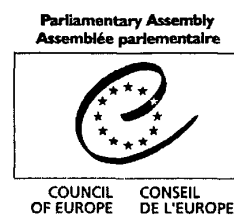


**Parliamentary Assembly**  
**Assemblée parlementaire**



**2006 SESSION**

**First part**

**23–27 January 2006**

**TEXTS ADOPTED**

**BY**

**THE ASSEMBLY**



**List of texts adopted  
by the Assembly  
(23 – 27 January 2006)**

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Provisional edition

## **Draft Protocol on the avoidance of statelessness in relation to state succession<sup>1</sup>**

Opinion No 258 (2006)<sup>2</sup>

1. The right of the person to nationality is a fundamental right recognised by the 1948 Universal Declaration of Human Rights and the 1997 European Convention on Nationality. The Parliamentary Assembly therefore welcomes the draft Protocol on the avoidance of statelessness in relation to State succession which it regards as an essential instrument complementing the existing Conventions. It fully supports the objective of avoiding cases of statelessness by facilitating the acquisition of nationality and it generally subscribes to the provisions laid down therein.

2. In this context, it draws attention to its Opinion No 200 (1997) on the draft European Convention on Nationality and welcomes the response to its call that "the provisions relating to state succession [...] be further developed".

3. The Assembly notes that the draft Protocol applies in respect of any succession of states occurring subsequent to its entry into force. The Assembly regrets that the present draft Protocol, limited to cases relating to state succession, does not make it possible to resolve cases of statelessness existing prior to the state succession. It consequently calls on future States Parties to play an active part in the process desired for years by the Committee of Ministers and the Parliamentary Assembly of tangibly and effectively reducing cases of statelessness in member states. It urges them to take a more proactive approach, basing their legislation on the principles and provisions in Recommendation No. R(99)18 of the Committee of Ministers on the avoidance and reduction of statelessness.

4. The Assembly regrets that, according to Article 14 of the draft Protocol, the Protocol will only apply to situations of state succession which will take place after its entry into force. The Assembly recalls a widely accepted principle of law according to which rules that offer a more favorable regime for individuals should have a retroactive effect. This is particularly important in view of the high number of persons deprived of nationality as a result of the cases of state succession that occurred in Europe the late 1980s and early 1990s.

5. The Assembly recalls its Recommendation 1223 (1993) on reservations made by member states to Council of Europe conventions, in which it expressed the view that it was "advisable and even necessary that the number of reservations made in respect of Council of Europe conventions be considerably reduced". It notes with regret that the draft Protocol allows states to make reservations on at least two fundamental provisions of the Protocol, to the detriment of both the coherence and effectiveness of the Protocol and the necessary harmonisation of national legislation.

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<sup>1</sup> See Doc 10646.

<sup>2</sup> *Assembly debate* on 27 January 2006 (8<sup>th</sup> Sitting) (see Doc. 10770, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Bartumeu Cassany). *Text adopted by the Assembly* on 27 January 2006 (8<sup>th</sup> Sitting).

6. Certain provisions of the draft Protocol, as currently worded, could be improved so as to take account of the opinions previously expressed by, inter alia, the Assembly and the Venice Commission. Consequently, the Assembly recommends that the Committee of Ministers introduce the following amendments, which it regards as essential, to the draft Protocol:

6.1. change the title of the draft Protocol to "Convention on the avoidance of statelessness in relation to state succession" and replace the word "Protocol" by "Convention" throughout the text;

6.2. amend **sub-paragraph e of Article 1** (Definitions) to read "'Person concerned' means every individual who, at the time of the State succession:

a) has the nationality of the predecessor State and is or would become stateless as a result of the State succession,

b) is lawfully and habitually resident on the territory subject to succession and is stateless at the time of the succession";

6.3. replace **Article 4** ("Non-discrimination") by the following text: "States concerned shall not discriminate against any person concerned on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.";

6.4. amend **Article 5.1** by replacing "A successor State shall grant its nationality to" by "The nationality of the successor State shall be acquired by...";

6.5. add a new sub-paragraph after **Article 5.2.c** worded as follows: "descent from or marriage to a person covered by this article";

6.6. add a new paragraph **3** to **Article 5** worded as follows: "The nationality of the successor State shall also be acquired by those persons who, at the time of the State succession, are lawfully and habitually resident on the territory subject to succession and are stateless at the time of the succession";

6.7. add at the beginning of **Article 7** a new sentence worded as follows: "The States concerned shall take account of the will of the persons concerned whenever these persons fulfil the conditions for obtaining the nationality of two or more States";

6.8. add at the end of **Article 7** a new sub-paragraph worded as follows: "The acquisition of the nationality of a successor State or the choice of the nationality of the predecessor State or of one of the successor States according to the will expressed by the person concerned shall not have detrimental consequences for those so opting, particularly in respect of their right to reside on the territory of the successor State or of their movable or immovable property situated there.";

6.9. add a new article after **Article 7** worded as follows: "EFFECTIVE DATE - The acquisition of nationality in relation to the succession of States, as well as the acquisition of nationality following the exercise of an option, shall take effect on the date of such succession, if the person concerned would otherwise be stateless during the period between the date of the succession of States and such acquisition of nationality.";

6.10. amend **Article 8.2** by replacing "before granting its nationality to" by "before attributing the nationality to";

6.11. replace **Article 10** by the following sentence: "The nationality of a State concerned shall be acquired *ex lege* by a child born on the territory of a State concerned at birth, if that child would otherwise be stateless.";

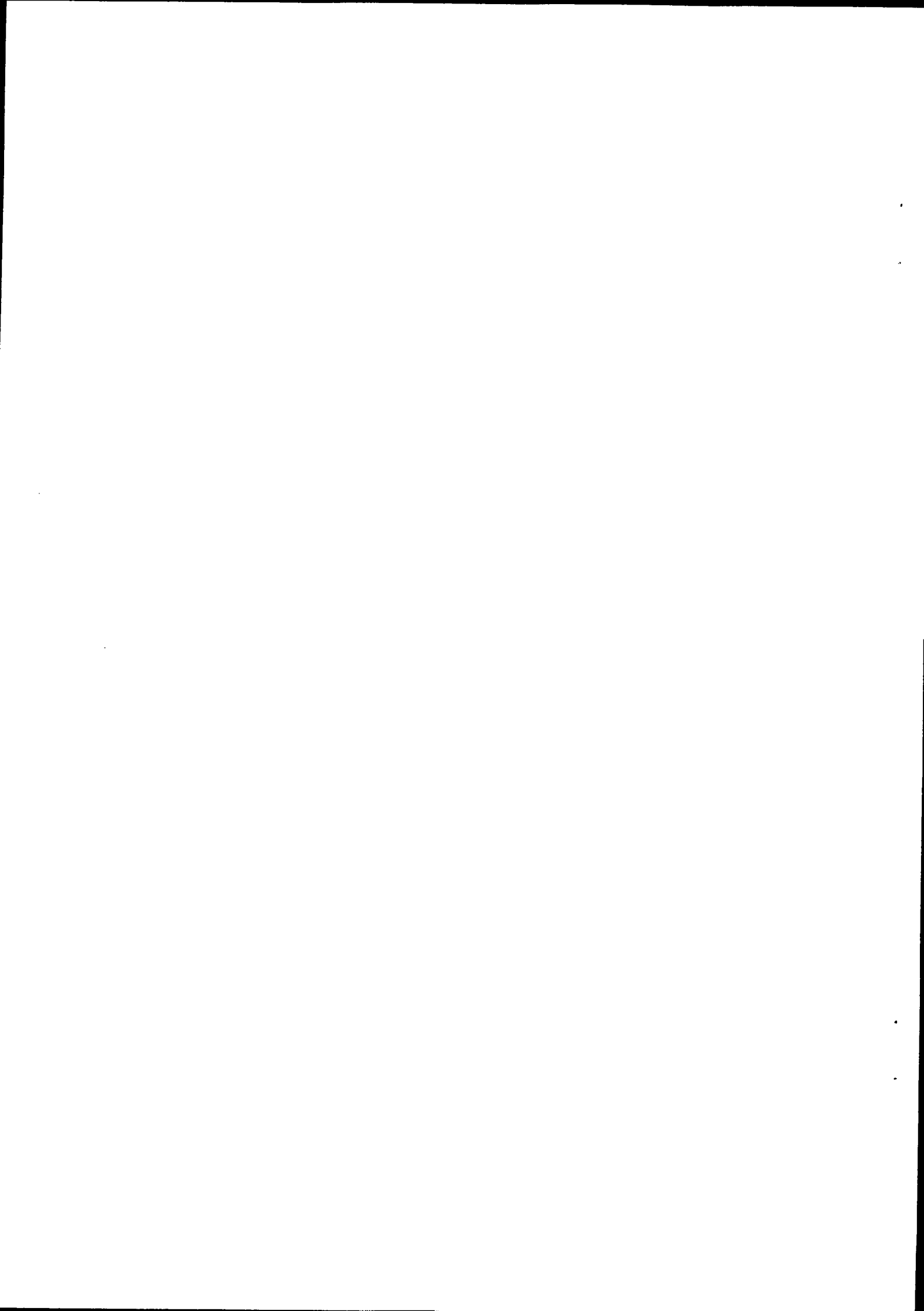
6.12. after **Article 10** add a new article worded as follows: "LEGISLATION AND REGULATIONS ON NATIONALITY - States concerned should, without undue delay, enact legislation and regulations on nationality arising as the result of the State succession.";

6.13. replace **Article 11** by the following text: "States concerned should take all appropriate measures to ensure that persons concerned will be apprised, within a reasonable time period, of the effect of their legislation and regulations on their nationality, of any choices they may have thereunder, as well as of the consequences that the exercise of such choices will have on their status.";

6.14. after **Article 11** add a new article worded as follows: "RIGHT TO AN EFFECTIVE REMEDY - The decisions taken by the State concerned in respect of requests relating to the acquisition, retention, deprivation or withdrawal of nationality or refusal to grant it or in respect of the exercise of an option on the occasion of State succession shall be notified in writing; persons concerned have the right to an effective administrative or judicial remedy.";

6.15. replace the whole of **Article 19** with the following "No reservations may be made to the present Convention".

7. The Assembly therefore calls on Council of Europe member states to sign and to ratify this instrument as soon as possible and, taking a proactive approach, to recognise through a declaration that the Protocol will have retroactive effect for existing cases of statelessness. It notes that only 14 states have ratified the European Convention on Nationality (CETS 166) and that another 12 have signed it, figures which are disappointing. It encourages states which have not yet done so to sign and ratify the Convention.







Provisional edition

## Europe's contribution to improving water management

Recommendation 1731 (2006)<sup>1</sup>

1. Water management is a critical element for the sustainable development of Europe and a matter for all: parliamentarians, governments, local and regional authorities, international organisations, scientists, the private sector, non-governmental organisations and European citizens at large.
2. The Parliamentary Assembly reaffirms the validity of the principles laid down in the Council of Europe Charter on Water Resources adopted by the Committee of Ministers on 17 October 2001.
3. Recalling its Resolution 1449 (2005) on the environment and the Millennium Development Goals (MDGs), the Assembly reiterates that it is unacceptable that 1.2 billion people in the world lack access to safe drinking water and 2.6 billion lack access to basic sanitation. The United Nations' MDGs agreed in 2001 to include specific targets regarding water resources: to halve the proportion of people without sustainable access to safe drinking water and basic sanitation by 2015. However, the 2005 United Nations progress report on the MDGs, states that access to improved drinking water resources has improved but much slower progress has been made globally in improving sanitation.
4. The Assembly welcomes the commitment of the Heads of State and Government of member states to achieve the MDGs expressed in the Warsaw Declaration and Action Plan of 17 May 2005 and in particular the reference to "everyone's entitlement to live in a balanced, healthy environment" (Action Plan, IV,3). The Assembly further welcomes the commitment of member states to "improving the quality of life for citizens" through the further development and support of integrated policies on the environment, with a "sustainable development perspective" (Action Plan, II-7).
5. Recognising access to water as a fundamental human right could serve as an important tool to encourage governments to improve their efforts to meet basic needs and accelerate progress towards achieving the MDGs. A rights-based approach to water would be a very important tool for civil society to hold their governments accountable for ensuring access to an adequate quantity of good quality water as well as sanitation.
6. Water resources and services in Europe are inter-dependent. European countries should adequately integrate transborder water basins management and the need for co-ordinated policies, solidarity, and responsibility in their water management policies and plans. In this sense, it is urgent that member countries transfer appropriate water management responsibilities to local and regional authorities.

<sup>1</sup> *Assembly debate* on 24 January 2006 (2<sup>nd</sup> Sitting) (see Doc.10772, report of the Committee on the Environment, Agriculture and Local and Regional Affairs, rapporteur: Mrs Papadimitriou). *Text adopted by the Assembly* on 24 January 2006 (2<sup>nd</sup> Sitting).

7. The Assembly recalls Recommendation 1669 (2004) on transboundary water basins and its invitation for member states to develop transfrontier co-operation for the integrated management and protection of transboundary rivers and lakes, in particular through bilateral and multilateral agreements, and based on sound environmental, social and economic criteria.

8. It reiterates the recommendations to member states made in Resolution 1449 (2005) and draws attention to the urgency to take action to:

8.1. ensure access to water and sanitation for all which should be considered as a fundamental human right;

8.2. address the burden placed on local and regional authorities regarding the provision of water and sanitation and the importance of improving their capacity (technical, technological and financial) to achieve this goal;

8.3. improve water governance and facilitate decentralisation of decision-making, recognising the self-government of local and regional authorities, including energy and sanitation matters;

8.4. develop integrated plans for a more efficient water resource management, including the establishment of the necessary legal and institutional frameworks;

8.5. support and fully engage on the European Union Water Initiative, designed to contribute to achieving global targets for drinking water and sanitation by mobilising a wide range of partners to increase co-ordination and co-operation on water issues at all levels, under the overarching policy framework of integrated water resources management based on a river basin approach.

9. The Assembly welcomes the results of the colloquy jointly organised with the Congress of Local and Regional Authorities of the Council of Europe on "Water management: A shared responsibility" held on 20-21 October 2005, within the European Solidarity Week for Water. The key messages from that colloquy, together with this recommendation, will be a contribution to the 4<sup>th</sup> World Water Forum on "Local Actions for a Global Challenge" which will take place in Mexico in March 2006.

