruption-related crimes. We noted that the organisational separation of the Investigation Committee from the bodies of the Procuratura dealing with legal oversight has lead to a certain amount of tension between these two institutions. We, therefore, encourage the Russian authorities to continue working on the reform of the Procuratura and of its Investigation Committee in order to ensure proper separation of powers, independence of the investigation as well as respect of human rights and fundamental freedoms. We hope that, over time, the role and the capacity of the Investigation Committee will be further strengthened to make this body an effective tool to combat crime and impunity.

56. That said, we are aware that other investigation structures operate in the Russian Federation, especially, under the authority of the Ministry of the Interior and of the Federal Security Service (FSB). In this context, we would like to ask our Russian colleagues to provide us with their views on the broader reform of the investigation services in the Russian Federation in order to gain a better understanding of the challenges the authorities have to face and of the future directions of the reform.

57. We still remain concerned about the broad extra-penal functions of the Procurator General's Office. These include, in particular, several "legality oversight" functions in the following fields:

- oversight over the implementation of laws by Federal, regional and local bodies and officials, as well as commercial and non-commercial organisations;
- oversight over the respect of human rights and freedoms by Federal, regional and local bodies and officials, as well as commercial and non-commercial organisations;
- oversight over the implementation of laws by bodies in charge of conducting pre-trial investigation;
- oversight over the activities of the bailiffs;
- oversight over the implementation of laws by bodies of penitentiary institutions; and
- co-ordination of activities of law enforcement agencies in the fight against crime.

58. While we acknowledge that these and similar extra-penal functions are exercised by Procuraturas in different Council of Europe member-states[9], we would like to reaffirm 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"[10] 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 [European] Convention [of Human Rights] and the case-law of the [European] Court [of Human Rights]"[11].

59. Whatever the current and future functions of the Russian Procuratura are and will be, these fundamental principles must be respected. The reform should ensure that, in exercising "legality oversight", the procurators should be immune from any influence from the executive power. The powers of the procurators to initiate checks and challenge normative acts should never be misused on the basis of political considerations. This has to be guaranteed in law, as well as in practice.

60. To clarify all remaining concerns, we would like to ask our Russian colleagues to provide us with detailed information about the procedure of "legality oversight" by the Procuratura in all areas of its competence. We are also prepared to meet with procurators engaged in "legality oversight" activities on the occasion of our forthcoming visits to Russia, in order to examine concrete examples of cases where the procurators challenge normative acts or actions by commercial and non-commercial organisations.

61. With respect to the activities of the procurators aiming at protecting human rights and fundamental freedoms, we understand that, in the current situation, the procurators may play a role in this field. However, in the medium-term, the reform of Russia's legal system should enable the persons to protect their rights in courts of law directly, or with the assistance of independent lawyers. The role of the Procuratura in this field should, therefore, be phased out.

62. This process does not affect the reform of the Procuratura only. It is a matter primarily linked to the reinforcement of the authority of the courts of law, which should become effective guardians of the legality. It is also a matter linked to the strengthening of the legal profession, so that every person should have not only

[9] Opinion N°3(2008) of the Consultative Council of European Prosecutors (CCPE) on "the Role of Prosecution Services outside the Criminal Law field" and Conclusions of the Conference of Prosecutors General of Europe, The role of public prosecution in the protection of human rights and public interest outside the criminal law field, 2-3 July 2008.
[10] Opinion N°3(2008) of the Consultative Council of European Prosecutors (CCPE), paragraph 34, a).
[11] *Ibid*, paragraph 34, c).

the right but also the effective possibility to seek advice from an independent lawyer. Finally, it is a matter of awareness-raising, so that every citizen should know his or her rights and the legal means of defending them. Only then, the Russian society could develop a real "culture of legality" whereby violations of the law would become exceptional.

63. On the occasion of our forthcoming visits to Russia, we would like to meet with representatives of the legal profession and their professional associations in order to discuss how the procurators' activities on the protection of citizens' rights interact with the activities of independent lawyers.

