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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 visits to Moscow and Murmansk (22-24 March 2010 and 5-8 July 2010)<sup>1</sup>**

Co-rapporteurs: Mr György FRUNDA, Romania, Group of the European People's Party, and Mr Andreas GROSS, Switzerland, Socialist Group

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<sup>1</sup> This information note has been made public by decision of the Monitoring Committee dated 9 September 2010.

## I. Introduction

1. On 27 January 2010, we were appointed co-rapporteurs of the Monitoring Committee to replace our predecessors, Mr Pangalos and Mr Van den Brande, who both left the Parliamentary Assembly during 2009. With a view to taking charge of the file and opening dialogue with our Russian discussion partners, we began by visiting Moscow from 22 to 24 March 2010. From 5 to 9 July 2010, we returned to the Russian Federation to move forward with the roadmap which we wish to draw up with the Russian authorities concerning the honouring of their obligations and commitments. We focused our visit on the issues surrounding political pluralism as a mainstay of a modern democracy and we also visited one of the country's regions, Murmansk, to assess the scale of the reforms under way in terms of decentralisation and local democracy.

2. With regard to the monitoring procedure itself, we do not wish to repeat here what our predecessors have already said.<sup>2</sup> 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 have visited the Russian Federation several times, although the monitoring procedure with regard to the Russian Federation was overshadowed by the August 2008 war between Georgia and Russia and its immediate consequences. Moreover, the consequences of the war and their implications for the Assembly are dealt with in a separate report prepared under a separate mandate.<sup>3</sup>

3. As things stand, we aim to submit our report on the honouring of obligations and commitments by the Russian Federation to the Assembly for debate during summer 2011. Following our visit in July 2010, we will submit a roadmap to the Russian delegation this autumn and will return to Moscow in the hope of discussing it with the highest authorities. We now intend to submit our draft report to the Monitoring Committee in the second half of this year.

4. In building on the conclusions of the visits already made and agreeing the practical arrangements for dialogue, we wish to achieve better understanding of the priorities and draw up the roadmap needed to help the Russian authorities and the Council of Europe promptly to move ahead on issues where agreement between the parties exists.

5. During our visits, we met Mr Alexander Grushko, Deputy Minister of Foreign Affairs, Mr Alexander Khloponin, Deputy Prime Minister of the Russian Federation and Plenipotentiary Representative of the Russian Federation President in the North Caucasus Federal District, Mr Boris Gryzlov, Speaker of the State Duma, the members of the Russian delegation to the Parliamentary Assembly of the Council of Europe and the leaders of the groups in the State Duma, Mr Anatoly Kucherena, Chair of the Public Chamber commission for public scrutiny of the activity of law-enforcement agencies and the judicial system, Mr Yuri Chaika, Prosecutor General of the Russian Federation, Mr Alexander Konovalov, Minister of Justice, Mr Vladimir Churov, Chair of the Central Election Commission of the Russian Federation and Mr Vladimir Platonov, Speaker of the Duma of the City of Moscow.

6. In Murmansk, we met Ms Natalya Portnaya, Deputy Governor of Murmansk Region, Mr Petrukhin, Deputy Head of Murmansk Region Department of Internal Affairs, Mr Nikora, Speaker of Murmansk Regional Duma, Mr Yershov, Prosecutor of Murmansk Region, and Mr Plevako, Murmansk Region Minister of Justice.

7. We also met representatives of civil society, including Ms Maria Slobodskaya, Chair of the Public Chamber commission on development of civil society, various NGO representatives, journalists and philosophers, as well as Jehovah's Witnesses (see list in appended programme).

8. We are grateful to the delegation of the Russian Federation to the Parliamentary Assembly for the programme arranged and the support provided to our delegation during both visits. In addition, we would like to thank the ambassadors of Switzerland, His Excellency Walter B Gyger, and of Romania, His Excellency Constantin Grigorie, for organising meetings with the members of the Moscow diplomatic community and for their hospitality.

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<sup>2</sup> Public statement by the co-rapporteurs following their visit (3-5 April 2006), approved on 11 April 2006; note by the co-rapporteurs on their fact-finding visit to Tbilisi (20-22 November 2006) and Moscow (28-30 November 2006): AS/Mon(2006)40 rev; declaration on the current tensions between Georgia and the Russian Federation approved on 23 January 2007; declaration adopted on 28 June 2007; information note by the co-rapporteurs on their fact-finding visit (20-23 April 2008) (AS/Mon(2008)21); information note by the co-rapporteurs on the state of the monitoring procedure with regard to Russia (AS/Mon(2009)09 rev).

