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5 September 2012

Honouring of obligations and commitments by the Russian Federation

Report¹

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

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

Summary

¹ Reference to committee: Resolution 1115 (1997).

Doc.

A. Draft resolution²

1. The Russian Federation joined the Council of Europe on 28 February 1996. Upon accession, it committed itself to respect the obligations incumbent upon every member State under Article 3 of the Statute, with regard to pluralist democracy, the rule of law and human rights. It also undertook a number of specific commitments listed in Opinion No. 193 (1996) of the Parliamentary Assembly of the Council of Europe.
2. In accordance with the monitoring procedure, as set out in Resolution 1115 (1997) and amended by Resolution 1431 (2005) and Resolution 1515 (2006), the Assembly has assessed the progress made by the Russian Federation in the fulfilment of its obligations and commitments in Resolutions 1277 (2002) and 1455 (2005).
3. The Russian Federation has reached a unique moment in its short history of democratic development. The engagement and the mobilisation of more than 100,000 citizens following the December 2011 elections, the awakening of a very engaged civil society and the willingness of the authorities to hear the call for reforms could create a momentum for change.
4. To realise this unique political potential, the Russian society needs concrete reforms. A number of laws introduced since December 2011 – including amendments to the law on political parties, changes in the electoral law and the re-introduction of direct elections of governors – constitute very positive steps and illustrate a will to liberalise the system and make it more inclusive. That is why the Assembly welcomes the decrease of the electoral threshold from 7% to 5%, the liberalisation of the rules for registration of political parties and the reduction of the number of members needed, as well as the reduction of signatures needed, for a presidential candidate from 2 million to 100,000 signatures and the abrogation of the obligation to collect signatures for all other elections.
5. The Assembly also welcomes the decision of the Constitutional Court of 19 November 2009, to abolish de facto the death penalty. The Assembly firmly asks for the establishment also of the de jure abolition of the death penalty in Russia and urges the authorities to ratify Protocol No. 6 of the Convention of Human Rights without delay.
6. Other measures and decisions taken this year raise serious concerns. In particular, four laws adopted by the State Duma in June and July 2012, namely the law on the criminalisation of defamation, on the Internet, amendments to the law on assemblies (the so-called “protest law”) and on NGOs (the so-called “law on foreign agents”), are worrying, illustrate how full of contradictions the political situation in the Russian Federation is and must call the authorities’ real intentions into question. The recently announced two-year prison sentence handed down to three members of the Pussy Riot group, widely perceived as patently disproportionate, has added to existing concerns and calls for their immediate release.
7. In Resolution 1455, adopted in 2005, the Assembly fully recognised the right of the Russian authorities to carry out reforms adapted to economic, political and administrative realities. It welcomed the progress made in the fulfilment of a number of commitments, the ratification of the European Social Charter for instance, the establishment of a public media service, the review of the way the regional governors are elected and others.
8. Referring to the concern expressed in its last report about the reforms introduced by President Putin to reinforce “the verticality of power”, as fundamentally undermining in many respects the system of checks and balances indispensable for the proper functioning of pluralistic democracy, the Assembly urges the newly elected President Putin to democratise the system instead of increasing its authoritarianism.
9. Since the adoption of the last resolution, two parliamentary elections, in 2007 and 2011, and two presidential elections, in 2008 and 2012, have taken place. All of them were marked by serious shortcomings and concerns relating to the whole electoral process, identified by both international and national observers, who praised nevertheless how many Russian citizens made use of their right to vote. Throughout the whole reporting period, the same political force, United Russia, has held the majority of seats in the Duma, and its candidates, Mr Medvedev and Mr Putin, have won consecutive presidential elections.
10. Up to the parliamentary elections in December 2011, the reporting period, was marked by a further strengthening of executive power and narrowing pluralism, despite a number of legislative initiatives undertaken by President Medvedev in 2009-2010 to liberalise the political system. Regrettably, the reforms

² Draft resolution adopted unanimously by the committee on 4 September 2012.

aimed at increasing parliamentary control over the executive and enhancing party pluralism have had little impact and have not contributed in any significant way to the improvement of the democratic process.

11. At the same time, deficiencies in and restrictive implementation of other laws, crucial for the functioning of democratic institutions and the political environment, in particular the laws on political parties and on freedom of assembly, have led to a deterioration of the conditions for genuine political pluralism. The delegatisation of the Republican Party in 2007, rebuked by the European Court of Human Rights (ECtHR), the refusal to register some political parties, such as Parnas, the systematic non-authorisation of peaceful demonstrations and the use of disproportionate force to disperse them, the creation of restrictive conditions for freedom of the media, and especially the big and influential ones, and harassment of the opposition, all had negative effects on the state of democracy in Russia until autumn 2011.

12. Furthermore, legislative amendments to the laws on the constitutional court have been widely viewed as democratically regressive and indicative of the growing lack of judicial independence in Russia. For example, the conviction of Mr Khodorkovsky, in December 2010, to six more years of prison and the conviction of the Punk artists Pussy Riots in August 2012 were largely perceived as a sign that the judiciary in Russia remains subject to political pressure and the influence of the executive.

13. Although just one murdered journalist is one too many in a democratic society, the Assembly takes note that the number of cases of violence against journalists decreased in the Russian Federation during the reporting period. But serious human rights violations, such as harassment, beatings and assassinations of engaged citizens, including, among others, the murders of Ms Anna Politkovskaya and Ms Natalia Estemirova, still remain unpunished.

14. Torture and death in detention are unacceptable in a Council of Europe member State by any means. That is why the cases of Mr Magnitsky and Ms Trifonova, and the continuous impunity of the perpetrators, have raised the Assembly's utmost concern during the reporting period. The people responsible for these deaths must be identified and punished and these cases have to remain issues of investigation and report during the next reporting period of the Russian Federation.

15. The situation in the North Caucasus, and in particular in Ingushetia and Dagestan, the serious abuses by law enforcement agents, including killings, abductions and torture, and the prevailing impunity of the perpetrators in the region, confirmed by over 150 judgments of the ECtHR, remains extremely worrying and unacceptable. The Assembly urges the Russian authorities to bring the perpetrators before the Court.

16. At the same time, the Assembly notes with satisfaction that a number of reforms in the field of the judiciary, such as the establishment of the Investigative Committee and its separation from the Prosecutor's Office, the adoption of the Compensation Act, penitentiary reform and a considerable decrease in the number of detainees in pre-trial detention places, address long-standing concerns expressed by the Assembly on many occasions.

17. Terrorist attacks in the Russian Federation, regrettably, remain a major concern. Since the adoption of Resolution 1431 in 2005, the country has been shaken by a considerable number of deadly attacks, notably in the Moscow Metro in March 2010 and in one of the big Moscow airports in January 2011.

18. With regard to the consequences of the war between Georgia and Russia, the Assembly reiterates its Resolutions 1633 (2008), 1647 (2008) and 1683 (2009), and recalls the conclusions of the report of the International Independent Fact-Finding mission on the Conflict in Georgia, established by the European Union and led by Ambassador Tagliavini. The Assembly reaffirms the decision of the Monitoring Committee of January 2011 on the modalities of how to further proceed with this matter.

19. The developments following the last parliamentary elections in December 2011, initiated by mass protest demonstrations and the subsequent declared readiness of the authorities to reform the system, have created a window of opportunity which is still open.

20. Unfortunately, these positive developments have been recently overshadowed by the adoption by the State Duma of a number of restrictive federal laws, including amendments to the law on defamation, the law on information, the law on NGOs, and the law on assemblies. The Assembly considers these laws as potentially regressive in terms of democratic development and urges the authorities not to make use of them in this harmful way.

21. The Assembly points to the recent opinions of the European Commission for Democracy through Law (Venice Commission) on five federal laws, namely the electoral law, the law on assemblies, the law on

Doc.

extremism, the law on the federal security service (FSB) and the law on political parties, which identified a number of shortcomings, and calls on the Russian authorities to address the concerns expressed therein.

22. The Assembly is convinced that the coming months will be crucial for the democratic future of Russia, and that the Russian authorities must confirm their commitment to the democratic progress of the country. Therefore, the Assembly calls on the Russian authorities to:

23. The Assembly asks the Russian Federation to make full use of the legal expertise of the Venice Commission.

With regard to the functioning of pluralist democracy:

23.1. reflect, in cooperation with the Venice Commission, on a unified electoral code, which would address all the concerns identified during the 2011 and 2012 elections, in particular relating to:

23.1.1. modalities of the appointment procedure for the members of the Central Electoral Commission and electoral commissions of lower levels, in order to ensure their independence and impartiality;

23.1.2. safeguards which would effectively prevent the convergence of the State and the ruling party;

23.1.3. equal access to the media for all political parties during electoral campaigns;

23.1.4. observation of elections by representatives of national NGOs and associations and ensuring their effective participation;

23.1.5. an effective complaints and appeals procedure;

23.1.6. rules on party financing during electoral campaigns and the introduction of public funding;

23.2. address the outstanding concerns raised by the Venice Commission in its opinion on the law on political parties, in particular relating to the level of bureaucratic control on the establishment and functioning of political parties;

23.3. re-establish a meaningful political dialogue with the opposition not represented in the State Duma, which happened between December 2011 and March 2012;

23.4. improve the political environment so as to allow the opposition forces to be genuinely competitive;

23.5. amend the newly adopted laws on defamation, information, and assembly (the so called "protest law"), so that they cannot be misused in order to suppress public opinion, freedom of expression and civic involvement and mobilisation;

23.6. refrain from undue control of social networking services and the Internet, online filtering and cyber-attacks on opposition websites;

23.7. refrain from attempts to discredit some of the most respected domestic and international NGOs by publicly accusing them, without foundation, of acting on foreign instructions and representing foreign interests;

23.8. amend the new law on NGOs (the so-called "law on foreign agents"), so that it cannot be used as an instrument of repression and intimidation of NGOs and civil society;

23.9. refrain from undue pressure and intimidation on the opposition and critical NGOs;

23.10. review legislation on local and regional authorities, with a view to abolishing the rule allowing for dismissal of mayors;

23.11. reconsider the legislation on the distribution of powers between the federal executive authorities, executive authorities of entities of the Russian Federation, and local authorities;

With regard to the rule of law:

23.12. review the legislative and administrative framework, with a view to ensuring a better protection of judges from undue influence by State or private interests, with particular focus on:

23.12.1. procedures for appointment, promotion and dismissal of judges;

23.12.2. tenure in office, notably in the case of justices of the peace;

23.12.3. powers of courts' presidents;

23.13. refrain from undue influence on judges;

23.14. ensure proper implementation of the federal law on lawyers, in particular with regard to the responsibility of the Bar Associations for the appointment of legal representatives for indigent suspects;

23.15. limit the supervisory powers of the Prosecutor's Office (the Prokuratura) over the executive and legislative branches and bring the Office into line with relevant European standards;

23.16. refrain from using the "supervisory review procedure" (nadzor) in civil cases, which will be abolished after 1 January 2013, thus eliminating violations of the principle of legal certainty by the quashing of final judicial decisions;

23.17. pursue reforms in the field of the judiciary, in strict compliance with Council of Europe standards;

23.18. continue efforts to improve conditions of detention on remand, in particular in pre-trial detention places;

23.19. publish the most recent report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment (CPT), as well as previous CPT reports;

23.20. consider measures to implement the recommendations of the Group of States against Corruption (GRECO) and in particular:

23.20.1. revise the codes of administrative and criminal procedure, in order to firmly establish that cases of corruption be treated as criminal offences;

23.20.2. adopt the necessary legal measures to establish the liability of legal persons for corruption offences;

23.20.3. provide effective, proportionate and dissuasive sanctions in these cases in compliance with the requirements of the Criminal Law Convention on Corruption (ETS No. 173);

23.21. enhance efforts to fully implement the ECtHR's judgments;

With regard to human rights and freedoms:

23.22. ratify, without further delay, Protocol No. 6 to the European Convention on Human Rights (ECHR);

23.23. ensure effective investigation into cases of abuses against and harassment of human rights defenders and prosecute the perpetrators;

23.24. implement Assembly Resolution 1738 (2010) on legal remedies for human rights violations in the North Caucasus region, and notably bring to justice those found responsible for human rights violations;

23.25. investigate effectively all cases of alleged ill-treatment and torture by the police and by law enforcement agencies and bring the perpetrators to justice, and in particular elucidate all the circumstances of the deaths of Mr Magnitsky and Ms Trifonova, as well as of the case of Mr Vasily

Doc.

Alexanyan, who was imprisoned on pre-trial detention for over two years and denied adequate medical treatment, and who died about two years after the Russian authorities released him following the intervention of the European Court for Human Rights;

23.26. refrain from using force against peaceful demonstrators;

23.27. review the policies of authorising demonstrations and sanctioning the organisers and refrain from restrictive or abusive application of the law on assemblies;

23.28. review, in accordance with the procedures provided for by Russian legislation and in compliance with democratic standards, as set forth in the ECHR and the ECtHR's case law, the recent judgment against three members of the Pussy Riot group;

23.29. ratify the European Charter for Regional or Minority Languages without further delay;

23.30. review the law on alternative military service, so as to bring it into line with European practice;

23.31. refrain from applying the law on extremist activities against religious communities such as the Jehovah's Witnesses;

With regard to other outstanding commitments:

23.32. implement Resolutions 1633 (2008), 1647 (2008) and 1683 (2009);

23.33. complete the withdrawal of the remaining Russian military forces and their equipment from the territory of Moldova without further delay;

23.34. continue efforts to settle outstanding issues on the return of cultural and other property by direct negotiation with the countries concerned.

24. The Assembly is encouraged by the renewed commitment of the Russian authorities to pursue the fulfilment of its commitments. However, declarations should be followed by acts. In this respect, the Assembly expects that they will pursue the path of democratisation and will refrain from taking any measures which may hinder democratic progress.

25. Against this background, the Assembly resolves to pursue its monitoring of the honouring of obligations and commitments by the Russian Federation until it receives evidence of substantial progress with regard to the issues raised in this and the above-mentioned resolutions.

B. Explanatory memorandum by Mr Frunda and Mr Gross, co-rapporteurs*Contents*

1. Introduction	8
2. Political situation	10
2.1. <i>Major political developments since 2005</i>	
2.2. <i>Developments since the December 2011 parliamentary elections</i>	
3. Economic and social situation	18
4. External relations	21
4.1. <i>Relations in the context of Europe</i>	
4.2. <i>Russia and the Soviet successor states; neighbours and "The Near Abroad"</i>	
4.3. <i>The war between Georgia and Russia</i>	
4.4. <i>Fulfillment of obligations under the Treaty on Conventional Armed Forces in Europe (CFE)</i>	
4.5. <i>Withdrawal of Russian troops from the Republic of Moldova</i>	
4.6. <i>The return of property and cultural property to other Council of Europe member states</i>	
5. Functioning of pluralist democracy	26
5.1. <i>Free and fair elections</i>	
5.2. <i>Party pluralism</i>	
5.3. <i>Separation of powers, checks and balances system</i>	
5.4. <i>Media pluralism</i>	
5.5. <i>Civil society</i>	
5.6. <i>Local and regional democracy</i>	
6. Rule of law	39
6.1. <i>Judiciary</i>	
6.2. <i>Corruption</i>	
6.3. <i>Execution of ECHR judgments</i>	
7. Human rights and freedoms	48
7.1. <i>Abolition of the death penalty</i>	
7.2. <i>The right to life and the fight against impunity</i>	
7.3. <i>Abuses by law enforcement agencies</i>	
7.4. <i>The case of the death of Mr Magnitsky</i>	
7.5. <i>Freedom of expression</i>	
7.6. <i>Freedom of assembly</i>	
7.7. <i>Freedom of conscience and religion</i>	
7.8. <i>Alternative military service</i>	
7.9. <i>Protection of minorities, xenophobia and racial intolerance</i>	
7.10. <i>The Ombudsman institutions</i>	
7.11. <i>The Presidential Council on Civil Society Development and Human Rights</i>	
8. Conclusions	61
APPENDIX	63

1. Introduction

1. The Russian Federation became a member of the Council of Europe on 28 February 1996. Upon its accession, Russia undertook a number of specific commitments, contained in Parliamentary Assembly's Opinion No 193 (1996) which, together with statutory obligations constitute the basis for the monitoring procedure in accordance with Resolution 1115 (1997), as modified by Resolution 1431 (2005) and Resolution 1515 (2006).

2. Until now, three reports on Russia's honouring of obligations and commitments have been presented by the Monitoring Committee: an information report in 1998³, and full reports in 2002 and 2005.⁴ The present report thus covers a period of seven years.

3. In the meantime, since the last debate in the Assembly in 2005, the Committee has discussed five information notes by the co-rapporteurs and declassified three of them.⁵ The respective co-rapporteurs have carried out as many as eleven fact-finding visits.

4. There are several reasons why the requirement to report on a monitored country at least once every two years has not been respected in the case of the Russian Federation. The size and the complex administrative structure of the country may partly justify the longer period of time necessary for the preparation of a report.⁶ The parliamentary elections to the State Duma in 2007 and 2011, as well as the presidential elections in 2008 and 2012, accounted for further delays. The war between Russia and Georgia in 2008 and its consequences overshadowed the monitoring procedure in respect of both countries. The Monitoring Committee has dealt with the conflict in a separate file (see below). Last but not least, a relatively frequent rotation of co-rapporteurs in respect of Russia also contributed to the extension of the monitoring procedure.

5. It has to be noted, however, that the lack of a full monitoring report has partly been compensated by a number of other reports relating to various aspects of the honouring of obligations and commitments by the Russian Federation. In particular, the question of the human rights situation in Chechnya has been extensively dealt with in the report presented by the Committee on Legal Affairs and Human Rights.⁷ Furthermore, some outstanding concerns with regard to the human rights situation have also been the subject of separate reports.⁸

6. As regards the war between Georgia and Russia, a series of reports has been presented to the Assembly⁹ and the question was followed closely within the Monitoring Committee initially under a separate file by specifically appointed co-rapporteurs. Furthermore, with reference to the question of the war, the Assembly has held a number of debates on the reconsideration of previously ratified credentials of the Russian delegation on substantial grounds.¹⁰

³ See Doc. 8127, co-rapporteurs: Mr Rudolf Bindig, Germany, Socialist Group and Mr Ernst Muehleman, Switzerland, ALDE.

⁴ See Docs. 9396 and 10568 co-rapporteurs: Mr David Atkinson, UK, EDG and Mr Rudolf Bindig, Germany, Socialist Group.

⁵ Information note by the co-rapporteurs on their fact-finding visit to Moscow (30 November 2006): AS/Mon(2006)40rev; information note by the co-rapporteurs on their fact-finding visit (20-23 April 2008) considered on 26 June 2008: AS/Mon(2008)21; information note by the co-rapporteurs on the state of the monitoring procedure with regard to Russia declassified on 30 March 2009: AS/Mon(2009)09rev; Information note by the co-rapporteurs on their visits (22-24 March 2010 and 5-8 July 2010) declassified on 9 September 2010: AS/Mon(2010)28rev; information note by the co-rapporteurs on their visit (18-21 January 2011) declassified on 11 April 2011: AS/Mon(2011)09rev.

⁶ The Russian Federation is composed of 83 subjects (constituent entities) of the Federation including 21 republics, 46 oblasts (provinces), 9 krais (territories), 1 autonomous oblast, 4 autonomous okrugs (districts) and two federal cities. Republics have their own constitutions and legislation, they are created on an ethnic base and have a right to establish their own official languages. They are represented by the federal government in international affairs. Oblasts (provinces) are headed by governors and locally elected legislature. They are commonly named after their administrative centers. The only autonomous oblast is the Jewish Autonomous Oblast. Autonomous okrugs are smaller administrative entities with a substantial ethnic minority. 2 federal cities, Moscow and St. Petersburg, function as separate regions. The Constitution provides for exclusive competence of the Russian Federation, shared competence of the Federation and the subjects, and own competence of the subjects.

⁷ See Doc. 12276, Resolution 1738 (2010), and Recommendation 1922 (2010).

⁸ See, for example, a report on the circumstances surrounding the arrest and prosecution of leading Yukos executives (Doc. 10368).

⁹ See Docs 11800, 11876 and 12010; Resolutions 1633 (2008), 1647 (2009).

¹⁰ See Docs 11726 and 12045.

7. On 27 January 2011, the Monitoring Committee decided that the consequences of the war, as well as the implementation of Assembly recommendations and demands made on Georgia and Russia in the relevant resolutions on this issue, would be followed by the respective co-rapporteurs for Georgia and Russia in the framework of the ongoing monitoring procedures for both countries. The co-rapporteurs, under the responsibility and co-ordination of the Chairperson of the Monitoring Committee, would present annually a joint information note to the Committee, in which they would outline developments with regard to the conflict and their findings with regard to the implementation of Assembly demands, as expressed in its resolutions on this subject. This information note would be discussed by the Committee in a specific sitting in which it would also be updated, *inter alia*, on relevant developments in other international fora. In addition, the Committee would be informed about possible activities of the Committee on Migration, Refugees and Population with regard to the humanitarian situation. In consequence, the present report does not deal with the question of the conflict.

8. Both the 2007 and 2011 parliamentary elections, and 2008 and 2012 presidential elections were observed by the ad hoc committees of the Bureau of the Assembly. The respective reports (except for the 2012 presidential elections, which, at the time of drafting, have not yet taken place) were presented to the Assembly.¹¹

9. As co-rapporteurs of the Monitoring Committee, we were appointed in January 2010, in place of Mr Luc van den Brande (Belgium, EPP) and Mr Theodoros Pangalos (Greece, Socialist Group) who had both left the Assembly. We visited Moscow in March 2010, Moscow and Murmansk in July 2010, Moscow and Kazan in January 2011, Moscow in July 2011, and again Moscow and Nizhniy Novgorod in July 2012, and we submitted the information notes mentioned in paragraph 3 to the Monitoring Committee following our visits. We were members of the ad hoc committee on the observation of parliamentary elections in 2011, and presidential election in 2012, and we participated in post-electoral missions to Moscow last January and March.

10. Since our first visit, we have structured our dialogue with the Russian authorities in order to achieve a common understanding of the priorities in the fulfilment of obligations and commitments, as set out in Opinion No 193 (1996) and other relevant resolutions adopted by the Assembly since then. Our objective was to draw up a list of outstanding concerns in the form of a roadmap, and reach a consensus on the measures which the Russian authorities would undertake to introduce, within mutually agreed deadlines, in order to remedy the situation.

11. In the meantime, developments in Russia following the parliamentary elections in December 2011 have created a new political situation. A broadly-engaged civil society has emerged, the existence of which even surprised the Russians. We believe that this created a specific moment of crucial importance and opportunity for the future of the process of democratisation in this country. The reaction of a large part of the Russian people to the concerns raised by the election observers showed clearly that there is a general need and expectation for democratic progress and reforms, and the authorities should address this issue in an appropriate way. There is a clear need for change.

12. During the First Part of the 2012 Session, on 26 January, the Assembly held a current affairs debate entitled "The Russian Federation between two elections". Many speakers who took part in the debate, expressed concerns with regard to the state of democracy in Russia. They reiterated Council of Europe standards in the field of democratic elections, and urged the Russian authorities to comply with the statutory obligations and commitments entered into upon accession to the Organisation.

13. We are fully aware of the risks inherent in the preparation of a report on such a big and diverse country which is undergoing such important changes. We cannot exclude that our assessment, based on the situation as it is today, may prove to be completely inadequate if developments go in an unexpected direction. The structural opportunity created by the present openness of the system – mass demonstrations on the one hand and declared readiness by the authorities for reforms on the other – may either contribute to the improvement of democracy in Russia, or result in a more restrictive, even repressive, system. It is extremely difficult, if not impossible, at this precise moment, to anticipate in which direction the system will evolve.

14. Indeed, the signals which have been recently sent by the Russian authorities seem to be contradictory. On the one hand, several laws introduced since December, including amendments to the law on political parties, changes in the electoral law or the re-introduction of direct elections of governors, constitute very positive steps and illustrate the will to liberalise the system and make it more inclusive. On the other hand,

¹¹ See Doc. 11473 and Doc. 11536.

Doc.

four laws that passed through the State Duma just before the summer, namely the law on the criminalisation of defamation, on the Internet, amendments to the law on assemblies (the so-called "Protest law") and on NGOs (the so-called "Law on Foreign Agents"), must raise inevitable concern. We must admit that we are not sure how to evaluate the authorities' intentions and wonder who can really answer this question.

15. Despite this uncertainty, we decided not to further postpone the presentation of a report on Russia. It has been a long time since the last report on this country was debated in the Assembly, and we feel that nothing can justify any further delay. But, more importantly, we are convinced that the Council of Europe can make an essential contribution to overcoming the challenges facing Russia right now. The Assembly should not remain silent; on the contrary, it should voice its position, engage in an honest and fair analysis and actively support all those who work in the country for its democratic and European future. We hope that this report will contribute to the improvement of democracy in Russia.

16. The preliminary draft report was discussed and approved by the Monitoring Committee on 13 March 2012. In accordance with the monitoring procedure it was transmitted to the Russian authorities for comments. The present draft report has been updated and revised, taking into account the latest developments as well as the comments of the Russian delegation on the preliminary draft. We also included the conclusions of the legal expertise by the European Commission for Democracy through Law (Venice Commission) of five federal laws¹², sent by the Monitoring Committee for opinion and received only after the discussion of this report by the Committee.

17. In the preparation of the present report, we also used the findings and conclusions of the relevant institutions and monitoring mechanisms attached to the conventions of the Council of Europe to which the Russian Federation is a party. The work of the following bodies has been taken into account: the European Court of Human Rights, the Committee of Ministers in its supervisory function of the execution of the Court's judgments, the Commissioner for Human Rights, the Congress of Local and Regional Authorities of the Council of Europe, the Group of States against Corruption (GRECO), MONEYVAL, the Committee of the Prevention of Torture, the Advisory Committee on the Framework Convention for the Protection of the National Minorities and the ECRI.

18. During our visits, we held a wide range of meetings including, on the one hand, the highest representatives of the legislative, executive and judicial authorities, at the federal and regional levels, and, on the other, representatives of national and international civil society and leaders of the extra-parliamentary opposition. We used every opportunity to listen to the latter including during the parliamentary sessions in Strasbourg. The Monitoring Committee also organised a hearing to which it had invited representatives of major political forces not represented in the Duma and the Mayor of Yaroslavl, who had won the election against a candidate of the ruling party.

19. It has to be clear that, in our understanding, the mandate of the co-rapporteurs of the Monitoring Committee covers both the commitments and obligations of the country under our responsibility, in accordance with paragraph 5 of the terms of reference of the Monitoring Committee, as set out in Resolution 1115 (1997) on the setting up of an Assembly Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, and as modified by Resolution 1431 (2005).

20. The table illustrating the state of fulfillment of commitments undertaken by the Russian Federation upon accession is appended to the present report.

2. Political situation

2.1. Major political developments since 2005

21. The reporting period was marked by two parliamentary elections to the State Duma, and two presidential elections. The first parliamentary elections took place in December 2007, and resulted in a comfortable majority obtained by the ruling United Russia party, which won 315 of 450 seats. Two other parties, which generally support governmental policies, Just Russia and the Liberal Democratic Party, obtained 38 and 40 seats respectively. The opposition Communist Party won 57 seats. The next parliamentary elections were held on 4 December 2011, and they triggered off the engagement of the civil society and the political process which we are witnessing at the moment and which has surprised us all. We will examine these elections as well as all the surrounding developments in the next chapter.