10. The Assembly calls on national parliaments to contribute to keeping the political momentum on the management of water resources before, during, and after the 4<sup>th</sup> World Water Forum by:

10.1. holding debates on water management in preparation for the Forum;

10.2. participating in the Multi-Stakeholder Dialogue that will be held in Mexico;

10.3. leading the way in ensuring that the governments of member countries take action to keep their commitments and follow-up to the Ministerial Declaration that will be published at the close of the 4<sup>th</sup> World Water Forum;

10.4. co-operating with other parliaments in their geographical region, and sharing information with other assemblies such as the European Parliament, the Euro-Mediterranean Parliamentary Assembly.

11. The Assembly asks the Committee of Ministers to:

11.1. continue the involvement of the Council of Europe in this important issue and support a rights-based approach to water;

11.2. actively participate in international efforts to take forward the water management agenda;

11.3. prepare and send a message from the Council of Europe to the 4<sup>th</sup> World Water Forum of March 2006 in Mexico;

11.4. call on member States to:

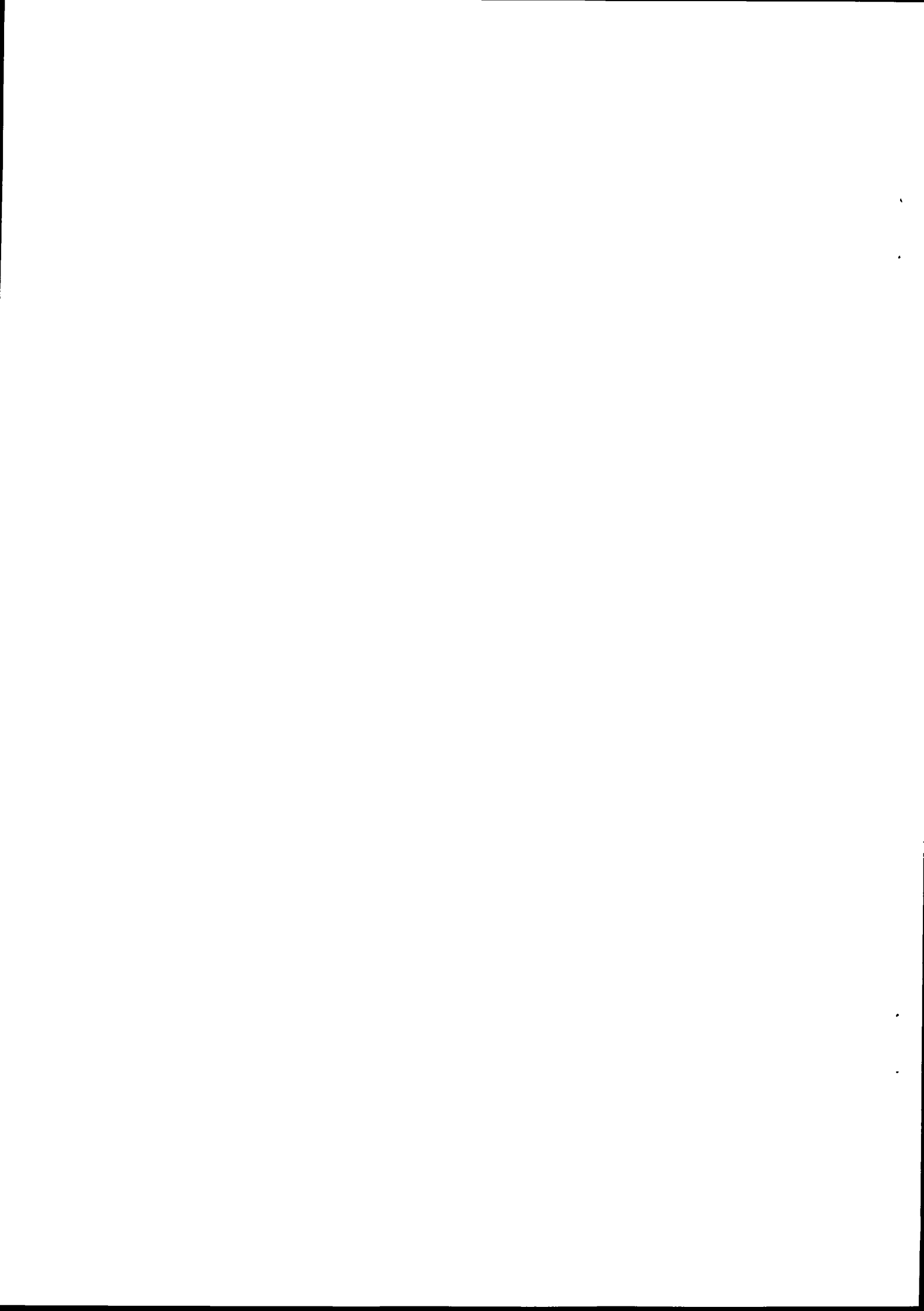
11.4.1. intensify regional efforts to improve water management, in particular regarding shared lakes and watercourses;

11.4.2. develop integrated water management policies and laws and consider the adoption of framework laws that take account of the social, economic and environmental aspects of water resources and their sustainable management, such as the European Union Water Framework Directive and Water Initiative;

11.4.3. decentralise water management regimes to local and regional authorities and enable them to carry out these tasks through appropriate legislative, technical and financial means;

11.4.4. ensure that house building projects, by both local authorities and the private sector, shall not take place on designated flood plains land.

12. The Assembly encourages the Congress of Local and Regional Authorities of the Council of Europe to promote the role and responsibilities of local and regional authorities with regard to the management of water resources, including transboundary water basins.



Provisional edition

## Integration of immigrant women in Europe

Recommendation 1732 (2006)<sup>1</sup>

1. The Parliamentary Assembly refers to its Resolution 1478 (2006) on the integration of immigrant women in Europe.

2. The Assembly recalls that the Heads of State and Government at the Third Summit in Warsaw (16 and 17 May 2005) strongly condemned "all forms of intolerance and discrimination, in particular those based on sex, race and religion, including anti-Semitism and Islamophobia" and undertook to continue to "implement equal opportunity policies in (...) member states (...) to achieve real equality between women and men in all spheres of our societies."

3. The Parliamentary Assembly further points out that it is essential to ensure the protection of the fundamental rights of immigrant women in the Council of Europe member states. It expresses its concern at the legal shortcomings identified in relation to the protection of the human rights of immigrant women and compliance with the principle of equality between women and men in immigrant communities which may be weakened as a result of bilateral agreements, the application of personal law to immigrant women or women of immigrant origin and the absence of any legal status independent of that of the principal right-holder.

4. In this context, the Council of Europe must assert the paramount importance of human rights and the rules of international private law which secure the legal protection of immigrant women and of migration and integration policies which include a gender equality dimension. It must pursue its activities to promote equal opportunities for immigrant women and men in the host societies, building on the work of the Council of Europe's 7<sup>th</sup> Conference of European Ministers responsible for Migration Affairs (Helsinki, 16 and 17 September 2002).

5. The Parliamentary Assembly calls on the Committee of Ministers to:

5.1. gender mainstream all its work concerning migration in Europe;

5.2. with this in mind, instruct the competent steering committee(s) to place an emphasis on strengthening protection of the fundamental rights of immigrant women, and in particular to:

5.2.1. encourage the granting of an independent legal status to immigrant women having joined a principal, if possible within no more than one year from the date of their arrival, in the follow-up to Committee of Ministers Recommendation Rec(2002) 4 on the legal status of persons admitted for family reunification and Parliamentary Assembly Recommendation 1686 (2004) on human mobility and the right to family reunification;

5.2.2. ensure that applications for independent legal status submitted by immigrant women who are the victims of violence are processed by member states with the utmost diligence and by means of expedited procedures;

<sup>1</sup> *Assembly debate* on 24 January 2006 (3<sup>rd</sup> Sitting) (see Doc.10758, report of the Committee on Equal Opportunities for Women and Men, rapporteur: Mrs Bilgehan). *Text adopted by the Assembly on 24 January 2006 (3<sup>rd</sup> Sitting).*

5.2.3. ensure that any provision in foreign legislation relating to immigrant women in the member states of the Council of Europe which is contrary to the European Convention on Human Rights, Protocol No. 7 to the Convention or the fundamental principle of equality between women and men is identified and not applied and/or that any sections of bilateral agreements and rules of international private law which violate the fundamental principles of human rights, in particular with regard to personal status, particularly in the field of marriage, divorce or child custody, are renegotiated, rejected or denounced;

5.2.4. prepare a recommendation on the transcription and validation, by the competent authorities of the host states, of judgments in matters relating to marriage, divorce and child custody delivered by courts in non-Council of Europe member states and states which have not ratified Protocol No. 7 to the European Convention on Human Rights;

5.3. invite the Steering Committee for Equality between Women and Men, in conjunction with the European Committee on Migration to:

5.3.1. pursue its activities to promote the integration of immigrant women, based on accurate sex-specific data and scientific studies, placing particular emphasis on the participation of men in this process, bearing in mind the need to promote equal opportunities for immigrant men and women;

5.3.2. take into account the specific problems of immigrant women in an irregular situation;

5.3.3. initiate a dialogue with the migrants' countries of origin, to include equality between women and men in the migration process in the activities of the *Council of Europe Political Platform on Migration – a North-South, East-West Dialogue*, to exert pressure on the countries of origin to encourage them to promote equality between women and men as a principle of human rights and call upon them to prohibit practices which are contrary to human rights, such as polygamy, repudiation, forced marriages, divorce without mutual consent and the automatic granting of custody of children to the father.

6. The Parliamentary Assembly invites the European Commission against Racism and Intolerance (ECRI) to ensure the implementation in member states of the recommendations of the Parliamentary Assembly and the Committee of Ministers to promote the integration of immigrant women and to continue examination of the situation of immigrant women in the Council of Europe member states.

7. The Assembly encourages the Council of Europe's Congress of Local and Regional Authorities to pursue its activities on the integration of migrants and cultural diversity at local level, paying particular attention to measures to facilitate the integration of immigrant women in host countries.



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## Human rights violations in the Chechen Republic: the Committee of Ministers' responsibility vis-à-vis the Assembly's concerns

Recommendation 1733 (2006)<sup>1</sup>

1. The Parliamentary Assembly stresses that the protection of human rights is the core task of all Council of Europe bodies and recalls Resolution 1479 (2006) and its previous Recommendations 1600 (2003) and 1679 (2004) on the human rights situation in Chechnya, regretting that serious human rights violations still occur on a massive scale in the Chechen Republic and, in some cases, in neighbouring regions of the Northern Caucasus.

2. It urges the Committee of Ministers to confront its responsibilities in the face of one of the most serious human rights issues in any of the Council of Europe's member states, as the lack of effective reaction by the Council's decision-making body has the capacity to seriously threaten the credibility of the whole Organisation.

3. The Assembly urges the Committee of Ministers to discuss ways and means to prevent new human rights violations and to overcome the climate of impunity in the Chechen Republic and to address appropriate recommendations to the Government of the Russian Federation.

4. It commends the Committee of Ministers for its positive response to the proposal on the desirability of a Council of Europe field presence in the region. It is, however, dissatisfied with the Committee of Ministers' failure to obtain the full investigation of the bomb explosion that effectively put to an end the continued presence of the Council of Europe in the Chechen Republic.

5. In view of the seriousness of the situation, the Assembly

5.1. recommends relaunching the Committee of Ministers' monitoring of the human rights situation in the Chechen Republic;

5.2. invites the Committee of Ministers again to take "specific action" by virtue of the 1994 Declaration on compliance with commitments, after Recommendation 1600 (2003), which was the first time that the Assembly had used this specific Committee of Ministers monitoring mechanism;

5.3. reiterates its call to the Committee of Ministers to discuss the necessary consequences of the public statements of the European Committee for the Prevention of Torture (CPT) on insufficient co-operation of the Russian Federation with this important body, and to urge the Russian authorities to authorise, without delay, the publication of all reports of visits to the region by the Council of Europe's Committee for the Prevention of Torture (CPT).

5.4. calls on the Committee of Ministers to ensure that the Council of Europe supports the authorities in the Russian Federation in taking practical steps to address the issue of missing persons and "disappeared" persons in Chechnya, particularly through introducing effective

<sup>1</sup> *Assembly debate* on 25 January 2006 (4<sup>th</sup> Sitting) (see Doc.10774, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Bindig). *Text adopted by the Assembly* on 25 January 2006 (4<sup>th</sup> Sitting).

systems for identification and recording of bodies found, and improvement of the forensic facilities in Chechnya.

5.5 continues to urge the Russian authorities to implement the individual and general measures in relation to all European Court of Human Rights judgments, in particular those relating to violations committed in the course of the armed conflict in Chechnya.

6. In order to be able to take the required strong action, it invites the Committee of Ministers to make use of all the possibilities provided by the Statute of the Council of Europe to reach decisions, including votes by a two-thirds majority.