<sup>3</sup> Until 2010, the co-rapporteurs were Mr Luc van den Brande, one of the co-rapporteurs on Russia, and Mr Mátyás Eörsi, one of the co-rapporteurs on Georgia. On 28 January 2010, Mr David Wilshire was appointed as successor to Mr Van den Brande, while Mr Eörsi's successor still has to be appointed at the time of drafting.

## II. Strengthening pluralist democracy

### *i. Electoral framework*

9. Our predecessors already mentioned the concerns raised by the last elections<sup>4</sup>; the reports of the ad hoc committees were similar in their conclusions. Although the outcome of the elections reflected the political will expressed by the Russian voters in overall terms and the technical organisation of the proceedings on election day was praised, significant shortcomings resulted in an election process that undermined political pluralism and did not comply with Council of Europe standards for democratic elections.

10. In July 2010, during our meeting with Mr Vladimir Churov, Chair of the Central Election Commission, we were informed about the various legislative reforms undertaken by the government with a view, in particular, to expanding political pluralism and the representativeness of elected representatives.

11. The Federal Law of 9 February 2009 on amendments to certain legislative acts of the Russian Federation in connection with the abolition of the electoral deposit in elections abolished the electoral deposit as the basis for registration of electoral associations and candidates for elected office.

12. The Federal Law on amendments to Articles 25 and 26 of the Federal Law on political parties and to the Federal Law on basic guarantees of electoral rights and the right to participate in a referendum for citizens of the Russian Federation was passed on 5 April 2009. The declared objective was to establish the procedure for the participation of non-governmental organisations in local government elections. The principal aim of the law was to establish new forms of participation by non-governmental organisations, which are not political parties, in nominating candidates in municipal elections in co-operation with political parties, while ensuring representation of such non-governmental organisations in local government and improving the quality of work in local government bodies.

13. The Federal Law on amendments to the Federal Law on political parties in connection with a phased reduction in the minimum number of members of a political party was passed on 28 April 2009, aiming at a phased reduction in the minimum number of members required for the creation and activities of a political party, as well as rotation of the leaders of permanent collegial governing bodies of political parties.

14. The Federal Law on amendments to certain legislative acts of the Russian Federation in connection with improving voter representation in the Russian Federation Federal Assembly State Duma was passed on 12 May 2009, guaranteeing representation in the State Duma of the interests of electors who voted for parties whose lists of candidates in elections received from 5 to 7 per cent of the votes.

15. The Federal Law on guarantees of equality for parliamentary parties in reports on their activities in state public television and radio broadcasts was passed on 12 May 2009, guaranteeing equality for parties in reports on their activities and also defining the requirements imposed on Russian national and regional television and radio programmes (broadcasts) when reporting on the activities of political parties.

16. The Federal Law of 3 June 2009 on amendments to certain legislative acts of the Russian Federation in connection with reducing the number of voters' signatures supporting nomination of federal lists of candidates in the election of deputies to the Russian Federation Federal Assembly State Duma and redefining the requirements for registration of candidates and lists of candidates in elections to state and local government bodies is aimed at a phased reduction in the number of voters' signatures supporting nomination of federal lists of candidates in the election of State Duma deputies and also at exemption from such collection of signatures for political parties whose lists of candidates are entitled to allocation of seats in state legislative (representative) bodies in not less than one-third of the constituent entities of the Russian Federation.

17. The Federal Law on amendments to certain legislative acts of the Russian Federation in connection with changing the term of office of the President of the Russian Federation and of the State Duma, supplementing Article 8, paragraph 1, of the Federal Law on basic guarantees of electoral rights and the right to participate in a referendum for citizens of the Russian Federation was passed on 19 July 2009; it provides that the term for which state bodies of constituent entities of the Russian Federation, local government bodies and deputies in these bodies are elected and also the terms of office of those bodies and

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<sup>4</sup> Parliamentary elections were held in the Russian Federation on 2 December 2007 and presidential elections were organised on 2 March 2008; see observation reports of the ad hoc committees of the Parliamentary Assembly, Doc. 11473 and Doc. 11536 respectively.

deputies in accordance with the constitutions (statutes) of constituent entities of the Russian Federation and the statutes of municipal bodies may not be less than two or more than five years.