¹² The Committee asked for opinions on the following Federal laws: on the election of the deputies of the State Duma; on political parties; on combating extremist activity; on the Federal Security Service (FSB) and on assemblies, meetings, demonstrations, marches and picketing.

22. The first of the two presidential elections took place in March 2008. The successful candidate, Dmitry Medvedev, who won with about 70% of the vote, was supported by United Russia and the outgoing President, Vladimir Putin, who himself was not eligible, as the Russian Constitution does not allow for more than two consecutive presidential mandates. Still as a candidate, Mr Medvedev announced that, if elected, he would appoint Mr Putin as Prime Minister, which he did on 8 May 2008. The next presidential election was held on 4 March 2012. It was won by Mr Putin with 63.6 % of the vote cast. On 15 May 2012, Mr Medvedev was appointed Prime Minister as announced prior to the election..

23. The reference period of this report has been characterised by a further strengthening of executive power, a process which had already started in the early 2000s. It was marked by the legislative changes of 2004, by which direct gubernatorial elections were replaced by presidential appointments with the consent of the regional assemblies.

24. In a series of measures taken during the two terms of presidential office, between 2000 and 2008, the government ownership or control of major media was established.¹³ Introduction of legislative amendments or more restrictive implementation of existing laws resulted in the creation of an unfavourable environment for the activities of independent journalists, human rights defenders and NGO activists. Harassment and even physical violence, including assassinations of critics of the government and the President, accompanied by a climate of impunity, largely contributed to limiting political pluralism. This trend was reinforced by the restrictions imposed on the activities of the political opposition, including the refusal to register new parties, limitations on the freedom of assembly, expression etc. A detailed analysis of these questions may be found in the respective chapters of this report.

25. The change in the presidency in 2008 generated some expectations, in view of the newly elected President's call for modernisation and reforms of Russia's ineffective political and economic institutions. At the outset of his presidency, President Medvedev proclaimed his intention to focus on the four Is: innovation, institutions, investment and infrastructure.¹⁴

26. In late 2008, President Medvedev proposed a number of political changes that were subsequently enacted. These included constitutional changes extending the presidential term of office to six years and State Duma Deputies' terms of office to five years.

27. Furthermore, in an effort to increase parliamentary control over the executive, he proposed that the government be obliged to present annual reports to the State Duma. He also announced that a new law permitting regional authorities to dismiss mayors would be introduced.

28. At the same time, President Medvedev announced a package of measures aimed at increasing party pluralism, and in particular giving small political parties more rights, by, for example, reducing the number of signatures required for a party to participate in elections, reducing the number of members necessary in order for parties to register, and abolishing the payment of the bond in lieu of signatures for participation in elections.

29. In a further sign of his intention to broaden political pluralism, the Federal Assembly approved a proposal by President Medvedev in April 2009 whereby political parties that get between 5 and 7% of the vote in future Duma elections would win one or two seats.¹⁵ All these changes will be examined in detail in the chapter on party pluralism.

30. However, in May 2009, President Medvedev submitted legislative amendments to laws on the Constitutional Court and on a probationary period for judicial appointments. They were approved but the changes to the selection of the Chairman and two other officials of the Constitutional Court were widely viewed as democratically regressive and were openly criticised by two Constitutional judges as being indicative of the growing lack of judicial independence in Russia.¹⁶

¹³ For example, in 2006, the government forced most Russian radio stations to stop broadcasting programmes prepared by the US-funded Voice of America and Radio Liberty. For more information see chapter "Freedom of the media".

¹⁴ See also President Medvedev's article "Go Russia" on the website of the Presidency.

¹⁵ According to the previous law, there was a threshold of 7% below which no seat was attributed.

¹⁶ One of these two judges was forced out and the other was stripped of some duties. The Russian authorities, in their comments to the preliminary draft report, considered this statement groundless. For further information see the chapter on the judiciary of the present report.

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31. In August 2009, President Medvedev called for further limiting jury trials (he had signed a law at the end of 2008 limiting jury trials to terrorist or extremist cases) that involve “criminal communities”, which some legal experts and civil rights advocates criticised as an effort to further quench acquittals by juries.

32. All these and other changes in the judicial laws will be examined in the chapter on the judiciary of the present report.

33. The failure to punish those guilty for Mr Magnitsky’s death in prison, as well as the conviction of Mr Khodorkovsky, in December 2010, to six more years, were largely viewed as signs that the judiciary in Russia remained subject to political pressure and the influence of the executive. We will come back to these questions in the relevant chapter.

34. The situation in the North Caucasus region, and in particular in the Chechen Republic, Ingushetia and Dagestan, continues to raise serious concern in terms of human rights protection, the functioning of democratic institutions and respect for the rule of law.

35. The centre of gravity of the insurgency has shifted to Ingushetia and particularly to Dagestan, but the situation in Chechnya has not returned to normal either. Even if the Chechen rebel movement is in serious decline, it still has the capacity to launch individual terrorist attacks (see below). Whereas undeniable successes in the sphere of reconstruction have to be noted, a generalised climate of fear, the human rights situation and the functioning of justice and democratic institutions, continue to give cause for the most serious concern. In particular, the disappearance of the government’s opponents and human rights defenders, still remain widely unpunished. Real respect for human rights and the rule of law as well as a functioning democracy are the undeniable conditions to overcome terrorism and prevent violence of any kind.

36. In Ingushetia and Dagestan, a worrying resurgence of violence, since 2009, has been accompanied by a climate of impunity, in which assassinations and disappearances of opponents to the government and independent journalists are not elucidated or prosecuted.

37. The European Court of Human Rights (ECHR) has condemned the Russian Federation for serious human rights violations in the region in over 150 judgments. Those wishing to have more information in this respect should refer to the report on Legal remedies for human rights violations in the North-Caucasus Region, presented by Mr Dick Marty on behalf of the Committee on Legal Affairs and Human Rights, in June 2010.

38. Terrorist attacks in the Russian Federation, unfortunately, remain a major concern. Since the last report in 2005, the country has been shaken by a considerable number of terrific and deadly attacks.

39. A series of attacks against civilian targets across the Russian Federation includes a bomb explosion in a Moscow suburban market in August 2006 which killed ten people. In another attack in August 2007, a bomb derailed the Nevsky Express between Moscow and St. Petersburg, injuring 60 people. Two years later, in November 2009, a bomb blast on the same railway line killed 26 people and injured 100. In August 2007, a bomb on a bus in the city of Togliatti situated in central Russia, killed eight and injured 50 people. In March 2010, two blasts struck Moscow metro stations during the rush hour, killing 34 people and wounding 18. A suicide bomber attack at Moscow’s Domodedovo airport in January 2010 left 36 people dead and more than 100 injured.

40. Attacks against military targets were even more frequent. In October 2005, key security points were attacked in Nalchik, the main city of the Kabardino-Balkaria region. Twelve civilians and 12 policemen were killed. In February 2006, seven policemen were killed in a village in the Stavropol region of Southern Russia. In April 2007, a Russian helicopter was shot down in Chechnya, killing 18 people. In August 2009, a suicide bomber drove a truck into the gates of the main police station in Nazran (the largest city of Ingushetia), killing 20 people and wounding 138 others. In January 2010, seven policemen were killed and 20 injured in Dagestan, when a suicide bomber detonated a car packed with explosives at a traffic police depot.

41. In June 2009, Ingush President Yunus-Bek Yevkurov was seriously injured, when a suicide bomber detonated explosives beside his car.

42. According to General Yevgeni Potapov, Deputy Chief of Staff of the National Anti-terrorist Committee (NAC), the overall number of terrorism-related crimes is decreasing. While there were 1 030 such crimes in 2009, only 779 cases were registered in 2010. A total of 410 people (119 civilians, 268 military personnel and law enforcement officers, 13 government officials, 10 public figures) died as result of 21 terrorist attacks

and 14 bombings, which were carried out by suicide bombers. According to Mr Potapov, as a result of preventive measures, 60 militants surrendered to the police and 93 terrorist acts were thwarted. Police and interior troops found and destroyed 433 militant bases and arms caches, seized 454 home-made explosive devices, 1263 firearms and more than 2.5 tons of explosives.¹⁷

43. The above list of terrorist attacks on the territory of the Russian Federation is not exhaustive, but it illustrates well the scale of the problem and the challenge faced by the Russian authorities. It also partly explains the support by the traumatised Russian population for the restrictive measures taken by the Government, even if those measures also resulted in restrictions on rights and freedoms.

44. The war between Russia and Georgia broke out in August 2008. As already mentioned, the Assembly closely followed developments since the very beginning, under a distinct file. It was specifically agreed that the present report, like the report on Georgia, will not deal in detail with the question of the war and its consequences. These problems are the subject of a separate report, prepared in co-operation with our colleagues, co-rapporteurs on Georgia.

2.2. Developments since the December 2011 parliamentary elections

45. In September 2011, at the United Russia Convention, Mr Putin announced that he would be a candidate for the presidential election and that, if elected, he would appoint Mr Medvedev Prime Minister, and that the latter would not stand as candidate for the presidency. The way the switch of the power was announced was perceived as humiliating by many Russians and is considered as one of the reasons for their wide participation in demonstrations.

46. The parliamentary elections to the State Duma took place on 4 December 2011. In their joint preliminary conclusions, issued on 5 December 2011¹⁸, the members of the International Election Observation Mission (IEOM), including representatives of the PACE, pointed to a number of deficiencies in the electoral process which, in their view, "did not provide the necessary conditions for fair electoral competition".

47. Following the publication of the preliminary conclusions, a number of European political leaders, including the EU High Representative, Catherine Ashton, British Minister of State responsible for European Issues, David Lidington, and German Foreign Minister, Guido Westerwelle, expressed their concern and called on the Russian authorities to investigate the allegations of electoral fraud.

48. US Secretary of State, Hillary Clinton, in her address to the Foreign Ministers of the OSCE member States in Vilnius, said: "Russian voters deserve a full investigation of all credible reports of electoral fraud and manipulation and we hope in particular that the Russian authorities will take action".

49. The exit polls and preliminary results announced on the day following the election showed that the ruling party, United Russia, received much less support than in the previous parliamentary elections of 2007 (a fall from 64% to approximately 49%) but it still remained the biggest party with a majority of seats in the State Duma. Out of seven political parties contesting the elections, only four represented in the outgoing Duma reached the required 7% threshold and thus gained seats. These were, apart from the already mentioned United Russia: the Communist Party of the Russian Federation, the Liberal Democratic Party of Russia and Just Russia. The other three contestants, which failed to pass the threshold were the Russian United Democratic Party "Yabloko", the Patriots of Russia and Right Cause.

50. In the immediate aftermath of the elections, allegations of fraud in favour of the ruling party fuelled by mobile phone videos and accounts on internet social networking sites resulted in spontaneous anti-government demonstrations in the streets of Moscow, St. Petersburg and, to a lesser extent, across the country. Protesters called for the election results to be annulled and for a fresh ballot.

51. These spontaneous demonstrations, held on 5 and 6 December, involving several thousand people, resulted in more than one thousand arrests, mostly in Moscow. Several leading opposition figures were detained. While some of them, such as Boris Nemtsov, were released after several hours, others, such as the well-known opposition blogger, Alexei Navalny, or Ilya Yashin, were given 15-day jail sentences for having disobeyed police orders during the unauthorised demonstration.

¹⁷ Rossiiskaya Gazeta, 10.03.2011.

¹⁸ These preliminary conclusions were subsequently confirmed in the OSCE/ODIHR Final Report of 12 January 2012 and the Report of the ad hoc committee presented to the PACE on 23 January 2012.

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52. On 6 December 2011, President Medvedev declared that the elections had been free and democratic, and at the same time ordered an investigation into the alleged violations. He said that a total of 117 claims over alleged vote fraud were filed on election day.¹⁹ The Head of the Central Electoral Commission, Mr Churov, publicly promised that all complaints, including video clips, would be carefully examined. He added, however, that the complaints amounted to much less than 1% of the votes cast, which meant that they could not affect the results in a meaningful way.

53. On 7 December 2011, the EU High Representative, Catherine Ashton expressed concern about the detention of hundreds of protesters and about reports of police violence against activists, journalists and bystanders. She recalled the need to respect freedom of assembly and expression.

54. On the same day, the President of the European Parliament, Jerzy Buzek, expressed his concern about "the events following the election: detention of dozens of protesting opposition activists, intimidation against the independent watchdog Golos and the cyber attacks against leading independent news websites".

55. In our statement as co-rapporteurs of the Monitoring Committee on Russia, issued on 8 December 2011, we said that "The right to peacefully demonstrate is one of the basic rights of people in any democratic State, and is part of the freedom of expression and assembly. There is no justification for the arrest and detention of hundreds of people just because they have gathered to protest calmly. On the contrary, they have the same right to police protection as those who express their support for the winning party." We also called on the Russian authorities to release all those detained.

56. On 10 December 2011, the Central Electoral Commission (CEC) announced the final results of the elections. Voter turnout was 60.2%. United Russia had won 238 out of 450 seats in the State Duma (49.3% of votes cast), the Communist Party 92 seats (19.19%), Just Russia 64 seats (13.2%), and the Liberal Democrats 56 seats (11.6%). United Russia has thus lost its constitutional majority but still holds more than half of the seats. The parties which did not gain seats received respectively: Yabloko 3.4%, Patriots of Russia 1% and Right Cause 0.5%.

57. Several registered political parties, namely the Communist Party, the Right Cause Party and Yabloko, have contested the results. The Communist Party accused the CEC of flouting procedure in dealing with complaints about alleged falsifications and declared its mistrust of the Chairman, calling for his resignation. Yabloko has challenged the results in the entire Moscow district and requested recounts.

58. Russia's independent election monitoring organisation, Golos, said it had lodged complaints of more than 7000 cases of falsification during the polls. Despite the fact that domestic civil society groups are not allowed by legislation to observe parliamentary elections, Golos deployed some 2000 observers on election day, registered as journalists.

59. This well-known and respected non-governmental organisation, which has been operating for over a decade, was the subject of hostile campaigns before and after the elections. On 3 December 2011, following a request by the Chair of the CEC, the court imposed on the organisation a 30 000 ruble fine for breaking the law prohibiting the publication of opinion polls or other studies relating to elections during the last five days of the campaign. The accusation related to the Golos website containing a list of alleged violations during the electoral campaign. The website had been attacked on several occasions and the members, including the President, had been subject to harassment. On 2 December 2011, "Golos" was the subject of a programme on the State-controlled NTV station, which aimed at discrediting the organisation.

60. On 14 December 2011, the European Parliament adopted a resolution on the outcome of the Duma elections on 4 December 2011, in which it "expresses its deep concern with regard to reports of fraud" and calls for "new and fair elections to be held after registration of all opposition parties".

61. In reaction to international criticism of the elections, Prime Minister Putin accused western countries of encouraging the protests. Russian Foreign Minister, Sergey Lavrov, made a statement in which he declared that "comments by the US Secretary of State Hillary Clinton about the Russian parliamentary elections, as well as those of other representatives of the White House and the US Department of State, are unacceptable".

62. In the meantime, the opposition had called for a big rally on 11 December and submitted a request for authorisation, which was granted. Thousands of people attended the biggest anti-government rally in

¹⁹ RiaNovosti, 6 December 2011.

Moscow, on Bolotnaya Square, since the fall of the Soviet Union. The number of participants ranged from 25 000, according to the police, to 100 000, according to the organisers. Most other sources referred to 50 000. Speakers, applauded by the demonstrators, called for cancellation of the election results, new elections, the resignation of the electoral commission chief, Vladimir Churov, an investigation into the alleged ballot-rigging and the immediate release of the arrested protesters. The protest was peaceful and well-organised.

63. In St Petersburg, around 10 000 people gathered on Pionerskaya Square and listened to speeches calling for a re-run of the election. Other smaller protests and rallies took place across the country, including in Khabarovsk, Vladivostok, Kurgan, Novosibirsk and Yekaterinburg. There were no protest-related arrests in Moscow, but the Interior Ministry reported 130 arrests at rallies across the country, most of them in Khabarovsk, in the far east.

64. Another big demonstration, again authorised by the authorities, took place on 24 December 2011. It was carried out in a peaceful and orderly manner and no protest-related detentions were reported. In Moscow, it gathered approximately 80,000 demonstrators.

65. The political composition of both big demonstrations held in Moscow was politically very diversified and ranged from far left to far right. According to the survey conducted by the independent Levada Centre, the overwhelming majority of participants were very well educated representatives of the urban middle class, many of them connected through social networking sites.

66. The country's political leaders were obviously taken by surprise by the scale of the protests, but, from mid-December, they started making it clear that they would address the outstanding concerns expressed by the protesters. On 15 December 2011, during a live nationwide television question and answer session, Prime Minister Putin promised that he would liberalise politics in Russia if elected President in the forthcoming presidential elections.

67. On 22 December 2011, in a statement to the joint sitting of the Duma and the Council of Federation, President Medvedev announced his intention to submit to parliament, before the end of his mandate, a number of legal acts aimed at the liberalisation of the political system, in particular with regard to political parties and the procedure for appointing governors.

68. In the subsequent weeks, President Medvedev submitted to the State Duma legislative proposals with regard to liberalisation of the requirements for the formation and activities of political parties, exemption of registered political parties from collecting voter signatures at elections except for the presidential election, and elections of governors. We will look closer at these proposals in the chapter on pluralist democracy.

69. We would only like to point out here that the law on direct elections of governors, which would replace their appointment by the President, addresses a long-standing concern of the Parliamentary Assembly. However, the provision which foresees the "consultation" of candidatures with the President before they are registered, is problematic and raises concern. We also regretted hearing that, on 17 January 2012, even after having submitted the draft legislative act to the Duma, President Medvedev dismissed the Governors of Volgograd and Arkhangelsk, two regions in which United Russia had received lower than average voting results. The law was signed by President Putin on 2 May 2012.

70. In order to address some other concerns formulated by observers and improve the quality of the process on voting day, the Prime Minister announced that specific measures would be introduced on 4 March 2012 during the presidential election, including the installation of webcams and the introduction of transparent ballot boxes.

71. On 24 December 2011, the Presidential Council on Human Rights stated that it had lost confidence in the Head of the CEC, Mr Churov, widely criticised by the election observers and demonstrators for lack of impartiality.²⁰ Despite this, Mr Churov announced that he would not resign.

72. The developments following the parliamentary elections shed new light on the registration of candidates for the presidential run, which a few months earlier had been considered by many as a mere formality.

²⁰ In the same statement, the Council also said that it was necessary to ensure the speedy adoption of a new electoral law in order to conduct early parliamentary elections.

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73. Apart from the leaders of two parties represented in the Duma, who had contested the presidential race in 2008, Mr Gennady Zyuganov (Communist Party), and Vladimir Zhirinovskiy (Liberal and Democratic Party), seven other candidates submitted documents for registration with the Central Electoral Commission. Two of them, Mr Eduard Limonov, radical left leader and Mr Boris Mironov, connected to the nationalist movement, were denied registration on formal grounds. The latter was permitted inclusion in the list of presidential candidates by a Supreme Court decision, which was widely perceived as an unprecedented case.

74. Among those six candidates, only Mr Sergei Mironov, the leader of Just Russia, nominated by his party, was exempted, according to the law, from the requirement to collect two million signatures. The others, Mr Mikhail Prokhorov, billionaire who had founded the Right Cause Party, but left it before the parliamentary elections; Mr Grigory Yavlinsky, founder of the Yabloko party, Mr Eduard Limonov, and Mr Dmitry Mezentsev, Governor of Irkutsk, had 20 days to collect signatures in at least 50 entities of the Russian Federation.

75. On 27 January 2012, the CEC announced that out of 2,132,000 signatures submitted by Mr Yavlinsky, 25% had been considered invalid as they were collected on copies of original forms. In consequence, he was denied final registration. Speaking to journalists the same day, Mr Yavlinsky insisted that this decision was of a political nature. On 10 February 2012, the Supreme Court confirmed the CEC's decision. Mr Prokhorov was the only one whose candidature was confirmed.

76. In their comments on the preliminary draft report, the Russian authorities referred to the Supreme Court's justification as to the dismissal of Mr Yavlinsky's appeal. The Court's interpretation of the relevant provision of the Federal Law "on Elections of the President of the Russian Federation" was that an elector has to undersign and put down the date of the signature with his/her own hand. They also have to write some personal data, either with their own hand or, at their request by the person who is collecting signatures. This has to be done on the original signature sheets delivered by the Central Electoral Commission. As Mr Yavlinsky had delivered copies of the signature sheets, the Court decided that they could not be considered as signed and dated by the elector's own hand.

77. However, in the light of the short time available for the collection of signatures and given the vast territory of the country, we maintain our opinion that this interpretation is far too restrictive and detrimental to the democratic process.

78. On 4 February 2012, as many as 120,000 people turned out for the third and the largest mass protest demonstration since the parliamentary elections. They denounced the forthcoming presidential election as illegitimate in the light of the lack of genuine political competition.

79. Protests also took place in St. Petersburg on the same day, drawing 5,000 people, and smaller rallies were held in several dozen other cities across Russia.

80. A separate rally in Moscow in support of Prime Minister Putin drew no more than 20,000 people. Most of them were teachers, municipal workers, employees of State-owned companies or trade union activists, who had come with co-workers on buses provided by their employers.

81. An opposition event called "Big White Circle" gathered over 30 000 people on the Garden Ring Road in Moscow joining hands to form an unbroken circle around the city centre.

82. As a result of a spontaneous civil initiative, a League of Citizens was established with the objective of observing the presidential elections. Many thousands of volunteers intended to observe the work of the election commissions on 4 March 2012.

83. The presidential election took place on 4 March 2012. There were five candidates. The final results were announced by the CEC on 7 March: Mr Putin won in the first round having received 63.6% of the votes. The other candidates received respectively: Mr Zyuganov: 17.18%; Mr Prokhorov: 7.98%; Mr Zhirinovskiy: 6.22% and Mr Mironov: 3.85%. The turnout was announced at 64%.

84. In their joint statement, issued on 5 March 2012, the members of the International Observation Mission, including the representatives of the PACE, stressed that "conditions were clearly skewed in favour of one of the contestants, current Prime Minister Vladimir Putin". In the report on the observation of the presidential election²¹, the PACE observers concluded that "these elections showed a clear winner with an

²¹ Doc. 12903.

absolute majority, avoiding a second round. However, the voter's choice was limited, the electoral competition lacked fairness and an impartial referee was missing".

85. Following the widespread allegations of fraud during the Duma elections, webcams were installed in each polling station in order to ensure greater transparency. In addition, approximately 30% of polling stations used new, transparent ballot boxes with a smaller opening in order to prevent ballot box stuffing.

86. The number of volunteers wishing to observe the presidential election had risen considerably since the December parliamentary elections as a clear sign of significant civic mobilization. A significant number of observers were designated by the League of Voters, a grassroots civil society initiative that emerged from the protest movement after the State Duma elections.

87. As we have already mentioned, the electoral law in the Russian Federation does not allow for domestic observers other than those affiliated with candidates and parties which the latter represent. In order to overcome this obstacle, a number of NGOs approached different candidates to have their members registered on their behalf. For example, the League concluded co-operation agreements with candidates Prokhorov, Mironov and Zyuganov, as well as with the Yabloko party. In the framework of this agreement, a consolidated database of reports and protocols by observers was created in order to compare them with results protocols published by the CEC. Another method used by NGOs in order to obtain accreditations was to appoint observers as journalists.

88. Some NGOs, including the Golos, complained about the pressure on them from the authorities because of their election observation activities throughout the campaign.²² On election day, numerous cases of obstruction of observer activities were reported, including denial of access to or expulsion from polling stations.²³ Some cases of harassment and violence towards observers were also reported.

89. According to the CEC's final report, 178 complaints were filed with the CEC on election day and 168 complaints after election day. Some presidential candidates announced that they had evidence of violations from many polling stations. For example, Mr Prokhorov stated that his observers had noted 170 cases where results protocols signed by polling the electoral commission were different from those announced. The Communist Party, the Liberal Democratic Party and Mr Mironov's Party also announced that they would lodge complaints.

90. The post-election period was marked by several large authorised and unauthorised protests held in Moscow and Saint Petersburg with large-scale police presence. On 5 March, a big demonstration was held on Pushkinskaya Square in Moscow, claiming that the vote was marred by widespread fraud. Mr Prokhorov, who was one of the speakers, announced his intention to establish a new liberal political party. Around 250 protesters who stayed beyond the authorised time for the demonstration were detained by the police. On the same day, in Saint Petersburg, two unsanctioned rallies were held and several hundred protesters were detained.

91. On 10 March, a demonstration was organised on Novy Arbat in Moscow to express dissatisfaction with the election.

92. On 20 March, a picket was organised against manipulations and slander on TV channels in front of Ostankino TV Centre. Another meeting was held on 17 March on Pushkinskaya Square in support of political prisoners.

93. The period directly preceding the day of inauguration, which took place on 7 May 2012, was marked by street violence. On 6 May, over 50 000 protesters gathered for a "March of millions". The demonstration was authorised but as a result of violent clashes between a small group, who wanted to break the police cordon, and the police on Bolotnaya Ploshchad, as many as 650 protesters were arrested and dozens were injured. According to the police, some 20 to 30 police officers were among those injured. On 9 May, a court sentenced two opposition leaders, Mr Navalny and Mr Udaltsov to 15 days in jail for disobeying a police order during the demonstration of 6 May.

94. The clashes and arrests continued on a smaller scale on the following days as groups of protesters dodged police in the city center. In an unprecedented step, police also snatched dozens of opposition

²² Report on Domestic Monitoring of Elections of the President of the Russian Federation of 4 March 2012 by Association Golos available at the website of the Association : <http://www.golos.org>.

²³ See OSCE/ODIHR Election Observation Mission Final Report, Warsaw, 11 May 2012.

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supporters from cafés and restaurants for the simple act of wearing a white ribbon, the symbol of the “Fair election” movement. Some 120 arrests were made, according to RIA Novosti.²⁴

95. A new form of protest, “protest walks”, has developed following calls from some opposition leaders. The first “walking protest” took place on 13 May and gathered about 2000 people including well known writers and singers in downtown Moscow.²⁵

96. In the meantime, the new President announced the composition of the new Cabinet, retaining some key figures heavily criticised in the past. In particular, the appointment of ex-Interior Minister Rashid Nurgaliyev, as an undersecretary of the Presidential Security Council. Mr Nurgaliyev has faced massive public outrage over widespread cases of allegations of torture and other abuses by police. His appointment was widely perceived as a sign of disrespect for public criticism.

97. On 5 June 2012, to our great disappointment and despite protests by the opposition and the international community²⁶, the Duma adopted a law which considerably increased fines for participation in unsanctioned protests or for violations during sanctioned ones. This law allows for a big margin of interpretation and gives the authorities greater powers to decide on where public protests can be held and what form they can take. Civil society in Russia claim that the bill violates Russia’s constitution on the right to free assembly.

98. We particularly regret that the Duma has decided to adopt this controversial law, in a situation where already the existing law on assemblies was raising concern as to its compliance with Council of Europe standards. The Monitoring Committee asked for the Venice Commission’s opinion on this legislative act, and the opinion, delivered in March 2012, confirmed our concerns. The newly adopted law not only does not address these concerns but creates new ones. In June 2012, the Monitoring Committee asked the Venice Commission for an opinion on the “Protest bill”.

