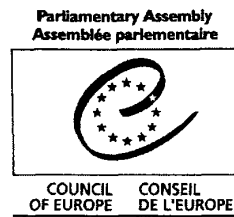


**Parliamentary Assembly**  
**Assemblée parlementaire**



**2006 SESSION**

**Second part**

**10–13 April 2006**

**TEXTS ADOPTED**

**BY**

**THE ASSEMBLY**



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by the Assembly  
(10 – 13 April 2006)**

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Provisional edition

## **The place of mother tongue in school education**

Recommendation 1740 (2006)<sup>1</sup>

1. In the Parliamentary Assembly's view, considerations of various kinds influence the place of the mother tongue in schools. There is the question of rights – both the right to education and the right to a cultural identity. There is preservation of the linguistic heritage, both European and world, there is the promotion of dialogue and exchange through linguistic diversity, and there are pedagogical factors, to say nothing of the political use which is often made of the issue.
2. The Assembly has often concerned itself with language matters. Recommendation 814 (1977) on modern languages in Europe, Recommendation 928 (1981) on the educational and cultural problems of minority languages and dialects in Europe, Recommendation 1203 (1993) on Gypsies in Europe, Recommendation 1291 (1996) on Yiddish culture, Recommendation 1333 (1997) on Aromanian language and culture, Recommendation 1353 (1998) on access of minorities to higher education, Recommendation 1383 (1998) on linguistic diversification, Recommendation 1521 (2001) on the Csango minority culture in Romania, Recommendation 1539 (2001) on European Year of Languages, Recommendation 1688 (2004) on diaspora cultures and Resolution 1171 (1998) on endangered Uralic minority cultures are examples.
3. The Assembly recalls the importance of the instruments adopted by the Council of Europe such as the European Charter for regional or minority languages as well as those adopted by other bodies, such as the Unesco Convention on the protection and promotion of the diversity of cultural expressions.
4. It would be desirable to encourage, as far as possible, young Europeans to learn their mother tongue (or main language) when this is not an official language of their country.
5. At the same time, every young European has the duty to learn an official language of the country of which he or she is a citizen.
6. The language which is the vehicle of instruction has a crucial role in that command of it is the key to classroom communication and consequently to pupils' acquisition of knowledge. A great deal of research has confirmed that types of education based on the mother tongue significantly increase the chances of educational success and give better results.
7. In European societies, everyday use of the official language is the main precondition for the integration of children whose main language is different from the official one of the country or region. However, a large amount of research is agreed on one point: immediate schooling of such children in a language they do not know well, or not at all, seriously jeopardises their chances of academic success. Conversely, bilingual education based on the mother tongue is the basis for long-term success.

<sup>1</sup> *Assembly debate* on 10 April 2006 (9<sup>th</sup> Sitting) (see Doc.10837, report of the Committee on Culture, Science and Education, rapporteur: Mr Legendre). *Text adopted by the Assembly* on 10 April 2006 (9<sup>th</sup> Sitting).

8. Recent studies have shown that the ideas that every language is linked to a particular culture and that bilingualism ultimately excludes the individual from both cultures are mistaken. The view that bilingualism or plurilingualism is a burden on pupils is also incorrect – they are assets.

9. There are various ways in which child bilingualism can be supported by education systems. They are distinguished by their political objectives: maintaining a minority language, revitalising a less widespread language or integrating children who speak a foreign language into the dominant society. There are appropriate bilingual educational models in all cases. Which is chosen will depend on prior reflection and a transparent decision on objectives, negotiated with the players.

10. “Strong” bilingual educational models which aim to equip the future adult with real bi/plurilingual proficiency and, in particular, bi-literacy, have many advantages over “weak” models which treat bilingualism as an intermediate stage between mother-tongue monolingualism and official-language monolingualism rather than as an end in itself. These advantages concern both the people who benefit from such models and the societies that provide them. In all cases, however, the condition for success is that bilingual educational programmes should last several years.

11. Particular attention should be paid to the case of regional languages exclusively spoken in a country with a different official language or which are spoken in more than one country but are not official languages in any of them, as well as in the case of deterritorialised or diaspora languages. Significant support by educational systems can be the condition even for the survival of these languages.

12. The Assembly accordingly recommends that the Committee of Ministers:

12.1. inventory the different models and types of bilingual education in Europe;

12.2. promote exchange and meetings between practitioners involved in bilingual education;

12.3. prepare a recommendation inviting the governments of member states to:

12.3.1 develop bilingual and plurilingual education on the basis of the principles set out above;

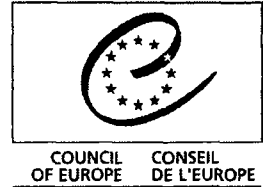
12.3.2. foster development of children’s plurilingual repertoires and give substantial support to all languages in children’s repertoires;

12.3.3. propose, whenever appropriate and useful, strong support in their mother tongue for children for whom it is not an official language of the state;

12.3.4. promote threatened languages with parents and communities so that their commitment to a threatened language receives support and reinforcement;

12.3.5. develop and implement policies for the use of languages in education, in open dialogue and permanent consultation with the concerned linguistic groups;

12.4. invite those member states that have not yet done so to sign and ratify the relevant instruments adopted by the Council of Europe and Unesco.