18. The Federal Law of 9 July 2009 on amendments to legislative acts of the Russian Federation on elections and referenda regarding the provision of airtime and press space for pre-election campaigning supplemented the Federal Law on basic guarantees of electoral rights and the right to participate in a referendum for citizens of the Russian Federation by a provision whereby the law of a constituent entity of the Russian Federation may provide that an electoral association which nominated a list of candidates prior to an election but received less than the number of votes prescribed by that law and was not included in the allocation of seats, or a candidate who was not elected and received less than the number of votes prescribed by that law, is not entitled to free airtime or to free press space. In this case, the number of votes prescribed by the law of the constituent entity of the Russian Federation may not exceed 3 per cent of the number of votes cast.

19. The Federal Law on amendments to Article 3 of the Annex to the Federal Law on guaranteeing the constitutional rights of citizens of the Russian Federation to elect, and to be elected to, local government bodies and Article 4 of the Federal Law on basic guarantees of electoral rights and the right to participate in a referendum for citizens of the Russian Federation was passed on 9 November 2009, lowering the minimum age at which a citizen can be elected as a deputy on a representative local government body from 21 to 18 years. This minimum age is fixed at 21 on the day of voting in the election of deputies of a legislative (representative) state government body in a constituent entity of the Russian Federation.

20. The Federal Law of 27 December 2009 on amendments to Article 24 of the Federal Law on basic guarantees of electoral rights and the right to participate in a referendum for citizens of the Russian Federation alters the procedure for the formation of municipal electoral boards. The representative body of a municipal region, city district or intra-city area in a federal city appoints half the total number of members of the municipal electoral board on the basis of proposals received from the electoral board of the constituent entity of the Russian Federation. The representative body of a community appoints half the total number of members of the community electoral board on the basis of proposals received from the electoral board of the municipal region or territorial board.

21. The Federal Law on amendments to certain legislative acts of the Russian Federation in connection with improving voter representation in state legislative (representative) bodies in the Russian Federation and exemption from collection of voters' signatures for political parties whose lists of candidates have received deputies' seats in state legislative (representative) bodies in constituent entities of the Russian Federation was passed on 22 April 2009. It provides that in cases where the specified minimum percentage exceeds 5 per cent of the number of votes cast, the law of the constituent entity of the Russian Federation must provide for the transfer of deputies' seats to lists of candidates which received less than the specified minimum percentage but not less than 5 per cent of the votes cast and were not entitled to allocation of deputies' seats. One deputy's seat is transferred to each such list of candidates. If the specified minimum percentage is 5 per cent or less of the votes cast, this provision does not apply.

22. These political parties are granted free airtime on state and municipal radio and television channels in the case of a relevant referendum.

23. In elections to a legislative (representative) state body in a constituent entity of the Russian Federation, as well as in elections to local government bodies in the territory of that entity, candidate registration and registration of a candidate list nominated by a political party whose candidate list is entitled to allocation of deputies' seats or to whose candidate list a deputy's seat in that legislative (representative) state body in a constituent entity of the Russian Federation is transferred do not require the collection of voters' signatures. Regional sections and other structural subdivisions of such a political party are also exempt from collecting voters' signatures if they nominate candidates or candidate lists in these elections.

24. In the case of the election of the President of the Russian Federation and deputies to the Russian Federation Federal Assembly State Duma, candidate registration and registration of a federal candidate list nominated by a political party whose candidate lists are entitled to allocation of deputies' seats and (or) to whose candidate lists deputies' seats in legislative (representative) state bodies in not less than one-third of the constituent entities of the Russian Federation are transferred, do not require the collection of voters' signatures.

25. The Federal Law on amendments to the Federal Law on the general principles of organisation of state legislative (representative) and executive bodies in constituent entities of the Russian Federation in connection with increasing voter representation in state legislative (representative) and executive bodies in

constituent entities of the Russian Federation and establishing requirements for deputies' working conditions was passed on 4 June 2010 and provides that a parliamentary group may consist of one deputy elected on a list of candidates entitled to allocation of deputies' seats which has received one deputy's seat. Such a deputy is also entitled, on an equal footing with representatives of other groups, to propose candidates for posts elected by a state legislative (representative) body of a constituent entity of the Russian Federation, to speak in that body and participate in its work and also to deputise for leadership positions in a state legislative (representative) body of a constituent entity of the Russian Federation.