99. On 12 June 2012, a national holiday in Russia, the authorities sanctioned a second “March of millions” which gathered around 50 000 Russians of all ages and political movements. Several protest leaders, Mr Navalny, Mr Yashin and Ms Sobchak, the famous TV star, did not attend because they were summoned for questioning one hour before the protest began. Another leader, Mr Udaltsov, refused to obey the summons and turned up at the protest. The day of the demonstration had been preceded by police raids and searches without warrant in the houses of several prominent activists.

100. Another worrying law, which is the subject of strong criticism by national and international NGOs and civil society, is currently undergoing legislative process in the Duma. The new law on NGOs aims at stigmatising as “foreign agents” those organisations which receive foreign funding (almost all human rights NGOs are concerned) and burdens them with bureaucratic reporting requirements and inspections. Staff responsible for this reporting may face, in case of failure, severe fines up to 91 000 USD or three years in prison. We will deal with it in more detail in the relevant chapter.

101. The situation is evolving. We are quite worried by the direction it is taking right now. We will obviously follow it closely.

3. Economic and social situation

102. Russia’s economy grew during the first eight years of the 2000s (2000-2008) with the gross domestic product (GDP) average rate at approximately 7% a year, in contrast to an average annual decline in GDP of 6.8% during the previous seven years (1992-1998). As a result, Russia moved up from being the 20th largest economy of the world to the 7th. Nearly all Russia’s foreign debts were settled and real income per capita rose from USD 5.9 thousand in 1998 to 9.6 in 2005. Investment rose by an average of 12% annually.²⁷

103. The surge in economic growth, linked to the high price of oil, brought with it a larger degree of economic stability, such as Russia had not experienced since the collapse of the Soviet Union, and resulted in an important increase in the living standards enjoyed by the population. Real wages grew at double that

²⁴ The Moscow News, 15 May 2012.

²⁵ RIA Novosti, 13 May 2012.

²⁶ See also our statement of 6 June 2012 (Ref. PACE 111(2012) in which we stressed: This measure would undermine freedom of expression and freedom of assembly. It would symbolise a lost opportunity to strengthen the democratic process in the Russian Federation as it would close the window of opportunity opened in the last six months following the massive demonstrations by the Russian population. The dynamic activity of society should be used to implement the reforms instead of being suppressed”.

²⁷ Source: OECD, available at <http://www.cbr.ru>.

rate. The percentage of the population living in poverty fell from 38% in 1998 to 9.5% in 2004. Unemployment fell to under 7%.²⁸

104. The growth of the Russian GDP was led mainly by exports of oil, gas and other natural resources. Russia is the world's number two oil producer and number one natural gas producer. Global prices for oil quintupled between 2002 and 2008.

105. The decline in energy prices and the global economic crisis of 2008-2009 contributed to an 8% drop in Russia's GDP in 2009. However, rising world oil prices in 2010-2011 bolstered the Russian economy once again.

106. The Russian oil and natural gas industries are important factors in the global energy market. Russia has by far the largest natural gas reserves in the world, possessing over 30% of the world's total. It is eighth in the world in oil reserves, with at least 10% of the global total.

107. Enterprises in the oil and gas industries are either directly controlled by the Russian government or are subject to heavy government influence. There is some fear that European dependence on Russian energy and Russia's growing influence in large segments of Europe's energy infrastructure, pose a long-term threat. The Parliamentary Assembly raised these concerns in the report on "The peril of using energy supply as an instrument of political pressure".²⁹

108. Concerns about Russian energy policy focus mainly on natural gas supplies to Europe. While about 80% of Europe's natural gas imports from Russia transit via Ukraine, the state-controlled "Gazprom" halted all gas supplies going by this route for nearly three weeks as a result of the lack of agreement with Ukraine in 2006 and 2009. In 2010 and 2011, disputes between Russia and Belarus led to temporary reductions of oil and natural gas supplies to Belarus and neighbouring countries.

109. These problems led Russia and some European countries to agree on new pipelines projects: the North stream, transporting gas from Russia directly to Germany under the Baltic Sea, and South Stream, from Russia under the Black Sea to Bulgaria, Austria, Italy and Greece.

110. On the other hand, as a result of concerns on the possible consequences of overdependence on Russia for energy, the Nabucco pipeline for transporting gas from Azerbaijan and circumventing Russia is being constructed.

111. The high dependence of the Russian economy on the export of oil, gas and other natural resources remains a big challenge. Oil and gas accounted for 61% of Russia's export earnings in 2005. Manufacturing accounted for only 8% of Russia's exports. The surge in oil revenue has produced a spike in consumer spending, largely satisfied by imports, but has not stimulated a recovery of the Russian manufacturing industry or agriculture. A large share of the wealth has been invested abroad by oligarchs.

112. The State is a major beneficiary of the oil boom – it has doubled the ranks of bureaucrats and tripled spending on the military. It has reasserted its control over key industrial corporations, especially in the oil sector, leading to the emergence of a new hybrid form of state oligarchic-capitalism. The climate remains difficult for small business development, with small firms accounting for only 17% of employment, compared to 60% in the US. A downturn in oil prices risks exposing the rather shaky foundations of Russia's development model.

113. Some experts argue that this economic boom cannot be sustained as it is not built on solid grounds, and the present success is a matter of luck. It is also plagued by decrepit infrastructure – aged pipelines, dilapidated airports, a limited highway network, contaminated water, an unreformed and underfunded healthcare system, an only partially reformed educational system, energy efficiency one-third that of the average OECD country, low domestic investments, high rates of crime and corruption, capital flight and unemployment.

114. In order to better understand the present economic situation, it is necessary to recall that Boris Yeltsin's radical liberalisation in 1992 led not to a competitive market economy but to oligarchic capitalism

²⁸ Idem.

²⁹ See Doc. 11116. It can be observed that Russia itself views its natural resources as a political tool. "National Security Strategy to 2020" published in May 2009, states that "the resource potential in Russia is one of the factors that has expanded the possibilities of the Russian Federation to strengthen its influence on the world arena".

Doc.

without the rule of law and with no social effort to soften the hardship that the transition meant for millions of Russians. By 2001, it was estimated that the country's 23 largest firms accounted for 30% of Russia's GDP, and they were controlled by 37 individuals. The rise of the oligarchs coincided with a wave of lawlessness, contract killings and grotesque displays of wealth, which remained in sharp contrast to the drastic economic and social situation of the overwhelming majority of the population. For many Russians, the nineties remain a symbol of economic vulnerability and instability, which unfortunately they often associate with democracy.

115. Following the strengthening of the executive and the establishment of "vertical power", President Putin succeeded in subordinating and controlling the oligarchs.

116. In September 2009, President Medvedev published an article entitled "Go Russia!"³⁰, which deplored the economic downturn in Russia and called for increased efforts to boost economic modernisation. These ideas were developed in his annual state of the nation address to the Russian Federal Assembly in November 2009. In a foreign policy speech, in July 2010, President Medvedev argued that the global economic crisis had brought about a "paradigm shift in international relations" and called for his diplomats and trade officials to forge a "modernisation alliance" with western democracies which would result in foreign investments in Russia, particularly in the field of technological innovation.

117. In December 2011, Russia was admitted to the World Trade Organisation (WTO), thus completing negotiations opened in 1993. Until that date, Russia was the only major economy outside the WTO, an organisation with over 150 members. Among the concerns raised by the WTO, which contributed to the lengthy negotiations, were Russia's enforcement policies and practices, sanitary regulations that might be blocking imports of agricultural products and large subsidies for the agricultural sector.

118. Despite the support of the US and the EU, Georgia's veto prevented Russia from joining for a few years. The recent WTO accession will certainly make investors more comfortable with Russia's commitments to international standards in the area of governance.

119. Upon accession, the Russian Federation committed itself to study, with a view to ratification, the Council of Europe's Social Charter. The revised European Social Charter (ETS No. 163) was signed in 2000, and ratified in 2009. Russia has not accepted the Additional Protocol providing for a system for Collective Complaints. The first report prepared by the Russian authorities on the implementation of the Charter in the framework of the Charter's monitoring mechanism was submitted on 28 October 2011.

120. The main social challenge facing Russia is a demographic crisis of disputed proportions, but severe enough to prompt its leadership to treat it as a national-security threat, not merely as a socio-economic problem.³¹ In 1992, Russia's population entered a period of negative growth – the number of deaths exceeded the number of births combined with the number of immigrants. The fertility rate has declined to among the world's lowest, while its abortion rate is the highest.

121. Russia is experiencing unusually high death rates from non natural causes, many related to alcoholism. Life expectancy, especially among working-age males, has dropped precipitously. Growing alcohol consumption is not the only explanation of increased mortality. Deaths from violence, injuries, and other non natural causes have contributed significantly to this rise. Russia's rates of homicide and suicide are among the highest in the world. In addition, deaths from illness and chronic and degenerative diseases, such as cancer, respiratory failure, and circulatory and cardiovascular diseases, have increased sharply, particularly in the context of the inefficient health care system.

³⁰ In the article he wrote: "Let's answer a simple but a very serious question: should we have a primitive economy based on raw materials and endemic corruption accompany us into the future? An inefficient economy, semi-soviet social sphere, fragile democracy, harmful democratic trends, and unstable Caucasus represent very big problems even for a country such as Russia.(...) Achieving leadership by relying on oil and gas markets is impossible" "By setting out five priorities for technological development, offering specific measures for the modernization of the political system, as well as measures to strengthen the judiciary and fight corruption, my starting point is my views on Russia's future. And for the sake of our future it is necessary to liberate our country from persistent social ills that inhabit its creative energy and restrict our common progress. "Russian democracy will not merely copy foreign models" "Civil society cannot be bought by foreign grants. Political culture will not be reconfigured as a simple imitation of the political traditions of advanced societies. An effective judicial system cannot be imported. Freedom is impossible to simply copy out of a book. (...) The modernization of Russian democracy and establishment of a new economy will, in my opinion, only be possible if we use the intellectual resources of post industrial societies.(...) We need money and technology from Europe, America and Asia. In turn, these countries need opportunities Russia offers. We are very interested in rapprochement and interpretation of our cultures and economies".

³¹ See President Putin's State of the Union addresses in 2002 and 2004.

4. External relations

4.1. Relations in the context of Europe

122. The legal framework for cooperation between the European Union and Russia was established by the Partnership and Cooperation Agreement (PCA), signed in 1994, which entered into force in 1997 for ten years. It provided for joint structures (permanent council, working groups), and each party's own instruments (strategies, European Neighbourhood and Partnership Instrument).

123. The PCA expired in 2007. Without a new agreement, it has been automatically renewed and it will remain in force until a new agreement is reached. The negotiations on a new agreement have, however, been difficult. They were only launched in 2008, as some members had blocked their opening for over two years.³² Then progress was slowed for a long time by contention over Russia's bid for membership of the WTO and was affected by EU objections to the presence of Russian troops in Abkhazia and South Ossetia. The new agreement is not likely to be concluded in the near future.

124. In the meantime, co-operation continued in the framework of the "Four Common Spaces", a common strategy created in 2003, and covering four specific policy areas: economic issues and the environment; freedom, security and justice; external security including crisis management and non-proliferation, and research and education including cultural aspects.

125. In addition, in 2010, Russia and the EU launched a "Partnership for Modernisation", which is designed to help develop and diversify the Russian economy, and the two sides have been negotiating on the possibility of a visa-free travel regime. The following main priority areas were set out: enhancing and deepening bilateral trade and economic relations, and promoting small and medium-sized enterprises; expanding opportunities for investment in key sectors driving growth and innovation; cooperation in research, promoting alignment of technical regulations and standards; ensuring effective functioning of the judiciary and strengthening the fight against corruption.

126. Relations between the EU and Russia revolve largely around energy and economic issues. As indicated before, Europe as a whole depends to a large extent on Russian gas and oil supplies, which cover approximately 25% of its needs. However, some EU member States are almost completely reliant on Russian energy. This dependence is expected to grow over the next 20 years. So far, the EU has failed to develop a common strategic energy policy and Russia has prioritised bilateral ties with several EU member States with their consent.

127. On the other hand, Russia is, to a great extent, dependent on the European Union which is its first foreign exchange partner (while Russia's import and export amounts to approximately 6.5 % of the EU's exports³³), and Russia's modernisation would hardly be possible without European technologies and the market.

128. The EU and Russia co-operate on a number of key international and regional issues including the Iranian nuclear issue, the Middle East Peace Process, Afghanistan/Pakistan, European security and the protracted conflicts in Georgia and the Republic of Moldova, climate change, drug and human trafficking, organised crime, counter-terrorism, and non-proliferation.

129. In recent years, economic issues have to a great extent eliminated discussion on values. Since the beginning of the second mandate of President Putin, the question of Russia's democratic shortcomings has been omitted from the Russian-European agenda. The follow-up given to the consequences of the Russian-Georgian conflict has strengthened the impression of priority being given by the EU to pragmatic interests over principles.

130. The recent reactions of some European leaders and the European Parliament to the developments following the December 2011 parliamentary elections leave room for hope that the question of democratic values will again become an integral part of the political dialogue between the EU and Russia.

³² Poland and Estonia exercised their veto power; the former trying to exert pressure over the Russian ban on imports of Polish meat and the latter linked to the crisis around the statue of the Bronze Soldier.

³³ See DG Trade Statistics, EU bilateral trade.

Doc.

4.2. *Russia and the Soviet successor states; neighbours and "The Near Abroad"*

131. As one of its accession commitments, Russia agreed to "denounce as wrong the concept of two different categories of foreign countries, whereby some are treated as a zone of special influence called 'the near abroad'". In practice, the term "near abroad" has been commonly used in Russia to refer to the fourteen former Soviet republics.

132. The understanding behind this commitment was that Russia should not only denounce as wrong the concept of "near abroad", but effectively cease to treat some countries as zones of their special influence with insufficient regard to their sovereignty and territorial integrity.

133. The Foreign Policy Concept and the National Security Concept of the Russian Federation, adopted by Presidential decrees respectively in July 2008 and May 2009, include no reference to the concept of "near abroad".

134. However, in an interview given to the three main television channels (Channel 1, Rossia and NTV) on 31 August 2008, in the wake of the recognition of South Ossetia and Abkhazia as independent states, President Medvedev outlined one of the principles guiding his foreign policy in the following way: "*Protecting the lives and dignity of our citizens, wherever they may be, is an unquestionable priority for our country. Our foreign policy decisions will be based on this need. We will also protect the interests of our business community abroad. It should be clear to all that we will respond to any aggressive acts committed against us. Finally, as is the case of other countries, there are regions in which Russia has privileged interests. These regions are home to countries with which we share special historical relations and are bound together as friends and good neighbours. We will pay particular attention to our work in these regions and build friendly ties with these countries, our close neighbours. These are the principles I will follow in carrying out our foreign policy.*"

135. In an interview with the Euronews TV channel on 3 September 2008, President Medvedev reiterated this stand, saying: "*... Russia, like any other State, has certain regions it will pay particular attention to. These are regions of our privileged interests. We are going to have special, cordial, long-term relations with the States in these regions.*"

136. Russian Foreign Minister Sergei Lavrov, in a letter published in the Polish daily "Gazeta Wyborcza" on 10 September 2008, stated that Russia had a geographical sphere of "privileged interests" and he called on Poland and the rest of Europe to recognise that "new reality." Mr Lavrov stressed that "*In conducting our foreign policy, we invariably observe principles formulated by President Dmitri Medvedev, including paying particular attention to regions where Russia has its privileged interests. ... We call on our partners to follow Russia's example and acknowledge the new realities. We believe that the statements, made by some countries' leaders, about Russia's 'imperialist' and 'revisionist' policies are completely wrong.*"

137. The term "privileged interests" is a new concept in the Russian political discourse. Its precise meaning is unclear and it is not obvious in which countries and regions these "privileged interests" are to be found. Presumably it applies to the former "near abroad", the states of the former Soviet Union.

138. This new policy doctrine was announced in the aftermath of the use of the military force outside its own territory, in order to achieve the forceful change of borders of another State, Georgia, and the Presidential decree of 26 August 2008, officially recognising the independence of South Ossetia and Abkhazia. Subsequent deployment of Russian troops in both breakaway regions has been criticised by the international community, which called on Russia to reverse these deployments and rescind the recognitions of independence. This has not been done.

139. Russia continues to voice strong opposition to NATO enlargement to Georgia and Ukraine. In 2008, the NATO summit in Bucharest had to accept the position of several key European members and denied Ukraine and Georgia accession to the Membership Action Plan. The decision itself was well argued, as Ukraine was lacking internal popular support to join NATO, while Georgia did not have peaceful borders with all its neighbours. But to many observers, Russia had been given back the *de facto* veto power on further expansion of Euro-Atlantic institutions on the territory of the CIS.

140. Cutting off or reducing energy supplies and, more generally, economic pressure in relations with Ukraine and Belarus in particular, but also other former Soviet republics, have been other distinctive features of Russia's foreign policy with some countries.

141. In this context we would also like to recall the recommendations³⁴ of the Venice Commission on the amendments to the Federal Law on Defence, submitted for opinion by the Monitoring Committee. We urge the Russian authorities to address the concerns with regard to the provisions concerning the protection of a State's citizens on the territory of a third State. The Venice Commission finds them problematic, as such protection is mainly the responsibility of this third State. If the latter is unable to prevent genocide or ethnic cleansing, protection becomes the responsibility of the international community, on the basis of the relevant resolution of the UN Security Council. The protection of own nationals cannot be used as a pretext for military intervention and cannot have as a consequence the stationing of troops in order to ensure the continued protection of the citizens in question.

142. The Russian delegation points out that neither the Foreign Policy Concept nor the National Security Concept of the Russian Federation bears any reference to the concept of "near abroad". It considers that this commitment is fulfilled.

4.3. *The war between Georgia and Russia*

143. We recall here that the Parliamentary Assembly adopted Resolutions 1633 (2008), 1647 (2009) and 1683 (2009) with regard to the consequences of the war between Georgia and Russia, presented by the Monitoring Committee, which dealt with this question as a separate file. The humanitarian questions are followed by the Committee on Migration which has been at the origin of several resolutions.³⁵ We reaffirm all these adopted texts.

144. In relation to the international inquiry into the origins and course of the war, we refer to the report of the International Independent Fact-Finding Mission on the conflict in Georgia, established by the European Union and led by Ambassador Heidi Tagliavini. Ms Tagliavini participated in the hearing organised by the Monitoring Committee in Paris in January 2011 and she gave an exhaustive account of her findings.

145. We believe that the so-called Tagliavini report is the most comprehensive and unbiased document on the circumstances and causes of the war that it was possible to elaborate on the basis of declassified and voluntarily given information by the parties involved. We invite all those interested to consult this detailed and voluminous document. It has to be stressed that both countries concerned have publicly stated that they agree with most of the findings and conclusions of the report. We consider that this report and the Assembly's resolutions are complementary.

146. We also recall the principled approach taken by the Assembly that the recognition of the independence of South Ossetia and Abkhazia by Russia, as well as subsequently by four other States (Nicaragua, Venezuela, Nauru and Tuvalu), runs counter to international law and the principle of territorial integrity, as well as the continuing build-up of Russian military forces in the two break-away regions .

147. The non-implementation of the above-mentioned resolutions remains a matter for concern. The outstanding issues addressed to Russia, including unrestricted access for international organisations, humanitarian aid and for European Union Monitors as well as credible investigations into alleged violations of human rights and international law, including ethnic cleansing, have not been accomplished.

148. Georgia and Russia have held 20 rounds of talks in a bid to settle differences. The so-called Geneva talks, co-chaired by the EU, UN and OSCE, involve a format of two working groups and participants from Georgia, Russia and the United States, as well as from Sukhumi and Tskhinvali. The first working group is discussing security-related issues, the second one humanitarian issues and in particular the return of refugees and IDPs. They do not seem to be advancing. The last round was held in June 2012, the next one is foreseen for 3 October 2012.

149. Together with the rapporteurs on Georgia and the Chair of the Monitoring Committee, we intend to carry out a fact-finding visit to Moscow, Tbilisi, Sukhumi and Tshinvali later this year. We will present our conclusions in a separate report. We will therefore not dwell on this subject in the present report.

4.4. *Fulfillment of obligations under the Treaty on Conventional Armed Forces in Europe (CFE)*

150. One of the commitments undertaken by the Russian Federation upon accession concerns the fulfilment of its obligations under the CFE Treaty signed in 1990. The previous monitoring report of 2005,

³⁴ See Opinion No. 572 (2010).

³⁵ Resolutions 1648 (2009) and 1664 (2009).

Doc.

stated that "The Russian Federation is largely fulfilling its obligations under the original CFE Treaty, which is the subject of its commitment to the Assembly".

151. Since then, the situation has changed insofar as that on 13 July 2007, President Putin issued a decree intended to suspend Russia's observance of its treaty obligations, effective 150 days later, stating that it was the result of "extraordinary circumstances"(...) which affect the security of the Russian Federation and require immediate measures". The suspension applies to the original CFE treaty, as well as to the follow-up agreements, and in particular to the adapted CFE treaty signed at the 1999 Summit in Istanbul.

152. The Russian parliamentary delegation to the PACE has argued that, according to Article 1.d of the Statute of the Council of Europe "Matters relating to national defence do not fall within the scope of the Council of Europe", and in consequence they have refused to discuss this question.

4.5. *Withdrawal of Russian troops from the Republic of Moldova*

153. Upon accession to the Council of Europe, Russia committed itself to "ratify, within six months from the time of accession, the agreement of 21 October 1994 between the Russian and Moldovan Governments, and to continue the withdrawal of the 14th Army and its equipment from the territory of Moldova within a time-limit of three years from the date of signature of the agreement".

154. Withdrawal of Russian forces from Transnistria has also been an international obligation by Russia under the agreement on the adaptation of the Conventional Armed Forces in Europe Treaty signed by President Boris Yeltsin during the OSCE Summit in Istanbul in November 1999. According to this document, Russia undertook an obligation to withdraw its forces from Transnistria by the end of 2002. However, as we have indicated above, Russia suspended its observance of the Treaty in 2007.

155. On 21 June 1995, the Russia-Moldova agreement of 1994 was submitted by President Yeltsin to the State Duma for ratification. It was withdrawn by President Putin on 11 March 2003.

156. Until now, Russia has failed to ratify the agreement of 21 October 1994, and Russian forces remain in the Transnistria region of the Republic of Moldova against the wishes of the Moldovan government and in violation of Russia's international commitments. As of today, Russia has 1,500 troops on Transnistrian territory. Most patrol jointly with Moldovan and Transnistrian soldiers and Ukrainian military observers. The rest stand guard around Soviet-era ammunition depots.

157. Russia also provides economic subsidies to bolster the pro-Russian separatist regime in Transnistria despite repeated calls from the EU and the US to refrain from doing so.

158. In 2008, the NATO Parliamentary Assembly adopted a resolution, urging Russia to "respect its commitments which were taken at the Istanbul OSCE Summit in 1999 and withdraw its illegal military presence from the Transdnestrian region of Moldova in the nearest future".

159. Russian leaders have sought to condition the withdrawal of their troops on the resolution of Transnistria's status. Russian Deputy Foreign Minister, Grigori Karasin, stated on 20 January 2010 that Russia would continue its peace-keeping mission in Transnistria as long as it takes to reach a lasting solution to the separation crisis in the eastern Moldovan region.

160. On a positive note, official normalisation talks, involving negotiators from Russia, Transnistria, the Republic of Moldova, Ukraine, OSCE, and observers from the US and the EU (the so-called 5+2 talks), resumed on 30 November 2011 in Vilnius, after a five-year suspension, then in Dublin on 28-29 February 2012 and in Vienna on 17-18 April 2012; During the latter, the parties agreed on a number of procedural questions. They also agreed on the fact that the accords reached by the parties must define mechanisms for ensuring their implementation. This fits the framework of the policy of small steps initiated recently.

161. In reference to this commitment, the Russian delegation has again argued that, being a matter relating to national defence, it does not fall within the scope of the Council of Europe.

162. In their comments to the preliminary draft report, the authorities also referred to the Statement by the Ministerial Council of the OSCE, made during the meeting in Porto in December 2002, which they called "a

consensus” and which, according to them, confirmed the Russian Federation’s obligation to complete the withdrawal of its forces “subject to necessary conditions”.³⁶

4.6. *The return of property and cultural property to other Council of Europe member States*

163. Upon accession, Russia committed itself to “negotiate claims for the return of cultural property to other European countries on an ad hoc basis that differentiates between types of property (archives, works of art, buildings, etc) and of ownership (public, private or institutional)”. Russia also accepted to “settle rapidly all issues related to the return of property claimed by Council of Europe member States, in particular the archives transferred to Moscow in 1945”.

164. The Federal Law on Cultural Valuables Displaced to the USSR as a result of World War II and Located on the Territory of the Russian Federation underwent a very complicated legislative process: adopted by the Duma in 1998, it was rejected by the Federation Council, redrafted, adopted, vetoed by the President, sent to the Constitutional Court. Following two Constitutional Court decisions, it was finally readopted in 2000 with amendments, and again amended in 2004 and 2008.

165. The original law proclaimed all captured foreign cultural objects, without distinction among art, archives or rare books, to be military trophies, and as such, the property of the Russian Federation. Following the Constitutional Court’s decision, the legislators introduced an amendment stating that the cultural objects in question are compensation for the losses of cultural treasures by the Soviet Union during the war. Furthermore, they established an important exception in order to recognise the right for claiming lost property by countries, individuals and organisations (including religious organisations) who themselves were victims of Nazism. The amended law states that former proprietors falling under these categories can demand the return of their property.

166. The law also provides a mechanism for creating a database of all displaced cultural objects on Russian territory. So far, the Ministry of Culture, responsible for the process, has identified 250,000 objects, 265,000 archive files and about 1,2 million rare books.

167. The database is available on the Ministry’s website³⁷ to allow people, organisations and governments to identify lost property and to make appeals for restitution under the law.

168. As regards negotiations on the return of archives, including key documentation of military intelligence and government security agencies, trade-union records, files of Masonic lodges and Jewish communities, and personal papers of prominent individuals, the bilateral negotiations between the Russian Federation and the countries concerned carried out under the terms of 1998 laws as amended, have proven to be much more successful than the return of art.

169. Since the adoption of the law, archives have been returned to the following countries: Liechtenstein, Great Britain, France, Belgium, the Netherlands and Austria. Moreover, 103 files of Masonic records have been returned to Luxembourg, and the Rothschild family papers to Vienna, as the first instance of a private family arrangement.

170. While most demands from west European countries have been satisfied, many other captured foreign records, from eastern and south-eastern Europe as well as from Germany, still remain in Moscow.

171. Certainly, many countries which were part of the former communist bloc had received a part of their captured archives during the years of the Cold War. However, significant quantities of the records of some of them still remain in Moscow.

172. In particular, negotiations for more general restitution of Polish archival materials are still pending.

173. The Czech Republic and successor states to former Yugoslavia are another example.

174. Greece has been negotiating for over ten years for the return of the records of the Thessalonica Sephardic Jewish Community, 90% of whom perished in the Holocaust. The official claim was submitted in 2008. In their comments to the preliminary draft report, the authorities informed us that at the end of 2011,

³⁶ The statement says : “We welcome the Russian Federation’s commitment to complete the withdrawal of Russian forces as early as possible and its intention to do so by 31 December 2003, provided necessary conditions are in place”.