Provisional edition

## **Social reintegration of prisoners**

Recommendation 1741 (2006)<sup>1</sup>

1. A good prison policy aiming at the social reintegration of prisoners is an important factor when it comes to assessing the functioning of democracy in Council of Europe member states.
2. In this connection, the Parliamentary Assembly draws attention to Committee of Ministers Recommendation R (83) 7 on participation of the public in crime policy and its own Recommendations 1257 (1995) on conditions of detention in Council of Europe member states and 1656 (2004) on the situation of European prisons and pre-trial detention centres.
3. Even though the purpose of a prison sentence is to punish offenders and put them where they can do no harm, while preparing them for subsequent release and reintegration into society, the Assembly notes that, in all Council of Europe member states, imprisonment does not achieve the second objective as a large number of former prisoners reoffend within five years of their release.
4. There are many causes for this, including failure by prison authorities to provide positive help to prisoners at the end of their sentences with work and housing, socialisation to prison culture, lack of family support, lack of education and vocational training and social prejudices.
5. Spending many years in prison may be a factor in desocialisation as it very often destroys prisoners' ties with their families, friends and the rest of society.
6. The chances of successful social reintegration also depend on the nature of the offence committed and the sentence served. In this connection, the Assembly draws attention to the possibility of alternatives to imprisonment for petty offenders.
7. The Assembly noting the high level illiteracy amongst prisoners underlines that education is a fundamental human right and that prison authorities should provide appropriate measures of education for prisoners for up to 25 hours per week. Further recognising that sport, particularly team sport, can help divert young people from crime, the Assembly believes that sporting activities should be more widely available in all prisons.
8. As knowledge of events in the outside world is also an important factor, prisoners must have access to information.
9. Since adjusting to freedom can often be difficult for individuals who have served long prison sentences, the Assembly believes that a system of conditional releases, prison leave and day releases can help ensure their successful reintegration into society.
10. The Assembly underlines the importance of the proper organisation of prisons and the role played both by prison staff and by social, medical and judicial services.

<sup>1</sup> *Assembly debate* on 11 April 2006 (11<sup>th</sup> Sitting) (see Doc.10838, report of the Social, Health and Family Affairs Committee, rapporteur: Mr Gülcicek ). *Text adopted by the Assembly* on 11 April 2006 (11<sup>th</sup> Sitting).

11. Prison policy must be geared towards enabling prisoners to lead socially responsible lives when released and preparing them for this during their imprisonment.

12. The Assembly recommends that the Committee of Ministers ask the relevant committees of experts:

12.1 to draw up a recommendation to member states on the social reintegration of prisoners, urging them to:

12.1.1. provide social reintegration counselling;

12.1.2. train prison staff appropriately by creating special training centres, if they do not exist ;

12.1.3. take steps to keep first-time offenders and young offenders separate from repeat offenders and other prisoners;

12.1.4. organise information for prisoners' families;

12.1.5. use alternatives to custodial sentences (placement, conditional release, electronic tagging), in appropriate cases;

12.1.6. apply flexible and tolerant rules on visits, including "conjugal visits";

12.1.7. take the necessary steps to enable and encourage prisoners to follow vocational training courses;

12.1.8. allow prisoners to keep up with events in the outside world through newspapers and radio and/or television;

12.1.9. launch awareness-raising campaigns to combat discrimination based on criminal records;

12.2. to organise exchanges of information between European prison governors so that they can share their experiences with a view to improving detention systems;

12.3. to give specific consideration to:

12.3.1. the situation of women and minors in prison;

12.3.2. the health, hygiene and drugs situation in prisons.

12.3.3. the particular needs of long-term prisoners.

13. In addition, the Assembly calls on Council of Europe member states which have not already done so to sign and ratify without delay the Optional Protocol to the United Nations Convention against Torture and the United Nations Convention on the Rights of the Child.





Provisional edition

## **Human rights of members of the armed forces**

Recommendation 1742 (2006)<sup>1</sup>

1. The army is the institution which is responsible for protecting the State and defending the community. *Combat is its raison d'être, the very purpose of its existence, and it is bound by the specific constraints of rules regarding unity, hierarchy, discipline and compliance with orders.*
2. The Parliamentary Assembly recalls the many texts which it has adopted on promotion of human rights in the armed forces and notes their continued relevance and topicality. It considers that members of the armed forces are citizens in uniform who must enjoy the same fundamental liberties, including those set out in the European Convention on Human Rights and the European Social Charter, and the same protection of their rights and dignity as any other citizen, within the limits imposed by the specific exigencies of military duties.
3. With the ending of conscription and the professionalisation of the armed forces in several countries, at a time when armies in many member States are seeing action in the same theatres of operations, the Assembly resolutely promotes the shared principles to be used to guide army action and govern the conditions under which they discharge their duties. Members of the armed forces cannot be expected to respect humanitarian law and human rights in their operations unless respect for human rights is guaranteed within the army ranks. It is therefore essential that the Council of Europe's efforts to lay down guidelines on human rights protection within the armed forces be accompanied by a policy in the member States of heightening human rights awareness among their own military personnel.
4. The Assembly notes that, despite its repeated requests to member States, the situation of members of the armed forces in some States vis-à-vis the rights which they enjoy under the European Convention on Human Rights and the case-law of the Court is far from satisfactory. It regrets that many restrictions to the exercise of their rights by members of the armed forces in certain member States exceed what is acceptable under the terms of the Convention.
5. It also regrets that scant attention has so far been paid to military justice and military disciplinary and criminal procedures, and considers that in view of the diversity of legal and judicial systems in the member States it would be useful to conduct a comparative law survey in order to promote the rights of the military to freedom and safety and to a fair trial.
6. The Assembly considers that the Council of Europe should pay greater attention to the issue of the status of women in the armed forces. A great many female soldiers are subjected to sexual harassment. Access to military duties and to specific posts in the armed forces, career structures and equal rights: all these issues are relevant to discrimination against women which also require in-depth consideration.
7. The Assembly is horrified and appalled by the situation of servicemen in some member States' armies who are subjected to abuse, brutality, institutionalised bullying, violence, ill-treatment and torture, constituting extremely serious violations of their rights. This applies to the "initiation ordeals" (*dedovshchina*) which, despite periodical complaints from NGOs, remain common practice in the armed forces of certain countries.