26. We welcome these legislative changes which involve liberalisation of the electoral legislation and urge the authorities to implement them effectively in time for the next parliamentary elections (which are due to be held in 2011). Naturally, a fair and democratic election requires more than just good legislation. The whole electoral process should be genuinely competitive to give all political players the effective possibility of participating. That said, the improvement of the legislation governing elections is crucial to ensure a truly democratic and pluralist electoral process.

27. However, given the fact that the legislative changes have already been passed, we are disappointed that the Russian authorities chose not to co-operate with the European Commission for Democracy through Law (Venice Commission) in the preparation of the texts, as the commission could have offered the country expertise.

28. While we welcome the initiatives of the authorities, 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 only six parties currently 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 genuinely pluralist representation in the federal parliament that fully reflects the wide range of political views existing in Russian society.<sup>5</sup>

ii. *Media pluralism and freedom of the media*

29. The one-sided news coverage in all electronic media, which were dominated by the parties and candidates supported by the authorities in the parliamentary elections in December 2007 and the presidential elections in March 2008, highlighted existing concerns regarding media pluralism and freedom of the media in the Russian Federation. The co-rapporteurs described the situation in detail in their previous notes. The impression was confirmed during our own meetings with media representatives and intellectuals who gave us their views of the situation regarding freedom of expression in the Russian Federation.

30. There is a wide range of print media in the Russian Federation and they present a wide 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 changes in the ownership of media outlets had no effect on editorial policy. However, print media often have a limited circulation and the timely distribution of relevant, up-to-date information is undermined by shortcomings in the distribution and logistics networks for national distribution, especially outside the large cities. Distribution is one of the key concerns of independent journalists and of the authorities. We were informed that distribution of print media is currently performed by some five private distribution networks, alongside the postal system. The federal authorities appear to be working on improving the distribution of print media by extending the network of post offices and providing assistance to municipal governments with the establishment of 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 for creating alternative networks to distribute their own output.

31. As in most developed countries in the Internet era, however, electronic media, especially television, are the main source of information for the majority of people. Yet diversity and pluralism of opinions are constrained in this sector, as most, if not all, television broadcasters, especially those with nationwide

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<sup>5</sup> 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 1619 (2008) on the state of democracy in Europe: functioning of democratic institutions and progress of the Assembly's monitoring procedure.

coverage, 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.

32. The journalists we met mostly felt that media pluralism in Russia has declined over the last three years and they confirmed what our predecessors described. Various intellectuals we met said that in an environment where 93% of the media belong to the federal or local authorities and the remaining 7% do not cover political or social issues, the minimum requirement for a democracy where media freedom is vital is far from being satisfied.

33. In the view of many of the people we met, the wrongful application of the anti-terrorism law contributes to a climate of distrust that is not conducive to the exercise of fundamental freedoms such as freedom of expression or assembly. One person described the situation as follows: opposition of some kind, even if only intellectual, could exist in the Russian Federation as long as it involved no more than 1% of the population in terms of the circulation of a newspaper or support for a party or organisation.

34. Given the extreme sensitivity of the fight against terrorism in the member states, we would like to ask the committee to seek the opinion of the Venice Commission on the legislation and, above all, its scope.

35. We are also concerned about the number of journalists who have been killed in the Russian Federation, which is one of the highest rates in Europe. We insisted that we should receive information from the Prosecutor General on several cases of investigations in which there has been no progress and we will revert to this issue in our report.

36. Some journalists complained about the existence of a 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 list, all the journalists we met expressed concerns about the policy of "self-censorship" which exists in many media outlets. In any case, the very idea that this list may exist generates a kind of self-censorship in the media sector which we cannot but deplore.

### *iii. Civil society*

37. Our predecessors described in detail the situation of NGOs and the relevant legislation passed in 2006. In Moscow we met Mr Anatoly Kucherena, Chair of the Public Chamber commission for public scrutiny of the activity of law-enforcement agencies and the judicial system in March, as well as Ms Maria Slobodskaya, Chair of the Public Chamber commission on the development of civil society, and various members of the latter.

38. The Public Chamber has 126 members, with 42 appointed by presidential decree, 42 by national associations and 42 by regional and inter-regional associations. The people we met explained that some NGOs boycotted the chamber on the grounds that it was not independent of the authorities, but they themselves believed that it would gain credibility with time. It mainly gives opinions on bills under preparation and puts forward amendments.

39. During our visit to Murmansk, we met various NGOs which confirmed that they had to confine their activities to non-politicised areas if they did not wish to be closed down or have their registration turned down. It was made clear to us that the local authorities were in charge of managing registrations and that there could be no question of challenging those in power or even putting forward alternative arguments.