³⁷ The website www.lostart.ru was established in 2010.

Doc.

they had submitted to Greece a proposal for an agreement concerning “mutual return of documents”. So far, they have not received a reply.

175. In this context, we would like to recall PACE Resolution 1205 (1999) on looted Jewish cultural property.

176. Germany constitutes an exception as no return has been noted. The return of German records is now prohibited by the 1998 law.³⁸

177. In contrast to archives, the return of arts and rare books has been much less successful, which can partly be explained by a more difficult process of identification. For example, estimates of the number of “trophy” books still remaining in Russia vary from 1,2 million (Russian Ministry of Culture) to 12 million.³⁹

178. Negotiations concerning the most notorious art objects are conducted in accordance with the 1998 law and some of them have reached a conclusion. This is the case of the Sarospatak Library, consisting of 134 volumes, which was returned to Hungary in 2005, and of four fresco fragments returned to Ukraine in 2009. Another example is a return of the stained-glass panels to Germany. At the same time, however, the Romanian treasure (collection of valuable objects sent by the Romanian Government to Russia for safekeeping during World War I) has not been returned and the Russian authorities have refused to discuss this issue.

179. Furthermore, only about one thousand (out of the millions captured) of trophy books have been returned since 1999. Among those remaining in Russia, there are 649 papyrus documents in Persian belonging to the Austrian National Library. On a positive side, we can mention a transfer of the book collection of Esterhazy Princes to Austria, currently underway.

180. The Russian delegation considers the commitment on the return of cultural property as fulfilled, referring to bilateral negotiations underway.

181. However, one can observe a vehement anti-restitution sentiment in Russian political circles and in the public at large as illustrated by the debate in the media.⁴⁰ We do not consider this commitment as fulfilled.

5. Functioning of pluralist democracy

5.1. Free and fair elections

182. As we have already indicated, there have been four important nationwide elections in Russia since the presentation of the last report in 2005, namely parliamentary elections to the State Duma in 2007 and 2011, and the presidential elections in 2008 and in 2012.

183. The elections to the State Duma, held on 2 December 2007, were considered by the Parliamentary Assembly observers “to a great extent free in terms of a variety of voting options, but they were definitely not fair”.⁴¹

184. In their conclusions, the members of the ad hoc committee pointed out that the cumulative effect of the amended electoral legislation had hindered political pluralism in that this legislation made it more difficult for new and smaller parties to compete effectively. The prohibitively high 7 per cent threshold for a party to be able to enter the Duma, and the ban on parties forming electoral blocks, discouraged the development of new political parties and more pluralistic parliamentary representation. Political party registration rules were also put into question. The process of registration of candidates was also harshly criticised as being excessively bureaucratic and not neutral.

185. The report raised a number of concerns relating to the electoral campaign and its financing including the extensive abuse of administrative resources and the massive State backing of United Russia, the unequal access to the media, the discouraging political environment and even alleged harassment of the

³⁸ The Law prohibits the restitution of all cultural valuables including archives to “former enemy states” including Germany, Bulgaria, Hungary, Italy, Romania and Finland.

³⁹ See article by Patricia Kennedy Grimsted “Restitution achievements under the Russian law”, *International Journal of Cultural Property*, 2010.

⁴⁰ See RiaNovosti, “Russia returns Sarospatak library to Hungary”, 9 February 2006.

⁴¹ See Doc 11473, Report on the observation of the parliamentary elections in the Russian Federation (2 December 2007).

opposition forces. In conclusion, the observers from the Parliamentary Assembly called on the Russian authorities to address all shortcomings and deficiencies in time for the next elections.

186. The invitation to observe the elections which the PACE received initially limited the number of observers to 30 members. However, in response to the pre-electoral mission's request, the Chairman of the State Duma, Mr Gryzlov, agreed to increase the number of PACE observers to 55.

187. At the same time, the OSCE/ODIHR refused to send a long-term observation mission because of the conditions set by the Russian side (for example reducing the number of observers from 450 to 70 and prohibiting Russian citizens from acting as observers). The PACE delegation cooperated closely with the observers from the OSCE Parliamentary Assembly.

188. The presidential election, which took place a few months later, on 2 March 2008, was also observed by the Parliamentary Assembly. It concluded that the results of the election "were a reflection of the will of an electorate whose democratic potential was, unfortunately, not tapped".⁴²

189. The ad hoc committee highlighted that the presidential election, which had more the character of a plebiscite, repeated most of the flaws revealed during the Duma elections of December 2007. Regrettably, none of the concerns formulated at that time had been addressed.

190. Concern was raised about candidate registration procedures, which were considered to be too complicated and cumbersome, and not sufficiently inclusive, in particular for independent candidates. The legislation on campaign funding, abuse of administrative resources, unequal access to the media – all these deficiencies put into question the fairness of the election.

191. The observers from the PACE strongly recommended that the existing electoral legislation should be revised and modified in close co-operation with experts from the Venice Commission. Furthermore, they stressed the need for reforms to ensure independence of the media, in particular by putting into place a genuinely independent public broadcasting system that would be free of State influence and control, and not subject to manipulation by other vested interests.

192. The ad hoc committee was composed of 30 members. It deplored the absence in the field of its traditional election observation partners, notably from the OSCE/ODIHR, who found it impossible to deploy its long-term observation mission due to time constraints imposed on it by the Russian CEC, as well as due to numerical limitations in terms of observers. It therefore decided not to participate. The OSCE PA and the Nordic Council decided not to observe either. The European Parliament had not been invited.

193. Following the presidential election, the EU Presidency issued a declaration regretting that the electoral process did not allow for truly competitive elections. It found the lack of equal media access for the opposition candidates of particular concern.

194. In the light of the above findings, and in the absence of a full report on the monitoring of Russia, the Monitoring Committee has systematically included in its annual progress reports a call on the Russian authorities to address the shortcomings in the electoral law and to seek legal advice from the Venice Commission.⁴³

195. We are aware that, in 2009-2010, on the initiative of President Medvedev, the State Duma passed a number of federal laws amending existing electoral procedures with a view to expanding political pluralism and the representativeness of those elected.

196. In particular, electoral deposits as the requirement for registration of electoral associations and candidates for elected office were abolished. Furthermore, amendments to certain legislative acts of the Russian Federation provided for the gradual reduction of the number of voters' signatures required for registration of candidates and federal lists of candidates in the election of deputies to the Russian Federation Federal Assembly State Duma and for 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.

197. As regards the question of the high electoral threshold, the amendments introduced to the Federal Law "On the election of Deputies of the State Duma of the Federal Assembly of the Russian Federation"

⁴² See Doc 11536, Report on the observation of the presidential election in the Russian Federation (2 March 2008).

⁴³ See Resolution 1747(2010).

Doc.

provided for the granting of seats to the federal lists of candidates that received less than 7 percent but not less than 5 percent of the total vote, according to the following rule: the federal list which received between 7 and 6 percent is allocated two seats in the Duma, and the list which received less than 6 but not less than 5 percent is granted one seat.

198. Moreover, in reply to criticism over the excessively high threshold, the Central Election Commission drew our attention to Article 82 of the above-mentioned Law, which stipulates that allocation of the seats to the lists which received over 7 percent of the vote requires that there are not less than two such lists of candidates and that these federal lists of candidates together received more than 60 percent of the total vote. This means that, theoretically, it may happen that a party which received even less than 5 percent of votes can be allocated seats.

199. In regional level elections under a proportional representation system, the electoral threshold is set by the regional laws and may not exceed the figure specified for federal level elections. The number of electoral lists entering the local parliament may not be less than two, and the electoral lists entitled to an allocation of seats must have received together not less than 50 percent of the total votecast (regional legislators may set a higher percentage). According to the amendments introduced in 2010, if the electoral threshold set by the law of a constituent entity exceeds 5 percent, this same law must provide for granting at least one seat to the lists of candidates which win not less than 5 percent of the votecast.

200. These provisions have been supplemented by an amendment to the Federal Law on the general principles of organisation of State legislative and executive bodies, which 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 only one seat. Such a deputy is also entitled to benefit from rights which other political groups enjoy, such as proposing candidates for posts within the legislative, speaking time and participation in the work of different bodies.

201. The Russian authorities have justified the high threshold by claiming that it was a necessary condition for maintaining a stable political situation and preventing the fragmentation of parliament. Before the threshold of 7% was introduced in 2003⁴⁴, the political landscape in Russia was made up of more than 150 political forces. In their view, this was all the more important in Russia, where often the influence of a minority's views on society is far greater and significant than the actual support it receives. They also refer to the judgment of the ECHR in the case of *Yumak and Sadak v. Turkey* which rejected the applicant's complaint against the excessively high electoral threshold.⁴⁵

202. However, the Assembly's position (and ours, indeed) in this respect is clear. It has been expressed on several occasions, in particular in Resolutions adopted following its debates on the state of human rights and democracy in Europe.⁴⁶ Therefore, we were satisfied to hear that the Duma adopted, in October 2011, an amendment to the electoral law, lowering the threshold back to 5%. Regrettably, this change was not in force in time for the parliamentary elections in December 2011, and will only enter into force on 1 January 2013. The representative of President Medvedev in the parliament, Mr Garry Minkh, explained this "delay" by the need to develop legislation for small parties.⁴⁷

203. A number of legislative amendments introduced in 2009-2010 apply to local and regional elections.

204. Amendments introduced to 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 allowed for the participation of non-governmental organisations in local government elections. The principal aim of these amendments was to establish new forms of participation by non-governmental organisations by allowing them to nominate candidates in municipal elections in co-operation with political parties, and thus to ensure their representation in local government and other local government bodies.

205. Amendments to the law on 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, provided that, in cases where the specified minimum percentage exceeded

⁴⁴ Between 1993 and 2003, the threshold was 5%.

⁴⁵ 30 January 2007, 10226/03.

⁴⁶ See Resolution 1547(2007) and Resolution 1619 (2008) on the state of human rights and democracy in Europe. In the former, the Assembly declares that: "in well-established democracies, there should be no thresholds higher than 3% during the parliamentary elections".

⁴⁷ RT website: Less is more: Russia reduces electoral threshold, 21 October 2011.

5 percent 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 percent 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 percent or less of the votes cast, this provision does not apply.

206. 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, registration of a candidate list nominated by a political party which 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.

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

208. Amendments 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, lowered 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 was 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.

209. Amendments to the Federal Law on basic guarantees of electoral rights and the right to participate in a referendum for citizens of the Russian Federation altered the procedure for the establishment 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.

210. Amendments to the Federal Law on basic guarantees of electoral rights and the right to participate in a referendum for citizens of the Russian Federation provided 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 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 years.

211. Furthermore, a number of legislative amendments introduced in the same period sought to improve the legal framework for electoral campaign.

212. 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 percent of the number of votes cast.

213. We welcome these legislative changes, which aim at liberalising the electoral legislation, as the improvement of the legislation governing elections is crucial to ensure a truly democratic and pluralist electoral process.

214. Given the fact that the legislative changes have already been passed, we are nonetheless 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 its expertise. To our regret, at no stage has the Venice Commission been asked for its legal expertise on the amendments proposed.

215. While initiatives of the authorities go in the right direction, further improvements should be made in order to ensure that the electoral system is genuinely pluralist. Regrettably, some major concerns raised

Doc.

during the observation missions in 2007 and 2008, have not been addressed, and they were reiterated during the last elections.

216. The most recent parliamentary elections to the State Duma took place on 4 December 2011. They were observed by 40 long-term observers from the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) as well as by a total of 325 short-term observers from the OSCE/ODIHR, PACE and the OSCE PA in the framework of an International Election Observation Mission (IEOM).

217. As we have indicated above, already in their preliminary conclusions, the international observers raised a number of very serious concerns which were subsequently confirmed in the report on the observation of parliamentary elections in the Russian Federation presented by the ad hoc committee to the PACE⁴⁸ as well as in the final report prepared by the OSCE/ODIHR EOM.⁴⁹

218. Regrettably, all the stages of the electoral process were marked by a range of violations of the electoral code. This was amplified by the fact that the legal framework for parliamentary elections is complex and confusing. Out of two major laws regulating the parliamentary elections, the Federal Law on the fundamental guarantees of electoral rights and rights of citizens of the Russian Federation to participate in a referendum was amended 28 times between 2008 and 2011 alone, and the Federal Law on the Election of the Deputies of the State Duma of the Federal Assembly of the Russian Federation, 17 times, during the same period.

219. In accordance with the Russian legal procedure, amendments are not integrated into the existing text but adopted as separate laws. As a result, the legislation is overly complex and inconsistent, to the detriment of precision and clarity, allowing for confusion and abusive interpretation.

220. On several occasions, the Parliamentary Assembly has called on the Russian authorities to draw up, in co-operation with the Venice Commission, a unified Electoral Code.⁵⁰ This issue has also been raised in our discussions, as co-rapporteurs, with the Russian parliamentary delegation to the PACE. As a result, on 15 December 2011, on our initiative and with the agreement of the Russian delegation, the Monitoring Committee sent the electoral laws - along with four other federal laws raising concern - to the Venice Commission for legal opinion.

221. In its Opinion⁵¹, delivered in March 2012, the Venice Commission confirmed that improvements to the legislation applicable to State Duma elections are needed in order for it to conform fully with international standards. It also recommended its simplification and consolidation. It pointed to some outstanding concerns which had also been identified by the election observers and had fuelled, to a large extent, widespread mistrust in the electoral process.

222. The lack of neutrality of the Central Electoral Commission is probably the most serious problem. The CEC is composed of 15 members, five of them appointed by the President, five by the State Duma and five by the Federation Council. As a consequence, it is clearly dependent on the executive and the ruling party. This is even more true for the 83 Federal Subject election commissions (SECs), 2,746 territorial election commissions (TECs) and over 95,000 precinct election commissions (PECs). The partiality of the electoral commissions at all levels was well-documented over the whole electoral period. We will come back to this question below. The Venice Commission recommended amending appointment procedures in order to effectively ensure the electoral commissions' independence and impartiality.

223. The transparency of the elections was reduced by a restriction introduced to the law by an amendment in 2005: election observers can only be appointed to polling stations by registered candidates or by parties whose candidate lists are participating in the elections. NGOs or associations are not entitled to register observers. This is the reason why the GOLOS volunteers had to conduct election monitoring as journalists working for the newspaper "Grazhdanskij golos".

224. The transparency of the vote on voting day was further reduced by ambiguous provisions, which allowed for the rejection of observers and even members of electoral commission, using different pretexts, by chairs of commissions. The Venice Commission recommended amending the rules on election observers with a view to ensuring that they are not interpreted in a restrictive way and avoiding any discrimination

⁴⁸ See Doc. 12833.

⁴⁹ OSCE/ODIHR Election Observation Mission Final Report, Warsaw, 12 January 2012.

⁵⁰ See, for example, Doc. 12275, report on the state of democracy in Europe and the progress of the Assembly's monitoring procedure.

⁵¹ Opinion No. 657/2011.

between national and international observers. Moreover, it stressed that non-partisan national observers should also be admitted and election observation should be extended to the post-electoral process, in conformity with international standards.

225. The run up period to the elections was marked by the convergence of the State and the governing party. As a common practice, regional and local administrative officials took part in the electoral campaign in favour of the ruling party. Social and other campaigns sponsored by the State were widely used for electoral purposes. The most striking example is an electoral poster used by United Russia, which was an almost exact copy of Moscow City election commission's posters. The CEC, seized of a complaint by Yabloko and Just Russia, did not find any violation.

226. At the same time, State organs reportedly interfered in the activities of other parties. Allegedly, there were numerous cases of unlawful confiscation of campaign materials and of pressure exerted on local contractors engaged in the campaign. The Venice Commission recommended the reconsideration of rules ensuring separation between State and party with a view to ensuring their effectiveness.

227. The media did not respect the legislation in force, allowing for unlawful campaigning and allocating the opposition with disadvantageous time slots. The Venice Commission recommended the establishment of safeguards which would ensure equal access to the media.

228. Furthermore, the rules on the funding of electoral campaigns should be reconsidered and some public financing should be envisaged.

229. Other issues of concern, which, in the opinion of the Venice Commission, need to be addressed, include restrictions to the registration of federal lists of candidates, in particular concerning the verification of signatures; the issue of constituencies; the obstacles to the registration of political parties (see the next chapter), the prohibition of individual candidacies; the representation of women and minorities; the provision prohibiting negative campaigning; the rules on mobile voting.

230. On voting day, a large number of observers were reportedly denied access to polling stations or hindered in their observation. According to a report published by Golos, this concerned about 10% of their observers. Furthermore, a large number of observers were expelled from polling stations without any justification.

231. The major irregularities took place after the closure of the polling stations, during and after the tabulation and included ballot box stuffing and falsification of protocols. The latter was particularly alarming. We were told during the post-election mission by the representatives of Golos that they had as many as 700 copies of duly signed protocols which contained different results from those published by the CEC.

232. The problem would have been perhaps less serious if the complaints and appeals procedure was clear and properly observed which, unfortunately, was not the case. The ambiguity of legal provisions (for example unclear distinction between "application" and "complaint"), and the partiality of some commissions (according to the report published by Golos, 76% of complaints submitted by their observers were rejected, and 23% were, contrary to the law, not noted in the protocol), resulted in a lack of transparency of the whole complaint process.

233. No information on the total number of complaints filed with electoral commissions during the electoral campaign and after voting day is available. Public statements on the number of complaints about the pre-electoral period and the voting day were confusing and sometimes contradictory. The CEC did not appear to comply with the legal requirement that all complaints be acted upon and responded to in writing within five days. It did not publish all the complaints on its website as required by the law. The entire process of resolving complaints at the CEC lacked transparency and accountability and did not afford complainants the right to an effective or timely remedy.

234. In a report released on 18 January 2012, the Prosecutor General announced that 3,000 cases of violation during the electoral period, transmitted to him by the CEC, had been examined. They included campaigning on the day of elections, exclusions from the electoral lists, and one case of a regional prosecutor discovering a completed protocol detailing election results the day before the elections were held. Two criminal cases had been opened for falsifications and attempts to bribe voters and 95 people had been charged for administrative violations. In our opinion, these figures remain in contrast with those reported by the observers from Golos, Yabloko and other parties.

Doc.

235. According to the law, complaints could be also filed with courts. However, a restrictive application of rules on admissibility (for example, the complaint about the falsification of a protocol could only be filed by one of its signatories which excluded the intermediary of Golos) has to a great extent limited the role of the courts. During the post-electoral mission, we were informed, however, that a few hundred complaints have been filed with courts by Yabloko, the Right Cause, the Communist Party and Golos following the elections.

236. We have also followed with great interest citizens' initiatives aimed at observation of presidential election.

237. The presidential election, as already indicated above, took place on 4 March 2012. The PACE sent an ad hoc committee which acted as part of the International Election Observation Mission (IEOM) which also included the election observation missions of the OSCE/ODIHR and of the Parliamentary Assembly of the OSCE. Forty long-term observers were deployed throughout the country.

238. In order to address some other concerns formulated by observers of the December parliamentary elections, and to improve the quality of the process on voting day, the Prime Minister has announced that specific measures would be introduced on voting day including the installation of webcams in polling stations and the introduction of transparent ballot boxes.

239. However, the electoral legislation remained unchanged between the parliamentary and presidential elections, and all major concerns were not addressed. They were reflected again in the conclusions of the observers.⁵²

240. In the light of the above considerations, we find that the CEC's decision to deny the registration of Mr Yavlinsky did not serve to increase the quality of the democratic process and political pluralism in Russia. The requirement of collecting two million signatures in at least half of the 83 subjects of the country within 20 days is sufficiently challenging and should not be completed by restrictive interpretations. As mentioned before, the rejection of Mr Yavlinsky's candidature was explained by the fact that 25% of signatures were either copies or put on copied forms. We find this argument highly controversial and we regret that it was used to limit political pluralism.

241. We have already referred to the legislative proposals submitted by President Medvedev to the Duma following his statement to the joint chambers of the parliament on 21 December 2011. One of them is the draft Federal Law "on amendments to certain legislative acts of the Russian Federation to exempt political parties from Collecting Voter Signatures at Elections of Deputies to the State Duma of the Federal Assembly of the Russian Federation, Government Authorities in the Federal Constituent Entities of the Russian Federation and Local Governments", signed into law on 2 May 2012. Before its adoption, only political parties represented in the State Duma and legislative bodies of State power at various levels were exempted from collecting voter signatures during elections at the corresponding level. The new law stipulates that all registered political parties are exempted, except for presidential elections. It also reduces the number of signatures to be collected by self-nominated candidates. With regard to candidates for the presidency, the number of required signatures has been reduced from 2 million to 100,000.

242. It goes without saying that a fair and democratic election requires more than just good legislation. The whole electoral process should be genuinely competitive and give all the political players the effective possibility of participating. That said, improvement of the legislation governing elections is crucial to ensure a truly democratic and pluralist electoral process.

5.2. Party pluralism

243. Until the beginning of 2012, seven parties were registered in Russia. Four of them are represented in the Duma: United Russia (the ruling party, 238 seats as compared to 315 in the previous Duma), the Communist Party of the Russian Federation (respectively 92 and 57 seats), the Liberal Democratic Party of Russia (56 up from 40 seats) and Just Russia (64 up from 38 seats). The remaining three parties have no parliamentary representation. They are: Patriots of Russia, the Russian United Democratic Party Yabloko and Right Cause Party.

244. Between 2003 and April 2012, only two parties were registered in Russia, namely Just Russia in 2003, and Right Cause Party in 2009. At the same time, as many as eight parties have been refused registration by the Ministry of Justice. One party, the Russian Republican Party, has been de-legalised.

⁵² See PACE Doc. 12903 as well as OSCE Report on the Presidential Election, Warsaw, 11 May 2012.

245. Whereas, in some cases, the refusal of registration by the Ministry of Justice did not raise concern from civil society and human rights defenders, as it followed practice in any democratic state and complied with democratic standards, some others have been highly controversial and widely criticised by civil society and the international community.

246. This was particularly the case of the People's Freedom Party (PARNAS), an opposition movement co-headed by Mr Boris Nemtsov, former Deputy Prime Minister, Mr Mikhail Kasyanov, former Prime Minister, Mr Vladimir Ryzhkov, former Duma Deputy, and Mr Vladimir Milov, former Deputy Energy Minister. The party is severely critical towards government policies. Its programme includes reverting the presidential term to four years, the revision of the proceedings of the former Yukos leader Mikhail Khodorovsky, and revision of the rules for registration of parties. According to the founders, the party has branches in 53 of Russia's 83 regions and more than 46 000 members, which means that it fulfils the minimum legal requirements to qualify for a party. It had its founding conference on 13 December 2010, and it applied for registration on 23 May 2011. The Ministry of Justice refused registration on 22 June 2011. This development was even more worrying in the light of the forthcoming parliamentary elections, as it prevented the party from running in the elections.

247. During our visit in Moscow, in July 2011, we met the Deputy Minister of Justice, Mr Lubimov, as well as directors of units directly involved in the registration procedure. From the explanation that we received from the officials, it appears that they followed strictly the letter of the law on political parties. According to them, some of the provisions of the statute of the Freedom Party did not comply with the legislation in force. In particular, the party's charter did not provide for rotation of its leadership. Moreover, random checks proved that a number of members of the party did not meet some requirements (for example had no permanent address), some people registered as party members were dead.

248. For his part, Mr Nemtsov argued that the membership of the party largely exceeded the required 40 000 (there were 45 000 on the lists out of which only 72 were invalid). Furthermore, according to Mr Nemtsov, the charter clearly stipulates that, at regularly scheduled party congresses, a vote will be held to determine party leadership. Moreover, according to him, the text of the statute of his party was copied from the statute of the United Russia party (governing party) (this last allegation was denied by the Ministry).

249. This unfortunate decision was taken shortly after the judgment of the European Court of Human Rights of 12 April 2011⁵³, which had rebuked the Federal Law on political parties, and ruled that the 2007 dissolution of the opposition Republican Party of Russia had been unjustified. The case concerned the party's complaint of the authorities' interference with its internal functioning and its dissolution in 2007 by a court decision. The European Court held that there had been a violation of Article 11 (freedom of assembly and association) of the European Convention on account of the authorities' refusal to amend information about the Republican Party in the State register and on the subsequent party's dissolution.

250. It was beyond any doubt for both of us that the Federal law on political parties should be reviewed. Unfortunately, the April judgment of the European Court did not explicitly provide for it. It was not a pilot judgment and it did not include in its operational part the requirement to change the law. This is why the Monitoring Committee, at its meeting on 15 December 2011, on our initiative and with the agreement of the Russian delegation, requested a legal expertise on this law by the Venice Commission .

251. In its Opinion⁵⁴, delivered in March 2012, the Venice Commission pointed to serious deficiencies of the law then in force. According to the Venice Commission, the law, as it stood, established important obstacles to the very existence of political parties and was not in line with European standards and, particularly, Articles 10 and 11 of the European Convention on Human Rights.

252. The main concerns identified by the Venice Commission related to the registration procedure of political parties and the internal control of political parties by the State authorities. The Venice Commission recommended that the minimum membership requirement should be considerably lowered, the requirement on regional representation should be reduced, if not abolished and intrusive control mechanisms in the context of initial registration should be reduced. Furthermore, the parties should be able to control their own internal procedures, with appeals to courts where appropriate. Any supervisory powers and control of political parties should be given to an independent authority and not to part of the executive branch in order to ensure transparency and build institutional trust.

⁵³ See ECHR judgment : Republican Party of Russia v. Russia (12976/07).

⁵⁴ Opinion No. 658/2011.

Doc.

253. The only party which was successful in its registration process in the run up to the December 2011 elections was the Right Cause Party, which was created in 2009 from the merger of the Union of Right Forces, Civil Force and Russia's Democratic Party. According to some, its inception was sanctioned by the Kremlin, which was looking for a loyal party to unite liberal voters. Its founder, Mr Gozman, described the party as a "political compromise with the authorities".⁵⁵

254. The difficulties faced by political parties in registering for elections have effectively constrained political competition in Russia, reduced the choice available to the electorate and created real obstacles to political pluralism in the country.

255. Again, we acknowledge that, in 2009-2010, the authorities took some measures to increase the pluralism of the system. We have already mentioned, in the previous chapter, a number of laws aimed to facilitate parties' access to parliamentary elections.

256. These measures were supplemented by other legislative acts including amendments to the law on political parties, which provided for a phased reduction in the minimum number of members required for the creation and activities of a political party. Another law proposed by the President and adopted by the Duma, allows for the participation in a parliamentary debate of a representative of parties which have no seats in the Duma at least once a year (this provision also applies to regional assemblies). Yet another law passed during this period, the Federal Law on guarantees of equality for parliamentary parties in reports on their activities in State public television and radio broadcasts, provides for equality for parties in reports on their activities and also defines the requirements imposed on Russian national and regional television and radio programmes (broadcasts) when reporting on the activities of political parties.

257. In reaction to the criticism following the parliamentary elections of December 2011, the then President proposed amendments to the Federal Law "on Political Parties". They entered into force on 4 April 2012. The revised law reduced the number of members required for the registration of a political party from 40,000 to 500 persons. Furthermore, there are no requirements concerning the number of members in the regional units. The law provides for the suspension of the registration procedure for a period of three months in case of non-compliance of the application with the procedural requirements; after three months the procedure is resumed.