<sup>1</sup> *Assembly debate* on 11 April 2006 (11<sup>th</sup> Sitting) (see Doc.10861, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Arabadjiev). *Text adopted by the Assembly* on 11 April 2006 (11<sup>th</sup> Sitting).

8. The Assembly recalls that the right of conscientious objection is an essential component of the right to freedom of thought, conscience and religion as secured under the Universal Declaration of Human Rights and the European Convention on Human Rights.

9. The Assembly asks member States to ensure genuine and effective protection of the human rights of members of the armed forces, and in particular to:

9.1 authorise members of the armed forces to join professional representative associations or trade unions entitled to negotiate matters connected with remuneration and conditions of employment, and to set up consultative bodies at all levels involving the aforementioned associations or trade unions, representing all categories of personnel;

9.2 introduce, where such a facility does not already exist, the autonomous civil institution of military ombudsman responsible for promoting the fundamental rights of members of the armed forces, ensuring respect for such rights, providing legal assistance to servicemen, and receiving complaints of violations of their rights, and to whom military personnel can turn in a confidential manner in cases of employment disputes or other questions arising out of the exercise of military duties;

9.3 remove existing restrictions on the electoral rights of members of the armed forces;

9.4 authorise members of the armed forces and military personnel to join legal political parties;

9.5 adopt or modify legislation and statutory regulations in order to ensure their conformity with the European Convention on Human Rights and the case-law of the Court, including military codes and internal military regulations which should clearly set out the rights and obligations of armed forces personnel;

9.6 lift any remaining reservations to the application of Articles 5 and 6 of the European Convention on Human Rights;

9.7 introduce into their legislation the right to be registered as a conscientious objector at any time, namely before, during or after implementation of military service, as well as the right of career servicemen to obtain the status of conscientious objector;

9.8 adopt, where necessary, the requisite urgent measures to put an end to the scandalous situations and practices of bullying in the armed forces and to put an end to the conspiracy of silence in the armed forces which ensures impunity for such acts;

9.9 ensure that every case of violation brought to the authorities' attention is thoroughly, openly and rapidly investigated and that the perpetrators are prosecuted and brought to justice.

10. The Assembly recommends that the Committee of Ministers prepare and adopt guidelines in the form of a new recommendation to member States designed to guarantee respect for human rights by and within the armed forces, drawing on the European Convention on Human Rights and the case-law of the European Court, the previous recommendations of the Committee of Ministers, the recommendations of the Parliamentary Assembly and those of the Commissioner for Human Rights of the Council of Europe. Guidelines on the rights of army personnel, whatever its status - conscripts, volunteers or career servicemen - should include at least the following rights:

10.1. members of the armed forces must enjoy the following fundamental rights and freedoms:

10.1.1 the right to life (bearing in mind, however, the inherent dangers of the military profession);

10.1.2 the right to protection against torture and inhuman or degrading treatment or punishment;

10.1.3 the prohibition of slavery, servitude, employment in tasks incompatible with their assignment to the national defence service and forced or compulsory labour;

10.1.4 the right to legal protection in the event of violation of their rights, the right to freedom and safety and the right to a fair trial by independent tribunals, as well as the right to appeal;

10.1.5 the prohibition of discrimination;

10.1.6 the right to freedom of thought, conscience and religion;

10.1.7 the right to full enjoyment of civic and voting rights;

10.1.8 the right to respect for property;

10.1.9 the right to marry and found a family;

10.2. members of the armed forces must enjoy the following fundamental freedoms and rights which may, however, be subject to certain restrictions:

10.2.1. the right to freedom of expression;

10.2.2. the right to freedom of assembly and association, including the right to form trade unions and to belong to political parties;

10.2.3. the right to respect for private and family life, the home and correspondence;

10.3. any restrictions on the exercise and enjoyment by members of the armed forces of the rights mentioned in paragraph 10.2 must fulfil the following specific criteria:

10.3.1. they must have a legitimate aim, be strictly justified by the needs and specificities of military life, discipline and training, and be proportional to the aim pursued;

10.3.2. they must be known, be provided for and strictly defined by law and comply with the provisions of the Constitution;

10.3.3. they must not unjustifiably threaten or jeopardise the physical or mental health of members of the armed forces;

10.3.4. they shall respect limits established by the European Convention on Human Rights.

10.4. members of the armed forces must also enjoy economic and social rights, including:

10.4.1. the right to decent and adequate housing/accommodation;

10.4.2. the right to receive fair remuneration and a retirement pension;

10.4.3. the right to health protection and work security;

10.4.4. the right to decent and sufficient nutrition.