Provisional edition

## **Situation in Belarus on the eve of the presidential election**

Recommendation 1734 (2006)<sup>1</sup>

1. Recalling its Resolution 1482.(2006) on Situation in Belarus on the eve of the presidential election, the Assembly recommends that the Committee of Ministers:

1.1 include in the agenda of its relevant Rapporteur and Working Groups items concerning Belarus on a regular basis;

1.2 if political conditions allow, establish a School of Political Studies in Belarus, or a School of Political Studies for Belarusian citizens located in a neighbouring Council of Europe member state, easily accessible for Belarusians, with a view to promoting the formation of a Belarusian political elite and the development of a political culture;

a. if political conditions allow, set up an Information Office of the Council of Europe in Belarus, or use other existing Information Offices situated in neighbouring countries which are easily accessible for Belarusian citizens, to promote Council of Europe values in the field of democracy, rule of law and human rights among the Belarusian public;

1.4 support the establishment of joint programmes with the European Union and other relevant partners, in the fields of democracy, rule of law and human rights;

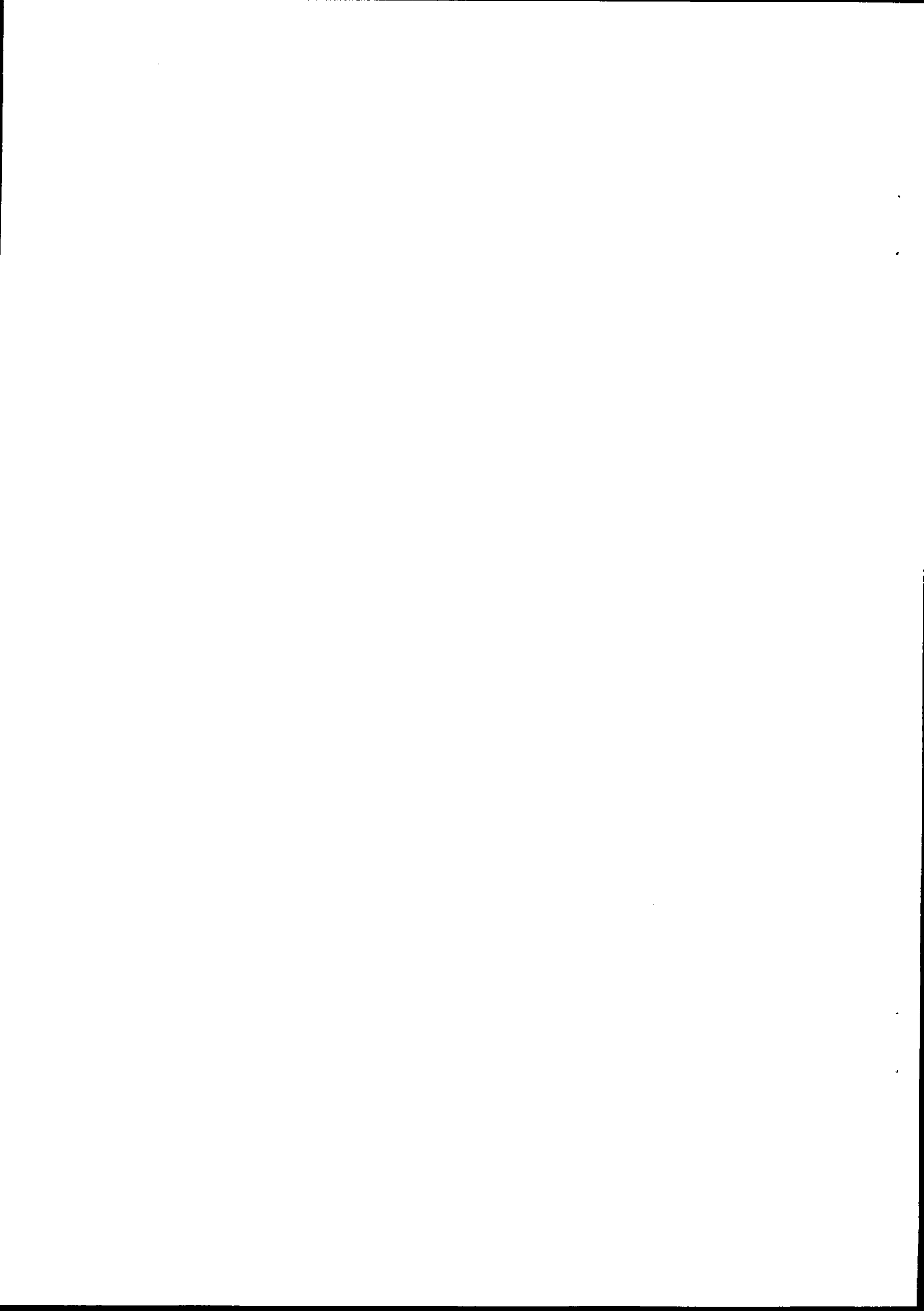
1.5 facilitate entry by young people from Belarus into the territory of member states, for instance in accordance with the European Agreement on Travel by Young Persons on Collective Passports between the Member Countries of the Council of Europe;

1.6 instruct its inter-governmental committees in which Belarus participates on the basis of the European Cultural Convention to maintain their contacts with government officials from Belarus at a working level;

1.7 establish and extend, at the levels of its Rapporteur Groups and steering committees, contacts with representatives of all democratic political parties, non-governmental organisations and youth organisations from Belarus.

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<sup>1</sup> *Assembly debate* on 26 January 2006 (6<sup>th</sup> Sitting) (see Doc.10806, report of the Political Affairs Committee, rapporteur: Mr Andres Herkel and Doc. 10814, opinion of the Committee on Culture, Science and Education, rapporteur: Mr McIntosh). *Text adopted by the Assembly* on 26 January 2006 (6<sup>th</sup> Sitting).





Provisional edition

## The concept of “nation”

Recommendation 1735 (2006)<sup>1</sup>

1. In 2003, the Parliamentary Assembly debated the question of preferential treatment of national minorities by the kin-state in the light of the Hungarian law of 19 June 2001 concerning Hungarians living in neighbouring countries (“Magyars”). In Resolution 1335 (2003), the Assembly noted in connection with the Hungarian law, which defined the concept of “nation” in its preamble, that to date there was “no common European legal definition of the concept of ‘nation’.”

2. The Assembly, aware of the need to clarify the terminology used in constitutions and legislations in force to cover the phenomenon of ethnic, linguistic and cultural links between groups of citizens living in different states, in particular the use of the word “nation” as well as the correlation with a specific historical or political context, has considered whether, and how, the concept of nation – where applicable, a rethought and modernised concept – can help to address the question of national minorities and their rights in 21st-century Europe.

3. The Committee on Legal Affairs and Human Rights, in a study of the concept of nation and its use in Europe based on data gathered from questionnaire replies from 35 national parliamentary delegations and on statements by experts in law and political science at a hearing it had organised in Berlin on 7 June 2004, concluded that it was difficult, not to say impossible, to arrive at a common definition of the concept of nation.

4. The term “nation” is deeply rooted in peoples’ culture and history and incorporates fundamental elements of their identity. It is also closely linked to political ideologies, which have exploited it and adulterated its original meaning. Furthermore, in view of the diversity of languages spoken in European countries, a concept such as nation is quite simply untranslatable in many countries where, at best, only rough translations are to be found in certain national languages. Conversely, the words used in certain national languages have no adequate translation in English or French, the two official languages of the Council of Europe.

5. The Assembly has acknowledged that in some Council of Europe member states, the concept of nation is used to indicate citizenship, which is a legal link (relation) between a state and an individual, irrespective of the latter’s ethno-cultural origin, while in some other member states the same term is used in order to indicate an organic community speaking a certain language and characterised by a set of similar cultural and historic traditions, by similar perceptions of its past, similar aspirations for its present and similar visions of its future. In some member states both understandings are used simultaneously to indicate citizenship and national (ethno-cultural) origin respectively. To this end, the term “nation” is sometimes used with a double meaning and at other times two different words are used to express each of those meanings.

6. The Assembly also acknowledges that whenever the concept of nation means citizenship it designates some kind of a contractual relation between a physical person and a state, while when the concept of nation means an ethno-cultural community it designates a cultural reality (a cultural fact or a cultural status) which is based on the free and unilateral association of a physical person to that community and involves only the relations among the members of that community.

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<sup>1</sup> *Assembly debate* on 26 January 2006 (7<sup>th</sup> Sitting) (see Doc.10762, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Frunda). *Text adopted by the Assembly* on 26 January 2006 (7<sup>th</sup> Sitting).

A nation in its cultural understanding becomes a subject of law (see international law) only if it organises itself as a state which is internationally recognised.

7. The Assembly notes that within the very complex process of nation building and of the nation-states' birth, the modern European states founded their legitimacy either on the civic meaning of the concept of nation or on the cultural meaning of the concept of nation. However, while the distinction between those two meanings is still to be identified in some of the Council of Europe member states' constitutions, the general trend of the nation-state's evolution is towards its transformation depending on the case, from a purely ethnic or ethnocentric state into a civic state and from a purely civic state into a multicultural state where specific rights are recognised not only to physical persons but also to cultural or national communities.

8. The Assembly also notes that because of the way in which the nation-states were formed during the 19<sup>th</sup> century and the first part of the 20<sup>th</sup> century, as well as because of nation-states' border changes at the end of the Second World War and of the Cold War, on the territories of almost all the Council of Europe member states there live various groups of people who are at the same time citizens of the same state or civic nation, but who belong to and are part of different cultural nations. As compared with the biggest group of citizens having the same ethno-cultural background, those groups, who are relatively smaller, constitute and are called national minorities.

9. These national minorities or communities – often created as a result of changes in state borders –, which represent a constitutive part and a co-founding entity of the nation-state of which their members are subjects as citizens, enjoy their rights in order to preserve, express and foster their national identity, as provided for in Assembly Recommendations 1201 (1993) and 1623 (2003) and the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages.

10. The Assembly also notes that since national minorities as such do not have legal personality they cannot be legal subjects and therefore they cannot be parties to contracts or covenants. However, they must be the object of collective protection and their members must enjoy the capacity to act, either as individual legal subjects or associated in various entities with legal personality, in defence of the respective national minorities' identity and cultural rights. These rights are not territorial or territorially connected and their recognition and protection must be legally organised both at the level of each nation-state concerned and at the transnational (international) level.

11. The Assembly acknowledges that the most important role in preserving the identity of national minorities falls to the state of which the national minority members are citizens. Consequently, it invites member states to adopt legislation and regulatory acts recognising the traditional national minorities and apply them in good faith. Where representation in political institutions is concerned, it recommends that the states apply the principle of positive discrimination to members of national minorities, especially as regards proportional representation in central and decentralised institutions (including executive bodies) in particular in the regions where those minorities live.

12. The Assembly believes it necessary to strengthen recognition of every European citizen's links with his identity, culture, traditions and history, to allow any individual to define himself as a member of a cultural "nation" irrespective of his country of citizenship or the civic nation to which he belongs as a citizen, and, more specifically, to satisfy the growing aspirations of minorities which have a heightened sense of belonging to a certain cultural nation. What is important, from both a political and a legal standpoint, is to encourage a more tolerant approach to the issue of relations between the State and national minorities, culminating in genuine acceptance of every individual's right to belong to the nation which he feels he belongs to, whether in terms of citizenship or in terms of language, culture and traditions.

13. The Assembly recalls that, in its Resolution 1335 (2003), it stated that "the emergence of new and original forms of minority protection, particularly by their kin-states, constitutes a positive trend (...)". It considered that the possibility for states to adopt unilateral measures for the protection of the kin-minorities abroad, irrespective of whether they lived in neighbouring or other countries, was conditional upon respect of the following principles: territorial sovereignty, *pacta sunt servanda*, friendly relations amongst states and respect for human rights and fundamental freedoms – in particular the prohibition of discrimination. While kin-states may legitimately play an important role in upholding national minority rights by taking an interest in what happens to their

kinspeople living in other countries, it is imperative that this support respects the legislation of the states where the minorities concerned live and any regulatory act must be negotiated beforehand with the governments of those states. The same rights and obligations should be recognised for or observed by all states who intend to adopt unilateral measures regarding the protection of the identity of cultural and national minorities living in different states and being formed by the latter states' citizens.

14. The Assembly considers that, where the upholding of national minority rights is concerned, the Congress of Local and Regional Authorities of the Council of Europe has a major role to play, through work helping to guarantee application of the relevant European rules. It believes that Recommendation 43 (1998) on territorial autonomy and national minorities and Recommendation 70 (1999) on local law/special status should be re-examined to identify concrete follow-up.

15. Taking note of the Warsaw Declaration and the Action Plan adopted on 16 and 17 May 2005 by the Heads of State and Government of the member states of the Council of Europe, the Assembly calls on the Committee of Ministers to initiate discussion without delay with a view to swiftly implementing the decisions taken. In particular, the Action Plan points out that "Europe's chequered history has shown that the protection of national minorities is essential for the maintenance of peace and the development of democratic stability. A society that considers itself pluralist must allow the identities of its minorities, which are a source of enrichment for our societies, to be preserved and to flourish. (...)".

16. Consequently, the Assembly recommends that the Committee of Ministers:

16.1. invite the member states not yet having done so to sign and ratify the Framework Convention for the protection of national minorities, the European Charter for regional or minority languages and the European Charter of local self-government, which are fundamental instruments for maintaining the national identity of national minorities or communities, and step up its efforts in this respect;