64. Of course, during all our visits we discussed at length with the authorities the investigation of high-profile cases against politicians, businessmen, journalists and human rights activists. We expressed concern about the outcome of the trial about the murder of the independent journalist Anna Politkovskaya which ended recently with the acquittal of the suspects by the jury. We noted, in particular, that the representatives of the Investigation Committee expressed reservations about the way evidence was presented to the jury by the prosecution. Most independent observers, as well as the lawyers and the family of Ms Politkovskaya made even stronger statements to the media, claiming the investigation into the murder was not effectively conducted. We called upon the authorities to promptly complete the investigation of this case in order to bring to justice not only the authors of this awful crime, but also the organisers. Equally, we urged the Investigation Committee to seriously and promptly investigate the recent murder of a lawyer and human rights defender, Mr Stanislav Markelov, and of the journalist, Ms Anastasia Baburova. We reminded to the authorities that, in accordance with the European Convention of Human Rights, the state has to take positive steps to ensure the protection of human rights activists. We expect the authorities to inform us about concrete results promptly.

65. Our colleague, Mr Dick Marty, is preparing a report for the Committee on Legal Affairs and Human Rights on legal remedies for human rights violations in the North Caucasus region. The Bureau of the Assembly agreed that the co-rapporteurs for Russia would visit the Northern Caucasus after Mr Marty's report is published, in order to also follow-up his findings and recommendations in the framework of the monitoring procedure of the Assembly. The visit of Mr Marty to the region is foreseen to take place in May 2009. We, therefore, decided not to visit the Northern Caucasus during our visits to Russia in April 2008 and March 2009. We shall closely follow Mr Marty's work and incorporate his conclusions in our report on the honouring of obligations and commitments by Russia. At the same time, we are prepared to visit the regions of Northern Caucasus on our own to discuss with the authorities the current political and institutional challenges they are facing there.

ii. Reform of the judiciary

66. During our visit of 20-23 April 2008, we met the Presidents of the Supreme Court and of the Constitutional Court. They informed us that the situation of the judiciary has improved over the last couple of years. 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, if the Ministry of Finance does not include the judiciary's proposal in the draft budget in full. According to the law, the budgetary allocations for the court system cannot be reduced by more than 5% without the consent of the Council of Judges of the Russian Federation (which is a permanent body of the judicial community). More important changes to the budgetary allocations may be made only with the consent of the All-Russian Congress of Judges.

67. However, the Russian judiciary still has to face a number of structural problems. These are, *inter alia*, the non-execution of final domestic judicial decisions against the state (according to well-founded analysis, 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.

68. We gained the impression that the Russian judiciary and the Ministry of Justice are well aware of the need to solve these problems as quickly as possible. Several commendable initiatives in this direction have been recently taken. In December 2007, a set of amendments to the Civil Procedure Code was adopted which 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 and by the prosecutor (if he / she was a party 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.

69. In its Ruling on the application of the Civil Procedure legislation in supervisory review proceedings n° 2 of 12 February 2008, while interpreting the new "*nadzor*" procedure, the Supreme Court made an express reference to the provisions of the European Convention of Human Rights and stated that the principle of legal certainty does not allow the competent courts to engage in supervisory review to review final judicial decisions only for the sake of holding another hearing. The fact that the higher court does not share the view of lower courts on the decision in a specific case may not be a ground for quashing a final judicial decision[12].

70. This is a welcome development. We encourage the Russian authorities to continue the reform of the supervisory review in civil litigation, using commercial procedure (*arbitrage*) as a model[13]. This approach is supported by both the President of the Supreme Court and the President of the Constitutional Court.

71. 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).This being said, in its ruling of 11 May 2005[14], the Constitutional Court considered that the absolute ban of the *reformatio in peius* is unconstitutional inasmuch as it would not allow "*nadzor*" courts to review sentences of lower courts in case substantial mistakes in the judicial proceedings were committed. However, to guarantee the right to a fair trial, as protected by the European Convention of Human Rights, the Court ruled that the Federal legislator had to amend the Criminal Procedure Code to establish clear grounds and deadlines for reviewing final court sentences which may lead to the worsening of the situation of the convicts.

72. The relevant amendments were adopted by the State Duma on 25 February 2009 and aim at allowing to change the sentence 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.

73. Equally, we welcomed, in April 2008, the intention of the President of the Supreme Court to launch a stocktaking exercise of the operation of the courts nation-wide. In fact, all courts were requested to provide the Supreme Court with detailed information about all cases currently in procedure by September 2008. This information should be analysed and cases of unreasonable delays in judicial proceedings identified. Disciplinary sanctions would be taken against those responsible for delaying the procedure. We would like to ask our Russian colleagues to provide us with information on the outcome of this exercise.

74. This being said, while it may indeed be necessary to apply disciplinary sanctions in justified cases, we consider that it is even more important to use the analysis of judicial practice to identify the most common structural shortcomings of the system. Further reforms should be based on the lessons learnt.