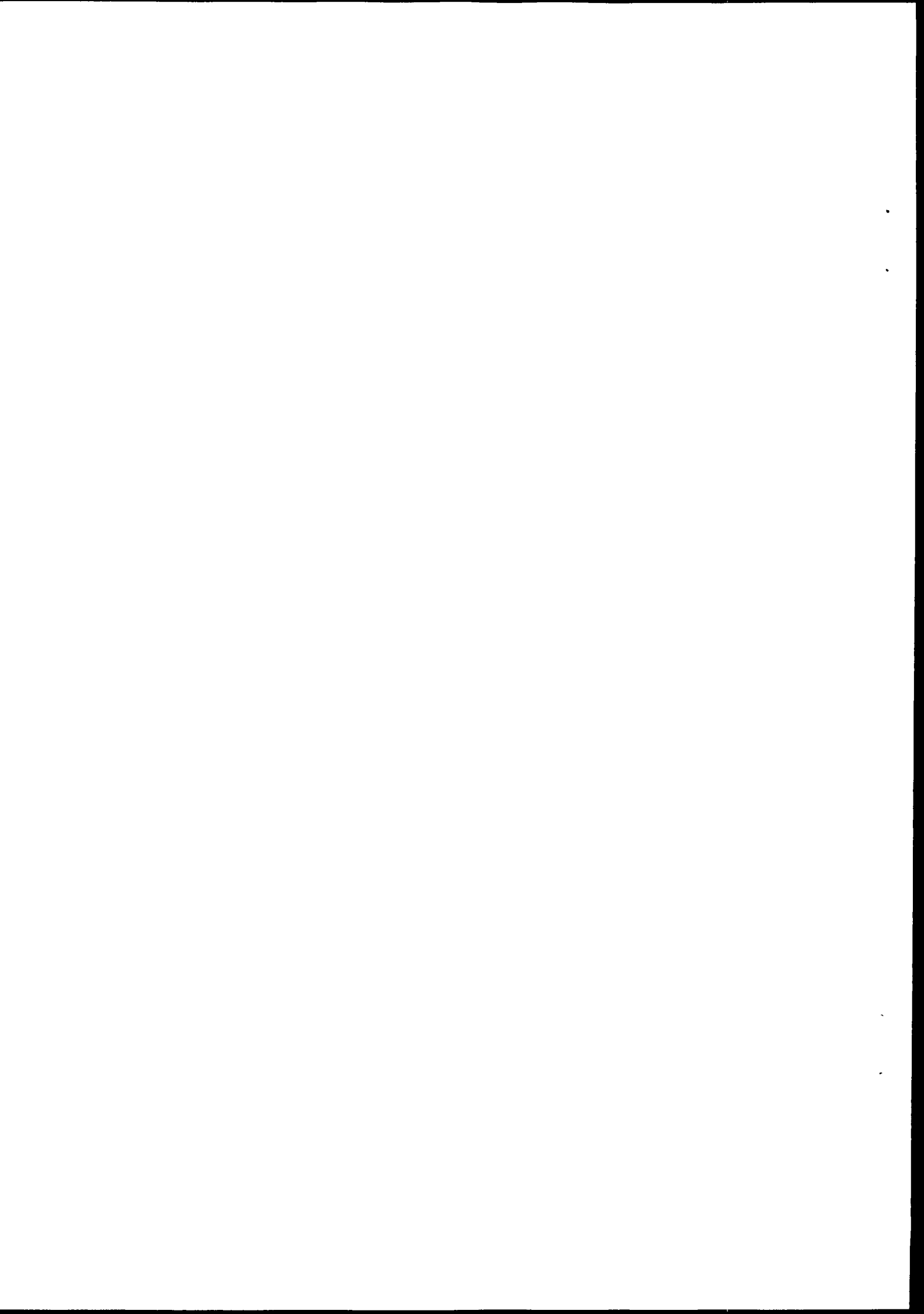
10.5. members of the armed forces must be informed of their rights and receive training to heighten their awareness of human rights.

11. The Assembly further recommends that the Committee of Ministers:

11.1. reconsiders its proposal to introduce the right to conscientious objection to military service into the European Convention on Human Rights by means of an additional protocol amending Articles 4.3.b and 9;

11.2. specifically examines the situation of women in the armed forces;

11.3. provide the Assembly with its full and firm support on the implementation of a zero-tolerance policy on bullying in the armed forces.





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## **Memorandum of understanding between the Council of Europe and the European Union**