40. We had the impression that these bodies' activities seemed to be fairly constrained by various forms of both government and business lobbying.

41. 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 major 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.

42. It must be stressed that 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 behind its adoption in 2006.

43. 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 concerning 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 ongoing concern to us, which we intend to follow closely in the process of drafting our report to the Assembly.

44. Again with regard to the pluralism of civil society and freedom of association, although the authorities assured us that freedom of religion is fully respected in the Russian Federation, we take note of repeated 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.

45. In this connection, in its judgment of 10 June 2010 on *Jehovah's Witnesses v. Russia*<sup>6</sup>, the European Court of Human Rights found that Articles 9, 11 and 6 of the European Convention on Human Rights had been breached following the dissolution of the applicant community, which the Court held had been an excessively severe and disproportionate sanction compared to the legitimate aim pursued.

46. We would join with the Court in reiterating its consistent case-law that freedom of thought, conscience and religion is one of the foundations of a 'democratic society' [...]. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it.

47. Our report on the honouring of commitments will have to look in greater detail at the anti-terrorism legislation and its implications for civil society and democratic debate in the country. To this end, we reiterate our desire to seek the opinion of the Venice Commission with a view to proposing the necessary adjustments (which could be included in the forthcoming roadmap) to enable the Russian Federation to come into line with its commitments as a Council of Europe member state.

#### *iv. Local self-government*

48. The reform of federalism and local self-government has been a key challenge for democratic reforms in the Russian Federation. In their notes, our predecessors mentioned the comprehensive reforms the authorities have implemented in recent years and the substantial progress made in achieving the relevant objectives.

49. In order to assess these reforms on the ground, we visited Murmansk, in the region of the same name.

50. With a territory reaching 144.900 sq. km and a population – about 840,000 people, the 72 years old Murmansk Region counts 40 municipalities. Situated on the Kola Peninsula to the north of the Arctic Circle, the region has unique natural resources, both mineral and biological which includes the non-freezing Kola Bay, an open outlet to the ocean, the Northern Sea Route, borders with Norway and Finland.

51. The state power in the Russian Federation is exercised on the basis of its division into legislative, executive and judicial power. The bodies of legislative, executive and judicial power shall be independent, with respectively the Governor of the region the Murmansk Regional Duma (Regional Parliament) and the local Court.

52. The Governor of the Murmansk Region defines the structure of executive authorities, forms the Murmansk Region's Government and determines the guidelines of the Government activity. The Government of the Murmansk Region determines and implements measures aimed at complex social-economic development of the region and participates in pursuing of the state policy in the field of finance, research, education, healthcare, welfare, environment.

53. The Murmansk Regional Duma (Regional Parliament) is a permanent acting legislative (representative) body of state power of the Murmansk Region; established in December 1994. It consists of 32 representatives (members) elected by the population for a term of five years. New members of regional parliament were elected on 11 March 2007, half of them –in double-seat constituencies (electoral districts), the rest 16– in the unified regional electoral district in proportion of the number of votes cast for regional lists of candidates nominated by political parties. Six political parties took part in the regional elections, 2 of them did not clear 7% barrier for entry to the Regional Duma ("Yabloko" and "Patriots of Russia"). Four party groups are represented in the regional Duma: "United Russia" political party parliamentary group (19 mandates with 42% + 12 mandates in constituencies), "Just Russia" political party parliamentary group

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<sup>6</sup> Application no. 302/02

(6 mandates with 16% + 3 mandates in constituencies), "Communist Party of Russian Federation" parliamentary group (3 mandates with 15%), "Liberal-Democratic Party of Russia" parliamentary group (2 mandates with 12,5%).

54. The regional duma considers legislative proposals and adopts the Charter of Murmansk Region and Regional Laws in some areas (Regional Budget; Structure, procedure of forming and activity of Regional Government; Local Government; Procedure for elections of the regional Duma members, mayors and municipal councils members; Procedure for regional and local referendum; Programmes of social-economic development of the Murmansk Region submitted by the Governor; Taxes and duties and procedure of collection; Procedure of administration of the Regional Property; Procedure of land and natural resources use).