75. Moreover, we were informed that, in September 2008, the Supreme Court of the Russian Federation tabled a draft law on the "Compensation of damage occurred as a result of the violation of the right to trial within reasonable time and of the right to the execution of final decisions of courts of law, within reasonable time". This is a welcome initiative, as the non-execution of final domestic judicial decisions is one of the key systemic problems of the Russian judiciary (according to well-founded analysis, 70% of domestic final judicial decisions are not executed). In this respect, we noted with regret that the government gave a negative opinion on this draft law, claiming that it would introduce additional costs to the state budget. We urge 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.

76. At the same time, we encourage the Russian authorities to continue reforming the domestic legal framework and strengthening the role and the powers of the bailiffs in order to introduce effective

[12] Ruling of the Plenum of the Supreme Court of the Russian Federation No.2 of 12 February 2008. (Постановление Пленума Верховного Суда Российской Федерации № 2 от 12 февраля 2008 г.)

[13] The supervisory review procedure in commercial procedure was modified by the new Commercial Procedure Code adopted in 2002.In Commercial procedure, there is only one supervisory review instance and the deadline for filing a supervisory review appeal is limited to 3 months.

[14] Ruling of the Constitutional Court N 5-П of 11 May 2005 (Постановление Конституционного Суда РФ от 11 мая 2005 г. N 5-П "По делу о проверке конституционности статьи 405 Уголовно-процессуального кодекса Российской Федерации в связи с запросом Курганского областного суда, жалобами Уполномоченного по правам человека в Российской Федерации, производственно-технического кооператива "Содействие", общества с ограниченной ответственностью "Карелия" и ряда граждан").

mechanisms of compulsory execution of domestic court decisions. The recommendations prepared by the Council of Europe Department for the execution of the European Court's judgments could provide a good basis for future reforms[15].

77. Equally, we welcome the political will of the authorities to step up the fight against corruption, which is exemplified by the political declarations of President Medvedev, as well as a number of concrete steps recently taken, including the establishment of the Anti-Corruption Council chaired by the President himself. We recommend that the Russian authorities should fully co-operate with the Council of Europe's Group of States Against Corruption (GRECO), using the wealth of expertise developed by the Organisation. We intend to address the issue of fight against corruption, which is especially important in the context of the current financial situation, as one of the key topics of our next visit, before the preparation of the report.

iii. Ratification of Protocols No. 6 and 14[16]

78. We have to note that the position of the Russian authorities on the ratification of Protocols 14 and 6 to the European Convention of Human Rights has not changed in the course of the last year and, unfortunately, we cannot report any progress on this front. This issue remains a key stumbling block in the co-operation between Russia and the Council of Europe.

79. The non-ratification by Russia of Protocol 14 further aggravates the operational difficulties which the Strasbourg Court is experiencing. Therefore, we are deeply concerned by 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**.** We are closely following the work of our colleagues from the Legal Affairs and Human Rights Committee who held, on 10 November 2008, an exchange of views with the members of the State Duma concerning the non-ratification of Protocol 14[17] and hope that their efforts will contribute to a prompt solution to this problem.

80. On our side, we raised the issue of the ratification of Protocol 14 in all our meetings, during both visits of April 2008 and March 2009. The Russian Federation remains the only member state of the Council of Europe which signed Protocol 14 but has not ratified it. In this respect, the Russian authorities reiterated their position, in that they consider that their formal commitment is not to ratify a particular legal instrument but to promote the efficiency of the protection mechanisms provided for by the European Convention of Human Rights. In their opinion, Protocol 14 is only a "half-measure" which does not address all the problems the Court is facing. They, therefore, appear to be reluctant to ratify it, while being open to the development of a new legal instrument, which should complete the reform of the Court.

81. We cannot accept this argument as a justification for the non-ratification of Protocol 14. The furthering of the reform of the Court should go in parallel with the implementation of an already adopted legal framework for the strengthening of the Court, to which all member states of the Council of Europe, including Russia, have agreed. The Russian Federation should urgently ratify Protocol 14, as part of its membership commitments. We, therefore, urged the Russian authorities to urgently reconsider their position and stop being "the odd ones out" who are preventing other fellow Europeans from fully and effectively benefiting from the protection granted by the European Convention of Human Rights.