Recommendation 1743 (2006)<sup>1</sup>

1. The Parliamentary Assembly attaches great importance to relations between the Council of Europe and other institutions. It supports in particular the intensification of co-operation and political dialogue with the European Union.
2. Furthermore, the Assembly has consistently played a leading role in the reflection on the relations between the Council of Europe and the European Union. It is therefore essential for the Assembly to make its voice heard in this debate and to contribute with all the wealth and weight of its experience.
3. The Assembly recalls that immediately after the Third Council of Europe Summit of Heads of State and Government, it welcomed the decision to “create a new framework for enhanced co-operation and interaction between the Council of Europe and the European Union in areas of common concern, in particular, human rights, democracy and the rule of law”.
4. In the Action Plan of the Summit, the Heads of State and Government agreed on Guidelines on the relations between the Council of Europe and the European Union. These Guidelines call for an enhanced partnership to promote the common objective of a Europe without new dividing lines. On the basis of these Guidelines, it was agreed to draft a memorandum of understanding between the Council of Europe and the European Union.
5. The Assembly already welcomed the decision taken at the Third Summit to entrust Mr Jean-Claude Juncker, Prime Minister of Luxembourg, with the preparation of a report, in his personal capacity, on the relationship between the Council of Europe and the European Union. The Assembly has consistently offered its full support to Mr Juncker's mission. As a contribution to Mr Juncker's report, the President of the Assembly prepared a position paper on the relations between the Council of Europe and the European Union, which was endorsed by the Bureau.
6. Mr Juncker presented his report to the Assembly on 11 April 2006. The Assembly considers that it provides an innovative approach, encouraging proposals and valuable political guidance for efficient co-operation between the two institutions.
7. As regards its co-operation with the European Parliament, the Assembly declares its readiness to develop activities by creating, if necessary, joint bodies and encourages its committees to enhance their contacts with the relevant committees of the European Parliament.
8. The Assembly notes that a preliminary draft memorandum of understanding is already under consideration by the Committee of Ministers.
9. The Assembly recommends to the Committee of Ministers to:
  - 9.1. take full account of Prime Minister Juncker's report in preparing the memorandum of understanding;

<sup>1</sup> *Assembly debate* on 13 April 2006 (14<sup>th</sup> Sitting) (see Doc.10892, report of the Political Affairs Committee, rapporteur: Mr Kosachev). *Text adopted by the Assembly* on 13 April 2006 (14<sup>th</sup> Sitting).

- 9.2. consult formally the Assembly before concluding the memorandum of understanding, in light of the obvious need to bring Europe closer to its citizens;
- 9.3. ensure that the Assembly is fully involved in the decision-making process relating to the final document;
- 9.4. propose to the Council of the European Union to:
  - 9.4.1. make use of Ministerial conferences, amongst others, in the fields of culture, education and justice to increase co-operation in these areas, in particular, by convening the relevant European Councils on the occasion of these conferences;
  - 9.4.2. include in the agenda of one of its meetings the adoption of a strategy of co-operation with the Council of Europe;
- 9.5. pending the consultation of the Assembly, agree with and propose to the European Union to include the following proposals in the memorandum of understanding:
  - 9.5.1. with a view to avoiding any duplication, systematically take into account the work of Council of Europe bodies in the European Union's action in the relevant areas, in particular when considering the setting-up of the European Union agencies;
  - 9.5.2. acknowledge that the Council of Europe must remain the benchmark for human rights, the rule of law and democracy in Europe, in particular ensuring that the European Union bodies should recognise the Council of Europe as the Europe-wide reference source for human rights and act according to the findings of the relevant monitoring structures in a systematic way;
  - 9.5.3. accede to the European Convention on Human Rights and thus contribute to the creation of a single legal mechanism for the protection of human rights, applied on an equal basis to all European states and other bodies exercising competence affecting the rights protected by the European Convention on Human Rights;
  - 9.5.4. study the steps that would lead to the development of a coherent European legal order by incorporating the main Council of Europe standard-setting instruments into the European Union legal system, or by acceding to major Council of Europe legal instruments, which the Committee of Ministers should identify, as having already been requested by the Assembly;
  - 9.5.5. ensure the Commissioner for Human Rights becomes the European institution to which the European Union, like all of the Council of Europe's member states, could refer all human rights problems that are not covered by the existing monitoring and supervisory mechanisms, as well as urging the Council of Europe member states to increase significantly the resources of the Commissioner's Office in order to enable the Commissioner to carry out this task;
  - 9.5.6. replace the "disconnection clause" by a modulation clause, making it clear that European Union member states are to abide by Council of Europe conventions, partly through the exercise of the European Union competence. In the case of inconsistencies, the normal mechanism of reservations should be used;
  - 9.5.7. set-up a Co-ordination Committee in the field of standard-setting with a view to increasing the co-operation in the drafting of new international legal instruments;
  - 9.5.8. ensure that the European Union and the Council of Europe together devise a strategy and implement a mechanism to promote democracy, making full use of the Venice Commission's expertise and the new Forum on the Future of Democracy created by the Third Summit;
  - 9.5.9. integrate the standards and values of the Council of Europe and use its expertise in the European Neighbourhood Policy;
  - 9.5.10. make use of the Council of Europe as a forum for intercultural dialogue;

9.5.11. make the inter-institutional relations between the European Union and the Council of Europe more substantial, with meetings for the co-ordination of activities held at a high level, focusing on strategic issues and taking place at regular intervals, and with additional meetings dealing with urgent issues also possible;