258. As a result of the amendments to the law, as of 1 June 2012, the Ministry of Justice was aware of the establishment of 172 organisational committees and received nine applications for registration. Furthermore, the Ministry received notifications from five organisations which intended to register as political parties.

259. In the framework of the execution of the ECtHR's judgement, the Ministry restored the registration of the Republican Party of Russia.

260. We have already mentioned, in the previous chapter, a law exempting political parties from collecting signatures for legislative elections.

261. We welcome these developments, which we consider extremely important for the state of democracy in Russia. We regret, however, that the Venice Commission was not consulted on the amendments and that they have not addressed all the concerns formulated by the latter and relating to the level of bureaucratic control on the establishment and functioning of political parties.

262. When speaking of representative democracy, its good functioning and the efficiency of the democratic process, one cannot avoid the question of the opposition. Political pluralism is a cornerstone of democracy and modern society and a source of political legitimacy.

263. Until the last parliamentary elections, the ruling party disposed of a constitutional majority in the State Duma and, moreover, the parliamentary opposition parties, with the exception of the Communist Party, rarely challenged the government's policies. This certainly weakened parliamentary control over the executive.

264. It is a matter of concern that a large part of Russian opposition remains outside the Duma and is not involved in the political dialogue. Such a situation cannot be beneficial for the democratic system as a whole.

265. While we welcome the openness for reforms declared by the authorities, we have to point out that a meaningful progress in this respect requires considerable improvements in the political environment, which

⁵⁵ The Moscow Times, 17 May 2011.

would allow the opposition forces to be genuinely competitive in the electoral process and for the establishment of a genuine multi-party system.

5.3. *Separation of powers, checks and balances system*

266. Following the adoption by the Duma in 2004 of the amendments to the Federal Law “on the general principles of the Organisation of Legislative, Executive Bodies of the Subjects of the Russian Federation” and “on the basic Guarantees of the Electoral Rights and the Right to Participate in Referendum of the Citizens of the Russian Federation”, the composition of the upper chamber of the parliament became to some extent determined by the President.

267. The upper house of the Russian Parliament – the Council of the Federation – is composed of two representatives from each subject of the Russian Federation: one from the legislative and one from the executive regional body. Its main task is to monitor and control the federal government and, in particular, the President.

268. Whereas before 2004, governors, who make up the half of the membership of the Council of Federation, had been elected in a direct popular vote, following the adoption of the above-mentioned amendments, it was the President of the Russian Federation who submitted a candidate to the regional parliament, which might refuse the endorsement only twice, following which the President had the right to dissolve the regional parliament and appoint an interim head of the regional executive (or to submit the candidature for a third time).

269. Furthermore, the President could dismiss governors before the expiry of their term of office on a number of grounds, including in cases of “losing the President’s trust” or “improper execution of duties”. Needless to say, these provisions limited governors’ independence – and as a consequence the independence of the upper chamber of the Parliament – in a considerable way.

270. The Venice Commission has expressed its serious concern over the law under which half of the deputies of the legislative body is appointed and may be dismissed by the President himself. In its opinion⁵⁶, the Venice Commission concluded that the adoption of the law necessitated a reform of the composition of the Council of the Federation, in order to preserve the principle of the separation of powers.

271. Over the whole period covered by the present report, the lower chamber of the Russian Parliament, the Duma, has been dominated by United Russia, the pro-presidential party, which enjoyed a two-thirds constitutional majority until the recent elections. Moreover, two out of three remaining parties (Just Russia and the Liberal Democrats) regularly vote with United Russia. The situation has not changed much after the December elections, even if United Russia now has only a simple majority.

272. Taking into account the serious concerns about the fairness of successive parliamentary elections, this situation must raise concerns.

273. As we already indicated, on 16 January 2012, President Medvedev submitted to the State Duma a draft federal law “On general principles of organization of legislative and executive governmental authorities of entities of the Russian Federation” re-introducing direct elections of governors instead of appointment by the President, and we welcome this development. The law entered into force on 1 June 2012.

274. We reiterate, however, our concern about the compliance of the law with democratic standards, in particular with regard to the question of possible presidential control over the list of candidates running for election. According to the law, candidates are either proposed by political parties or run as independent candidates. The President may, at his own initiative, undertake consultations with political parties and self-nominated candidates. Nomination must be supported by 5 to 10% of deputies of representative bodies of municipal districts before candidates’ names are put on electoral lists.

275. As regards the question of independence of the judiciary, we will tackle this problem in one of the next chapters.

⁵⁶ Opinion No. 321/2004 (CDL-AD(2004)042).

5.4. Media pluralism

276. Media freedom remains a matter of grave concern in Russia. It is seriously jeopardised by State control of the broadcast media, limited diversity in the print media, arbitrary use of an anti-extremism law and, above all, impunity of acts of violence against journalists. The international press freedom watchdog, Reporters without Borders (RSF) ranked Russia 140th in a list of 178 countries in its 2010 press freedom index.⁵⁷ Russia came in lower than countries like Ethiopia or Qatar.

277. There is a glaring lack of diversity in the broadcast media. Since 2000, the government has established control over all national broadcast outlets, by centralising, shutting down or nationalising independent television and radio stations.⁵⁸ It also maintains ownership of the largest radio stations, Radio Mayak and Radio Rossyi, as well as news agencies, ITAR-TASS and RIA-Novosti. Just two radio stations, Ekho Moskvyy and Radio Svoboda, have managed to maintain their independence.

278. In the 2005 report on Russia, with a view to ensuring an independent platform for a variety of political opinions, our predecessors called for the creation of a genuine nationwide public television channel under the responsibility of an independent public broadcaster in strict conformity with relevant Council of Europe standards.⁵⁹ We consider that this recommendation has not been followed up as the State-owned Channel One cannot be considered as complying with these standards.

279. Similarly, our predecessors called for the creation of an independent regulatory authority for the public broadcasting sector in conformity with Council of Europe standards.⁶⁰ A Broadcasting Council was, indeed, created in 2008, but its composition and appointment and dismissal methods, which are largely dependent on the executive, do not provide safeguards for its independence.

280. In their comments on the preliminary draft report, the Russian authorities informed us that, on 12 April 2012, the President issued an Order "on public TV in the Russian Federation" which provides for the creation of a new public TV channel. Furthermore, the Order provides for the establishment of a Board for Public TV, tasked with public control of the public channel. The members of the Board cannot be members of the Council of Federation, Deputies of the State Duma, members of the Public Chamber, governmental officials of all levels or officials of municipal services. They will be nominated by the Public Chamber and appointed by the President. We consider this a positive development which may contribute to increased freedom of expression in Russia and we will follow it closely.

281. As for the print media, just a few national newspapers, led by Novaya Gazeta, maintain their editorial independence and express opposition views, thus ensuring a minimum of pluralism. However, pressure on independent outlets remains considerable. There are reports of the selective use of bureaucratic regulations, intimidation and harassment, and, in some instances, politically motivated criminal investigations against critical journalists.

282. At the local level, the situation is more varied. Some regions, such as Perm, enjoy a relatively free media, while, in other regions, the media are entirely controlled by the local authorities or powerful figures often linked to major energy or industrial groups. Bans on the printing or distribution of the independent press are a common practice.⁶¹

283. There is also a dynamic growth in electronic publications, Russia's Izvesti recently reported that the Collective Security Treaty Organization (CSTO) will monitor social networks to prevent mass riots like the ones that recently occurred in Tunisia and Egypt.⁶²

284. Russian Prosecutor, General Yuri Chaika, emphasised the importance of control over social networking services *"It would be reasonable both in the framework of the protection of citizens' interests and*

⁵⁷ See RFS website: <http://en.rsf.org/press-freedom-index-2011-2012,1043.html>.

⁵⁸ In the 2000s, all nationwide TV channels: Channel One, NTW, ORT, TW-6 either became State-owned or State-controlled (through controlling ownership stakes), and all of them avoid criticism of the authorities.

⁵⁹ See Resolution on the future of public service broadcasting adopted at the 4th European Ministerial Conference on Mass Media Policy in 1994 and Committee of Ministers Recommendation No (96) 10 on the guarantee of the independence of public service broadcasting.

⁶⁰ See Committee of Ministers Recommendation (2000) 23 of 20 December 2000.

⁶¹ See Reporters Without Borders, Country report :Russia, 2 July 2011.

⁶² CSTO Summit in Astana, August 2011.

in the framework of crime rise prevention".⁶³ This statement seems to suggest that he is not aware of the cybercrime convention of the Council of Europe.⁶⁴

285. Draft amendments to the law "on protecting children from information causing harm to their health and development", currently under consideration in the Duma, raise some concern in the civil society. The draft revised law, posted on the Duma website, provides for the creation of a blacklist of Internet sites containing information banned for distribution. Its authors claim that it aims at blocking sites containing pornography, drug use and self-harm. The critics, however, fear abusive interpretation and the introduction of censorship which would result in filtering online content including international search engines as it is done in China. In a sign of protest, Wikipedia's Russian language page was shut down for 24 hours.

286. With the Internet rising in influence as the single most important source of information (over 40% of Russian citizens use the Runnet), the issue of online freedom of expression has become significantly more relevant. The internet has become a platform for political and social mobilisation.

287. Online filtering and surveillance, as well as attacks on opposition websites, even now are unfortunately common practice, well illustrated by the problems encountered by Golos in December 2011.

288. Blocking websites is a practice used widely by the authorities, mainly on a regional level, to control Internet content. In July 2010, a court in the Republic of Ingushetia required a local Internet provider to block access to LiveJournal; in August 2010, a provider in Tula temporarily blocked access to the independent portal "Tulskie Pryaniki". A provider in the city of Khimki blocked user access to Ecmo.ru because it was hosting a petition calling for Khimki Mayor, Vladimir Strelchenko, to resign. There are more examples of this method.

289. Cyber-attacks are also on the increase, targeting above all blogging platforms, such as LiveJournal and the websites of independent newspapers, such as Novaya Gazeta. The growing frequency of website blocking and attacks on bloggers resulted in Russia being included in the Enemies of Internet report that Reporters Without Borders released on 12 March 2011.

290. Like our predecessors, in their 2005 report on Russia, we are bound to conclude that the pluralism and the independence of media in the Russian Federation are not sufficiently guaranteed and that this situation has clear consequences on the functioning of democracy in the country. However, we are hopeful that the creation of a new public channel and a Public Board will contribute to an improvement in the situation, which is to be followed.

291. We will come back to the question of freedom of expression and the situation of journalists in Russia in the chapter on human rights and freedoms.

5.5. *Civil society*

292. A mature, active and well organised civil society constitutes an important element for the functioning of a democratic system and a lively democracy. It provides an essential contribution to the system of democratic checks and balances.

293. Events following the recent elections demonstrate that there is a strong civil society in Russia which allows for a lot of optimism for the future of democracy in this country.

294. The Russian Federation Law on Non Governmental Organisations which came into effect in April 2006 contained several controversial provisions criticised by national and international civil society. In particular, provisions of this law require NGOs to file annually reports on their activities as well as on their sources of funding. Failure to do so, as well as violating the strict requirements and conditions set out in this law, can lead to closure of the NGO in question following the decision by a court.

295. The total number of NGOs in Russia is over 200,000. During our visits to Russia, we had the opportunity to meet representatives of many domestic and international non-governmental organisations, and we were impressed by their commitment and contribution to democracy. Some NGOs played an important role in the recent mobilisation of Russian society, by gathering evidence of deficiencies and shortcomings in the Russian political system, denouncing human rights violations, and offering legal advice to the victims. Golos, an organisation specialised in election observation, contributed in a considerable way

⁶³ *Idem*.

⁶⁴ Convention on Cybercrime, CETS No. 185.

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to revealing irregularities in the electoral process. The newly created League of Citizens, aimed at observing the presidential elections, illustrates well the role which civil society may play in democratisation of the system.

296. In this context, we are very much concerned by the attempts of the authorities to discredit some of the most respected domestic and international NGOs by publicly accusing them, without foundation, of acting on foreign instructions, serving foreign interests and accepting foreign funding.

297. Particular concern is raised by the amendments to the Russian NGO law, proposed by United Russia, which at the time of drafting have already been adopted by the Duma and are pending adoption in the Council of Federation, foreseen for the Autumn. The draft law obliges non-profit organisations receiving funds from abroad and engaged in "political activity" (a term which is not clearly defined and open to interpretation) to register as "foreign agents" and imposes on them cumbersome bureaucratic reporting. The word "foreign agent" in the Russian language has a negative connotation and the proposed registration would stigmatise the majority of human rights NGOs which receive foreign grants.

298. The draft provoked protests from many NGOs and the international community. Ms Catherine Ashton, the High Representatives of the EU Union for Foreign Affairs, has expressed concern over the amendments which, in her view may limit space for a vibrant civil society in the country.⁶⁵ The draft has also been criticised by Mr Fedotov, the Head of the Presidential Council on Civil Society Development and Human Rights.

299. Undue pressure and intimidation are also common. At a press conference on 31 January 2012, leaders of Golos spoke about open intimidation, attempts to evict the organisation from its office, "phone-tapping" and the breaking into its letter boxes ahead of the presidential election.⁶⁶

300. The more general question of harassment, beatings and assassinations of human rights defenders, including the murder of a famous activist, Natalia Estemirova, and the accompanying climate of impunity, will be treated in the chapter on the human rights situation. We will only note here our grave concern that the list of murders is dramatically long. In the majority of cases, the perpetrators have not been identified. This situation is unacceptable and must be changed.

301. In 2005, the law adopted by the Duma established a Public Chamber – a consultative body composed of representatives of NGOs, partly appointed by the President, who, in turn co-opt other NGO representatives. The Chamber is tasked with "conducting public examinations of key state decisions and above all draft laws that concern prospects for the country development of national significance".⁶⁷ The Public Chamber is financed from the federal budget.

302. During our visits, we met the Chair and the members of the Public Chamber, but we still have difficulty in understanding the logic behind the creation of this body, whose work – in our view- overlaps those of an elected parliament.

303. Some NGOs have expressed their criticism about the creation of the Public Chamber, claiming that it is designed as an instrument to shape and domesticate civil society.

5.6. Local and regional democracy

304. Upon accession, the Russian Federation committed itself to sign and ratify the European Charter of Local Self-Government, which it did in 1998.

305. In its last Recommendation on the local and regional democracy in the Russian Federation⁶⁸, adopted in 2010, the Congress of Local and Regional Authorities of the Council of Europe, which monitors the implementation of the Charter, acknowledged the progress made by the Russian government with regard to legislative reforms concerning local and regional democracy and recognised the advances made in cooperation with the associations of local authorities, in implementing the legislation on local self-government and new structures that derive from it, in modernising local and regional government in the Russian Federation and in training local administrators and local elected representatives to exercise their new functions.

⁶⁵ RIA Novosti, 10 July 2012.

⁶⁶ RIA Novosti, 31 January 2012.

⁶⁷ <http://www.president.kremlin.ru>.

⁶⁸ Recommendation 297 (2010), Council of Europe Congress of Local and Regional Authorities.

306. At the same time, however, the Congress pointed to a number of concerns. These included, *inter alia*, the amendments concerning the dismissal of mayors, which may result in preventing mayors from carrying out their elected mandates without interference or political pressure from municipal councils ..

307. The question of the appointment of governors, in force prior to the adoption of a legislative proposal submitted by President Medvedev at the end of December 2011, had also been a serious matter of concern for the Congress, as it had been for the Parliamentary Assembly. The President of the Congress welcomed President's Medvedev proposed reform in a statement published on 18 January 2012.

308. Insufficient legal safeguards to ensure that local authorities are not subject to excessive levels of supervision by higher (regional) authorities, as well as increasing intervention in the affairs of local self-government by upper-level (regional) authorities, are incompatible with the provision of the Charter regarding the principle of subsidiarity.

309. This is aggravated by unclear competences of local authorities and a large gap between their competences and resources. Furthermore, following the recent introduction of a new law, the scope of shared competences has been broadened which results in forced transfer of competences to the upper levels with the accompanying financial resources.

310. In June 2011, following the Presidential Instruction "on the preparation of suggestions on distribution of powers between federal executive authorities, executive authorities of entities of the Russian Federation and local authorities", a working group was established with the task of elaborating legislative proposals in this respect. At present, the government is preparing draft legislation and holding consultations with all stakeholders. We hope that the final draft will take into account all the recommendations of the Congress.

311. The acute lack of financial resources of local authorities to enable them to carry out the functions assigned to them by specific legislation, which includes not only the insufficiency of financial resources, but also the freedom to determine expenditure priorities, the exercise of political choices and the determination of local taxes and charges, makes them even more vulnerable to political pressure.

312. According to the information received from the Russian authorities, the newly-appointed President has instructed the government to come up with legislative proposals aimed at increasing the financial resources of local authorities and ensuring the stability of regional budgets, before the end of 2012. For example, one of the measures under consideration is to review social tax regimes with a view to ensuring priority credit of receipts to local budgets.

313. The obligation to consult local authorities on all matters concerning them directly is not always properly respected, in violation of the Charter (e.g. in Tula where the Tula Regional Parliament adopted legislation changing the electoral system of municipal elections for cities of more than 400,000 inhabitants from a majority to a proportional system, without any consultation with the Tula Municipal Council).

314. Corruption is one of the most important challenges faced by local democracy in Russia. Although laws exist to control corruption, especially with regard to conflict of interests, it is alleged that the legislation is routinely circumvented. We will come back to this question in the chapter dealing with the rule of law.

6. Rule of law

6.1. Judiciary

315. The Russian Federation has made considerable progress in implementing Council of Europe recommendations with regard to the modernisation of its judicial system in terms of legislative work. There has been substantial legal reform in Russia since the 1990s. However, important problems still subsist.

316. Lack of independence and the interconnected question of the lack of confidence of the public in the judiciary are the main problems in the Russian judicial system.⁶⁹ They have deep roots in the legal and political culture, as in Soviet times judges were often seen not as arbiters, but rather as defenders of the interests of the State. These problems are obviously not easy to address.⁷⁰ One of the measures aimed at

⁶⁹ According to an opinion poll conducted in 2006, only 19% of Russians had confidence in the impartiality and independence of courts, *Ria Novosti*, 22 June 2006.

⁷⁰ On 15 July 2008, speaking at the Conference on developing the judicial system, President Medvedev admitted that Russia is far from having an independent judiciary, and that judges commonly encounter pressure in the courtroom. "We

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improving the image of the judiciary was the adoption, in 2008, of the Law "On access to information about activities of the courts in the Russian Federation" and the posting on the Supreme Court's website the information on progress in court proceedings.

317. The poor state of judicial independence is clearly facilitated by a legislative and administrative framework that fails to protect judges from undue influence by State or private interests. The way the judiciary operates puts pressure on judges through a complex system which is not always apparent or visible and includes not only external pressure, but also internal mechanisms and bureaucracy.

318. These internal mechanisms have become more significant as a result of the government's drive to strengthen the powers of the executive, known in Russia as "strengthening the vertical power". Political interference has increased under laws brought into force in the wake of the Beslan siege, allegedly for "counter-terrorism" purposes. The executive wields considerable power through the High Qualification Collegium⁷¹ and Judicial Qualification Collegia⁷², which is intended to be a body of judicial self-governance controlling the appointment, promotion and dismissals of judges.

319. The selection and appointment procedures are not transparent and the lack of regulation or clear procedures and standards established by the Collegia gives rise to the risk of abuse.

320. The power of courts' presidents to oppose the candidate (or candidates) proposed by the High Qualification Collegium gives court presidents broad power and a hardly justifiable competency, given that the Collegia are supposed to thoroughly examine each candidate, assess exams and hold interviews.⁷³

321. Finally, the unchallengeable nature of the Russian Federation President's refusal of appointment, without the possibility of review or the need to provide reasons, introduced in 2001, has considerably weakened the selection procedure. Furthermore, no clear standards with regard to the procedure at the presidential administration's office in charge of approving candidates have been established. For instance, there is no time limit on the appointment. It has to be pointed out that a significant percentage of recommended candidates do not obtain the approval of the presidential administration.⁷⁴ In their comments to the preliminary draft report, the Russian authorities argued that the expression "significant percentage" is inaccurate as only 4% of candidates were rejected by the President in 2009, 2% in 2010 and 1% in 2011. We consider, however, this interference to be significant and unjustified.

322. This process which may prevent someone regarded unfavourably by the executive to join the judiciary runs contrary to Council of Europe standards.⁷⁵

323. The independence of judges cannot be safeguarded without guaranteeing their tenure in office. Unfortunately, in the Russian judicial system, the tenure of judges is often not secured and they can be dismissed in an arbitrary way. Under the Law on the Status of Judges, federal judges are appointed for life. Justices of the peace (judges in courts of the subjects of the Russian Federation), however, are appointed for a period of five years, which is contrary to international standards.

324. Until 2009, all the federal judges appointed for the first time had to go through a probationary period of three years, which was widely considered as an instrument for eliminating judges for political or personal reasons. This mechanism was criticised by President Medvedev at the Congress of Judges in 2008 and subsequently abolished.

must take all necessary means to strengthen the independence of judges. It would seem that existing legislation should provide for it. However, it goes without saying that pressure and influence occur, that administrative leverage is applied, that direct bribery is often used". *Ria Novosti*, 16 July 2008.

⁷¹ The High Qualification Collegium of the Russian Federation consists of 29 members, including judges of different levels appointed by the Council of Judges, 10 members appointed by the Federation Council and 1 member appointed by the President.

⁷² The membership is composed of judges of the courts of the SRF of different levels, members appointed by the Federation Council and 1 member appointed by the President.

⁷³ In their comments on the preliminary draft report, the authorities stressed that according to the procedure, the final decision on the recommendation of a candidate is taken by the High Qualification Collegium and not by courts' presidents, whose veto may be overruled by a 2/3 majority. However, in our view, the courts' presidents' role in the selection and appointment procedure is too broad and is not justified.

⁷⁴ The state of judiciary in Russia, International Commission of Jurists, 2010.

⁷⁵ See the recommendation of the Committee of Ministers, no R(94)12 on Independence, Efficiency and Role of Judges and Report on the Independence of the Judicial System, adopted by the Venice Commission in March 2010. However, we were told by the Russian authorities that justices of the peace deal with minor questions.

325. The 2009 amendment to the law, while welcome, only addressed one of the many questions which allow for the arbitrary or unfair removal or disciplinary punishment of judges. Vague grounds for disciplinary responsibility, which can be broadly interpreted and abused, are used to put pressure on judges. In particular, the requirement to avoid “anything which can undermine the authority of the judiciary”⁷⁶ may be – and allegedly is – used to justify abusive dismissals, thus jeopardising the independent and impartial work of judges.

326. This can be illustrated by the case of Judge Olga Kudeshkina, who was dismissed following critical statements made concerning the pressure to which she had been subjected with regard to a case she was considering. She was accused of “... undermining public confidence that the judiciary in Russia is independent and impartial”. Judge Kudeshkina won her case in the ECHR⁷⁷, but she has never been reinstated as a judge. The Supreme Court, to which she appealed, confirmed the refusal regardless of the ECHR’s judgment.

327. In a 2009 interview with the Spanish newspaper, El Pais, Constitutional Court Judge Vladimir Yaroslavtsev claimed that the presidential executive office and security services had undermined judicial independence in Russia. In October 2009, the Constitutional Court, in an unprecedented motion, accused Mr Yaroslavtsev of “undermining the authority of the judiciary” in violation of the judicial code and forced him to resign from the Council of Judges.⁷⁸

328. Judge Anatoly Kononov, who has frequently dissented from decisions taken by the majority of the court, in his interview to Sobesednik, supported Mr Yaroslavtsev, claiming that there was no independent judiciary in Russia. Mr Kononov was forced to step down from the Constitutional Court on 1 January 2010, seven years ahead of schedule.

329. Disciplinary proceedings can be initiated by court presidents giving rise to concerns regarding the impartiality of court presidents and objectivity of the information collected, especially because the disciplinary bodies tend to follow the court presidents’ advice.

330. In 2010, a new body called the Disciplinary Judicial Presence was created. It is a specialised federal court serving as a second instance for decisions of qualification collegiums on disciplinary measures against judges. It is still to be seen to what extent it will address the above concerns with regard to security of tenure. We were informed by the Russian authorities that the amendments to the law “on the status of judges”, defining concrete criteria for disciplinary proceedings, is under preparation.

331. Other inappropriate methods of influence on judges are numerous and range from manipulation of promotions or benefits to applying direct pressure on a judge regarding a specific case.

332. Court presidents enjoy overly broad powers, including a decisive role in appointing judges, their promotion, remuneration and other material benefits, as well as the launching of disciplinary proceedings against judges. In the regional courts, court presidents decide on the reappointment of justices of the peace. Allocation of cases by court presidents is highly problematic, as cases are often assigned to certain judges to achieve the required result or re-assigned when judges do not agree to rule in the way required.⁷⁹ Along with other excessive powers of court presidents, this practice creates room for abuse.

333. Court presidents are appointed by the President of the Russian Federation or upon his nomination (depending on the level of the court) for a once renewable six-year term. Until 2009, the Constitutional Court had been an exception to this rule, and its president was elected by other judges, which beyond any doubt contributed to greater independence of the Court. However, following the 2009 amendment to the Law on the Constitutional Court of the Russian Federation, a new system was introduced and the Court president is now appointed upon the recommendation of the President of the Russian Federation.

334. The system pressures judges to show loyalty to State bodies or certain officials and to take into account political considerations. Threats to judicial independence are reported to be particularly acute in

⁷⁶ The Russian Federation Law On the Status of Judges in the Russian Federation, art.3.

⁷⁷ Kudeshkina v. Russia, Application no 29492/05, 26 February 2009.

⁷⁸ In their comments, the Russian authorities stated that no disciplinary proceedings had been initiated against Mr Yaroslavtsev and no sanctions had been applied against him, so there were no grounds to speak about “forced removal”. At the same time, however, they claim that “it is a generally accepted rule of judicial ethics and one of the guarantees of the independence of judicial authority as a whole that it is inadmissible for a judge to criticise any issued judgments and professional acts of his/her colleagues”.

⁷⁹ See ICJ Report, op.cit.

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cases where powerful political or economic actors have an interest in the outcome of a case. The most notorious examples are the cases involving Yukos and Mr Mikhail Khodorkovsky.⁸⁰

335. Access to lawyers is regulated by the Federal Law “on lawyers” which provides that the procedure of appointment of legal representatives for indigent suspects should be established by the Bar Associations of the entities of the Russian Federation, which would also be responsible for this task. However, it seems that this provision is systematically not implemented and in practice, the lawyer is designated by an investigator.

336. Furthermore, the lawyer remains closely dependent on the investigator who signs the document certifying that he was effectively present during the investigation process. This document is a condition for receiving remuneration by the State, and of course may be used as an additional tool for exercising pressure. This practice should be changed and legal guarantees should be introduced to ensure that the appointment and work of lawyers remain under the responsibility of the Bar Associations in order to eliminate any possible abuse.

337. More generally, the free legal aid system has not been effective in practice. Our predecessors already drew attention to this problem in the report presented in 2007. There are few or no defence attorneys in remote areas of the country and, moreover, lawyers often try to avoid accepting free of charge counselling. However, with a view to remedying this highly unsatisfactory situation, in November 2011, a new Federal Law “on free legal aid” was passed. We hope that it will have a positive impact.