82. Our colleagues from the Russian delegation to the Assembly, as well as the representatives of the Ministry of Justice at the highest level, reassured us of their support for the ratification of Protocol 14. We, therefore, expect the authorities to take some steps in this direction in the near future. At the same time, we encourage the authorities to continue to strengthen the national judicial system in order to establish effective domestic legal remedies against human rights violations.

83. With respect to the abolition of the death penalty in law, the authorities assert 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. They fear that introducing legislation to ratify Protocol No. 6 could lead to the opposite effect of having the

[15] Non-enforcement of domestic judicial decisions in Russia : general measures to comply with the European Court's judgments. CM/Inf/DH(2006)19 rev3, 4 June 2007.

[16] This issue is also 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.

[17] 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 the exchange of views with the State Duma.

continuation of the Presidential Moratorium on the suspension of the application of the death penalty being publicly questioned[18]. This being said, the abolition of the death penalty is usually seen as an unpopular measure which requires political courage, but which we expect the Russian political leadership to muster. In our opinion, 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.

V. Reforms in the armed forces (conscription, alternative service, hazing)

84. The issues of conscription, alternative service and hazing in the armed forces are long standing areas of attention for the Assembly.

85. 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. In 2007, amendments to the Law on the Armed Service were adopted which reduced the length of service from 24 months to 12 months for recruits drafted after 1 January 2008. Following this reduction, 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).

86. As stated in the Committee of Ministers' Recommendation (87) 8 of 9 April 1987 Regarding Conscientious Objectors to Compulsory Military Service, we consider that alternative service must not be of punitive nature and its duration should, in comparison with the military service, remain within reasonable limits[19]. 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. The representatives of the Ministry of Defence confirmed that this was only a very small percentage of all people who were called for military service. According to the representatives of the Ministry of Defence, "the very small number of requests for alternative service was the result of increased patriotism among young Russians, as well as of the attractiveness of military service itself, and not indicative of a lack of attractiveness of the alternative service". Taking into account the generally negative image of military service in Russia, also as a result of the hazing problem, this argumentation seemed less than credible to us.

87. According to the representatives of the Ministry of Defence, the occurrence of hazing has all but disappeared as a result of measures taken by the authorities. 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 fighting hazing in the armed forces.

88. Moreover, 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 to us, given the policy that recruits serve outside the territory of the Subject of the Federation in which they are resident.

89. 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. In addition, several NGOs questioned the provisions in the Law of Alternative Service that consider civil functions in the military as appropriate forms of alternative service. This was seen as a form of "hidden" military service.

[18] We cannot support this argument, as on the basis of the 1999 ruling of the Constitutional Court, 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 our opinion, which is shared by the Chairmen of the Supreme and of the Constitutional Court, there are no legal obstacles to abolishing death penalty in law in Russia.

[19] Committee of Ministers' Recommendation (87)8 of 9 April 1987 regarding Conscientious Objectors to Compulsory Military Service.

VI. External Relations

90. The recent war between Russia and Georgia has highlighted the importance of the commitments and obligations of Russia with respect to its relations with other states, especially its neighbours, as well as international organisations. The failure of Russia to honour its commitments and obligations as a member state of the Council of Europe in connection with the August 2008 war are extensively dealt with in Resolutions 1633 (2008) and 1647 (2009) and accompanying explanatory memoranda to which we refer. [20]

91. The conflict between Georgia and Russia raised the concern that Russia is re-establishing a special zone of influence, the so-called "near abroad", along its borders. While we consider it essential that Russia and its neighbouring states should maintain good neighbourly relations and respect each other's rightful interest for peace and security, we call upon Russia to fully respect its accession commitment that it should "denounce as wrong the concept of two different categories of foreign countries, where some are treated as a zone of special influence called the "near abroad"".

92. Equally, we expressed concern over the recent developments around the negotiations between Russia and Ukraine about the supply of natural gas. The lengthy negotiations and the lack of willingness on both sides to compromise resulted in the de-facto blocking of the supply of natural gas by Gazprom to European consumers, leaving several countries of Central and South-Eastern Europe without gas for several weeks. We consider that, whatever the reasons of disagreement between the two states, they should make sure that this disagreement does not adversely affect other European states. All sides have to behave in a responsible manner and energy should not be used a tool to achieve political goals.

93. Relations with Moldova seem to have been put back on a more normal track. Restrictions on the import of Moldovan wine and agricultural products have been removed. Consultations about the settlement of the Transnistrian conflict have intensified and culminated in the organisation, on 11 April 2008, of the first, in the past seven years, direct meeting between President Voronin and the leader of the self-proclaimed Tiraspol authorities, Igor Smirnov.