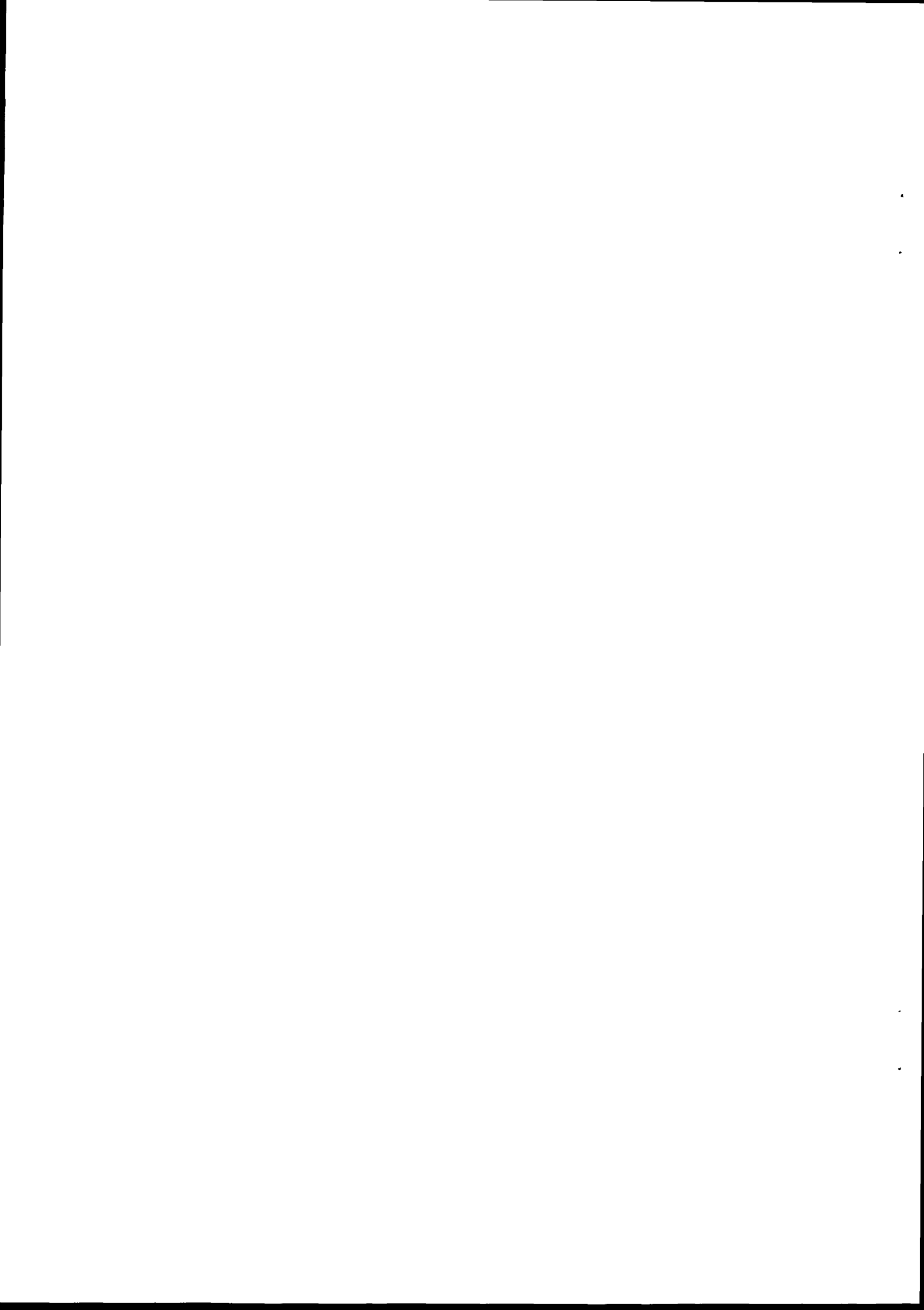
16.2. invite the member states to promote in their national legislation the recognition of the cultural rights of minorities, inter alia on the basis of Recommendation 43 (1998) on territorial autonomy and national minorities and Recommendation 70 (1999) on local law/special status of the Congress of Local and Regional Authorities of the Council of Europe;

16.3. take the appropriate measures in order to make sure that the member states reject any attempt to promote the ethnic purity of the state or to organise the territory and the administration of the state on an ethnic basis, with the exception of the affirmative measures which aim to achieve a fair representation of the national minorities in their country's administration, at the central and the local level;

16.4. invite the member states to bring into line their constitutions with the contemporary democratic European standards which call on each state to integrate all its citizens, irrespective of their ethno-cultural background, within a civic and multicultural entity and to stop defining and organising themselves as exclusively ethnic or exclusively civic states;

16.5. draw up guidelines on procedures for developing relations between a state and the minorities residing in a different state – mainly in its neighbourhood –, bearing in mind the criteria identified by the Venice Commission in its 2001 report, in the light of its analysis of existing legislations, as well as the pertinent Assembly resolutions and recommendations.

17. The Assembly recalls that, in its Recommendation 1623 (2003) on rights of national minorities, it urged the Committee of Ministers to "take the necessary measures to continue co-operation with the European Union, with a view to achieving common policies in the field of the protection of national minorities". It observes that the reply from the Committee of Ministers to this recommendation was terse, to say the least. It therefore requests the Committee of Ministers to ask Mr Jean-Claude Juncker to focus in depth on the question of complementarity of policies on protection of national minorities and recognition of their rights in his forthcoming report on relations between the Council of Europe and the European Union.





Provisional edition

## **Parliamentary dimension of the United Nations**

Resolution 1476 (2006)<sup>1</sup>

1. The Parliamentary Assembly refers to its Resolutions 1289 (2002) on Parliamentary scrutiny of international institutions and 1373 (2004) on Strengthening of the United Nations.

2. Despite wide acknowledgement that the United Nations (UN) should be reformed, reaching an agreement on the shape of this reform is proving to be a difficult and laborious task. Results can be noticed in some areas, such as the decision to set up a Peacebuilding Commission as well as a Human Rights Council. The general thrust of the reforms, however, is far from being outlined while negotiations on some important aspects, such as those relating to the enlarged representativity of the Security Council, seem to have reached a deadlock. In parallel, events such as the war in Iraq and the "food-for-oil" scandal have eroded confidence in the UN multilateral system and the credibility of the Organisation.

3. At this crucial moment, the Parliamentary Assembly calls for a renewed impetus in the continuation of the UN reform process. In its view, a durable and forward-looking reform should be led by the objective of rendering the whole United Nations system more transparent, legitimate and accountable, before its member states as well as public opinion at large. For this reason, the reform cannot be limited to making the Organisation more reflective of current geopolitical realities but should aim at incorporating democratic mechanisms in the UN system, with a view to redressing the democratic deficit in global governance and bridging the distance between the United Nations and the people.

4. In this context, the Assembly believes that the issue of the closer involvement of parliamentarians in UN activities should be brought to the forefront of current reform discussions as it is a fundamental means to associate the people – through their elected representatives – to the UN deliberative process, the oversight of UN activities and the monitoring of the implementation of UN decisions by member states.

5. Parliamentary involvement in the work of the UN should be enhanced progressively. This process should begin through the setting up within national parliaments of groups of members of parliament to support co-operation with the United Nations, by ensuring that parliamentarians are fully informed of UN activities and culminate with the inclusion in the UN system of a parliamentary assembly with consultative functions.

6. The Assembly takes note of the recommendations of the Panel of Eminent Persons on United Nations–Civil Society Relations – the so-called *Cardoso report* – concerning the engagement of parliamentarians in UN work and welcomes the growing association of parliamentarians with the UN activities, in the form of a strengthened co-operation between the United Nations and the Inter-Parliamentary Union (IPU).

7. This strengthened co-operation is welcome as it improves the familiarity of national parliamentarians with UN activities and provides them with a podium in UN instances. The Assembly, however, believes that in order to have a lasting impact on the legitimacy, accountability and representativity of the United Nations system, the involvement of parliamentarians in UN work should be further developed so as to become systematic and structurally linked with the functioning of UN institutions. In particular, given its deliberative

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<sup>1</sup> *Assembly debate* on 23 January 2006 (1<sup>st</sup> Sitting) (see Doc.10771, report of the Political Affairs Committee, rapporteur: Mrs de Zulueta). *Text adopted by the Assembly* on 23 January 2006 (1<sup>st</sup> Sitting).

and oversight functions as well as its role as the most representative global forum, the UN General Assembly is ideally placed to act as an interface to parliamentarians.

8. A decisive step towards the development of a UN parliamentary dimension could be the exploratory establishment of a parliamentary committee with consultative functions for General Assembly committees. It would be composed of national delegations, elected by national parliaments, with due respect to the principle of representativity of the political forces present in parliament and with due consideration to gender balance. This parliamentary committee should be of reasonable size, and should ensure a fair geographical representation of all the regional groupings currently existing in the General Assembly. Within each regional grouping, national delegations would rotate on a periodic basis. Should this experiment be successful, its structure and functioning could inspire the establishment of a UN parliamentary assembly, with consultative functions for the plenary General Assembly.

9. In light of the above, the Assembly urges Council of Europe member and observer states to:

9.1. encourage debates over issues discussed at the UN in national parliaments as well as in regional parliamentary assemblies;

9.2. allow the active participation of parliamentarians in national delegations to the General Assembly.

10. In addition, the Assembly invites the UN Secretary-General to give further consideration to the recommendations of the *Cardoso report* concerning the engagement of parliamentarians and suggest proposals along the same lines.

11. Finally, the Assembly invites the UN General Assembly to:

11.1. envisage appropriate ways for involving parliamentarians in its activities by:

11.1.1. working with the IPU and other inter-parliamentary representative bodies, devising a step-by-step strategy which could include the following stages:

11.1.1.1. setting up a network of regional parliamentary assemblies to discuss emerging UN priorities, with consultative functions for one or more General Assembly committees;

11.1.1.2. setting up a parliamentary committee to discuss issues of special global or regional importance and/or the UN budget, with consultative functions for one or more General Assembly committees;

11.1.1.3. setting up a UN parliamentary assembly, based on national delegations, with consultative functions for the General Assembly;

11.1.1.4. setting up with the United Nations and its institutions of national information and research centres for parliamentarians, local government representatives, representatives of NGOs and volunteers in member states;

11.1.2. adopting clear rules for the involvement of parliamentarians in its work, setting out their rights and responsibilities as well as the obligation, for parliamentary delegations, to ensure a fair representation of the political parties or groups in their parliament and give due account to gender balance considerations;

11.1.3. setting up a panel to make precise proposals on the recommended size, composition and rota system of parliamentary committees and/or a UN parliamentary assembly;

11.2. consider additional measures to ensure better interaction between the General Assembly and national or regional parliaments, including involving the Speakers or Presidents of these assemblies more actively in the work of the regional groupings of the General Assembly.





Provisional edition

## Implementation of Resolution 1415 (2005) on the honouring of obligations and commitments by Georgia

Resolution 1477 (2006)<sup>1</sup>

1. In its Resolution 1415 (2005), the Parliamentary Assembly reconsidered the deadlines for the fulfilment of Georgia's obligations and commitments to the Council of Europe in order to take into account the extraordinary circumstances resulting from the *Rose Revolution*. The Assembly made it clear that this move was exceptional and that there would be no further extensions of the deadlines. Two years after the *Rose Revolution*, it is now time for the new authorities to keep their promises.
2. The Assembly notes that some specific commitments have been fulfilled and that, in general, large-scale and long-term reforms have been set on the right track. The authorities are continuing to demonstrate a clear resolve to build a stable and modern European democracy and to better integrate the country into European and Euro-Atlantic structures. The post-revolutionary euphoria has given way to more pragmatism; the hasty, sometimes even chaotic initial approach to reforms is very gradually being replaced by a clearer focus on priorities and by a better-defined strategy.
3. However, most reforms are still at the very beginning and major challenges still lie ahead. The ambitious work which has been undertaken in order to bring legislation in line with European standards still has to produce concrete results in most areas. The implementation of reforms will be just as important and the authorities will have to demonstrate, at every step, that their solutions in overcoming the inevitable problems and obstacles along the way fully abide by the principles of democracy, rule of law and respect for human rights.
4. With regard to the Council of Europe legal instruments that Georgia had to sign and/or ratify before September 2005, only the European Social Charter was ratified within the set deadline (on 22 August 2005) and the Framework Convention for the Protection of National Minorities was ratified by Parliament with a slight delay, on 13 October 2005. The European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities was signed but has not yet been ratified. Regrettably, the procedure for signing and ratifying the European Charter for Regional and Minority Languages has only just started.
5. With regard to the commitments which concern long-term reforms, Georgia deserves praise for the first tangible results in the fight against corruption and the reform of the police, as well as for its efforts to improve economic performance and, consequently, to gradually improve the living conditions of the population. The Assembly welcomes the adoption, in co-operation with the Council of Europe, of a Strategy and an Action Plan for the fight against corruption and the creation of a State Commission on Decentralisation in the field of local self-government. Georgia has also undertaken encouraging steps in order to breed a new generation of magistrates, to rationalise the courts' structure, to improve the rights of detainees through changes in the criminal procedure code and to eliminate torture and generally improve conditions in prisons and pre-detention centres. It has started the operation of public service broadcasting catering for the needs and interests of the entire population. The work of the Ombudsman has produced useful results.

<sup>1</sup> *Assembly debate* on 24 January 2006 (3<sup>rd</sup> Sitting) (see Doc.10779, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), Co-Rapporteurs: Mr Eörsi and Mr Kirilov). *Text adopted by the Assembly* on 24 January 2006 (3<sup>rd</sup> Sitting).

6. At the same time, the concerns expressed in Resolution 1415 (2005) that the strong system of government is not accompanied by efficient checks and balances are still valid. Although the ruling party no longer enjoys an overwhelming majority in parliament, as inevitably some centrifuge forces have appeared within its ranks, the opposition is still weak and has not been able to come up with valid programme alternatives. Most reforms appear to be carried out by a narrow circle of like-minded leading politicians, rather than by a broad configuration of people reflecting all the rich potential of the nation. The media are financially weak and still lack the democratic culture which would allow them to credibly perform their role of democratic watchdog.

7. Two years after coming to power, the Georgian authorities still enjoy high popular support and benefit from a broad public consensus over the objectives and goals of the democratic transition. The people's trust must not be betrayed. In a country which is emerging from decades of political hypocrisy and manipulation, any failure to deliver on promised reforms can easily result in mistrust and questioning of these same reforms, especially by the most heavily affected layers of the population. The authorities cannot afford any unnecessary delays and obstacles which could be caused by nostalgic or revengeful attitudes; they should therefore be careful to always match words and deeds and to be open to dialogue and criticism.

8. The Assembly is aware that full normalisation of the situation in Georgia is impossible without reaching a peaceful and democratic settlement of the conflicts in the breakaway regions of Abkhazia and South Ossetia. It commends the President's efforts to push forward his peace initiative, but at the same time is extremely worried that no real progress has been achieved on the ground and in the ongoing negotiations. All interested parties in the conflict, including Russia, must demonstrate their commitment, in principle and in practice, to a peaceful and democratic solution with full respect of the territorial integrity of Georgia.

9. In conclusion, Georgia's progress over the last year can be regarded generally as encouraging but it still is only a first step towards meeting its obligations and commitments. The recommendations to the Georgian authorities contained in the present resolution are therefore similar or stem from those given in Assembly Resolution 1415 (2005). It is worth noting that the greatest progress has been achieved in fields where co-operation with the relevant Council of Europe bodies has been the strongest.