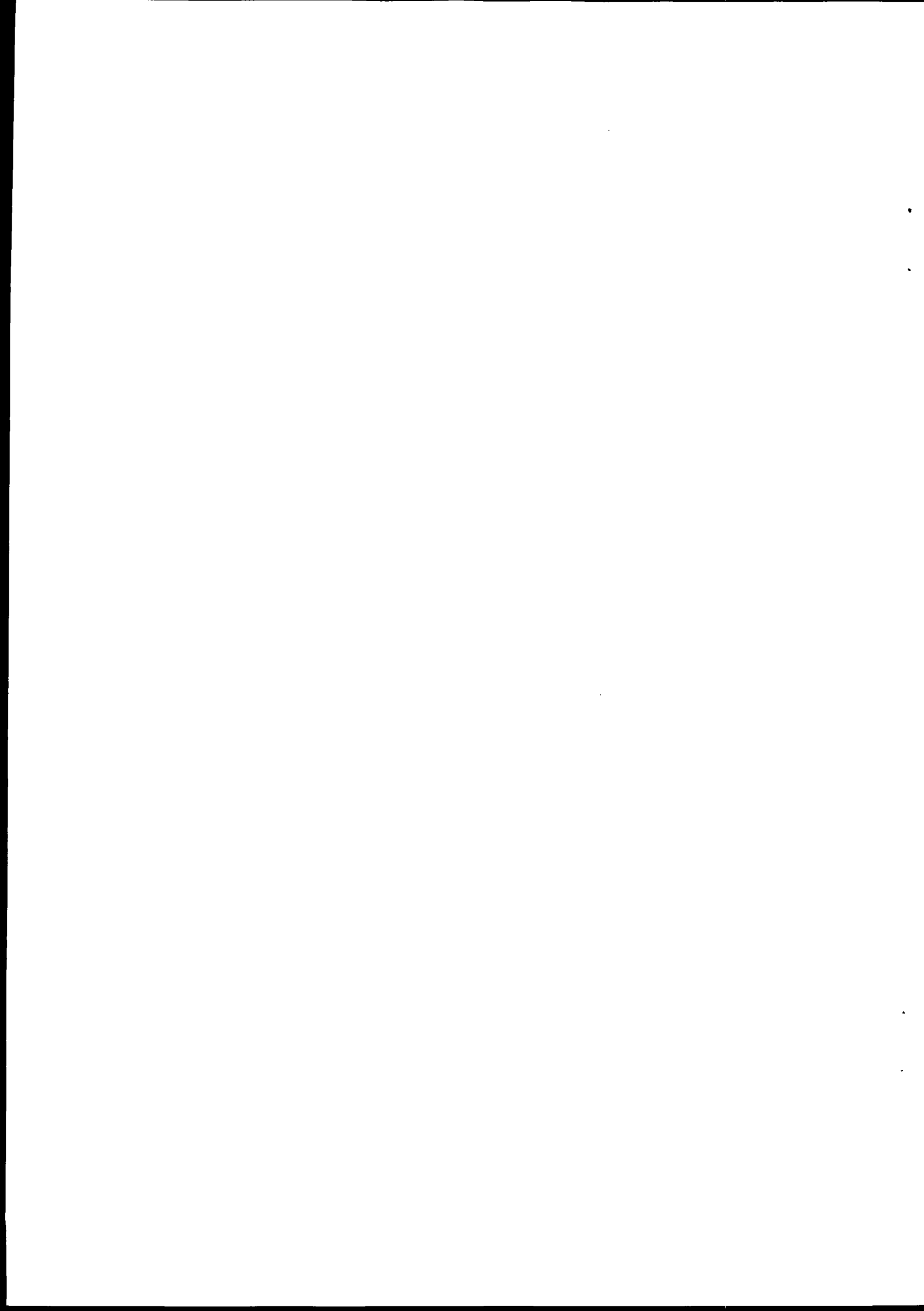
9.5.12. open a permanent office of the European Commission in Strasbourg to ensure closer contact with the Council of Europe and guarantee the participation of its representatives in the relevant working meetings;

9.5.13. give a parliamentary dimension to the quadripartite meetings with a view, in particular, to increasing their democratic components as well as their transparency;

9.5.14. improve co-operation between the Assembly and the European Parliament based on the recognition of common values and interests, in an effective and pragmatic manner;

9.5.15. give a major role to the Assembly and the European Parliament in defining future relations between the European Union and the Council of Europe.

10. Finally, the Assembly considers that the Council of Europe and the European Union should commit themselves to review their memorandum of understanding within five years after the date of signature in order to assess its effectiveness and to take into account developments in the fields of common interest.







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## **Follow-up to the Third Summit: the Council of Europe and the Fundamental Rights Agency of the European Union**

Recommendation 1744 (2006)<sup>1</sup>

1. The Parliamentary Assembly, recalling its Resolution 1427 (2005), reaffirms that “creation of a fundamental rights agency within the European Union (EU) could make a helpful contribution, provided that a useful role and field of action is defined for it and that the agency therefore genuinely “fills a gap” and presents irrefutable added value and complementarity in terms of promoting respect for human rights.”

2. To determine whether there is such a gap, it is necessary first to consider the existing human rights protection system which is built upon and around the Council of Europe. Over its 56-year history, the Council of Europe – which now counts amongst its membership all but one of the countries of Europe – has developed a complete range of instruments and mechanisms for promoting and protecting human rights.

3. Since all European Union member States are also members of the Council of Europe, their actions in implementing European Union law are subject to the standards and supervisory mechanisms of the Council of Europe. In fact, by far the most serious lacuna surrounds the institutions of the European Union itself: the only public authorities operating in Council of Europe member States that are outside the jurisdiction of the European Court of Human Rights, although the European Court of Justice, in its decisions, does in fact follow the case-law of the European Court of Human Rights.

4. The Assembly's concern in this matter is motivated by a desire to ensure that the inhabitants of Europe as a whole benefit from the most effective and efficient overall human rights protection system. First and foremost, the Agency should concentrate on filling the principal lacuna. Were it, in addition, to duplicate activities already undertaken by the Council of Europe (or by national human rights commissions), this could have serious adverse effects for the overall system. Duplication would risk inconsistency and create the possibility of “forum shopping,” with the countries that were subject to the different mechanisms giving preference to whichever took the more favourable position.