55. The Murmansk Regional Duma elects member of the Council of Federation – representative from Regional Duma, vests with authority the Governor of the Murmansk Region (upon recommendation of the President of Russian Federation), approves the appointments of the First Vice-Governors, approves the appointment of the Attorney of Murmansk Region, nominates half of the members of the Regional Election Commission, nominates and discharges Chairman, Vice-Chairman and auditors of the Regional Audit Chamber, nominates members of the Competition Commissions, elects Duma's representatives in Qualification Commission under the Chamber of Lawyers of the Murmansk region (upon recommendation of the President of the Regional Court nominates justices of the peace), nominates public representatives in Qualification Panel of Judges of the Murmansk region, elects one third of Regional Public Chamber's members, gives approval to the candidature of the Chief Editor of the Regional Newspaper "Murmansky Vestnik".

56. The regional Duma has the powers to control budget execution, designation and spending of credit resources and appropriations from federal budget, administration of the regional public property.

57. Following the changes in the electoral legislation (see above), a number of amendments were introduced into Regional Legislation and a number of new Regional Law "On elections of the Murmansk Regional Duma deputies" was passed, providing for the 7% barrier the parties must overcome to enter Regional Duma is reduced to 5% in a proportional system but only for parties reaching between 5 and 7 % (1 seat for parties reaching between 5 and 6 % and 2 seats for parties reaching between 5 and 6%). Parties with a faction in the Regional Duma are exempted from having to collect signatures to participate in regional elections. A further new Regional Law "On guarantees of equal coverage of activities of the political party represented in the Murmansk regional Duma in regional mass media" provides for equal coverage in the media for parties represented in Regional Duma.

58. The Charter of the Murmansk Region was supplemented with a new article, requiring the Governor of the Murmansk region to report to Regional Duma on results of the Regional Government activities on an annual basis, which was done for the first time on 23 June 2010 on results of the Regional Government activities in 2009.

59. Concerning the development of the Civil Society, a Public Chamber of the Murmansk Region was formed in 2008 just following the Regional Law "On Public Chamber of the Murmansk region" was passed. It consists of 45 representatives of the regional and local non-governmental organizations, one third (15 members) approved by the Governor, one third (15 members) elected by Regional Duma and these 30 members by-turn elected the rest 15 members of the Public Chamber.

60. A draft bill of Regional Law "On Commissioner for Child's rights in the Murmansk region" has been adopted in the first reading.

### **III. Justice**

61. During our visits in 2010, we focused on political dialogue with the authorities and the development of the pluralist nature of democracy in the Russian Federation, but we nevertheless also raised certain issues of concern in the relations between the Assembly and the Russian authorities regarding the implementation of accession commitments and statutory obligations.

62. 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 defenders. We reminded the authorities that, in accordance with the European Convention on Human Rights, the state has to take positive steps to ensure the protection of human rights defenders. The Prosecutor General's Office provided

us with a summary dated 20 April 2010 of the investigations in progress concerning murders of journalists, human rights defenders and their lawyers.<sup>7</sup>

*i. Ratification of Protocols Nos. 6 and 14*

63. First of all, we congratulated the Russian authorities on their ratification on 15 January 2010 of Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention (CETS No. 194). The Russian Federation was the last Council of Europe member state to proceed with ratification of Protocol No. 14, which was vital for starting the reform of the European Court of Human Rights in order to increase its effectiveness and deal with the backlog of individual applications facing it. The Assembly cannot but welcome the ratification, which it had called for repeatedly and which it regards as the outcome of the constructive dialogue between the Duma and the Parliamentary Assembly of the Council of Europe.

64. We must underline that the position of the Russian authorities on the ratification of Protocol No. 6 to the European Convention on Human Rights has not changed over the last year. The only progress that we have noted in this field is the decision of the Constitutional Court pronounced on 19 November 2009, in reply to the question by the Supreme Court, in which the Court confirms that, even after the introduction of a jury in the Chechen courts as from 1 January 2010, the moratorium of the death penalty should be enforced due to Russia's international obligations on the signature of Protocol No. 6. Although we can be pleased with this development, this question remains a key stumbling block in the co-operation between the Russian Federation and the Council of Europe.

65. 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, Russian society is still not ready to accept the abolition of the death penalty, especially in the light of the rise in crime statistics, and the most recent terrorist attack in March 2010 has made the prospect even remoter. However, the abolition of the death penalty has always been seen as an unpopular measure that demands a kind of political courage which the Russian political leadership must muster in order to move their society forward. 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 it entered into upon accession.