338. The Prosecutor General’s Office (Prokuratura) is the least reformed institution of the judicial system in Russia. Upon accession to the Council of Europe, the Russian Federation undertook to “introduce new law(s) in line with Council of Europe standards <...> on the role, functioning and administration of the Prosecutor’s Office”. Our predecessors, in 2002, while noting that some progress had been achieved, stated that they expected the Russian authorities to complete the reform of the Prosecutor General’s Office in accordance with Council of Europe principles and commitments entered into. This question was also extensively tackled by our predecessors in the last report on Russia in 2007 and we invite all those interested to consult it. The conclusions in 2003 of the then rapporteurs was that, since 2002, the reform process had come to a halt and meaningful reform is needed.

339. The main concerns identified by all our predecessors were the excessive role played by the Prokuratura in criminal cases and its general oversight function.

340. With regard to the former, it was a matter of serious concern that, in criminal cases, courts seemed to be an extension of the Prosecutor General’s Office. This was evidenced, inter alia, by the extremely low percentage of acquittals (less than 1%) and a substantial disparity in acquittal rates between cases involving juries (20%) and cases involving only judges (1%).

341. Judges who did not follow informal orders from the prosecutors, allegedly faced disciplinary proceedings on different grounds. This may be illustrated by the case of Judge Kudeshkina, already mentioned before, who was disqualified as a judge in 2003 after she refused to rule as the Prokuratura had requested in the case of Mr Pavel Zaitsev and publicly spoke about the pressure put on her.

342. These excessive prerogatives of the Prokuratura were deemed incompatible with Articles 5 and 6 of the ECHR, as well as with Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe on the role of public prosecution in the criminal justice system and Recommendation 1604 (2003) of the Parliamentary Assembly on the role of the public prosecutor’s office in a democratic society governed by the rule of law.

343. Moreover, the fact that the Prokuratura was at the same time responsible for the general supervision of all law enforcement agencies, for investigating crimes, protecting victims or citizens generally, for prosecuting offenders and for maintaining legality in all court procedures, was a cause of a serious concern.

344. It is to be welcomed that the Russian authorities decided to address this concern and, in September 2007, introduced the Federal Law “on the Prosecutor”, which amended the Code of Criminal Procedure, and established a new body, the Investigative Committee, charged with the pre-trial investigation.

345. Initially, the Investigative Committee was a part of the Prokuratura and its Head was one of the Prosecutor’s deputies. However, he was appointed according to the same procedure as the latter (by the

⁸⁰ His lawyers were subject to disciplinary proceedings at the behest of the Prosecutor’s Office on spurious grounds – the local Chamber of Advocates proved its own independence, rejecting the charges after a thorough investigation.

Federal Council upon the proposal of the President), and was not placed under his responsibility. In January 2011, in a welcome revision of the Law, the Investigative Committee was separated from the Prokuratura and became an independent structure.

346. The aim of the reform was to separate pre-trial investigation and “legality oversight”. The pre-trial investigation into serious and particularly serious crimes now falls within the exclusive jurisdiction of the investigators of the Investigative Committee. The “legality oversight” remains with the prosecutors. Other offences which do not fall under the exclusive jurisdiction of the Investigative Committee, are still investigated by the Ministry of the Interior under the close supervision of prosecutors. The latter give binding instructions to the investigators.

347. The broad supervisory powers of the Prokuratura over the executive and legislative branches, operational investigative organs and administrative agencies, are problematic. In general, the scope of instruments with which the Prosecutor’s Office is entrusted (for example, the power to issue an order to appear before the Prosecutor-General to present explanations in relation to any matter which is the subject of the Prosecutor’s supervision or investigation) is far too broad and it is not specified in what matters and in what proceedings such orders are binding.

348. The Russian authorities have informed us that two new draft laws “on the Prosecutor’s Office of the Russian Federation” and “on the status of prosecutors in the Russian Federation” are being prepared. We hope that they will address the outstanding concerns outlined above.

349. Violations of the principle of legal certainty, by the quashing of final judicial decisions in the applicants’ favour through the “supervisory review procedure” (*nadzor*), provided by the Code of Civil Procedure, is another major systemic problem. It is also the second important source of repetitive applications in Strasbourg.

350. Reform of this procedure is absolutely essential for two reasons: firstly in order to ensure the legitimacy and credibility of the entire Russian judicial system. This problem affects the efficiency of the judicial system as a whole.

351. Secondly, the supervisory review does not constitute a remedy to be exhausted prior to lodging an application with the European Court. As a result, the vast majority of cases which come to Strasbourg, have not been examined by the Russian Supreme Court. In consequence, the latter does not have a chance to redress a violation before it comes to Strasbourg. Therefore, this problem is closely linked to the long-term effectiveness of the Convention mechanism. In other words, the reform of this procedure would reduce the flow of applications to the Court by providing a remedy that has to be exhausted by Russian citizens before a complaint can be lodged in Strasbourg (currently Russian citizens may lodge an application after the second level of jurisdiction).

352. In a statement published on 20 May 2011, the Secretary General of the Council of Europe, Mr Thorbjørn Jagland, called for a reform of the Russian legal system saying: “Many cases concerning Russia before the ECHR are appeals to decisions taken by the regional courts (...). In my view, a final national decision in a huge country like Russia should be delivered by a supreme national judicial instance at the federal level, be it a Supreme Court or the Constitutional Court. I am pleased to say that Valery Zorkin, the President of the Constitutional Court, supports my proposal and President Medvedev has told me that it should be given serious consideration”. We fully support the position of the Secretary General in this respect and we hope to see the change in the Russian legal system in the near future.

353. The Russian authorities seem to be aware of the importance of this problem. Since the *Ryabykh* judgment, they have already implemented two reforms with a view to bringing the procedure in line with the Convention requirements. The first reform took place in 2002 with the adoption of the new Code of civil procedure. The second reform was carried in 2007 notably in response to the ruling of the Russian Constitutional Court of 5 February 2007. On 12 February 2008 this reform was supplemented by a Decree of the Plenum of the Supreme Court of the Russian Federation in which it provided lower courts with guidelines with a special emphasis on the need to comply with the Convention requirements and in particular with the principle of legal certainty.

354. These reforms were judged to be insufficient to solve the problem by the Court in *Martynets v. Russia*.⁸¹ According to the Court, despite tangible changes introduced by the above-mentioned reforms, the supervisory review still could not be regarded as compatible with the Convention.

⁸¹ See Court’s judgment *Martynets v. Russia*, case no 29612/09, decision of 5 November 2009.

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355. In the meantime, the supervisory review procedure as provided by the Code of Commercial Procedure was found to be in compliance with the Convention.⁸²

356. A third reform of the Code of Civil Procedure was adopted in December 2010 and aimed to introduce appeal courts in the system of Russian courts of ordinary jurisdiction and thus to limit recourse to supervisory review. The reform came into force on 1 January 2012 and has not yet been subject to assessment by the European Court. However, it is doubtful that the reform will improve the situation. Regrettably, the main shortcomings of the supervisory procedure, as identified by the European Court in its judgments, were not removed.

357. These main shortcomings include the multiplicity of instances in which a judgment can be challenged after it becomes final, and, linked to it, the problem of time limits. There are still three instances in which a final judgment may be quashed, each time the case is sent back for a new examination and each time a new decision is issued, it may be challenged through the same three instances. As a result, the starting point for the six-month limit for lodging an application with the European Court is unclear. Finally, the discretionary powers of the President and of the Vice-President of the Supreme Court remain unchanged: they both have the possibility to disagree with the decision of a judge following the examination of a cassation or a nadzor request.

358. The EU-Council of Europe Joint Programme on the "Introduction of an appeal instance in the Russian Federation" currently underway, aims to ensure, *inter alia*, the establishment of clear and coherent channels of review of judicial decisions.

359. Non-enforcement of domestic judicial decisions is a major systemic problem of the judicial system in Russia and the first source of applications to the European Court. In order to remedy the situation, the Russian authorities introduced two new federal laws: the Compensation Act and a federal law amending certain legislative acts, which came into force on 4 May 2010.

360. This new remedy allows claims for compensation for extremely lengthy judicial proceedings as well as delayed or non-enforcement of domestic judgments delivered against the State. Furthermore, the Russian authorities provided the Committee of Ministers with numerous examples of judicial practice demonstrating the active implementation of the reform, and with information on the adoption of further measures to ensure the effectiveness of the new compensation scheme, such as appropriate budgetary arrangements.⁸³

361. Despite this progress, the Court held in two recent judgments⁸⁴ that the new legislation did not resolve the specific problem of failure to enforce decisions ordering the provision of housing for servicemen by the State in specific cases.

362. Conditions of detention on remand, in particular in pre-trial detention centres, the excessive length and lack of relevant and sufficient reasons for detention on remand, ill-treatment in police custody and the lack of effective investigation, will be dealt with in the next chapters, devoted to the execution of the ECHR's judgments and human rights violations.

363. Corruption is a continuing widespread problem within the judiciary in Russia. This has been publicly acknowledged on many occasions, including at the highest levels of power, and numerous measures have been introduced in order to combat it. However, in their comments on the preliminary draft report, the Russian authorities claim that corruption incidents among judges are exceptionally rare as illustrated by the number of relevant convictions: only three judges were convicted on charges related to corruption in 2010-2011. In our opinion, taking into account numerous reports on alleged corruption, this extremely low figure is a real cause for concern. We will come back to this question in the next chapter.

6.2. *Corruption*

364. Corruption is a widespread systemic phenomenon in the Russian Federation, which affects society as a whole, including the public institutions in place to counteract corruption. The polls held over recent years testify to its existence in all public sectors, including the political level and the executive branches at various

⁸² See Kovaleva and others nr 6025/09 decision of 25 June 2009.

⁸³ See Interim Resolution of the CM CM/ResDH(2011)293.

⁸⁴ Ilyushkin and others v. Russia, and Kalinkin and others v. Russia, judgments of 12 April 2012.

levels, law-enforcement bodies, the judicial system, public procurement agencies, public health services, the education system, housing and communal services.⁸⁵

365. Transparency International has persistently rated Russia as one of the most corrupt nations in the world. According to the Corruption Perception Index for 2011, Russia was ranked 143rd out of 183, with a score of 2.4 out of 10.

366. Similarly, the OECD has reported on corruption in the Russian bureaucracy, which is cited by foreign and domestic investors alike as one of principal obstacles to investment in Russia today.⁸⁶ The World Bank noted that corruption in Russia has significantly grown in recent years, both in terms of State capture and administrative corruption.⁸⁷ The European Commission of the European Union points out that corruption continues to be a major problem in Russia.⁸⁸

367. The Russian authorities recognise that the level of corruption in the country is inadmissibly high and that it not only poses a danger to the functioning of the State institutions, but also has a negative impact on business in general as it undermines competition between market players for goods and services and makes the Russian economy less attractive for foreign investment. They also acknowledge that there is a link between corruption and organised crime, and that corruption is a component of the “shadow economy”.

368. There is no doubt that the Russian authorities take these problems seriously. Between 2005 and 2007, the Anti-corruption Commission of the State Duma cooperated closely with the Council of Europe in the implementation of assistance programmes funded by the European Union aimed at harmonisation of Russian legislation with the requirements of Council of Europe Criminal Law Convention on Corruption and the UN Convention against Corruption, with a view to ratifying these both instruments, which was finally done in 2007.

369. The fight against the corruption is recognised as a priority at the highest political level. Shortly after taking office, in May 2008, President Medvedev signed a decree to set up a Presidential Council on Counteracting Corruption, as the overall coordinating body, and in July 2008, the President approved a National Anti-Corruption Plan.⁸⁹

370. Russia joined the Council of Europe Group of States against corruption (GRECO) on 1 February 2007, and became subject to its monitoring mechanism. In the Joint First and Second Round Evaluation Report on the Russian Federation, adopted in December 2008⁹⁰, GRECO raised a number of concerns and made 26 recommendations. Some of them required fundamental measures, including the creation of a clear basis for the national anti-corruption policy, far-reaching legislative reforms and organisational changes in public administration, law enforcement, the judiciary as well as in relation to civil society.

371. The Compliance Report on the Russian Federation, adopted by GRECO in December 2010⁹¹, to assess the measures taken by the Russian authorities to comply with the recommendations, concluded that the Russian Federation has implemented satisfactorily just over a third of the 26 recommendations.

372. The outstanding concerns relate to the need for, firstly, revision of the system of administrative and criminal procedures in order to firmly establish that cases of corruption are to be treated as criminal offences as a main rule, and, secondly, adoption of the necessary legislative measures in order to establish liability of legal persons for corruption offences and to provide effective, proportionate and dissuasive sanctions in these cases, including monetary sanctions, in compliance with the requirements of the Criminal Law Convention on Corruption (ETS 173).

⁸⁵ See the Evaluation Report on the Russian Federation adopted by GRECO in December 2008 (Greco Eval I-II Rep (2008) 2E).

⁸⁶ OECD, Economic Survey on the Russian Federation, 2006.

⁸⁷ World Bank document « Administrative and Regulatory Reform in Russia », 2006.

⁸⁸ European Commission, Country Strategy Paper 2007-2013 on the Russian Federation.

⁸⁹ In the preamble of the Plan, the following statement was included: Despite the measures, corruption still seriously hampers the normal functioning of all social mechanisms, prevents social transformation as well as improvement of national economy, raises in Russian society serious concern and distrust in public institutions, creates a negative image of Russia in the international arena and is rightly regarded as one of the threats to security of the Russian Federation. In this regard, the development of anti-corruption measures, primarily to address its root causes, and the implementation of such measures in the context of the development of the country as a whole, is becoming imperative”.

⁹⁰ Greco Eval I-II (2008) 2E.

⁹¹ Greco RC-I/II(2010)2E.

Doc.

373. Given the immense task to accomplish all the remaining recommendations, and the commitment of the Russian authorities to doing so, GRECO will proceed to the next evaluation of progress in late 2012.

6.3. Execution of ECHR judgments

374. Since the accession of the Russian Federation to the European Convention on Human Rights, the Court has delivered in total 1119 judgments in respect of Russia⁹², of which more than 1045 found at least one violation of the Convention, primarily of Article 6 (right to a fair trial), Article 1 of Protocol No 1 (protection of property) and Article 5 (right to liberty and security). As of 31 March 2012, a total of 37 850 applications were pending before the Court; this figure accounted for over 25% of the total of pending cases.

375. According to Article 46 of the European Convention on Human Rights, it is the Committee of Ministers which supervises the execution of Court judgments. There were 1087 cases concerning the Russian Federation pending before the Committee of Ministers and awaiting execution on 31 December 2011. Out of this figure, 953 were clone cases. In our opinion, both the Assembly and the State Duma have an important role to play in this respect and they should actively contribute to progress in the implementation of the judgments.

376. The Assembly's Committee on Legal Affairs and Human Rights prepares periodic reports on the implementation of judgments of the ECHR in all Council of Europe member States. The most recent one was presented to the Assembly in January 2011.⁹³ It raised a number of major structural problems in the Russian legal system which had led to worrying delays in implementation.

377. Without interfering in the competence of the Legal Affairs Committee, we would like to draw attention to some concerns raised in the report, as they are directly linked to the process of the monitoring of obligations and commitments and fall under our mandate. In this way, we also wish to highlight the importance the Assembly attaches to the question of execution of ECHR judgments.

378. Over 90% of all cases concerning the Russian Federation awaiting execution before the Committee of Ministers are clone cases relating to the major systemic problems which have been described in the chapter on the judiciary in the present report.

379. Non-enforcement of domestic judicial decisions is one of the most important systemic problems which is at the origin of numerous clone cases. In 2002, the Court found a violation of the Convention on account of non-enforcement of a domestic judicial decision granting social benefits to a Chernobyl victim.⁹⁴ In January 2009, the Court, facing the constantly increasing flow of similar applications, delivered a pilot judgment in the case of the same Chernobyl victim.⁹⁵ As mentioned in the previous chapter, on 4 May 2010, the State Duma adopted amendments to the Civil Code aimed at remedying the situation. It should be undoubtedly seen as a positive step, although, as mentioned in the previous chapter, some concerns still remain.

380. Violation of the principle of legal certainty on account of the quashing of final judicial decisions through the "supervisory review procedure" (nadzor) is another major systemic problem. The first Court judgment was adopted in 2003 on this matter⁹⁶; since then a huge number of clone cases have appeared. Here again, we invite the readers to consult the previous chapter for more developed information.

381. Unacceptable conditions of detention on remand, in particular in pre-trial detention centres, as well as the excessive length of, and lack of relevant and sufficient reasons for, detention on remand, constitute the next systemic problem of the Russian legal system. The first judgment in this respect, adopted in 2002⁹⁷, revealed severe lack of space and appropriate conditions (including lack of private toilet facilities, ventilation problems, lack of access to natural light, and basic sanitation). Since then, a huge number of clone cases have been lodged with the Court.

382. The group of *Kalashnikov* includes 71 cases currently under Committee of Ministers' supervision. In all of them the ECtHR found that the poor pre-trial detention conditions and in particular the severe overcrowding and unsanitary environment, amounted to degrading treatment. We would like to underscore, however, that the main problem lies in the unnecessary use of detention on remand which results in

⁹² As of March 2011, see Press country profile, ECHR.

⁹³ See Doc. 12455 Resolution 1787 (2011).

⁹⁴ See Court's judgment of 7 May 2002 in the case *Burdov v. Russia*, application No. 59498/00.

⁹⁵ See Court's judgment of 15 January 2009 in the case *Burdov v. Russia*(no2), application No. 33509/04.

⁹⁶ See Court's judgment of 24 July 2003 in the case *Ryabykh v. Russia*, application No. 52854/99.

⁹⁷ See Court's judgment *Kalashnikov v. Russia* of 15 July 2002, application No. 47095/99.

overcrowding. This systemic issue is caused by, inter alia, inappropriate judicial practice (non-compliance with time-limits set by domestic law, failure to address specific circumstances of cases, failure to use alternative preventive measures). A further 61 cases concern unlawful detention, excessive length and insufficient grounds for extending detention on remand.

383. In January 2012, the Court delivered a pilot judgment in the case of *Ananyev and others v Russia*, in which it found that inadequate conditions of detention were a recurrent structural problem in Russia resulting in a malfunctioning of its penitentiary system, with insufficient legal and administrative safeguards.

384. The Russian authorities are aware of the problem and are trying to remedy it. We have been provided with extensive statistical data illustrating a significant decrease in the number of persons detained on remand (decrease of 29.5% between 2006 and 2012). Furthermore, in December 2011, amendments to the Criminal Code aimed to reduce the number of persons concerned by a punitive measure in the form of detention. Last but not least, the federal programme “on the development of the penitentiary system in the Russian Federation for 2007-2016” aims at the improvement of conditions of detention. According to the authorities, tangible progress may be noted in this respect.

385. Ill-treatment in police custody and lack of an effective investigation in this respect constitute another systemic problem. The first Court judgment was delivered in 2006⁹⁸; since then, there have been 33 other similar judgments. In February 2011, a new law on the police was adopted. Regrettably, the reform does not seem to address important issues, such as safeguards in police custody (notification of custody to a third party, right to a lawyer, right to a medical doctor). Also, the CPT reports, which might provide useful guidance to the Russian authorities on all these issues, remain confidential. The *Mikheyev* case also demonstrates the lack, in Russian criminal legislation, of appropriate tools to combat impunity. For instance, no such criminal offence as torture seems to exist. In the chapter concerning the abuses by the police forces, we will refer to the most recent measures introduced with a view to fighting impunity by the Russian police forces.

386. The action of the security forces in the Chechen Republic also remains one of the main causes for applications. Since 2007, the Court has delivered a large number of judgments in the context of actions of the Russian security forces in the Chechen Republic between 1999 and 2003.⁹⁹ They concern unlawful killings, unacknowledged detention, disappearances, torture, destruction of property, lack of effective investigations as well as effective domestic remedies.

387. These judgments have had little impact on the Russian Federation, as complaints continue to flood in. Almost 100 were lodged in 2009 alone concerning the North Caucasus (mainly Chechnya). The Committee of Ministers has consistently urged the Russian authorities to improve the legal and regulatory framework governing the anti-terrorist activities of security forces, to ensure accountability of perpetrators and to provide domestic remedies for victims. In its Interim Resolution¹⁰⁰, adopted in November 2011, the Committee of Ministers criticised the lack of decisive progress in domestic investigations with regard to human rights violations identified in the ECtHR judgments, even if facts and key elements had been established with sufficient clarity.

388. On 14 May 2012, the Russian authorities provided information on the Interim Resolution. There have been some positive developments, such as the establishment of a regulatory framework for domestic investigations, including a Special Investigative Unit, in April 2009, to investigate particularly serious crimes that have given rise to applications to Strasbourg.¹⁰¹ The Prosecutor has also taken on a greater “supervisory role” by putting emphasis on the integration of Convention law standards in Russian domestic law, and the process appears to be more victim-oriented in terms of access to the procedure. However, the impact of these measures on the pending investigations remains unclear; only one case has been so far elucidated.

389. Other cases of concern with regard to the execution of judgments include the risk of ill-treatment in cases of extradition and disregard of ECtHR interim measures under Rule 39 of the Rules of Court¹⁰², and the violation of the freedom of assembly and discrimination on grounds of sexual orientation.¹⁰³ This last issue will be dealt with in the chapter of freedom of assembly.

⁹⁸ *Mikheyev v. Russia*, January 2006.

⁹⁹ Over 150, with 235 pending before the Court.

¹⁰⁰ CM/ResDH(2011)292.

¹⁰¹ CM/Inf/DH(2010)26, 27 May 2010.

¹⁰² See *Iskandarov v. Russia* judgment of 23 September 2010.

¹⁰³ See *Alekseyev v. Russia*.

Doc.

390. Two recent judgments relate directly to Russia's commitment "to cease to restrict – with immediate effect – international travel of persons aware of State secrets, with the exception of those restrictions which are generally accepted in Council of Europe member States".¹⁰⁴ In both cases, the Court found disproportionate restriction of the applicants' liberty of movement due to the authorities' denial of their right to travel abroad for private purposes for several years on the sole ground that they had had access to classified information ("State secrets") during their professional career. Those unqualified restrictions were based on the Act on the Procedure for Entering and Leaving the Russian Federation.

391. Both applicants received passports following the Court's decision. With regard to the fulfillment of the commitment entered upon accession, the authorities created, in 2004, an Inter-Agency Commission on the Protection of State Secrets and tasked it with the preparation of appropriate draft legislation which would bring the Russian law into line with the Council of Europe standards. The Commission presented draft laws in 2007. Regrettably, since then, no progress has been noted in this respect.

392. We would like to express our concern here at some worrying signs and public statements by Russian senior officials directly connected to Russia's observation of commitments and obligations entered upon admission to the Council of Europe. The Head of the Constitutional Court, Mr Valery Zorkin, has spoken of the "threat to Russian sovereignty" posed by the rulings of the ECHR and even of the possibility of withdrawing from the Council of Europe. In Switzerland, we are used to hearing such declarations by conservative politicians, but we are very astonished to hear it from the Head of the Constitutional Court.

393. In their comments on our preliminary draft report, the Russian authorities indicated that the above quotations were taken out of context. According to them, the whole statement of Mr Zorkin at the XII International Forum for Constitutional Justice read as follows: "We granted the authority of making jurisdiction to the European Court. But if Russia wants, we can cancel the contract. I would not like the Constitutional Court to face the ECtHR in such a way as to encourage those in Russia, who want to use any pretext to close the door". If we misunderstood Mr Zorkin's public statement, we are the first to acknowledge our mistake and express our satisfaction.

394. In June 2011, a former Deputy Chairman of the Council of Federation, Mr Alexander Torshin, submitted a draft law allowing Russia's Constitutional Court to block decisions of the ECHR. The draft was subsequently withdrawn, but the mere fact that it was submitted is already disturbing.

7. Human rights and freedoms

7.1. Abolition of the death penalty

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

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

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

398. During our visits, we raised this question with a number of interlocutors, in particular in the State Duma. Every time, we heard that public opinion in Russia is not ready to accept the formal abolition of the death penalty, mainly due to the seriousness of terrorist threats in the country. As a consequence, the attempt to have the Protocol ratified in the Duma might turn out to be counterproductive.

399. In our view, however, this explanation does not justify the lack of progress towards compliance with this important commitment. In most Council of Europe member States, the majority of public opinion had

¹⁰⁴ Bartik v. Russia, judgment on 21 March 2007 and Soltysyak v. Russia, judgment on 20 June 2011.

originally been in favour of the death penalty, and it was the task and duty of the political class to influence this attitude and change it. It implied educational and informative work, required public debates and open discussions but proved to be successful in 46 countries. We do not see any reason why Russia should remain an exception.

7.2. *The right to life and the fight against impunity*

400. The overall situation with regard to human rights and freedoms in Russia is worrying. Major concerns in this area have already been mentioned in the chapter on the implementation of the ECHR's judgments.

401. The violations of the core human right – the right to life and personal integrity – are of particular gravity.

402. Following the debate of a report on the human rights situation in the North Caucasus, by the Committee on Legal Affairs and Human Rights¹⁰⁵, the Assembly firmly condemned the attacks by armed groups and persistent human rights violations, including killings, abductions and torture, which continue to affect the civilian population.

403. Impunity for abuses and murders prevailing in the region are of utmost concern, in particular when law enforcement bodies are responsible for violations. We invite our readers to consult the above-mentioned report of the Committee on Legal Affairs and Human Rights for a detailed account of this dramatic situation. We also draw attention to the most recent report by Mr Thomas Hammarberg, former Council of Europe Commissioner for Human Rights, on the human rights situation in the North Caucasus, following his visit to the Russian Federation in May 2011.¹⁰⁶ The question of abuses by law enforcement agencies will be examined in the next chapter of the present report.

404. Alarming reports are also contained in a document entitled "The circle of injustice. Security operations and human rights violations in Ingushetia" which has just been published by the Amnesty International.

405. To date, the European Court on Human Rights has issued over 150 judgments holding Russia responsible for having failed to protect the lives of applicants' relatives in Chechnya and it has harshly criticised the authorities for non-compliance with earlier judgments in this respect.

406. For example, on 2 December 2010, the Court ruled in the case of *Abuyeva and others v Russia*¹⁰⁷ concerning the federal military bombardment of the village of Katyr-Yurt in Chechnya, in which 29 relatives of applicants had died. The Court found a further violation of the right to life as the domestic investigation into the events was grossly ineffective, despite an earlier judgment of 2005¹⁰⁸ on the same events, in which Russia was urged to establish responsibility for the killings. The applicants were awarded 1.72 million euros in damages.

407. Russia's failure to fully implement the judgments of the ECHR on applications from Chechnya contributes to the climate of impunity both in the republic and in the North Caucasus region as a whole. Russia cooperates with the Court by paying out the required monetary compensation to the victims but fails to conduct an effective investigation and hold the actual perpetrators to account, even in cases where their identity is known. Furthermore, the authorities do not take measures to prevent similar abuses from reoccurring. New complaints from Chechnya and similar cases from Dagestan and Ingushetia continue to be lodged with the ECHR.

408. While the overall security situation in North Caucasus is volatile and the whole population suffers from it, certain categories of people, such as human rights defenders, lawyers, activists and independent journalists, are particularly exposed.

409. In the last few months alone, two cases of murders have been documented: in December 2011, Mr Ganzhimurad Kamalov, the publisher of a leading independent weekly in Dagestan, was murdered; in January 2012, Mr Umar Saidmagomedov, a lawyer, and another local resident, Mr Rasul Kurbanov, were killed by law enforcement officials in Dagestan.