5. There could also be disadvantageous consequences from the perspective of European integration. The fact of having two parallel institutions engaged in similar activities within the same geographical region, one having a more limited membership than the other, would create new dividing lines in Europe by reference to states' institutional situation in bodies devoted to human rights, one of the very principles intended to unite Europe. The apparent incoherency of creating a new European Union body to duplicate work already satisfactorily undertaken elsewhere would cause confusion amongst a European public already uncertain about the process of European integration. Duplication would also waste public money at a time of general budgetary stringency, thus further alienating citizens from European institutions, including the mechanisms of human rights protection.

6. At the Warsaw Summit in May 2005, the Heads of State and Government of the Council of Europe member States – including those of all European Union member States – reaffirmed the central role of the Council of Europe in protecting and promoting human rights and resolved to enhance its role as an effective mechanism of pan-European cooperation in this field, including by ensuring that the European Union and its member states make better use of available Council of

<sup>1</sup> *Assembly debate* on 13 April 2006 (14<sup>th</sup> Sitting) (see Doc.10894, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Jurgens). *Text adopted by the Assembly* on 13 April 2006 (14<sup>th</sup> Sitting).

Europe instruments and institutions. The Warsaw Summit also requested Prime Minister Jean-Claude Juncker of Luxembourg to prepare a report on relations between the Council of Europe and the European Union. The Assembly considers that creation of a new, separate human rights body whose activities duplicated those of the Council of Europe would be entirely inconsistent with the decisions taken at the Warsaw Summit and contrary to the conclusions of the Juncker report.

7. At the beginning of the consultation procedure, the European Commission produced a consultation document containing *inter alia* the following points:

7.1. the Agency will be required to monitor fundamental rights by area [thematically] and not prepare reports by country;

7.2. confining the Agency's activities to the scope of EC/EU law would help avoid duplication of the activities of other bodies;

7.3. a mandate for the Agency to act in relation to Article 7 of the Treaty on European Union, to determine serious and persistent breaches by member States of the founding principles of the European Union, would be difficult to reconcile with an effective agency and could lead to overlap with the work of the Council of Europe, creating a very real risk of duplication and contradiction;

7.4. confining the Agency's activities to European Union territory would clearly underline the political will to emphasise the importance of fundamental rights to and within the Union, effectively placing responsibility on the institutions; this message would be diluted if the agency's remit included third countries.

8. The Assembly deeply regrets the fact that subsequent developments appear to have lost sight of these points and firmly believes that they remain the most appropriate basis for an effective Agency, analogous to a national human rights institution, with the potential to bring genuine added value to the overall European human rights protection system.

9. The European Union Constitutional Treaty is often mentioned in justification for establishing the Agency, even by reference to the fact that its ratification process has been blocked. The Assembly notes that this Treaty, agreed upon as a package of measures, would also have given far greater powers to national parliaments with respect to the EU legislative process, in particular in relation to application of the principle of subsidiarity. Unfortunately, however, the role of national parliaments in the discussions surrounding the Agency has not been properly acknowledged, despite several – including in the Czech Republic, France, Germany, the Netherlands, the United Kingdom and, jointly, in Estonia, Latvia, Lithuania and Poland – having expressed serious reservations.

10. The Assembly recommends that all European Union member States' national parliaments that have not already done so give serious and detailed consideration to the proposed Agency, with a view to adopting a position based on the present recommendation. Assembly delegations from the relevant parliaments should take the lead in initiating the necessary procedures.

11. Given the double mandate of its members as democratic representatives at both national and European levels, the Assembly draws on its own existing positions and on the objections raised thus far within national parliaments to make the following recommendations to the institutions and member States of the European Union:

11.1. the Agency should be explicitly limited, in its mandate, to human rights issues that arise within the European Union's internal legal order;

11.2. the Agency should be explicitly required, in its mandate, to refer in its work to the principal human rights instruments of the Council of Europe, namely the European Convention on Human Rights, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the European Social Charter and the Framework Convention for the Protection of National Minorities;

11.3. the Agency should have no mandate to undertake activities concerning non-EU member States. Should such a mandate nevertheless be considered absolutely necessary, it should be strictly confined to candidate countries and limited to issues arising from the accession process;

11.4. the Agency should be explicitly excluded, in its mandate, from engaging in activities that involve assessing the general human rights situation in specific countries, in particular those that are members of the Council of Europe;

11.5. establishment of the Agency should not be accompanied by creation of a new Forum for human rights;

11.6. the Agency should be explicitly required, in its mandate, to ensure that it avoids duplication of the activities of the Council of Europe;

11.7. the Council of Europe should be represented on the management structures of the Agency at a level and with voting rights at least equal to those that it currently enjoys on the management structures of the EU Monitoring Centre on Racism and Xenophobia;

11.8. the legal basis of the Agency must be beyond reproach. In the interests of transparency, the critical opinion of the legal services of the Council of the European Union, as referred to by the French National Assembly and the Czech Senate, should be published;

11.9. further serious and detailed consideration should be given to application of the principle of subsidiarity. This should involve detailed comparison of the various activities proposed for the Agency with the relevant acts of member States at both national level and in other international fora, including in particular the Council of Europe;

11.10. further serious and detailed consideration should also be given to application of the principle of proportionality, taking into account the exact extent to which the relevant treaty contains objectives of relevance to the activities proposed for the Agency;