10. The Assembly therefore calls on the Georgian authorities to:

10.1. with regard to Council of Europe conventions: without any further delay, ratify the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities and sign and ratify the European Charter for Regional and Minority Languages;

10.2. with regard to the functioning of democratic institutions:

10.2.1. review the constitutional changes of February 2004, by taking into account the opinion of the Venice Commission, especially with regard to the strong powers of the President;

10.2.2. ensure that the next local elections, scheduled for October 2006, are free and fair, in full compliance with Council of Europe standards; improve the state of the electoral lists beforehand;

10.2.3. before the next parliamentary elections, lower the 7% electoral threshold so that it is not higher than 5% and ensure that the composition of the electoral committees at all levels guarantees their proper and impartial functioning;

10.2.4. adopt and ensure proper implementation of the law on transparency of party funding;

10.2.5. maintain the commitment to create a second parliamentary chamber, providing for the representation of its autonomous regions at state level, once South Ossetia and Abkhazia are politically and administratively reintegrated into Georgia;

10.2.6. make necessary legal provisions to ensure that the status of Adjara is part of a comprehensive approach to Georgia's regions which strengthens their powers and sends a positive signal to the breakaway regions of South Ossetia and Abkhazia;

10.2.7. speed up the local government reform:

10.2.7.1. adopt the legislative package including core legislation on local self-government and other related laws according to the timetable agreed with Council of Europe experts,

after careful analysis of all the issues at stake and appropriate consultation with all stakeholders;

10.2.7.2. implement the administrative and territorial reform of Georgia but only after the concept of the reform has been revised in accordance with the recommendations of the Council of Europe;

10.2.7.3. give real authority and the necessary means to the State Commission on Decentralisation to lead the preparation and implementation of the decentralisation strategy;

10.2.7.4. follow the recommendations of the Venice Commission relating to the election of the Tbilisi City Council and Mayor;

10.3. with regard to the Meskhetian population: pursue the work of the State Commission on the repatriation, seek actively international assistance and speed up the adoption of relevant legislation in order to create conditions for the repatriation process with a view to its completion by 2011; implement fully the recommendations set forth in Assembly Resolution 1428 (2005) on the situation of the deported Meskhetian population;

10.4. with regard to the 1990-94 conflicts:

10.4.1. adopt without further delay a legal framework for the restitution of ownership and tenancy rights or compensation for the property lost during these conflicts;

10.4.2. ensure the equal rights of internally displaced persons, along the lines of Assembly Recommendation 1570 (2002) on the situation on refugees and displaced persons in Armenia, Azerbaijan and Georgia;

10.5. with regard to the rule of law:

10.5.1. complete the reform of the judicial system, the Bar, the Prosecutor General Office and the police in full compliance with European democratic standards and in close co-operation with the Council of Europe experts;

10.5.2. guarantee a fully transparent and democratic system of replacement of judges and ensure that the new generation of magistrates is independent and highly professional; ensure successful start and functioning of the High School of Justice;

10.5.3. ensure constitutional and legislative guarantees for the independence of the members of the Supreme and Constitutional Courts; review, in consultation with the Council of Europe, the legislation allowing judges of the Supreme and Constitutional Court to resign voluntarily after, respectively, 3 and 5 years in office against life payment of their salaries and find more appropriate and dignified ways of solving human resources issues in these two bodies;

10.5.4. adopt a new criminal procedure code in co-operation with the Council of Europe;

10.5.5. pursue the fight against corruption, implement all recommendations of the Group of States against Corruption - GRECO and ratify the Council of Europe Criminal Law Convention on Corruption; step up work aimed at building a culture and ethics of civil service;

10.6. with regard to human rights:

10.6.1. implement the recommendations of the Council of Europe report of the compatibility of Georgian legislation with the provisions of the European Convention on Human Rights, in close co-operation with the Organisation's experts;

10.6.2. ensure that the newly built detention facilities and changes in the criminal legislation will solve the issue of overcrowding in prisons and pre-trial detention centres and consider supplementary measures, where appropriate;

10.6.3. build on first steps taken to eliminate the culture of violence and torture in prisons and pre-trial detention centres and adopt urgently with special attention to the regions of Georgia outside the

capital, in particular in order to secure prompt, independent and thorough investigation of all allegations of torture and ill-treatment and apply a policy of zero tolerance to impunity;

10.6.4. concerning freedom of expression and information:

10.6.4.1. revise legislation to ensure that any fines imposed for defamation are reasonable in quantum; that the presumption of innocence of suspects in media coverage is guaranteed; that media ownership is transparent and governed by democratic rules;

10.6.4.2. eliminate instances of obstruction of access to information for political or administrative reasons;

10.6.4.3. ensure the best quality of initial and life training for media professionals;

10.6.4.4. complete without any delay the transfer of property to the public service broadcaster and guarantee its financial sustainability and political independence;

10.6.5. grant all the necessary political and financial independence to the office of the Public Defender and consider broadening its powers;

10.7. commit themselves to a peaceful solution of the conflicts in Abkhazia and South Ossetia, in the interest of all parties concerned, of regional stability and in full respect of international law.

11. The Assembly calls on all member states of the Council of Europe to provide the necessary financial resources for the successful implementation of the Committee of Ministers' Action Plan for Georgia.

12. The Assembly further calls on all member states of the Council of Europe to get actively involved in the search for a peaceful solution of the conflicts in the breakaway regions of Abkhazia and South Ossetia, including by discussing the most appropriate framework for negotiations and for ensuring peace, law, order and respect for human rights on the ground.

13. Against this background, the Assembly resolves to pursue its monitoring of the honouring of obligations and commitments by Georgia until it receives evidence of substantial progress, particularly with regard to the issues mentioned in this resolution.



Provisional edition

## Integration of immigrant women in Europe

Resolution 1478 (2006)<sup>1</sup>

1. According to the International Organisation for Migration, women now account for more than 45% of migrants in the developed countries. These women, who for a long time were the “invisible figures” of immigration disregarded by the public authorities, in fact take on a number of responsibilities and play a role placing them at the very heart of the integration process. Nonetheless, the Parliamentary Assembly notes that access by immigrant women to public, political and economic life remains marginal. It deplores the two-fold discrimination to which they may be subjected on the grounds of their gender and their origin and the fact that this discrimination operates both in the host society and within immigrant communities themselves.

2. In its Recommendation 1261 (1995) on the situation of immigrant women in Europe, the Assembly considered that “the member states of the Council of Europe must do everything possible to eliminate the injustice and discrimination suffered by immigrant women and adopt measures aimed at their harmonious integration into society.” Ten years later, immigrant women are still faced with particular difficulties in a Europe which continues to be beset by economic crisis and in which, since the events of 11 September 2001, intolerance and Islamophobia have become more prevalent.

3. The Parliamentary Assembly reiterates its belief that migrants make a significant contribution to the cultural diversity and economic and social development of the host country. It also notes that the nature of migration flows has changed in recent years and that there is an increasing number of immigrant women: whereas in the past the majority of women had arrived in Europe under family reunification arrangements to join their spouse, today women, often skilled, take the decision to migrate alone.

4. The Assembly deplores the emergence of a threat of a “clash of civilisations” in European societies, foreigners living in ghettos, the calling into question of the concept of multiculturalism and the violence which erupted in the United Kingdom, France and in neighbouring countries in 2005 in the neighbourhoods where the majority of the population are immigrants or of immigrant origin. The Assembly stresses that these tensions reflect the social malaise of sections of the population deprived of equal opportunities and any prospects for integrating into the host society. This malaise is also reflected in the deterioration of relations between boys and girls and the difficulties encountered by young immigrant girls in asserting and exercising their individual rights. The Assembly accordingly calls on member states to promote positive measures in their economic, social, cultural and political integration policies – targeting also immigrant women and girls – to help strengthen social cohesion in multicultural European societies.

5. The Parliamentary Assembly is particularly committed to ensuring the protection of the fundamental rights of immigrant women in the Council of Europe member states. It is for member states to protect women against violations of their rights, to promote and implement full gender equality and accept no cultural or religious relativism in the field of women’s fundamental rights. The Assembly expresses its concern at the *legal shortcomings identified in relation to the protection of the human rights of immigrant women and compliance with the principle of equality between women and men in immigrant communities which may be weakened as a result of bilateral agreements, the application of personal law to immigrant women or women of immigrant origin or the absence of any legal status independent of that of the principal right-holder.*

<sup>1</sup> *Assembly debate* on 24 January 2006 (3<sup>rd</sup> Sitting) (see Doc 10758, report of the Committee on Equal Opportunities for Women and Men, rapporteur: Mrs Bilgehan ). *Text adopted by the Assembly* on 24 January 2006 (3<sup>rd</sup> Sitting).

6. In this context, the Assembly is convinced that measures to promote the protection of the fundamental rights of immigrant women, their access to education, training, employment, social and cultural rights and health help ensure that immigrant women are able to integrate into society and will lead to greater social cohesion in the host country.

7. The Assembly calls on Council of Europe member states to:

7.1. ensure that the fundamental rights of immigrant women are guaranteed and upheld by, inter alia:

7.1.1. granting immigrant women arriving under family reunification arrangements a legal status independent of that of their spouse, if possible within one year of the date of their arrival;

7.1.2. establishing a legal framework guaranteeing immigrant women the right to hold their own passport and resident permit and making it possible to hold a person criminally responsible for taking these documents away;

7.1.3. rejecting the application of any provision of foreign legislation relating to immigrants which is contrary to the European Convention on Human Rights, Protocol No. 7 to the Convention or the fundamental principle of equality between women and men and/or renegotiating, rejecting or denouncing those sections of bilateral agreements and rules of international private law which violate the fundamental principles of human rights, in particular with regard to personal status;

7.1.4. providing for the transcription and validation, by the competent authorities, of judgments in matters relating to marriage, divorce and child custody delivered by courts in non-Council of Europe member states and states which have not ratified Protocol No. 7 to the European Convention on Human Rights in order to verify that the said judgments are in conformity with the Convention and its Protocol No. 7;

7.1.5. ensuring the protection of immigrant women in an irregular situation from all forms of exploitation, including trafficking;

7.2. take fully into account gender specific forms of persecution when examining women's claims for asylum;

7.3. pay special attention to single women dispersed to areas outside the main hub of traditional refugee settlements, since they face a greater number of problems and issues including isolation and insecurity;

7.4. show resolve in combating all forms of violence suffered by immigrant women and ensure that all administrative measures are taken to protect them which includes effective access to assistance and protection mechanisms and expedited granting of a legal status and residence permit independent in particular of those of their spouse or their employer, in cases of violence;

7.5. implement the recommendations of the Parliamentary Assembly and the Committee of Ministers of the Council of Europe to promote the integration of immigrants, particularly immigrant women, and monitor such implementation;

7.6. offer courses targeting both immigrant women and men, especially on the local level and free of charge if possible, to learn the receiving country's language through tailor-made functional language courses targeted at their main interests in life, as well as to facilitate awareness of the rules of law, democratic values and fundamental human rights in the receiving countries and fundamental democratic principles, including equality between men and women, properly adapted to the specific needs of immigrant women, and to ensure that such mechanisms are properly evaluated;

7.7. collect gender-disaggregated data on migration flows to enable a better understanding of women's migration patterns, the needs of immigrant women and the specific actions which could accelerate their integration into the host society;

7.8. ensure adequate vocational training for immigrant women which would aim at lifting them out of subordinate positions and professions traditionally reserved for them (e.g. in the service, health or restaurant sector);

7.9. promote immigrant women's access to employment, adopting positive measures to combat the two-fold discrimination suffered by immigrant women on the labour market and creating favourable conditions for them to access the labour market and to balance their professional and private life (especially by putting into place accessible child-minding facilities, which take into account the diversity and the different languages of children and parents);

7.10. pursue active policies to combat the racial discrimination adversely affecting immigrant women and men;

7.11. promote information and awareness-raising campaigns in the media and in schools to increase the standing and the role of immigrant women in the host societies and to overcome stereotypes confining immigrant women to subordinate and passive roles;

7.12. encourage the media to cater for the needs of immigrant women and not to stereotype them as victims of restrictive religious or cultural traditions;

7.13. put in place programmes to promote the integration of immigrant women to include participation by their spouses, in particular in the field of parenting or access to health services, and to encourage and implement the principle of promoting equality between women and men in immigrant communities as a fundamental and inalienable principle of human rights;

7.14. take all necessary action to protect the rights of immigrant women and to combat the discrimination they face in their community of origin, by refusing all forms of cultural and religious relativism which could violate women's fundamental rights;

7.15. guarantee the fundamental rights of young girls and adopt measures to promote and implement the principle of equality between boys and girls;

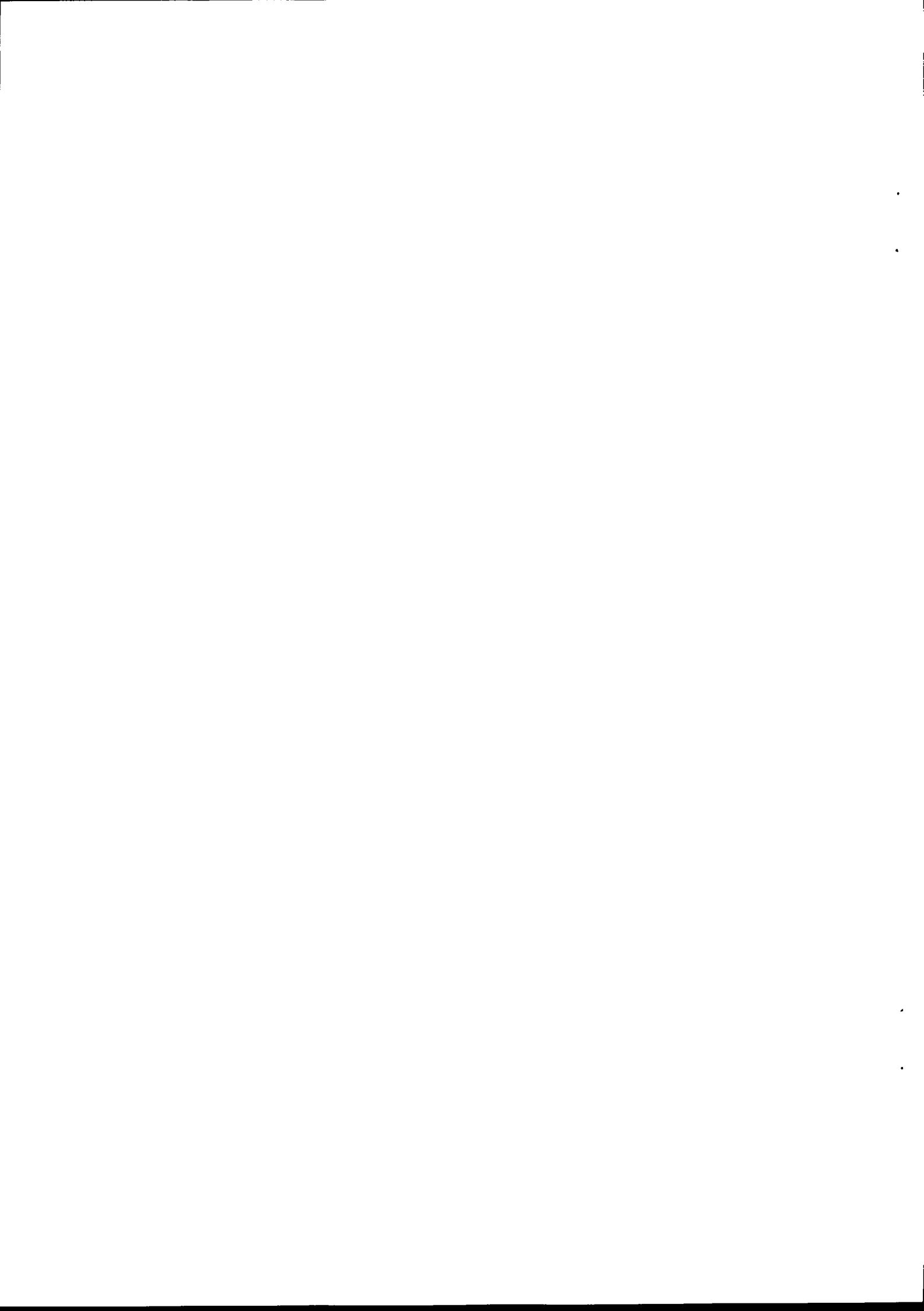
7.16. strengthen the powers of local authorities, in particular in the field of social services and active citizenship, and to allocate the necessary resources to implement action to promote the integration of immigrant women at local level;