94. The war between Georgia and Russia has affected the negotiations on the settlement of the Transnistrian conflict. However, we welcome the fact that the Russian authorities have clearly declared their commitment to the settlement of this conflict on the basis of the recognition of the sovereignty and territorial integrity of Moldova.

95. Since April 2008, several separate meetings between President Medvedev and the Moldovan President, Vladimir Voronin, as well as the leader of the "self-proclaimed Transnistrian Republic", Igor Smirnov, were held. These meetings culminated into the holding, on 17 March 2009, of a tripartite meeting between President Voronin, President Medvedev and the leader of the self-proclaimed Tiraspol authorities, Igor Smirnov. As a result of this meeting a joint declaration was signed which confirmed the commitment of the three leaders to finding a solution to the conflict. The three leaders also noted "the stabilising role of the current peacekeeping operation in the region and agreed that it would be expedient to transform it into a new mission under the auspices of the Organisation for Security and Cooperation in Europe after a solution (to the conflict) is found".[21]

96. We welcome Russia's efforts to facilitate the settlement of this long-lasting conflict. However, we consider that the settlement should be negotiated within the framework of the established international "5+2" format (which includes Moldova, Transnistria, Ukraine, Russia and OSCE, as well as the United States and the European Union as observers) [22]. In this connection, we would like to discuss the progress made in the negotiations over the settlement of the Transnistrian conflict with our Russian colleagues on the occasion of our forthcoming visit to Russia.

97. We also note that, during our meetings, we did not have the time to address the issue of the implementation of Russia's commitment relating to the withdrawal of Russian military forces and their equipment (weapons) from the territory of Moldova. Regrettably, no progress in the implementation of this commitment has been made in the last couple of years. We therefore would like to invite our Russian

[20] See Doc. 11742 and Doc. 11800

[21] Russia, Moldova say see Europe role in Transdniestria, Reuters, 18.03.2009.

[22] The settlement of the Trasnistrian conflict is closely followed by the committee co-rapporteurs on Moldova. On several occasions, including most recently in Resolution 1572 (2007), the Assembly stressed the importance of conducting negotiations about the settlement of this conflict in the "5+2" format. In the same Resolution, the Assembly appealed again to the Russian authorities to withdraw their troops from the territory of Moldova, in line with the commitments taken *vis à vis* the OSCE and the Council of Europe.

colleagues to inform us of the steps they intend to take with respect to the implementation of this commitment. We are prepared to come back to this issue on the occasion of our forthcoming visits to Moscow.

VII. Conclusions

98. The current state of the monitoring procedure with respect to Russia is both complex and ambiguous, a situation which is compounded by the consequences of the August 2008 war between Russia and Georgia. On the one hand, we recognise that measurable progress has been achieved in some areas since the last report on the honouring of obligations and commitments by the Russian Federation that was debated by the Assembly at its June 2005 part session. On the other hand, progress on Russia's meeting its commitments and obligations as a member state of the Council of Europe is less important than we had hoped for and expected after a nearly five-year period, especially with respect to some of its key commitments and obligations. We recognise that, to a certain extent, this lack of progress is related to an overall feeling among the Russian authorities that the monitoring process is open-ended and that, in their opinion, there are no clear benchmarks to guide the monitoring process. This perception has at times hindered the co-operation and dialogue between the Assembly and the Russian authorities.

99. However, during our last two visits, we noted a clear political will on the side of the Russian authorities to co-operate with the Assembly and engage in an open dialogue with regard to its commitments and obligations. We, therefore, stress that the implementation of Russia's commitments and obligations should be the subject of an in-depth discussion between the co-rapporteurs and the Monitoring Committee, on the one hand, and the Russian delegation to the Assembly, on the other. In our opinion, these discussions should result in a clear and measurable roadmap for the implementation of commitments and obligations. This roadmap should help the Russian authorities and the Council of Europe promptly to move ahead on issues where agreement between the parties exist, as well as set up concrete modalities for dialogue, with the aim of building a common understanding and agreement on the issues where the positions of the parties appear to diverge.

100. We wish to stress that the commitments which the Russian Federation has voluntarily taken upon when joining the Council of Europe, as well as its statutory obligations as a member state of the Organisation, which apply to all member states, are non-negotiable and have to be fulfilled in their entirety. There can be no deviation from this principle in relation to the monitoring procedure for any country, including the Russian Federation.