*ii. Reform of the Procuratura*

66. Further to the concerns voiced by the Assembly, we raised the issue of the reform of the Procuratura during all our visits to Moscow. We noted with satisfaction the positive changes which the Procuratura system has undergone over the last decade and which were mentioned in our predecessors' reports, including 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. However, given the importance of this reform for the country as well as for the monitoring procedure itself, we will revert to the implementation of this reform in our report.

67. We still remain concerned about the broad extra-penal functions of the Procurator General's Office, however. 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 investigations;
- oversight over the activities of 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.

68. We reiterated the basic principles which should govern prosecution services in the various Council of Europe member states. In particular, it should be noted 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"<sup>8</sup> and that "these functions are carried out 'on behalf of society and in the public interest', to ensure the application of law while respecting fundamental rights and freedoms and within

<sup>7</sup> Document available from the Secretariat

<sup>8</sup> Opinion no. 3 (2008) of the Consultative Council of European Prosecutors (CCPE), paragraph 34, a)

the competences given to prosecutors by law, as well as the [European] Convention [on Human Rights] and the case-law of the [European] Court [of Human Rights]”.<sup>9</sup>

69. The reform should ensure that, in exercising “legality oversight”, the procurators should be exempt from any influence from the executive. 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.

70. During our talks in July 2010, the Minister of Justice expressed support for reform proposals whereby the procurators would be involved in preliminary hearings. He also said that the efficiency and quality of their work could be improved if they dealt only with hearings.

*iii. Prison system*

71. We also raised the issue that the Russian Federation is now the only one of the Council’s 47 member states which does not comply with the practice of authorising the publication of the reports by the Committee for the Prevention of Torture (CPT) and the replies by the authorities. To date, the CPT has made 20 visits to the Russian Federation (including 11 to the North Caucasus); 16 reports have been prepared<sup>10</sup> and only one has been published (the 2001 report).

72. In our view, these reports would be most useful for Duma members who have to vote on reforms of the police and the prison system. We argued that publication would raise the profile of the activities and give the Ministry of Justice sound arguments for raising the funds needed to improve prison conditions.

73. The Minister of Justice said he was in favour of the publication of the reports and of greater transparency in the management of the prison services. He hoped to be able to persuade the various government agencies involved of the benefits of the recommendations by summarising the opinions, which could persuade them to publish the reports in future. In response to our request to visit a detention centre during our next visit to the Russian Federation, the Minister of Justice also assured us of his assistance with organising such a visit.

**IV. Conclusions**

74. We believe that the Assembly should hold a debate in plenary on the monitoring procedure with regard to the Russian Federation in order officially to record the tangible progress made in some areas since the last report on the honouring of obligations and commitments by the Russian Federation, which was debated by the Assembly at its June 2005 part-session, as well as the major progress still to be made.

75. We would underline that both the commitments which the Russian Federation voluntarily entered into upon joining the Council of Europe and also 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. The electoral legislation, the strengthening of pluralist democracy and the reform of justice mentioned in this note are at the heart of the Monitoring Committee’s concerns.

76. For their part, the Russian authorities are showing clear political will to co-operate with the Assembly and engage in an open dialogue concerning the obligations and commitments of the Russian Federation.

77. As part of the preparation of this new report and in consultation with the Russian delegation, we are therefore going to draw up a clear and measurable roadmap for the implementation of obligations and commitments with a view to helping the Russian authorities and the Council of Europe promptly to move ahead on issues where agreement between the parties exists and agree the practical arrangements for dialogue on the issues where the positions of the parties appear to diverge. We intend to present this roadmap in the autumn with a view to preparing a preliminary draft report for the beginning of 2011 and a plenary debate in spring or summer 2011.

78. In this perspective, we would like to ask the Russian delegation to provide us, in the forthcoming weeks, a first outline providing for the guidelines of this roadmap, with the view to prepare our next visit and to draw up this roadmap in coordination with the Russian authorities.

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<sup>9</sup> *Ibid*, paragraph 34, c)

<sup>10</sup> The 17<sup>th</sup> report is being drafted following the latest visit in April 2010.