7.17. build on the action of non-governmental organisations which are well placed to identify immigrant women's specific needs and difficulties and which, through grass-roots action, help to improve the abilities of immigrant women and facilitate their integration into social and economic life;

7.18. sign and ratify, if this has not already been done, the European Convention on the Participation of Foreigners in Public Life at Local Level, the European Convention on the Status of Migrant Workers, Protocol No. 12 to the European Convention on Human Rights, the United Nations International Convention on the Protection of the Rights of all Migrant Workers and their Families and the Council of Europe Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children.

8. The Assembly calls on Andorra and the United Kingdom to sign and ratify, and on Belgium, Germany, the Netherlands, Spain and Turkey to ratify, Protocol No. 7 to European Convention on Human Rights at the earliest opportunity, avoiding where possible any reservations to Article 5 which guarantees equality of rights and responsibilities of a private law nature between spouses.

9. The Assembly resolves to initiate dialogue with parliamentary and governmental representatives of the countries of origin on the matter of upholding the principle of equality between women and men in family codes in order to assess the legal status of women in the countries of origin and to analyse the consequences thereof in the host countries.







Provisional edition

## **Human rights violations in the Chechen Republic: the Committee of Ministers' responsibility vis-à-vis the Assembly's concerns**

Resolution 1479 (2006)<sup>1</sup>

1. The Parliamentary Assembly stresses that the protection of human rights is the core task of all Council of Europe bodies and recalls its previous Resolutions 1323 (2003) and 1403 (2004) and Recommendations 1600 (2003) and 1679 (2004) on the human rights situation in the Chechen Republic.
2. The Assembly is deeply concerned that a fair number of governments, member states and the Committee of Ministers of the Council of Europe have failed to address the ongoing serious human rights violations in a regular, serious and intensive manner, despite the fact that such violations still occur on a massive scale in the Chechen Republic and, in some cases, neighbouring regions in a climate of impunity.
3. The Assembly reiterates its unambiguous condemnation of all acts of terrorism and expresses its understanding of the difficulties the Russian Federation faces in combating terrorism.
4. The Assembly welcomes the fact that a number of criminal cases were opened and some perpetrators were taken to court and encourages the Public Prosecutor's office to intensify its efforts. Nevertheless, the Assembly notes insufficient progress of the Prosecutor General's Office in elucidating and achieving successful prosecution of numerous human rights violations brought to its attention in its previous reports on the human rights situation in the Chechen Republic. Impunity fosters more crime.
5. Both federal and regional law enforcement authorities must effectively investigate numerous specific and well-documented allegations of enforced disappearances, murder and torture brought to the attention of international public opinion and of the Assembly in recent months by non-governmental human rights organisations. Moreover, the authorities should authorize the publication of the reports of all CPT visits and publish plans and steps taken to implement CPT recommendations.
6. Emphasis must be placed on crimes against human rights defenders, lawyers, prosecutors, judges, forensic doctors and other law enforcement officials and against applicants to the European Court of Human Rights and their family members. It is intolerable that reprisals against applicants to the Strasbourg Court take place and remain unpunished.
7. The Assembly welcomes the recent adoption of a law making it possible to set up inquiry committees and urges the Russian delegation to the Assembly to request the setting-up, within the Duma, of a committee of inquiry to investigate the failure of law enforcement structures to hold responsible perpetrators of serious human rights violations such as documented by the Assembly.
8. Moreover, the Russian authorities must take practical steps to address the issue of missing persons and "disappeared" persons, particularly through introducing effective systems for identification and recording of bodies found and to make this information public.

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<sup>1</sup> *Assembly debate* on 25 January 2006 (4<sup>th</sup> Sitting) (see Doc.10774, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Bindig ). *Text adopted by the Assembly* on 25 January 2006(4<sup>th</sup> Sitting).

9. The Assembly fears that the excessively harsh manner in which the security forces act in the region in no way contributes to restoring law and order in the region. On the contrary, it produces more desperation, violence and thus instability.

10. Recalling the Council of Europe's humanitarian and legal principles, the Assembly strongly condemns human rights violations in the fight against terrorism, which have now for well over a decade proven not only to be unlawful but also totally ineffective.

11. It stresses that in order to prevent future serious human rights violations, all law enforcement agencies active in the Chechen Republic should receive additional orders from the highest authorities to respect basic human rights in the course of the operations. This is particularly true for certain Chechen security forces.

12. Both the democratic process and the fight against impunity must benefit from the work of strong and independent non-governmental human rights organisations. The Assembly expresses concern that the recently adopted law on the legal status of civil society organizations falls short of the standards of the Council of Europe. The Assembly is also concerned about reports on administrative and judicial harassment of some non-governmental organizations, and - in line with Resolution 1455 - reiterates its call on the Russian government to give NGOs the possibility to do their important work by creating administrative, fiscal and political conditions for the normal functioning of Russian civil society.

13. The Assembly urges the Russian government to fully implement all recommendations made by the bodies and mechanisms of the Council of Europe, as well as those of the UN.

14. In view of the seriousness of the human rights violations in the Chechen Republic, the Assembly is most dissatisfied with the replies of the Committee of Ministers to its recommendations. It regrets in particular that:

14.1. the Committee of Ministers' monitoring of the human rights situation in the Chechen Republic, launched by the Secretary General in June 2000, is now *de facto* at a standstill since the spring of 2004, despite repeated calls by the Assembly to intensify monitoring efforts;

14.2. the Committee of Ministers did not take any "specific action" by virtue of the 1994 Declaration on compliance with commitments, after the Assembly had formally seized it in Recommendation 1600 (2003). Such an omission is unacceptable, especially as the Assembly had used for the first time the mechanism the Committee of Ministers had itself set up for this purpose;

15. The Assembly fears that the lack of effective reaction by the Council's executive body in the face of the most serious human rights issue in any of the Council of Europe's member states undermines the credibility of the Organisation.



Provisional edition

## The challenge of still unratified credentials of the parliamentary delegation of Azerbaijan on substantial grounds

Resolution 1480 (2006)<sup>1</sup>

1. At the opening of the first 2006 part-session of the Parliamentary Assembly on Monday 23 January 2006, the credentials of the Azeri delegation were challenged on substantial grounds under Rule 8 of the Assembly Rules of Procedures in connection with the parliamentary elections that took place on 6 November 2005.
2. In its Resolution 1456 (2005) on the functioning of democratic institutions in Azerbaijan, the Assembly had warned that it would regard the 2005 parliamentary elections as a decisive test for the democratic credibility of the country as all previous ballots held since Azerbaijan's accession to the Council of Europe in 2001 had failed to meet basic democratic standards.
3. The Assembly deeply regrets that the parliamentary elections in Azerbaijan on 6 November 2005 once again did not meet a number of international standards. The most unacceptable violations found by the *ad hoc* Committee which observed the elections were: intimidation and arbitrary arrests of opposition candidates and supporters; impediments to the right to peaceful assembly; disproportionate use of force by the police in dispersing unauthorised rallies; interference of local authorities in the electoral process; abuse of administrative resources; ballot stuffing; and serious violations during the counting and tabulation of results. The media bias and the lack of impartiality of the election commissions also contributed to creating unfavourable conditions for free and fair elections.
4. The Assembly deplores the excessive use of force by the police to disperse a post-electoral opposition rally in Baku on 26 November 2005. The means used against peaceful protesters, including many women and children, are unacceptable in a civilised society.
5. The Assembly notes that the Central Election Commission and the Constitutional Court invalidated the results in 10 constituencies (out of 125), where rerun elections will be held on 13 May 2006. It also takes note of the dismissals of the heads of the executive power in three regions and of the limited number of criminal cases that are currently pending before the courts.
6. Administrative and legal measures however cannot repair the serious damage caused by the violations: the fact that the entire democratic process has been undermined, that political dialogue is jeopardised and that the newly elected parliament lacks the democratic credentials of the Azeri people.
7. The attitude of the opposition, which intends to boycott the parliamentary sittings and the rerun elections, is not constructive either and is not conducive to the development of the democratic process. The

<sup>1</sup> *Assembly debate* on 25 January 2006 (5<sup>th</sup> Sitting) (see Doc.10807rev, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), rapporteur: Mr Tony Lloyd and Doc. 10813, opinion of the Committee on Rules of Procedure and Immunities, rapporteur: Mr Pourgourides). *Text adopted by the Assembly* on 25 January 2006 (5<sup>th</sup> Sitting).

Assembly considers that the place of the opposition is in Parliament, not on the streets and it therefore urges the opposition to reconsider its decisions.

8. Free and fair elections are at the basis of democracy and constitute one of the most important commitments and obligations of any country sharing as a member State the values and standards of the Council of Europe. The way the November elections were conducted clearly shows that there is a persistent failure by Azerbaijan to honour its commitments to the Council of Europe. This must be sanctioned.

9. In order to restore confidence in the electoral, and more generally the democratic process, Azerbaijan needs to ensure that the rerun in the 10 constituencies fully abides by democratic principles. To this effect, the following measures need to be taken urgently:

9.1. investigations into electoral fraud should be conducted in a totally impartial and professional way, without any political or administrative pressure;

9.2. the results of these investigations should be made public and justice should be administered in an equally impartial and professional way, without any political and administrative pressure;

9.3. the newly elected parliament should amend the electoral legislation in line with the recommendations of the Venice Commission, in particular with regard to the composition of the electoral commissions;

9.4. freedom of assembly should be fully guaranteed;

9.5. media pluralism in the electronic media and freedom of expression should also be fully guaranteed.

10. The Assembly concludes that the conduct of the November 2005 parliamentary elections in Azerbaijan falls within the provisions of Rule 8.2.b of the Assembly Rules of Procedure: "persistent failure to honour obligations and commitments".

11. However, the Assembly decides to ratify the credentials of the parliamentary delegation of Azerbaijan.

12. The Assembly decides to observe the re-run elections on 13 May 2006. It instructs its Monitoring Committee to submit to the Assembly at its June part-session a report on the progress made in all the areas mentioned in paragraph 9 of this Resolution. On the basis of this report, the Assembly will then examine whether to apply Rule 9 of the Rules of Procedure on the reconsideration of previously ratified credentials on substantial grounds.



Provisional edition

## **Need for international condemnation of crimes of totalitarian communist regimes**

Resolution 1481 (2006)<sup>1</sup>

1. The Parliamentary Assembly refers to its Resolution 1096 (1996) on measures to dismantle the heritage of the former communist totalitarian systems.
2. The totalitarian communist regimes which ruled in Central and Eastern Europe in the last century, and which are still in power in several countries in the world, have been, without exception, characterised by massive violations of human rights. The violations have differed depending on the culture, country and the historical period and have included individual and collective assassinations and executions, death in concentration camps, starvation, deportations, torture, slave labour and other forms of mass physical terror, persecution on ethnic or religious base, violation of freedom of conscience, thought and expression, of freedom of press, and also lack of political pluralism.
3. The crimes were justified in the name of the class struggle theory and the principle of dictatorship of the proletariat. The interpretation of both principles legitimised the "elimination" of people who were considered harmful to the construction of a new society and, as such, enemies of the totalitarian communist regimes. A vast number of victims in every country concerned were its own nationals. It was the case particularly of peoples of the former USSR who by far outnumbered other peoples in terms of the number of victims.
4. The Assembly recognises that, in spite of the crimes of totalitarian communist regimes, some European communist parties have made contributions to achieving democracy.
5. The fall of totalitarian communist regimes in Central and Eastern Europe has not been followed in all cases by an international investigation of the crimes committed by them. Moreover, the authors of these crimes have not been brought to trial by the international community, as was the case with the horrible crimes committed by National Socialism (nazism).
6. Consequently, public awareness of crimes committed by totalitarian communist regimes is very poor. Communist parties are legal and active in some countries, even if in some cases they have not distanced themselves from the crimes committed by totalitarian communist regimes in the past.
7. The Assembly is convinced that the awareness of history is one of the preconditions for avoiding similar crimes in the future. Furthermore, moral assessment and condemnation of crimes committed play an important role in the education of young generations. The clear position of the international community on the past may be a reference for their future actions.

<sup>1</sup> *Assembly debate* on 25 January 2006 (5<sup>th</sup> Sitting) (see Doc.10765, report of the Political Affairs Committee, rapporteur: Mr Lindblad ). *Text adopted by the Assembly* on 25 January 2006 (5<sup>th</sup> Sitting).