¹⁰⁵ See Doc. 12276.

¹⁰⁶ See Doc. CommDH(2011)21.

¹⁰⁷ Case No. 27065/05.

¹⁰⁸ *Isayeva v Russia*, Case No. 57950/00.

Doc.

410. According to statistics gathered by the Committee for Protection of Journalists (CPJ), the North Caucasus region continues to be one of the most dangerous places in the world for journalists. This is also the case with regard to the work of human rights defenders and lawyers. Despite numerous promises by the Russian leadership to create normal working conditions for activists and journalists in the region, targeted killings and physical attacks have not been eliminated.

411. Unfortunately, these kinds of targeted assaults are not limited to the North Caucasus. Killings and beatings of prominent figures of civil society, journalists and lawyers, is one of the most serious human rights concerns throughout Russia.

412. Since 2006, when the assassination of Ms Anna Politkovskaya, journalist and well-known human rights activist, drew the attention to the gravity of the situation in Russia, a number of human rights defenders, journalists and human rights lawyers have been attacked and severely beaten or murdered. Only the murders of lawyer, Mr Stanislav Markelov, and journalist, Ms Anastasia Barburova, have been successfully investigated and the perpetrators convicted.¹⁰⁹ Other cases, including the abduction and murder of human rights defender, Natalia Estemirova, the brutal beatings of Kommersant Daily journalist, Oleg Kashin, or editor-in-chief of the newspaper Khiminskaya Pravda, Mikhail Beketov, remain unsolved.

413. Outside these high-profile cases, a number of unknown activists or lawyers are subject to violence. For example, Mr Konstantin Fetisov, a peaceful protester against the planned construction of a highway through Khimki forest near Moscow was assaulted in November 2010 by unknown men and seriously injured.

414. Another example is the case of Ms Elena Lavina, a Russian lawyer representing Mikhail Khodorkovsky in the appeal procedure, who was attacked and beaten in the street on 11 May 2011.

415. According to Human Rights Watch, activists in various Russian cities were attacked by unidentified people in the period between the December 2011 parliamentary elections and the presidential election of 4 March 2012. Moreover, on 24 March 2012, there was an arson attempt on the office of the NGO "Group of free people" in Nizhny Novgorod. These and other cases are contained in the report on "The situation of human rights defenders in Council of Europe member States"¹¹⁰ presented by the Legal Affairs Committee to which we draw your attention.

416. Abuses by the police force are treated in the next chapter.

417. Racially motivated violence also remains a serious problem. According to data from the SOVA Center for Information and Analysis, in 2010 alone, 37 people died as a result of hate crimes. Preliminary data for the year 2011, gathered by the Center for Information and Analysis SOVA, show that, in racist or neo-Nazi attacks, at least 20 people were killed and 130 injured across 34 regions of the Russian Federation. Additionally, six individuals received death threats. Moscow continues to lead in violent incidents, with seven killed and 28 injured in 2011, ahead of the Moscow region and St. Petersburg. The main targets of racist attacks continue to be individuals from former Soviet Central Asia.

7.3. Abuses by law enforcement agencies

418. There are numerous reported cases of abuses by law enforcement bodies, particularly by the police, including violence, excessive use of force, ill-treatment in custody and deplorable conditions of detention. The lack of proper investigation and impunity is a systemic problem. Criminal prosecution of critics of the authorities, human rights lawyers and defenders, activists and journalists is another serious concern.

419. As already mentioned in the previous chapter, the beginning of 2012 was marked by the killing of a lawyer, Mr Umar Saidmagomedov, and a local resident, Mr Rasul Kurbanov, by law enforcement officials in Dagestan. According to the official police report, police officers stopped a car with two men in it and during the control, Mr Kurbanov opened fire. The police started shooting in response, killing both men. However, according to the Memorial Human Rights Center claim, based on witness reports, both men were gunned down outside Mr Kurbanov's house in a premeditated execution by the police officers and then their bodies

¹⁰⁹ On 16 July 2012, the investigators announced that a former police officer would be charged with the murder of Ms Anna Politkovskaya. He would be tried using "a special procedure" because investigators had agreed with him on a plea bargain.

¹¹⁰ Doc. 12956.

and Mr Kurbanov's car were moved in order to fake a crime scene.¹¹¹ These allegations must be fully and impartially investigated.

420. In March 2012, public opinion was shocked to learn the details of the death of a detainee in a detention centre in Kazan (Tatarstan), following torture by the police.

421. The most worrying situation prevails in the North Caucasus, where law enforcement officials are accused of numerous human rights violations, including unlawful detention, torture, and in some cases extrajudicial executions. There is a lack of effective investigations and subsequent accountability.

422. Journalists, human rights defenders and lawyers are a frequent target of law enforcement agencies. In 2010, in Dagestan alone, Human Rights Watch documented five incidents of physical attacks on lawyers by police or investigation officials. In November 2010, one of the bar associations in Dagestan went on a month-long protest strike, demanding investigation of the abuses against lawyers. The authorities pledged to look into the reports on alleged abuses but, regrettably, none of the lawyers' complaints was effectively investigated in 2011.

423. The case of Ms Sapiyat Magomedova, a prominent local human rights lawyer, who represents victims in very sensitive cases, including allegations of torture in custody by the police, is a good example of a common pattern of abuse by law enforcement agencies and their impunity in the North Caucasus. In 2010, she was beaten by the police at the police station and she filed a complaint. Since then, she has been repeatedly approached by the investigators who tried to convince her to withdraw her complaint, but she refused. In 2011, she was charged with two criminal offences: using violence against State officials and insulting police officers on duty. If she is convicted, she faces up to five years in prison and the revocation of her law licence.

424. Arbitrary detention and unjustified interference by police is another common practice and may be illustrated by the recently reported case of a staff member of the Joint Mobile Group of Russian NGOs in Chechnya.¹¹²

425. Independent journalists also experience arbitrary actions by the law enforcement agencies. For example, journalists and the chief editor of the independent newspaper "Chernovik" in Dagestan, have been the targets of harassment and threats including through criminal prosecution on charges of extremism and insulting State officials. They were acquitted by the court in 2011 only after a long legal battle.

426. But such concerns are unfortunately not limited to the Northern Caucasus. Activists from other regions of Russia also face serious problems. For example, in February 2010, authorities in Novorossisk held Vadim Karastelev, a human rights advocate, for seven days of administrative arrest for organising a demonstration. The day after Karastelov's release, unknown assailants brutally beat him, causing serious injuries. The police investigation was ineffective.

427. In May 2010, Alexei Sokolov, a prisoners' rights advocate from Ekaterinburg, was sentenced to five years in prison following theft and robbery charges, which appear to be in retaliation for his activities.¹¹³

428. In another emblematic case, already mentioned in the previous chapter, the organisers of an international civil society gathering, which was held as a side event to the June 2011 EU-Russia summit in Nizhny Novgorod, faced numerous threats and harassment by the local law enforcement agencies. The deputy director of the Nizhny Novgorod Committee against Torture was detained and prevented from participating in the event. No effective investigation followed her complaint to the authorities.

429. Reports of torture and other forms of ill-treatment by law enforcement officials, often allegedly with the purpose of extracting confessions or money, remain widespread throughout the country.¹¹⁴

430. Detainees frequently report unlawful disciplinary punishments and the denial of necessary medical care. The notorious cases of Mr Magnitsky and Ms Trifonova, and the continuous impunity of those guilty of their deaths, illustrate well the gravity of the problem. Again, we draw the readers' attention to the report of the Legal Affairs Committee on this subject.

¹¹¹ See : Russia: Expert testimony on the situation for human rights defenders by Tanya Lokshina, Human Rights Watch website, 26 January 2012.

¹¹² Idem.

¹¹³ See: Human Rights Watch Memorandum for Russia-EU Human Rights Consultations, 2010.

¹¹⁴ See Amnesty International 2011 Annual report on Russia.

Doc.

431. Poor conditions of detention and pre-trial centers which do not meet basic sanitary and humanitarian standards, with insufficient access to medical services, constitute another serious problem. We were shocked to hear from Mr Nemtsov that, following his arrest on 31 December 2010, he had been kept for 48 hours in a room without a window, light or a bed.

432. The Russian authorities are aware of the problem. In 2006, the Federal Programme “On the development of the Penitentiary System in the Russian Federation for 2007-2016” was adopted. In October 2010, the Government approved “the concept of the Development of the Penitentiary System of the Russian Federation till 2020” which is now being implemented.

433. The Russian Federation ratified the Council of Europe Convention for the Prevention of Torture and Inhuman or Degrading Treatment in 1998. Out of 17 CPT reports on the visits to the Russian Federation, only one (on the visit which took place in 2001) became public. During our visits, we repeatedly asked the relevant authorities to authorise the publication of the last 2010 CPT report on Russia. We were assured that the positive decision in this respect had already been taken. So far, unfortunately the report has not been published.

434. Excessive use of force by police officers against peaceful demonstrators is another concern. We will come back to this question when we deal with the violations of freedom of assembly in reference to Article 31 and the demonstrations and protests in the immediate aftermath of the December elections. But the problem is not limited to political demonstrations. On 8 May 2011, about 200 people assembled in the town of Khimki for a peaceful gathering against a motorway project. The rally was suddenly and violently dispersed by riot police, who hit and kicked the protesters and dragged them onto a police bus. Many people were injured. Two activists who were detained were allegedly beaten in detention; they reported the beating to the duty officer at the station, but no effective investigation followed.

435. We received information from the Russian authorities that the investigation in this respect is underway and several criminal cases against police agents have been initiated. Furthermore, there have been a number of disciplinary proceedings.

436. The excessive use of force by the police during the Gay Parade in Moscow in May 2011, which resulted in 17 cases of injuries among peaceful demonstrators, is another illustration of this problem.

437. Corruption and collusion between police, investigators and prosecutors are widely perceived as undermining the effectiveness of investigations and obstructing prosecutions. This increases the impression of the lack of independence of judges, which is another systemic problem.

438. However, to a certain extent the legislation itself is conducive to abuse. In particular, the Laws on the Police, on the Federal Security Service (FSB), and on Extremism, raise concern among national and international civil society.

439. The amendments to the law on the FSB, adopted in 2010, allow the special services to issue warnings to individuals, organisations and media outlets if they decide that their activities are extremist or potentially extremist. Relevant individuals or organisations are then obliged to cease these activities. Given the ambiguous definition of extremism in the relevant law, these amendments open the way to arbitrary interpretation and abuses. Concrete examples of these abuses are given in the chapter on freedom of expression and freedom of conscience and religion.

440. In its opinion on the Law on the FSB¹¹⁵, delivered in June 2012, the Venice Commission observed that the law should contain an explicit requirement to duly respect the principles of necessity and proportionality and to provide for effective remedies. In particular, according to the Venice Commission, it is necessary to establish mechanisms to prevent political abuse. Agencies must be subject to legal external control, which is not the case at present. Furthermore, as regards the preventive measures and the issue of official warnings, the Venice Commission observes that they may be used in an arbitrary manner, thus risking having an undue chilling effect on the exercise of fundamental rights and freedoms.

441. Furthermore, in its opinion on the Federal Law on combating extremist activity¹¹⁶, delivered in June 2012, the Venice Commission states clearly that the law is problematic on account of its broad and imprecise wording, particularly insofar as the basic notions such as the definition of “extremism”, “extremist action”,

¹¹⁵ Opinion No. 661/2011.

¹¹⁶ Opinion No. 660/2011 .

“extremist organisations” or “extremist materials” are concerned, it gives too wide a discretion in its interpretation and application, thus leading to arbitrariness. In the view of the Venice Commission, the activities defined by the Law as extremist and enabling the authorities to issue preventive and corrective measures do not all contain an element of violence and are not defined with sufficient precision to allow an individual to regulate his or her conduct or the activities of the organisation so as to avoid the application of such measures. Finally, the specific instruments the Law provides for in order to counter extremism – the written warnings and notices – and the related punitive measures (ban on the activities of the organisation, closure of media outlets) raise problems in the light of the freedom of association and the freedom of expression and need to be amended.

442. Following widespread criticism of police abuse, including from within law enforcement agencies, the government presented a new draft law on the police. The draft law was widely discussed in the country, and for the first time in the history of Russia, public recommendations regarding the content of the bill were sought by legislators. Despite that, the Federal Law on Police which entered into force in 2011 was criticised by human rights organisations for having failed to introduce effective mechanisms to make law enforcement officials accountable for abuses and human rights violations. We regret very much that the Venice Commission was not asked for a legal opinion on the draft during the legislative process.

443. As we have already mentioned in the chapter on the judiciary, in a move intended to increase the independence of criminal investigations, the government announced, in September 2010, that the Investigative Committee would be transformed, as of 2011, into an independent investigative body. It would be answerable directly to the President and removed from the control of the Prosecutor General's Office. The Committee was originally created in 2007 in order to separate investigative and prosecutorial functions.

444. Widespread concern over deaths in custody resulting from denial of adequate medical care have led to changes into law governing pre-trial detention.

445. Furthermore, house arrest and restrictions on the use of pre-trial detention were introduced for people suspected of economic crimes.

446. During our visits, we were provided with information and statistics on the procedures, investigations and sanctions (disciplinary proceedings, court charges) imposed on law enforcement agents found guilty of abuses. However, the problem is far from being resolved and it requires further firm measures aimed at increasing the transparency and accountability of law enforcement agents.

447. In reaction to the tragic death of the detainee in Kazan, the Head of the Investigative Committee issued, on 18 April 2012, an Order “on additional measures on the organisation of investigation of crimes committed by the representatives of the law enforcement forces.” The Order provides for the establishment of a special division in the Investigative Committee tasked with the investigation of police abuses. It is to be seen to what extent this measure will be effective.

448. However, the ECtHR's case law and practice in other member States demonstrate that, in order to effectively prevent abuses by the police, three major safeguards are necessary: any person apprehended by the police should have a right to immediately inform a third party of their choice about their situation, and have access to a lawyer and to a medical doctor upon request. Furthermore, the legislation should provide for the obligation imposed on the police agents to inform the person deprived of their liberty of the above rights without any delay, and to immediately record the fact of deprivation of liberty. The current Russian legislation does not contain these safeguards and this should be remedied.

449. Furthermore, the Russian criminal legislation does not contain specific provision under which torture or ill-treatment may be prosecuted. As a rule, such acts are prosecuted under other offences, such as “exceeding official authority” or “infliction of bodily harm”.

450. The prevention of abuses and the strengthening of the police officers' accountability should go hand-in-hand with the development of modern methods of investigation and questioning in order to limit to the maximum any possible risk of torture and ill-treatment. These may include such tools as comprehensive and computerised custody records and detailed recording of interviews and wide use of different forensic techniques. The improvement of initial and in-service professional training of police officers is also required. For example, the adoption of a Code of Ethics for the police has been instrumental in changing the attitudes of police officers in certain countries.

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7.4. *The case of the death of Mr Magnitsky*

451. Mr Sergei Magnitsky was a young Russian lawyer working for Russia's largest foreign investor, Hermitage Fund. In 2007, he began investigating allegations of abuse involving senior Russian officials and organised crime. He discovered wide-scale tax fraud amounting to 230 million USD sanctioned by officials, and filed a number of complaints. His testimony implicated the police, the judiciary, tax officials, bankers and members of organised crime.

452. On 24 November 2008, Mr Sergei Magnitsky was arrested on trumped-up charges of tax evasion by the same police officers against whom he had testified. He was detained for almost one year without trial. According to his statements in the court hearings and the official case files, during his detention he was subjected to steadily worsening conditions and inadequate medical care, in an effort to force him to testify falsely against his employers.

453. On 16 November 2009, eight days before expiry of the one year limit during which he could be held without a trial, he was brutally beaten and left in an isolation cell without medical attention, where he subsequently died. These facts were confirmed by President Medvedev's Council of Human Rights on 5 July 2011.

454. The prison officials attributed his death to a "rupture of the abdominal membrane", and later to a heart attack, and the authorities refused to open a criminal investigation. It was only 20 months after his tragic death, on President Medvedev's order, that a criminal probe into his case was opened. This official inquiry was arbitrarily narrow, alleging solely "unintentional medical negligence", ignoring evidence of a deliberate conspiracy to exert pressure on Mr Magnitsky. The investigators showed a biased approach and a blatant disregard for basic legal standards for investigations involving alleged corruption and organised crime, as illustrated by the numerous shortcomings which characterised it.

455. Furthermore, the conclusions from two independent domestic investigations, carried out by the Moscow Public Oversight Commission and the Presidential Human Rights Council, have been dismissed by State bodies and have not resulted in prosecutions.

456. Criminal cases on negligence charges were opened against two doctors from the pre-trial detention centre where Mr Magnitsky died. However, so far nobody has been brought to justice or been charged for Mr Magnitsky's death. The ongoing investigation has been extended 12 times over the last two and a half years.

457. In April 2012, Russian prosecutors announced that they had closed the criminal case on negligence charges against one of the doctors at the pre-trial detention centre where Mr Magnitsky had died because the statute of limitations had expired. Another prison doctor is the only official still facing charges over Mr Magnitsky's death.¹¹⁷

458. In 2010, the Russian Ministry of Internal Affairs announced that Mr Magnitsky was the main suspect in organising the theft on which he was reporting. In an unprecedented move, the General Prosecutor's Office decided to try lawyer Magnitsky posthumously and reopened the case on the same charges that were found to be fabricated by officials with a conflict of interest by the President Medvedev's Human Rights Council.

459. The international community has on many occasions called on the Russian authorities to conduct a genuine investigation and prosecute and punish all those responsible for Mr Magnitsky's death. In mid 2011, the US administration decided to place a visa ban on approximately 60 Russian officials linked to the death. The European Parliament has called for an EU-wide visa ban on the Russian officials involved in this tragic event. The Parliamentary Assembly condemned the ongoing impunity of perpetrators in Resolution 1891 (2012).

460. On 24 May 2012, we addressed a number of questions to the Russian parliamentary delegation with regard to the concerns surrounding Mr Magnitsky's death. Regrettably, the replies did not go beyond referring to the usual official position of the Russian authorities, such as those set out in the results of official investigations and court decisions, and we do not consider them to be satisfactory.

461. As long as those responsible for Mr Magnitsky's death have not been brought to justice, this case will be a tragic illustration of the impunity and lack of independence of the Russian judiciary.

¹¹⁷ RiaNovosti, 14 March 2012.

7.5. Freedom of expression

462. Freedom of expression is highly problematic in Russia. We described in one of the previous chapters the situation of the media, characterised by State control of the broadcast media, limited diversity in the print media, arbitrary use of the anti-extremism law and, above all, violence against journalists and impunity of the perpetrators.

463. The insecurity of journalists remains a real threat to press freedom in Russia. Cases of targeted physical assault on well-known journalists, as well as continued failure to carry out credible and effective investigations and to punish those responsible for beatings and killings of journalists, is believed to force many to exercise self-censorship.

464. According to the Committee to Protect Journalists (CPJ), as many as 22 journalists were killed in targeted killings between 1991-2009. For comparison, the figures for other countries in the same period are: France: 0, Germany: 0, Italy: 0, United Kingdom: 1.¹¹⁸

465. Russia ranks eighth in the Committee to Protect Journalists' Impunity Index, a list of countries in which journalists are killed regularly and governments fail to punish the perpetrators. Since 1999 at only three trials for work-related killings, were the perpetrators convicted: for the 1998 murder of Larisa Yudina; the 2003 killing of Ivan Sukhomlin and for the fatal beating received by Igor Domnikov in May 2000.

466. The murder of Ms Anna Politkovskaya, a journalist well-known for her criticism of the Kremlin, who was gunned down on 7 October 2006, and the failure, so far, to elucidate all the circumstances of this case and punish those responsible, creates a climate of impunity and fear. It is true that, recently, there have been some encouraging developments in the investigation¹¹⁹, but the question of identifying the masterminds still remains open and it will require a great deal of courage on the part of the police and judicial authorities.

467. The number of recorded targeted acts of violence against journalists without a fatal outcome amounts to over 100 during the same period. Law enforcement agencies have investigated over 70 of these attacks (some have not been reported and besides the police are only obliged to investigate the physically more serious types of assaults). The investigations were usually halted due to lack of progress. In total, four assaults in this period reached the courts. Two led to convictions of the perpetrators but not of the purported instigators.

468. Threats against journalists and media outlets constitute the most insidious form of intimidation.

469. With the Internet's rising influence as the single most important source of information (over 40% of Russian citizens use the Runnet), the issue of online freedom of expression has become significantly more relevant. Here again, serious concerns are raised by the attempts of the authorities to develop online filtering and surveillance. Bloggers are the victims of lawsuits and prosecutions, often under the vague interpretation of the "anti-extremism" law, which was amended in July 2007.

470. There have reportedly been numerous cases of different kinds of harassment of bloggers – judicial and other – aimed at intimidating especially those who are critical of the authorities or speak on sensitive topics.

471. Furthermore, freedom of expression for human rights defenders, lawyers and civil society activists remains limited. Only one conviction – in May 2011 of the couple responsible for the double murder of human rights lawyer, Mr Stanislav Markelov, and journalist Ms Anastasia Barburova - was the first significant step against the climate of impunity prevailing in Russia.

472. With the exception of the murder of Mr Stanislav Markelov and Ms Anastasia Barburova, no other killings of well-known human rights activists – Natalia Estemirova, Maksharip Aushev, Zarema Sadulava or Alik Dzhabrailov – to mention only those assaulted during the last two years – have been brought to a conclusive end and resulted in the conviction of the perpetrators. Human rights defenders and civil society activists are also frequently subjected to intimidation, administrative harassment and physical attacks.

¹¹⁸ Other sources provide similar figures: according to Reporters sans Frontiers, 21 journalists were killed between 2000 and 2007; the International Press Institute (IPI) gives an account of 40 assassinated journalists since 1990.

¹¹⁹ On 23 August 2011, a retired police officer, Lt. Col. Dmitry Pavluchenkov, was arrested on a charge of organising the murder. He was also accused of hiring the assassins. Vladimir Markin, a spokesman for the Russian Investigative Committee, said that the investigators even "had information about the presumed mastermind" but added that it would be premature to make that information public. On 12 July 2012, the investigators announced that they would bring charges against the suspect, and had agreed with him on a plea bargain.

473. To our great regret, in mid-July 2012, the Duma passed two controversial laws which have a direct influence on the freedom of expression: firstly, a controversial law on criminalisation of defamation. The law reintroduces slander as a criminal offence and envisages fines of up to 5 million rubles (152 000 USD) . It rolls back the former President Medvedev's reform that decriminalised libel in December 2011 and made it an administrative offence. This law goes counter to democratic standards and vests increased powers in the authorities to silence its critics. Secondly, the law on Internet (Act on Information), which, according to many, may have negative effects and lead to the establishment of censorship. The Russian-language Wikipedia took its content offline for a day ahead of the vote claiming that the law "could lead to the creation of extra-judicial censorship of the entire internet in Russia".

7.6. Freedom of assembly

474. The right to freedom of assembly – which is crucial to supporting pluralism and democracy - remains problematic in Russia. This right is enshrined in Article 31 of the Constitution of the Russian Federation, and regulated by the Federal Law of the Russian Federation "on assemblies, rallies, demonstrations, marches and picketing" ("Law on Assemblies") which was amended in December 2010. Even if the general normative framework in principle complies with European standards, the interpretation of certain ambiguous provisions by the authorities raises justified concerns.

475. The law provides for a notification procedure which obliges the organisers to inform the authorities about their intention to hold a meeting. The provision does not oblige them to seek authorisation. However, the ambiguity of this provision allows the authorities to promulgate decisions and regulations which put restrictions on the freedom of the assembly: change of place for example.

476. The Guidelines on Freedom of Peaceful Assembly¹²⁰ recommend that the organiser of an assembly should not be compelled or coerced either to accept whatever alternatives the authorities propose or to negotiate about key aspects, such as time or place, of a planned assembly.

477. However, one of the provisions of the federal law which has often been applied is the prohibition of the holding of assemblies if the organisers disagree with the local authorities "motivated" proposals to change the venue or time of the assembly.¹²¹

478. The Venice Commission, in its opinion on the Federal Law on assemblies, meetings, demonstrations, marches and picketing¹²², delivered in March 2012, recommended the revision of the regime of prior notification. The grounds for restrictions of assemblies should be narrowed to allow application of the principle of proportionality; spontaneous assemblies should be allowed as long as they are peaceful; the obligations of organisers should be reduced. It also stressed that court decisions in case of appeal should be delivered before the planned demonstration.

479. It is clear from the above opinion that it would be advisable to review the legal framework with a view to including effective, foreseeable and clearly defined procedures for the resolution of any disagreements which may arise in the context of the notification. We are therefore seriously concerned about the adoption of a new law which further restricts the freedom of assembly. We have already mentioned the so-called "Protest Bill", adopted on 6 May 2012, which considerably raises fines for the organisation of, and participation in, unsanctioned rallies. In the case of possible restrictive implementation of this law, people might be sanctioned for walking with white ribbons in the streets or calling for protests on the internet. The adoption of the law has raised much criticism both in Russia and abroad. This piece of legislation does not comply with Council of Europe standards and we sincerely hope that the Russian authorities will reconsider it with a view to amending it.

480. The authorities refuse authorisations and police frequently disperse – sometimes using unnecessary or excessive force – public rallies held by civil society activists and the political opposition, despite compliance of the organisers with the notification procedure envisaged in the law. Police arbitrarily arrest and detain demonstrators who are frequently sentenced to administrative punishment.

¹²⁰ The second edition of the Guidelines was issued in October 2010 by the Council of Europe Commission for Democracy Through Law (Venice Commission) and the OSCE Office for Democratic Institutions and Human Rights in order to assist the member States of the Council of Europe and the OSCE in ensuring that their legislation on freedom of assemblies complies with European standards.

¹²¹ Articles 5(5) and 12(2) of the Law on Assemblies.

¹²² Opinion No. 659/2011.

481. Another concern relates to the sanctions and penalties imposed after assemblies. There are numerous allegations that the right to a fair trial is not observed. The ECHR has, on several occasions, found that subsequent sanctions have constituted disproportionate interference with the right to the freedom of assembly and expression.

482. Despite these difficulties, rallies in support of the freedom of assembly have been held by the opposition in major Russian cities on the 31st of months with that many days, symbolising Article 31 of the Russian Constitution, which guarantees the right to peaceful assembly. They have often been brutally dispersed by the police and some political activists have been detained. The means used against the demonstrators and the justification for detention seem highly controversial. For example, the rally on 31 December 2010, which, although authorised, resulted in the arrest of approximately 120 protesters including some leading opposition figures like Mr Nemtsov, Mr Ilia Iashin and Mr Konstantin Kosiakin, who were sentenced, on 2 January 2011, to fifteen, five and ten days of administrative detention respectively on the charges of “disobeying police instructions”, despite eyewitness reports that they had not obstructed police officers.

483. Since late 2010, when a new mayor of Moscow was appointed, some rallies have been authorised. This positive change has been confirmed recently in the post-electoral period, and we welcome it. Unfortunately, in other Russian cities, rallies have more often been refused.

484. The authorities should ensure that law enforcement officials at all levels respect and protect the right to freedom of assembly and act lawfully in the context of such events. Appropriate training in the policing of public assemblies, incorporating human rights principles, should be provided on a regular basis for such officials.