## APPENDIX

**Programme of the fact-finding visit to Moscow and Murmansk (5-8 July 2010)**

Mr György FRUNDA, Senator  
 Mr Andreas GROSS, National Councilor  
 Mrs Marine TREVISAN, Secretary of the Monitoring Committee

**Monday 5 July 2010 - Moscow**

20:00 Dinner with representatives of the diplomatic community, hosted by His Excellency Mr Constantin GRIGORIE, Ambassador of Romania

**Tuesday 6 July 2010 - Moscow**

08:00-09:00 Meeting with Mr Aleksey NAZARYCHEV, Mr Grigoriy MARTYNOV and Mr Ivan BELENKO, representatives of Jehovah's Witnesses in Moscow

10:00-11:30 Meeting with Mr Yury CHAIKA, Prosecutor General of the Russian Federation

12:00-13:00 Meeting with Mrs Maria SLOBODSKAYA, Chairman of the Committee on the civil society development in the Civic Chamber, and several members of the committee

13:30-14:30 Working lunch with the Chairman and members of the Russian delegation to the PACE

15:00-16:30 Meeting with Mr Mikhail FEDOTOV, Doctor of law, Professor, author of the draft Public Broadcasting Law of the Russian Federation

18:00 Meeting with Mr Boris NEMTSOV, Russian oppositional democratic movement "Solidarity"

20:00 Working dinner with Mr Igor KLYAMKIN, Doctor of Science (philosophy), Professor, Director of the Institute of Sociological Analysis, Vice-President of the Liberal Mission Foundation

**Wednesday 7 July 2010 - Moscow**

08:00-09:00 Meeting with Mrs Tanya LOKSHINA, Deputy Head of *Human Rights Watch*, Moscow office

10:00-11:30 Meeting with Mr Vladimir CHUROV, Chairman of the Central Election Committee of the Russian Federation

12:00-13:00 Meeting with Mr Alexander KONOVALOV, Minister of Justice

13:30 -15:00 Meeting with Mr Evgeniy GONTMAHER, Institute of Contemporary Development INSOR, Mr Alexander AUZAN, Economist, Head of the National Project Institute, Mr Lev GUDKOV, Sociologist, Director of the analytical *Levada Center* and Editor-in-chief of the journal *The Russian Public Opinion Herald*, Mrs Tatiana VOROZHEYKINA, Politologist, Gorbachev Fund, Mr Aleksandr VERHOVSKIJ, Head of "Sova", Center for Information and Analysis on the fight against nationalism and xenophobia, Mrs Galina KOZHEVNIKOVA, Deputy head of the "Sova" center

16:00-17:00 Meeting with Mr Vladimir PLATONOV, Speaker of the Moscow City Duma

**Thursday 8 July 2010 - Murmansk**

10:00-11:00 Meeting with Mr Andrey PETRUKHIN, Deputy Head of the Directorate of the Interior in the Murmansk region

11:30-12:30 Meeting with Mr Evgeny NIKORA, Chairman of the Murmansk regional Duma

14:30-15:30 Meeting with Mr Maxim YERSHOV, Prosecutor of the Murmansk region

16:00-17:00 Meeting with Mrs Natalya PORTNAYA, Deputy Governor of the Murmansk region, and Mr Vasily PLEVAKO, Minister of Justice of the Murmansk region

**Programme of the fact-finding visit to Moscow (22-24 March 2010)**

Mr György FRUNDA, Senator  
Mr Andreas GROSS, National Councilor  
Mrs Marine TREVISAN, Secretary of the Monitoring Committee

**Monday 22 March 2010**

- 17:00-18:00 Meeting with Mr Vasily LIKHACHEV, Deputy Minister of Justice
- 20:00 Dinner with representatives of the diplomatic community, hosted by Mr Konstantin KOSACHEV, President of the Russian delegation to the Parliamentary Assembly, with Mr GROSS and Mr FRUNDA

**Tuesday 23 March 2010**

- 09:30-10:30 Meeting with Mr Alexander GRUSHKO, Deputy Minister for Foreign Affairs
- 11:00 Meeting with Mr Alexander KHLOPONIN, Deputy Chairman of the Russian Federation Government, the Plenipotentiary representative of the Russian Federation President in the North-Caucasian Federal District
- 13:00-13:45 Meeting with Mr Boris GRYZLOV, Speaker of the State Duma
- 14:00-15:30 Working lunch with the members of the Russian delegation to the PACE and leaders of the State Duma factions
- 16:00-17:00 Meeting with Mr Anatoly KUCHERENA, Chairman of the Public Chamber Commission on public control over law-enforcement bodies' activities and judicial system
- 20:00 Dinner hosted by the Ambassador of Switzerland, the country holding the Chairmanship of the Committee of Ministers of the Council of Europe, with representatives of the diplomatic community

**Wednesday 24 March 2010**

- 10:00-11:00 Meeting with Mr Yuri CHAIKA, Prosecutor General of the Russian Federation
- 13:45 Press conference