8. Moreover, the Assembly believes that those victims of crimes committed by totalitarian communist regimes who are still alive or their families, deserve sympathy, understanding and recognition for their sufferings.

9. Totalitarian communist regimes are still active in some countries of the world and crimes continue to be committed. National interest perceptions should not prevent countries from adequate criticism of present totalitarian communist regimes. The Assembly strongly condemns all those violations of human rights.

10. The debates and condemnations which have taken place so far at national level in some Council of Europe member states cannot give dispensation to the international community from taking a clear position on the crimes committed by the totalitarian communist regimes. It has a moral obligation to do so without any further delay.

11. The Council of Europe is well placed for such a debate at international level. All former European communist countries, with the exception of Belarus, are now its members and the protection of human rights and the rule of law are basic values for which it stands.

12. Therefore, the Parliamentary Assembly strongly condemns the massive human rights violations committed by the totalitarian communist regimes and expresses sympathy, understanding and recognition to the victims of these crimes.

13. Furthermore, it calls on all communist or post-communist parties in its member states which have not so far done so to reassess the history of communism and their own past, clearly distance themselves from the crimes committed by totalitarian communist regimes and condemn them without any ambiguity.

14. The Assembly believes that this clear position of the international community will pave the way to further reconciliation. Furthermore, it will hopefully encourage historians throughout the world to continue their research aimed at the determination and objective verification of what took place.



Provisional edition

## **Situation in Belarus on the eve of the presidential election**

Resolution 1482 (2006)<sup>1</sup>

1. The Parliamentary Assembly recalls that it has followed developments in Belarus since 1992, in connection with Belarus's application for membership to the Council of Europe. It expresses, therefore, its strongest regret that Belarus, unlike all the other European countries, does not meet the conditions to be a member of the Council of Europe in terms of pluralist democracy, compliance with the rule of law and respect for human rights and fundamental freedoms. The responsibility for this state of affairs lies with the present regime.

2. It is a matter of extreme concern that in the run-up to the presidential election to be held on 19 March 2006, the Lukashenko regime has undertaken a series of measures to prevent even further any expression of political dissent and obstruct the activities of democratic forces: in particular, the recently adopted 'anti-revolution law' which establishes, amongst others, prison sentences for training or financing the training of people to take part in street protests and for misrepresenting the situation in Belarus to foreign countries or international organisations, or distributing material or information containing such appeals, leaves scope for broad interpretation and to a risk of abuse.

3. Likewise, the detention of a number of opposition figures as a result of trials based on questionable charges confirms the abuse of the criminal justice system for political purposes and the lack of independence of the judiciary, which has been further undermined by the decree enabling President Lukashenko to suspend judges' powers and dismiss them from office.

4. The Assembly recalls that, four years ago, the Minister of Information promised to send the draft media law to the Council of Europe for advice. In the absence of any action and the media situation deteriorating, the Assembly was forced to adopt its Resolution 1372 (2004) on the persecution of the press in the Republic of Belarus. Two years later, on the eve of the presidential elections, the situation has not improved but actually worsened and freedom of expression is now blatantly flouted. Under such circumstances, the people of Belarus cannot receive the information necessary in order to form freely political opinions and make a democratic choice in the coming elections.

5. The Assembly also recalls that the very participation of President Lukashenko in the forthcoming contest raises an issue of compliance with the rule of law: in its Opinion no. 314/2004 on the referendum of 17 October 2004 in Belarus, the European Commission for Democracy through Law (Venice Commission) argued that the 2004 referendum which removed the limitation of two terms in office, was contrary to the Belarusian law as well as Council of Europe standards.

6. In light of the above, and given that no follow-up has been given to previous Assembly resolutions including, amongst others, Resolutions 1371 (2004) on disappeared persons in Belarus and 1372 (2004) on persecution of the press in the Republic of Belarus, the Assembly believes that there cannot be any change

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<sup>1</sup> *Assembly debate* on 26 January 2006 (6<sup>th</sup> Sitting) (see Doc.10806, report of the Political Affairs Committee, rapporteur: Mr Andres Herkel and Doc. 10814, opinion of the Committee on Culture, Science and Education, rapporteur: Mr McIntosh). *Text adopted by the Assembly* on 26 January 2006 (6<sup>th</sup> Sitting).

in its policy towards the Belarusian regime and the lifting of the suspension of Special Guest status for the Belarusian Parliament is not on the agenda at the present time.

7. However, should the Belarusian authorities give clear and conclusive signs of their commitment to move closer to Council of Europe standards in the fields of democracy, rule of law and human rights, the Assembly would be prepared to reopen appropriate communication channels. To this end, particular attention will be paid to whether all candidates have equal freedom to campaign, the overall fairness of the electoral campaign and the conduct of election procedures.

8. In this context, the Assembly notes as a positive measure the invitations addressed to various international institutions - including the OSCE, the ODIHR and the OSCE Parliamentary Assembly - to monitor the forthcoming election.

9. The Assembly cannot but welcome, as a sign of increased maturity of the Belarusian democratic forces, the recent election of the Single Candidate of the Unified Democratic Forces of Belarus to run in the 2006 presidential election and encourages democratic forces to maintain their unity, irrespective of ideological differences, in the aftermath of the election irrespective of its results.

10. On its part, the Assembly shall endeavour to intensify its support for the consolidation of democratic forces, the development of civil society, the provision of pluralist information and the promotion of Council of Europe values among the Belarusian population at large. In this context, the Assembly recommends that its political groups invite on a regular basis representatives of Belarusian democratic political forces to attend Assembly sessions and other Assembly events.

11. Finally, in respect of their respective policies and mandates, the Council of Europe, the European Union (EU) and the Organization for Security and Cooperation in Europe (OSCE) should enhance their information-sharing as regards Belarus. It is necessary to follow a common strategy in order to have a stronger impact on the democratisation process in Belarus.

12. In light of the above, the Assembly urges President Lukashenko and the Belarusian authorities to:

12.1 embark resolutely on a path to reform liable to bring Belarus closer to Council of Europe standards in the fields of pluralist democracy, human rights and the rule of law;

12.2 refrain from obstructing the free and fair running of the electoral campaign, and take positive action to ensure that pluralist information can be provided, in particular to ensure equal accessibility to the media during the election campaign for all candidates participating in the presidential election;

12.3 ensure that the elections are held in full compliance with international standards;

12.4 remove from the Central Election Commission those who have been involved in the fraudulent referendum and parliamentary elections of 2004, including its Chair, Ms Lidia Yermoshina;

12.5 redress the composition of the territorial election commissions by ensuring equal representation of all sides;

12.6 repeal the anti-revolution law;

12.7 allow the immediate release of political prisoners, in particular Andrei Klimov, Mikhail Marinich, Pavel Severinets, Sergey Skrebets and Nikolai Statkevich;

12.8 conduct an independent investigation into the fate of disappeared persons, as requested by Assembly Resolution 1371 (2004) on Disappeared persons in Belarus;

12.9 remove the restrictive requirements for the registration and the activities of political parties and non-governmental organizations;

12.10 comply with Article 19 of the Universal Declaration of Human Rights and the United Nations' International Covenant on Civil and Political Rights and respect freedom of expression in the media in accordance with Assembly Resolution 1372 (2004) and this present Resolution;



12.11 respect academic freedom and in particular provide appropriate conditions for the European Humanities University to return to Minsk and for Belarusian students to participate in studies as well as student organisations abroad.

13. Besides, the Assembly reiterates its recommendation to the Russian Federation *'to make any political or financial assistance to the Government of Belarus conditional on the respect of the human rights and civil liberties of the people of Belarus'*, as stated in Assembly Resolution 1455 (2005) on the Honouring of obligations and commitments by the Russian Federation.

14. The Assembly also calls on Council of Europe member states to give immediate financial and if necessary logistical support to independent broadcasting to Belarus from abroad, which should preferably employ independent Belarusian journalists and broadcast in the Belarusian language about Belarus.

15. The Assembly invites the European Union to:

15.1 extend the visa-ban to a greater number of high-ranking officials in the Lukashenko regime;

15.2 consider easing visa requirements for ordinary Belarusian citizens, especially students;

15.3 take appropriate steps to identify and freeze bank accounts and other assets belonging to President Lukashenko and others from his entourage;

15.4 support student exchanges from Belarus with universities in the European Union and continue supporting the European Humanities University in exile in Vilnius;

15.5 activate immediately financial support which had been allocated to European media broadcasting into Belarus.

16. In addition, the Assembly calls on the OSCE to put pressure on the Lukashenko regime, by appropriate means, to ensure that Belarus upholds commitments stemming from its membership to the OSCE.

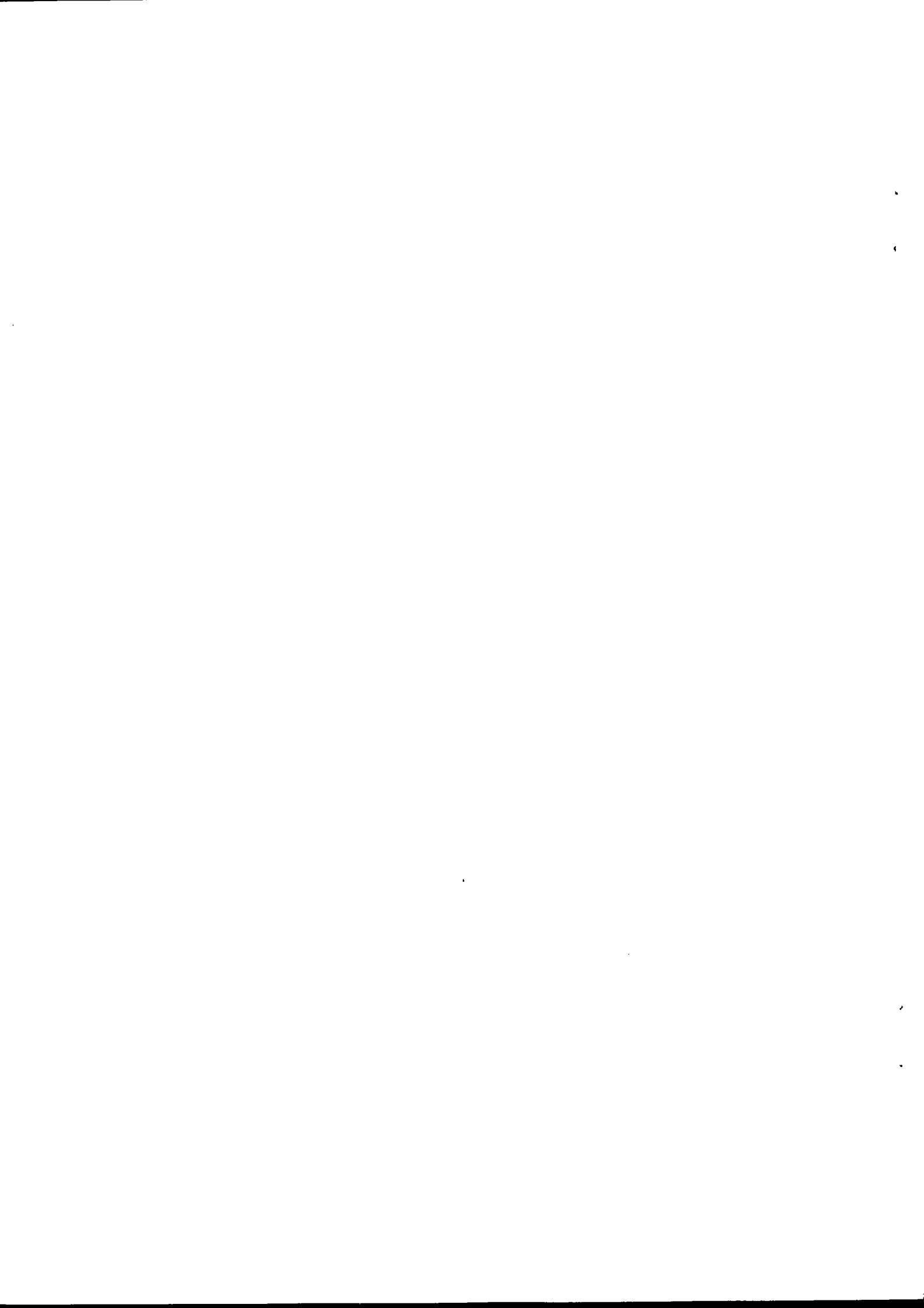
17. It also invites the OSCE Parliamentary Assembly and ODIHR to coordinate their position on the observation of the forthcoming presidential election with the Assembly.

18. The Assembly calls on the Council of Europe, the European Union and the OSCE to:

18.1 improve information-sharing regarding Belarus and encourage the organisation of joint initiatives;

18.2 resume the activities of the Parliamentary Troika on Belarus on a stable basis.

19. Finally, the Assembly welcomes the initiative of its President, in co-operation with the Czech Minister for Foreign Affairs, to organise a Conference on Belarus in Prague prior to the presidential elections, and decides to participate in this Conference.





Provisional edition

## Policy of return for failed asylum seekers in the Netherlands

Resolution 1483 (2006)<sup>1</sup>

1. The Parliamentary Assembly takes note of the recent policy on asylum seekers proposed by the Dutch Government and approved by the Parliament in February 2004 which sets up rules for implementing the return of asylum seekers who applied for asylum before 1 April 2001 and whose application has been rejected (hereafter referred to as "failed asylum seekers").

2. The recent Dutch policy aims at expediting the return of a number of members of this group of 26,000 people, once they have exhausted all legal remedies against the refusal of their asylum application and provided that they are not granted a residence permit on asylum or other grounds. The persons concerned are allowed to make representations to the Dutch authorities to draw attention to any special circumstances of their case. The return plan is also accompanied by an amnesty for asylum seekers who have not received a decision on their first asylum application within five years. 2,097 people have benefited from this amnesty.

3. The Assembly believes that the effective return of failed asylum seekers who have exhausted all legal remedies against the refusal of their claim, and do not have any right to stay in a Council of Europe member state on other grounds, is necessary to ensure the integrity of the institution of asylum and the credibility of the asylum system both to citizens and to people in need of protection.