485. They should also be accountable for any illegal acts committed during the assembly. A number of measures aimed at remedying this situation might be recommended: for example, members of law enforcement forces should wear clear and visible identification signs during their action. Moreover, information and statistics about unlawful acts by law enforcement officials during assemblies should be gathered and made available.

486. Furthermore, there is no provision in the current legislation on spontaneous assemblies. The right to organise such meetings is important in cases when delay might weaken the message. This was particularly clear in the weeks following the December 2011 elections.

487. Gay parades are systematically banned. In September 2010, the European Court of Human Rights unanimously held that the Russian Federation had acted illegally in banning the Gay Rights demonstrations in 2006, 2007 and 2008. It said that Russia must legalise the event planned for 20 May 2011.¹²³ The Russian authorities went on to defy this ruling and, on 18 May 2011, 18 peaceful demonstrators were arrested and attacked. One was admitted to hospital. This problem is part of the broader issue of discrimination of LGBT, which we will tackle in more detail in one of the next chapters.

488. In the interview which Mr Gross gave to the Russian Press, in his capacity as the former PACE Rapporteur on the LGBT rights, he stressed that Russia must comply with the ECHR decisions and that the ruling out of the Moscow Gay Pride was contrary to the European Convention on Human Rights. He also criticised the statement by the Mayor of Moscow, Mr Sergey Sobyanin, that “gay parades do not need Moscow”. “I am very disappointed that the new mayor inherits the policy on Gay Pride Parades which was held by the previous mayor. Mr Yuri Luzhkov had his flaws – he was not a democratic mayor and has been associated with corruption. I really do not understand why the new Mayor is so against Gay Pride Parades”- the Rapporteur said.

489. Moscow’s human rights ombudsman, Mr Alexander Muzykantsky, announced, on 25 April 2011, that he would prepare a report on the violations by the Russian authorities of the freedom to hold demonstrations.

490. On 9 September 2011, the former Council of Europe Commissioner for Human Rights, Mr Thomas Hammarberg, issued a letter addressed to the Government of the Russian Federation in which he expressed his concerns about the hindrances to freedom of assembly.

491. In their reply of 30 September 2011, which is available on the Council of Europe Commissioner’s website, the Russian authorities commented on the issues raised in the letter and gave information on some measures taken to improve the situation.

¹²³ See ECtHR’s judgment in the case of Alekseyev v. Russia.

7.7. Freedom of conscience and religion

492. Upon accession, Russia committed itself to introducing new laws in line with Council of Europe standards, in particular on freedom of religion. The Federal Law on "Freedom of Conscience and Religious Associations" was adopted in 1997. It has been criticised, both within the country and outside, on the grounds that it disregards the principle of equality of religions.

493. The 1997 law is very complex and contains many ambiguous provisions. It creates various categories of religious communities with differing levels of legal status and privileges. The subsequent decisions of the Constitutional Court in 1999, 2000 and 2002 partially improved the situation, limiting the basis for application of different criteria, but the situation is still not fully satisfactory.

494. In the previous report on Russia, in 2005, the co-rapporteurs urged the Russian authorities to revise the law, in particular to eliminate the discriminatory provisions hindering the registration of new religious organisations, simplify the registration procedures, and grant more rights to unregistered religious groups. This has unfortunately not been done.

495. A number of confessions and religious organisations, including Mormons and the Krishna Consciousness Society, have encountered problems with registration.¹²⁴

496. In their comments on the preliminary draft report, the authorities insisted that there has been a clear decrease in the percentage of refusals by the State to register religious organisations: between 2008 and 2011, it fell from 5.5% to 2.4%.

497. Moreover, we have been told that the Federal Law "on counteracting extremist activities" (Extremism Law), adopted in 2002¹²⁵, has been misused as a tool against the activities of certain religions, particularly Jehovah's Witnesses, a large community of 162,000 people in Russia. This misuse has dramatically increased since the introduction of amendments to the law in 2006.

498. In the original law, extremism was partly defined as "incitement to social, racial, national or religious discord, associated with violence or calls to violence". The 2006 amendment removed the phrase "associated with violence or calls to violence". Article 1 of the Law defines extremism as: "*activity conducted by social or religious associations or other organisations or the media or individuals that involve the planning, organisation, preparation, and carrying out of actions with the following objectives: Incitement to social, racial, national or religious discord; Propagandizing exclusivity, superiority or inferiority of a person on the grounds of his social, racial, national, or religious standing or his language or attitude to religion.*" This ambiguous definition of "extremism" allows for arbitrary action by the law enforcement agencies.

499. As a consequence, 68 religious publications of the Jehovah's Witnesses, including the Bible for children, have been included on the Federal List of Extremist Materials issued by the Ministry of Justice.

500. Individual members of this community are being criminally charged for "incitement to hatred or enmity and denigration of human dignity" or for allegedly distributing "extremist" literature on the grounds of articles 282 and 282.1 of the Criminal Code. To date, ten criminal investigations have been opened against Jehovah's Witnesses.

501. Individual members have also been found guilty of violations of Articles 13.21, 20.2 and 20.29 of the Administrative Code for alleged distribution of religious periodicals without a permit, holding religious meetings without informing the authorities and alleged storage of religious publications deemed to be extremist materials for alleged distribution.

502. The recently amended Federal Law on the FSB gives the investigators numerous tools to invade the private lives of individual members, harass and intimidate them on the pretext of gathering evidence. Since December 2009, there have been over 1000 incidents of assaults, arson attacks, police detentions, searches and seizure of literature, and raids on private homes and places of worship. Websites of Jehovah's Witnesses in various cities have been cyber-attacked.

¹²⁴ See "Freedom of conscience in Russia in 2010: restrictions and challenges", SOVA, Center for Information and Analysis.

¹²⁵ See also paragraph 438 of the present report and Opinion 660/2012 of the Venice Commission.

503. In 2010, by decision of the Federal Service for Oversight of Communications, Information Technologies and Mass Communication, the distribution licence for Jehovah's Witnesses main English language magazine was revoked. By the same decision, the magazine cannot even be imported into the country.

504. On 10 June 2010, the European Court of Human Rights (ECHR) ruled that the liquidation and ban on the activities of the Moscow Community of Jehovah's Witnesses in 2004, was unlawful. Since then, however, the Community has not been able to re-register, despite repeated attempts.

505. We were presented with a long list of well-documented cases of violations of freedom of religion with regard to Jehovah's Witnesses.

506. We find this situation unacceptable, which was the main reason behind our initiative to send the above-mentioned Federal Law on Extremism, as amended in 2006, for opinion. We hope that the Venice Commission's guidance will contribute to remedying the current violations.

507. In a most worrying development, on 31 May 2012, 17 Jehovah's Witnesses in Taganrog were charged with organising and participating in a criminal activity merely for practicing their faith. The trial is expected to take place in the near future. A ruling to initiate a criminal case on the basis of Article 282.2 of the Criminal Code (organising the activity of an extremist organisation) was rendered on 5 August 2009 and it followed the decision of the Rostov Regional Court to liquidate the local religious organisation as an extremist organisation and to declare as extremist materials 34 of their religious publications.

508. Russia also undertook to return, without delay, the property of religious institutions. The Law on handing over to the religious organizations property owned by the State or municipalities was adopted by the State Duma in November 2010. We note with satisfaction, that most of the property used for religious services has been returned. We were able to confirm this at our meetings with representatives of different confessions in Moscow and in Kazan.

7.8. Alternative military service

509. Upon accession, Russia undertook to adopt a law on alternative military service. This was done in 2002.

510. In their report on Russia presented in 2005, our predecessors heavily criticised this law, concluding that it was incompatible with European standards and did not offer a fair alternative for young draftees. They stressed that, in their opinion, the commitment in this respect was not fulfilled and pointed out that the formal adoption of a law cannot automatically stand for compliance with obligations and commitments. We fully share this view.

511. Resolution 1455 (2005) on the honouring of obligations and commitments by the Russian Federation called on the Russian authorities to revise the law on alternative military service with a view to "changing its disproportionate character and bringing it in line with European practice".

512. Regrettably, this has not been done. The Russian delegation, for its part, considers the commitment fulfilled. To justify its position, it refers to statistics: according to the Ministry of Defence, as many as 5,388 applications for alternative military service were submitted between 2004 and 2010; 4,072, i.e. 80,5% were satisfied.

7.9. Protection of minorities, xenophobia and racial intolerance

513. Upon accession to the Council of Europe, Russia undertook to introduce new laws in line with Council of Europe standards for the protection of national minorities, to sign and ratify, within a year from the time of accession, the European Framework Convention for the Protection of National Minorities; to conduct its policy towards minorities on the principles set forth in Assembly Recommendation 1201 (1993), and to incorporate these principles into the legal and administrative system and practice of the country. Russia also committed itself to signing and ratifying, within a year from the time of accession, the European Charter for Regional or Minority Languages.

514. Russia is a multi-ethnic state with over 100 nationalities. According to the 2010 population census, the Russian population is made up of Russians: 80.9%; Tatars: 3.9%; Ukrainians 1.4%, Bashkir 1.1%; %, Chuvash

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1.1%; Chechens 1.0% and others: 10.6% including Finno-Ugric people, whose situation is considered to be a matter of concern by the Assembly.¹²⁶

515. The Russian Federation ratified the Framework Convention for the Protection of National Minorities on 18 June 1998. The last resolution of the Committee of Ministers containing recommendations for improvement of the implementation process dates back to May 2007. The third periodic report by the Russian authorities was presented in 2010, and the Third Opinion of the Advisory Committee was adopted in February 2012.

516. While noting an overall progress in the implementation of the Convention, it points to a number of areas of concern, in particular as regards the implementation of existing federal guarantees regarding minority protection, the lack of comprehensive anti-discrimination legislation offering effective remedies for victims of discrimination and continuing problems concerning access to residency registration and citizenship for persons belonging to national minorities, which results in difficulties in the implementation of their economic, social and civil rights.

517. There is an alarming increase in the number of racially motivated violent assaults. The reluctance of law enforcement officials and prosecuting authorities to acknowledge the racially and nationalist motivation of these crimes is a matter of concern. Furthermore, incitement to hate has become more common and too often it remains unpunished.

518. Regrettably, there have been setbacks related to minority participation in public life, including the abrogation of federal provisions allowing quotas for the participation of indigenous peoples in regional legislatures. In their comments on the preliminary draft report, the authorities drew our attention to the fact that the participation of representatives of minorities is exercised principally by their membership of and work in expert advisory bodies affiliated to State and local authorities. In particular, they are members of the Expert Advisory Council affiliated to the Interagency Task Force on Interethnic Relations. Furthermore, on 7 May 2012, the President issued a Decree "on ensuring Interethnic Concord". A Council on Interethnic Relations is planned to be established under the responsibility of the President.

519. The European Charter for Regional or Minority Languages was signed by the Russian Federation in 2001 but it has never been submitted for ratification. During our last visit, we were told that the procedure is underway and the ratification should be accomplished in the near future. We urge here the members of the Duma – as we did during our meetings in Moscow – to accomplish this task without delay, especially since this question does not seem to be problematic. Indeed, during our visit in Kazan, we had an opportunity to speak to different language communities present in the Republic of Tatarstan, and we could establish that an overall situation with regard to minority languages is satisfactory.

520. The most recent report of the European Commission against Racism and Intolerance (ECRI) was published in 2006 (it was adopted in December 2005). It gave evidence of specific concerns regarding the escalation of racist violence, the spread of racist statements and publications, racist discourse in politics, and racial discrimination in the system of residence registration. The next visit and report of the ECRI are foreseen for this year.

7.10. The Ombudsman institutions

521. Upon accession, Russia committed itself to adopting a law on the Office of the Commissioner for Human Rights. The Federal Law on the Ombudsman in the Russian Federation was adopted in 1997.

522. The Ombudsperson is independent from the executive and elected by the Duma for a five-year period. Since 2004, the post has been occupied by our former colleague from the Parliamentary Assembly, Mr Vladimir Lukin.

523. The Ombudsperson examines complaints on abuses of individuals' freedom and rights, takes measures to rectify the violations, offers recommendations on the compliance of national legislation with international law, as well as prepares annual reports on his department's activities for the President, parliament, government, the Prosecutor General and the top courts. In 2011, the Ombudsman's office received over 54,000 individual and group complaints.

¹²⁶ See Recommendation 1775 (2006)

524. While we are truly impressed by the devotion and commitment of the present Ombudsperson and his staff, we have to admit that an overall impact of their activities on the human rights situation in the Russian Federation is limited and focused on individual cases.

525. According to the law, every subject of the Russian Federation may also elect their own ombudsperson. During our visit in Kazan, we met the Ombudsperson for Tatarstan, Ms Saria Saburskaya, and were informed on her activities.

7.11. The Presidential Council on Civil Society Development and Human Rights

526. The Presidential Human Rights Council¹²⁷ is an advisory body established in 2004, which is responsible for preparing recommendations for the President on key human rights issues. It is composed of 27 representatives of major NGOs.

527. The Council has taken position on many important and sensitive issues, proving its independence and impartiality. It has prepared reports on the death of Mr Sergey Magnitsky, pointing to the responsibility of the prison guards, and on the imprisonment of Mr Mikchail Khodorkovsky, concluding that the investigation should be reviewed.

528. Most recently, on 24 December 2011, the Council called on the Head of the Central Election Commission to step down.

529. The reports of the Presidential Human Rights Council are public and they are published on the Council's website. However, they are not binding in any way, and their influence is very limited.

530. Regrettably, in June 2012, following the announcement of a change in appointment of the Council's members, 13 of the 27 members, including the famous human rights defender, Ms Ludmila Alexeeva, resigned. They said that they feared that the Council would lose its independence from the authorities. On 22 June 2012, Mr Mikhail Fedotov said that, as of the following month, Russian non-governmental and other civil society groups would be able to nominate their candidates on the Council's official website and the President would select and appoint new members from among these candidates.

531. This decision, along with recently adopted new laws, increases our concern with regard to the intentions of the authorities and the future of democracy in Russia.

8. Conclusions

532. The overall state of democracy in Russia raises concern and progress in the fulfillment of the country's obligations and commitments is slow. In this report, we have pointed to numerous problems in all areas of our interest, namely pluralist democracy, the rule of law and human rights, both at the level of legislation and its implementation. Russia should increase its efforts and advance more quickly on the way to democratisation.

533. A matter of particular concern over the reporting period was the restrictive political climate, which was harmful for a meaningful political dialogue and free expression of public opinion.

534. This restrictive political environment was also detrimental to the electoral process, which, together with the shortcomings and deficiencies of the electoral legislation and electoral administration, fuelled heavy criticism of the recent parliamentary and presidential elections.

535. Concerns with regard to the independence of the judicial system are closely linked to other concerns related to the rule of law, human rights violations and the impunity of police forces.

536. As Rapporteurs on the monitoring of Russia's obligations and commitments, we have been charged with the particularly difficult task of assessing the democratic progress in a country which seems to be at a crossroads, confronted with the choice of its own future. Indeed, at the time of drafting the present conclusions (July 2012), it is difficult to predict in which direction Russia will go.

537. The mass demonstrations which followed the parliamentary elections of December 2011, created a new political situation in Russia. After more than a decade of rule by one political force enjoying a

¹²⁷ It replaced the Presidential Human Rights Commission, established in 1993, as a complementary body to the Ombudsperson with direct access to the President and the Presidential Administration.

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comfortable majority in the parliament and the support of the population, which allowed it to consolidate its power, sometimes at the expense of democratic principles, the moment came when the population demanded more openness and inclusiveness of the political system.

538. The political stability and economic prosperity of the early 2000s, which replaced the chaotic situation and economic difficulties of the 1990s, was no longer sufficiently satisfying for the population's ambitions and expectations. The Russian population, often considered as politically passive and favouring strong authoritarian power, has, all of a sudden, demonstrated its democratic expectations and political potential.

539. This mass mobilisation has not been limited to big cities or specific categories of the population: the whole country was concerned and all population groups from all political backgrounds were represented in the demonstrations. This has created a window of opportunity for the ruling force which might result in a liberalisation of the system.

540. A number of legislative reforms initiated by the former President and signed into law, including changes in the electoral law, direct elections of governors, amended rules for registration of political parties, seemed to confirm a sincere wish to liberalise the system. The public announcement by the newly elected President of his intention to broaden political dialogue by including the extraparliamentary opposition, seemed to confirm this positive direction.

541. However, the declared openness of the authorities for change is too often contradicted by acts. As we mentioned in the introduction, the recently adopted restrictive laws, in particular the so-called "Protest bill", the re-criminalisation of defamation, the law on the Internet, amendments to the law on NGOs, constitute a step backwards and bring into question the intentions of the ruling forces.

542. The legal expertise of the Venice Commission demonstrates that a number of laws, crucial for the democratic environment in Russia, raise concern as to their compliance with democratic standards. We hope that the Russian authorities will take into account the Venice Commission's recommendations and will address them without delay. In the meantime, the existing legislation governing basic freedoms should be applied in a less restrictive manner.

543. We also call on the Russian authorities to use the Venice Commission's expertise when preparing the new legislation.

544. We believe that the coming months will be very important for the democratic future of Russia. Once again, we recall that it is in the best interest of the ruling forces to listen to public opinion and let it be expressed freely. Respect for freedom of expression, freedom of assembly and freedom of association are essential for a truly democratic process.

545. We are aware of the frustration of the Russian authorities with regard to the duration of the monitoring procedure. It results from the conviction that a considerable legislative effort in fulfilling commitments has been accomplished and that the country should move to a post-monitoring dialogue. We have witnessed this frustration and, indeed, lack of comprehension, at many meetings during our visit.

546. However, we are convinced that the conditions have not been met for closing the monitoring procedure. We have raised a number of concerns in the present report. We have discussed these concerns frankly and directly with the Russian authorities. The outstanding problems, including elections, freedom of expression, freedom of assembly and human rights, must be resolved before the question of the closing of the monitoring procedure may be considered.

547. Furthermore, the above-mentioned restrictive laws adopted in recent months, bring into question the genuine intentions of the authorities and their declared will to democratise the country. Therefore we recommend to the Assembly to continue the monitoring procedure.

548. We will follow the situation closely. We will continue our political dialogue with the authorities and we are determined not to exceed the deadlines foreseen in the monitoring procedure and present our next report before the end of our mandate in January 2015.

APPENDIX

Table of the legislation introduced by the Russian Federation relevant to the fulfilment of its commitments, as set out in paragraph 10 of Opinion No. 193 (1996) on Russia's request for membership of the Council of Europe

<p>i. to sign the European Convention on Human Rights at the moment of accession; to ratify the Convention and Protocols No. 1, 2, 4, 7 and 11 within a year; to recognise, pending the entry into force of Protocol No. 11, the right of individual application to the European Commission and the compulsory jurisdiction of the European Court (Articles 25 and 46 of the Convention);</p>	<p>The ECHR and the Protocols were ratified on 5 May 1998.</p>
<p>ii. to sign within one year and ratify within three years from the time of accession Protocol No. 6 to the European Convention on Human Rights on the abolition of the death penalty in time of peace,</p> <p>and to put into place a moratorium on executions with effect from the day of accession;</p>	<p>Submitted for ratification to the State Duma on 6 August 1999.</p> <p>Decree No. 724 "On stage-by-stage reduction of executions in connection with the accession of Russia to the Council of Europe" was signed by the President of the Russian Federation on 16 May 1996.</p> <p>Moratorium on executions was put in August 1996.</p> <p>Moratorium on death sentences was put on 2 February 1999 and was further confirmed by the Constitutional Court of the Russian Federation on 19 November 2009.</p>
<p>iii. to sign and ratify within a year from the time of accession the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;</p>	<p>The Convention and Protocols No. 1 and 2 to the Convention were ratified on 5 May 1998.</p>
<p>iv. to sign and ratify within a year from the time of accession the European Framework Convention for the Protection of National Minorities; to conduct its policy towards minorities on the principles set forth in Assembly Recommendation 1201 (1993), and to incorporate these principles into the legal and administrative system and practice of the country;</p>	<p>The Convention was ratified on 21 August 1998.</p>
<p>v. to sign and ratify within a year from the time of accession the European Charter of Local Self-Government;</p> <p>the European Charter for Regional or Minority Languages;</p> <p>to study, with a view to ratification, the Council of Europe's Social Charter; and meanwhile to conduct its policy in accordance with the principles of these conventions;</p>	<p>The European Charter of Local Self-Government was ratified on 5 May 1998.</p> <p>The European Charter for Regional or Minority Languages was signed on 10 May 2001, but has not been submitted for ratification.</p> <p>The Council of Europe's Social Charter was ratified on 16 October 2009.</p>

<p>vi. to sign and ratify and meanwhile to apply the basic principles of other Council of Europe Conventions - notably those on extradition;</p> <p>on mutual assistance in criminal matters;</p> <p>on the transfer of sentenced persons;</p> <p>and on the laundering, search, seizure and confiscation of the proceeds of crime;</p>	<p>The Convention on extradition and Protocols of 1975 and 1978 were ratified on 10 December 1999.</p> <p>The Convention on mutual assistance in criminal matters was ratified on 10 December 1999.</p> <p>The Convention on the transfer of sentenced persons was ratified on 28 August 2007.</p> <p>The Convention on the laundering, search, seizure and confiscation of the proceeds of crime was ratified on 2 August 2001.</p>
<p>vii. to settle international as well as internal disputes by peaceful means (an obligation incumbent upon all member states of the Council of Europe), rejecting resolutely any forms of threats of force against its neighbours;</p>	
<p>viii. to settle outstanding international border disputes according to the principles of international law, abiding by the existing international treaties;</p>	
<p>ix. to ratify, within six months from the time of accession, the agreement of 21 October 1994 between the Russian and Moldovan Governments, and to continue the withdrawal of the 14th Army and its equipment from the territory of Moldova within a time-limit of three years from the date of signature of the agreement;</p>	<p>On 21 June 1995, the Agreement was submitted by the President of the Russian Federation to the State Duma for ratification. On 11 March 2003, it was withdrawn by the President of the Russian Federation from the State Duma.</p> <p>As of today, approximately 1 500 Russian troops remain on the Transnistrian territory.</p>
<p>x. to fulfil its obligations under the Treaty on Conventional Armed Forces in Europe (CFE);</p>	<p>In 2007, Russia suspended observance of its treaty obligations.</p>
<p>xi. to denounce as wrong the concept of two different categories of foreign countries, whereby some are treated as a zone of special influence called the "near abroad";</p>	
<p>xii. to negotiate claims for the return of cultural property to other European countries on an ad hoc basis that differentiates between types of property (archives, works of art, buildings, etc.) and of ownership (public, private or institutional);</p>	<p>The Federal Law on Cultural Valuables Displaced to the USSR as a result of World War II and located on the territory of the Russian Federation (so-called "Trophy Law") was adopted in 1998 and amended in 2000 and 2004.</p>
<p>xiii. to return without delay the property of religious institutions;</p>	<p>The Law on handing over to the religious organizations the religious property owned by the state or municipalities was adopted by the State Duma on 19 November 2010, approved by the Federation Council and signed by the President of the Russian Federation (30 November 2010).</p>

<p>xiv. to settle rapidly all issues related to the return of property claimed by Council of Europe member states, in particular the archives transferred to Moscow in 1945;</p>	<p>These issues are being settled on bilateral basis with the parties concerned on the basis of the Trophy Law.</p>
<p>xv. to cease to restrict - with immediate effect - international travel of persons aware of state secrets, with the exception of those restrictions which are generally accepted in Council of Europe member states, and to facilitate the consultation of archives kept in the Russian Federation;</p>	<p>Under the Constitution of the RF (Article 55, part 3) "the rights and freedoms of man and citizen may be limited by the federal law only to such an extent to which it is necessary for the protection of the fundamental principles of the constitutional system, morality, health, the rights and lawful interests of other people, for ensuring defence of the country and security of the State".</p> <p>The relevant restrictions are regulated by Federal Law No. 114 of 15 August 1996 on the procedure for exiting and entering the Russian Federation (with the amendments and additions of 18 July 1998, 24 June 1999, 10 January and 30 June 2003, 29 June 2004).</p> <p>Decisions on specific cases are taken by the Inter-Departmental Commission for Considering the Applications of Citizens of the Russian Federation Relating to the Limitation of Their Right to Exit from the Russian Federation set up by Decision of the Government of the Russian Federation No. 302 of March 14, 1997.</p>
<p>xvi. to ensure that the application of the CIS Convention on Human Rights does not in any way interfere with the procedure and guarantees of the European Convention on Human Rights;</p>	<p>Russia's participation in the CIS Convention on Human Rights does not prevent the Russian Federation citizens from enjoying the right to apply to the European Court on Human Rights for protection of their human rights.</p>
<p>xvii. to revise the law on federal security services in order to bring it into line with Council of Europe principles and standards within one year from the time of accession:</p> <p>in particular, the right of the Federal Security Service (FSB) to possess and run pre-trial detention centres should be withdrawn;</p>	<p>Federal Law on Federal Security Service (No. 40 of 3 April 1995) has been amended since 1999 (the latest amendments were adopted on 16/10/2010).</p> <p>FSB pre-trial detention centres were transferred to the criminal-executive system within the Ministry of Justice under Decree No. 796 signed by the President of the Russian Federation on 12 July 2005.</p> <p>Venice Commission Opinion No. 661/2011 has identified a number of concerns in the existing law.</p>
<p>xviii. to adopt a law on alternative military service, as foreseen in Article 59 of the Constitution;</p>	<p>The Law was adopted on 25 July 2002. It entered into force on 1 January 2004.</p>
<p>xix. to reduce, if not eliminate, incidents of ill-treatment and deaths in the armed forces outside military conflicts;</p>	

<p>xx. to pursue legal reform with a view to bringing all legislation in line with Council of Europe principles and standards:</p> <p>in particular, Presidential Decree No. 1226 should be revised without delay;</p>	<p>Legal reform is pursued in the Russian Federation.</p> <p>Decree No. 1226 signed by the President of the Russian Federation on 14 June 1994 lost validity due to Presidential Decree No. 593 of 14 June 1997.</p>
<p>xxi. to extend its international co-operation to prevent - and eliminate the ecological effects of - natural and technological disasters;</p>	<p>Russia participates in CE Partial Agreement on the prevention of, protection against, and organisation of relief in major natural and technological disasters - knowledge, prevention, risk management, post-crisis analysis and rehabilitation (The EUR-OPA Major Hazards Agreement).</p>
<p>xxii. to sign and ratify within a year from the time of accession the General Agreement on Privileges and Immunities of the Council of Europe and its additional protocols;</p>	<p>The General Agreement was ratified on 28 February 1996.</p>
<p>xxiii. to co-operate fully in the implementation of Assembly Order No. 508 (1995) on the honouring of obligations and commitments by member states of the Council of Europe, as well as in monitoring processes established by virtue of the Committee of Ministers' Declaration of 10 November 1994 (95th session);</p>	<p>Russia co-operates fully with the PACE, CMCE, Congress of Local and Regional Authorities, the CPT, the European Commission against Racism and Intolerance (ECRI), the CE Commissioner for Human Rights on the honouring of obligations and commitments by member states of the Council of Europe, as well as in monitoring processes.</p>
<p>xxiv. to respect strictly the provisions of international humanitarian law, including in cases of armed conflict on its territory;</p>	
<p>xxv. to co-operate in good faith with international humanitarian organisations and to enable them to carry on their activities on its territory in conformity with their mandates.</p>	