4. Previous recommendations of the Assembly are relevant to the return of failed asylum seekers and in particular Recommendation 1237 (1994) on the situation of asylum-seekers whose asylum applications have been rejected, Recommendation 1547 (2002) on expulsion procedures in conformity with human rights and enforced with respect for safety and dignity, Recommendation 1624 (2003) on common policy on migration and asylum, and Recommendation 1703 (2005) on Protection and assistance for separated children seeking asylum.

5. The Assembly also recalls Recommendation No. R(99)12 of the Committee of Ministers to member states on the return of rejected asylum seekers, the Twenty guidelines of the Committee of Ministers of the Council of Europe on forced return (CM(2005)40), as well as Recommendation (2001)1 of the Commissioner for Human Rights concerning the rights of aliens wishing to enter a Council of Europe member state and the enforcement of expulsion orders.

6. Similarly, the European Convention on Human Rights and its Protocols, as well as the jurisprudence of the Court, have relevance for the implementation of return measures from Council of Europe member states, in particular Article 3 on the prohibition of torture and inhuman and degrading treatment, Article 5 on personal liberty and security, Article 8 on the protection of privacy and family life, Article 13 on an effective remedy, Article 14 on non-discrimination and Article 4 of Protocol 4 on the prohibition of collective expulsion.

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<sup>1</sup> *Assembly debate* on 26 January 2006 (7<sup>th</sup> Sitting) (see Doc 10741, report of the Committee on Migration, Refugees and Population, rapporteur: Mrs Zapfl-Helbling). *Text adopted by the Assembly* on 26 January 2006 (7<sup>th</sup> Sitting).

7. The Assembly reiterates that Council of Europe member states should promote the voluntary return of failed asylum seekers and that forced return should be considered only as a last resort. Where forced return is inevitable, it should be implemented in a humane and transparent manner in compliance with human rights and with respect for the safety and dignity of the person concerned.

8. The recently revised Dutch policy on asylum seekers broadly complies with the recommendations on return made by Council of Europe bodies. Some features of this policy, however, raise concerns which are also relevant for other Council of Europe member states applying similar return policies. Switzerland and the United Kingdom are, *inter alia*, countries with similar return policies.

9. In particular, the Assembly believes that special consideration, through a procedure laid down by law, should be given to those failed asylum seekers who have established strong family, community or other links with the Netherlands, such as children who were born or brought up there, or failed asylum seekers who have lived in the country for a long time and have integrated there.

10. Furthermore, the Assembly is concerned that, in pursuing the legitimate objective of expediting the return of foreigners who do not have a legal title to remain in the country, the Netherlands may return people to a situation where they might be at risk of serious human rights violations or their safety would be in danger because of the circumstances prevailing in the country or region of origin.

11. In addition, the Assembly fears that, under the recently revised Dutch policy, detention could be for an unlimited duration and resorted to as a punitive measure to sanction those who do not co-operate, or who cannot prove that they co-operate, towards facilitating their own return and regrets that this policy does not foresee any clear exemptions from detention for specific categories of failed asylum seekers such as children, the elderly, people suffering from trauma or mental illness and people with disabilities.

12. Reiterating its position expressed in Recommendation 1624 (2003) on common policy on migration and asylum, the Assembly believes that those who cannot be returned due to objective circumstances or due to a lack of co-operation from the country of origin should be given a residence permit to stay in the host country.

13. The Assembly agrees with the principle that failed asylum seekers who do not have the right to stay in the country should co-operate with the authorities to facilitate their own return, as stated by the Committee of Ministers in Recommendation No. R(99)12 on the return of rejected asylum seekers. The Assembly, however, is aware of the practical difficulties that failed asylum seekers may encounter while trying to obtain travel documents from the relevant authorities, or in proving that they have tried to do so. Failed asylum seekers should therefore be given a reasonable time to organise their voluntary return.

14. Finally, the Assembly believes that the recently revised Dutch policy should be modified insofar as it allows, in some cases, for certain persons to be protected from expulsion where it is impossible to return them, whilst simultaneously depriving them of all access to housing, social benefits and health care. The withdrawal of access to housing, social benefits and health care is a particularly worrying development, especially regarding children in the light of the rights under the Convention on the Rights of the child. It represents one of a series of measures increasingly used in a number of member states of the Council of Europe as a means of exerting pressure on failed asylum seekers to return to their countries of origin.

15. The Assembly, therefore, calls on the Government of the Netherlands and on other Council of Europe member states having similar policies to:

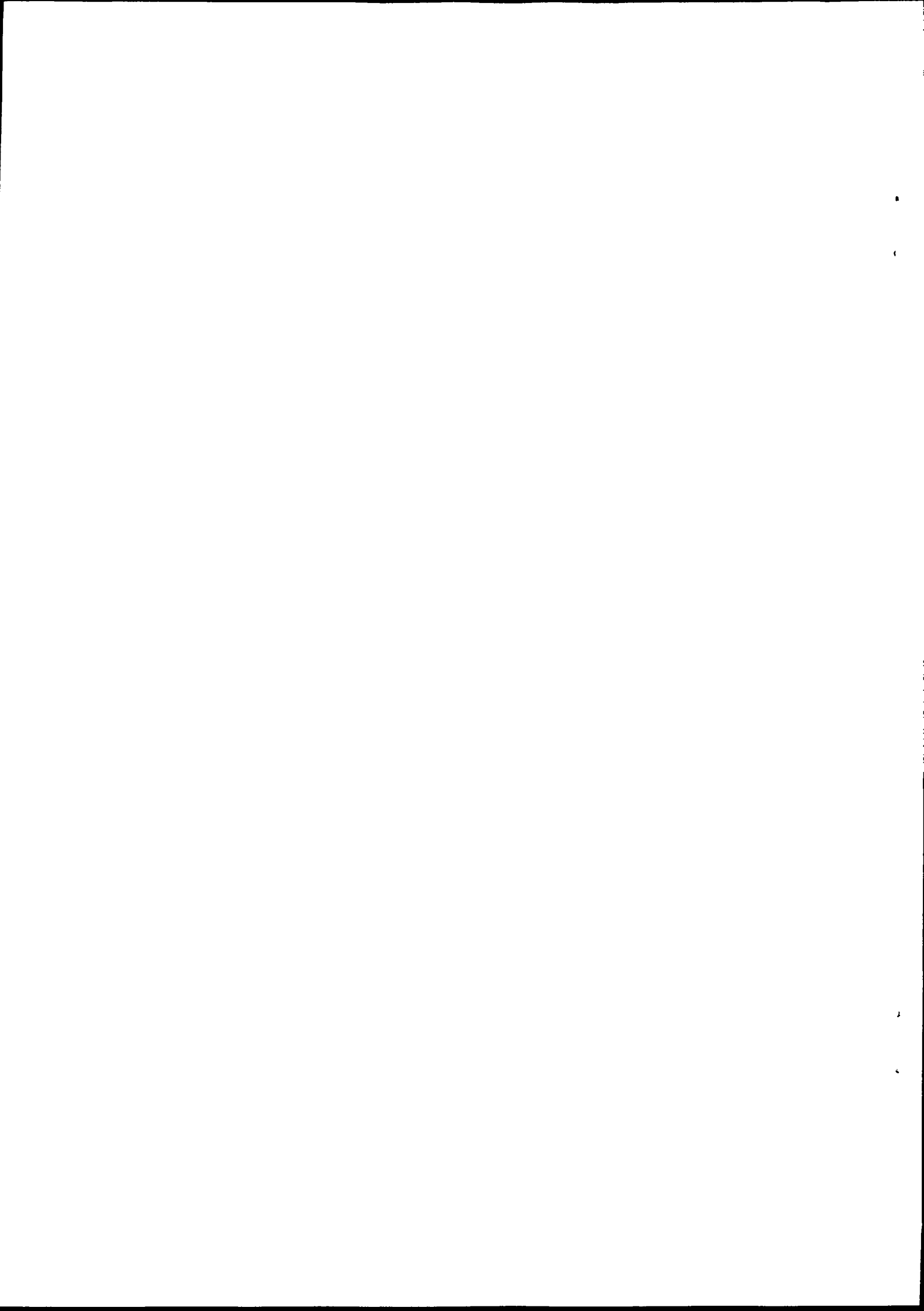
15.1. consider the possible use of amnesties, regularisation procedures or discretionary powers to regulate the situation of asylum seekers awaiting a decision on their asylum application for a long period of time;

15.2. while considering applications to remain in the country from failed asylum seekers, give special attention to the length of time the person concerned has lived in the country, family, community or other links, as well as his/her level of integration;

15.3. take into account the best interest of the child, before, during and after decisions are taken concerning the family and not only after a decision has been taken concerning the main applicant;

15.4. postpone the return of failed asylum seekers to countries or regions of conflict or where the humanitarian situation is volatile, pending improvement of the situation;

- 15.5. take all necessary steps to ensure that the principle of family unity is respected;
- 15.6. promote fully the use of voluntary return programmes, including advice and assistance on return, in preference to detention and forced returns;
- 15.7. provide a reasonable time to organise for voluntary returns;
- 15.8. refrain from introducing any policies which lead to excluding from the community or compelling to orbit around European states, failed asylum seekers who cannot be returned due to objective circumstances or due to lack of co-operation from their country of origin;
- 15.9. use detention only as a last resort and provide for a maximum period of detention. Where detention is considered, limit the period of detention and the use of detention to cases where there is a clear and objective risk that the person concerned would abscond to avoid return, on the basis of an individual assessment of each case;
- 15.10. provide for an automatic and regular review of all detention decisions as well as the right of failed asylum seekers in detention to apply to a judicial authority which would decide promptly on the lawfulness of their detention;
- 15.11. avoid in all circumstances detaining children, the elderly, people suffering from trauma or mental illness and people with disabilities;
- 15.12. demand a reasonable level of proof for failed asylum seekers to demonstrate that they have tried to co-operate towards their return and afford them the benefit of the doubt;
- 15.13. grant a residence permit that provides for the right to work and healthcare to failed asylum seekers who cannot be returned due to objective circumstances or to the lack of co-operation of the country of origin. This should translate into a permanent permit if there is no likelihood of return within a reasonable time-frame;
- 15.14. ensure an appropriate level of access to housing, social benefits and health care for all failed asylum seekers up to the time of their departure from the country;
- 15.15. promote public understanding of the situation of refugees in Europe and take measures to ensure that the media and politicians do not distort information on the situation of failed asylum seekers in such a way as to create hostility or intolerance towards persons belonging to this group.





Provisional edition

## **Relocation of economic activities abroad and European economic development**

Resolution 1484 (2006)<sup>1</sup>

1. The rising incidence of relocation of economic activities abroad by companies of production and services – often from more developed countries to countries with a more favourable cost structure in central, eastern and south-eastern Europe as well as in other parts of the world – has become a major political issue especially in western Europe and notably in countries with high unemployment. It may even have influenced recent referendums on the EU Constitutional Treaty, as some public personalities have called for measures to halt the trend by legislative and other means.

2. The Parliamentary Assembly – true to its own and the Council of Europe's pan-European mission, in the words of its Statute to “achieve a greater unity between its members ... and facilitate their economic and social progress” - believes, however, that the altogether natural tendency for firms to allocate their investment optimally in an increasingly integrated Europe should be allowed to continue unhindered, not least because it helps the continent to overcome its tragic division during half a century following the Second World War and since it will surely over time lead to increased trade, a rise in prosperity on all sides and a more unified and politically stable Europe.

3. Relocation may, however, at least temporarily, lead to considerable individual and social hardship and suffering, as a town or region may lose a vital source of employment and income. It is therefore essential that countries properly assist those affected by this process and that essential aspects of Europe's hard fought for social achievements be preserved. In this regard, policies to promote and encourage employability have shown themselves to be more efficient than those serving merely to protect employment.

4. It is particularly important that one of the main achievements of the European Union of 25 member states – the Internal Market – should not be called into question. The same holds for the Internal Market's extension via the European Economic Area to Iceland, Liechtenstein and Norway, the EU's Bilateral Agreements I and II with Switzerland, the various Partnership and Cooperation Agreements concluded with other European countries, including Russia, and the various agreements reached worldwide through the World Trade Organisation.

5. The Assembly calls on the member states of the European Union not to let the recent difficulties in ratifying the EU Constitutional Treaty form a reason to halt the EU enlargement process. It calls for new vigour in implementing the European Union's Lisbon Agenda designed to boost growth, employment and competitiveness. In this context, it stresses the importance of intra-European research co-operation, more liberalised markets and better conditions for entrepreneurship, including reduced red tape, whether at national or EU level. Investment into research should be increased and the results of such research should be better channelled into products, processes and services.

6. Relocation of economic activities is supported by technological developments, especially in the information and communications technology sector (ICT), and facilitated by increasingly efficient means of transport, including air cargo. Countries in Europe and elsewhere which have properly adapted to this development show persistently lower unemployment and higher growth. Countries which, by contrast, try to

<sup>1</sup> *Assembly debate* on 27 January 2006 (8<sup>th</sup> Sitting) (see Doc 10757, report of the Committee on Economic Affairs and Development, rapporteur: Mr Mimica). *Text adopted by the Assembly* on 27 January 2006 (8<sup>th</sup> Sitting).

6. The Assembly is aware of the widespread apprehension in Europe over intensifying penetration by Chinese companies in markets such as textiles and manufactures – in trade but increasingly also through investment in Europe-based production and retailing. It draws attention, however, to the enormous investment needs of China where European exports could excel. These include environmental facilities, education, healthcare, social and pension models, services, infrastructure, energy production, vehicles, housing, quality brands and luxury commodities – all areas where European companies have already made major inroads. Chinese tourism to Europe provides another important opportunity.

7. Finally, the Assembly calls on Council of Europe member states to take on board the positive and negative consequences for Europe of China's economic resurgence, such as the intensifying competition at world level for increasingly scarce energy, especially from oil and gas. In this context, it welcomes the European Union's growing contacts with China and the recent work of the OECD - for which the Assembly serves as a parliamentary forum via its Enlarged Assembly - on the Chinese economy and governance and resolves to ask member states to pay much greater attention to developments in the situation when taking decisions at economic and financial level. There is also the need to ensure adequate protection of intellectual property rights in China, an area where major shortcomings can be observed and have to be corrected.