11.11. given the importance to the legal environment in which the Agency would operate of the EU Charter for Fundamental Rights having binding effect and the European Union acceding to the ECHR – both foreseen in the European Union Constitutional Treaty – consideration should be given to postponing creation of the Agency until the fate of these provisions has been resolved;

11.12. the political will impelling the proposals for the Agency should be employed to give new impetus towards European Union accession to the European Convention on Human Rights, which would be the most important step in ensuring that the European Union acts with full respect for human rights;

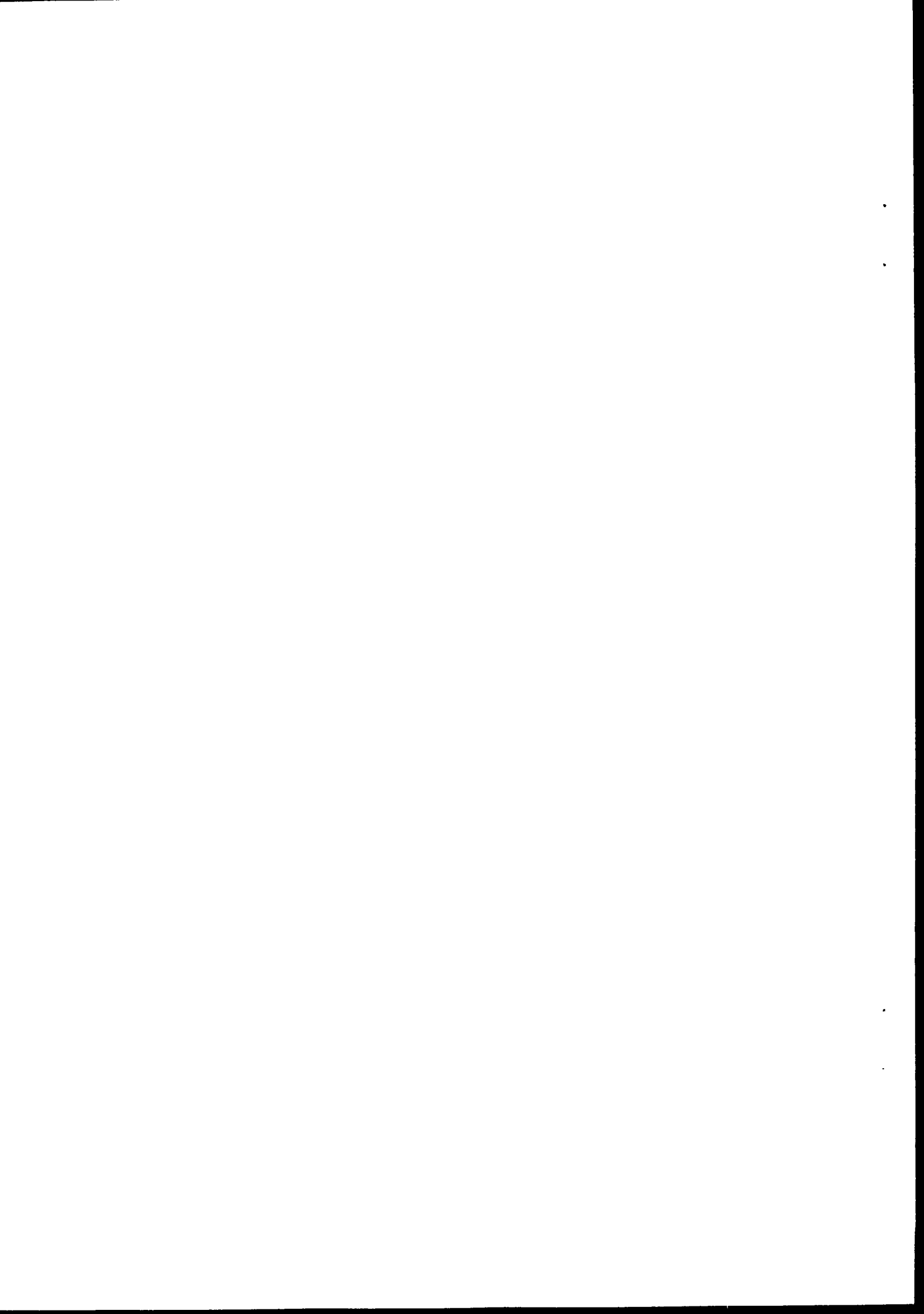
11.13. final decisions relating to the Agency should be deferred until national parliaments in all European Union member States have had the opportunity of adopting final positions on matters relating to it. The present report and recommendation complement but cannot completely substitute for the full range and detail of positions that might be taken in national parliaments:

12. Bearing in mind the more general work currently being undertaken concerning relations between the Council of Europe and the European Union, the Assembly strongly believes that the issue of the Agency should not be addressed outside this context. The Assembly therefore makes the following recommendations to the Committee of Ministers and to the institutions and member States of the European Union:

12.1. work on a co-operation agreement between the Agency and the Council of Europe should be deferred until the precise mandate of the Agency has been determined;

12.2. final decisions on the creation and mandate of the Agency should be deferred until the overarching new framework for enhanced co-operation between the Council of Europe and the European Union (at present being discussed as a "memorandum of understanding") has been defined and agreed upon.

13. Finally, the Assembly recommends to the Committee of Ministers that, since this issue is of profound significance to the overall European human rights protection system and thus to the Council of Europe in particular, it give further serious and detailed consideration to the issue, with a view to reaching a common position based on the present recommendation.





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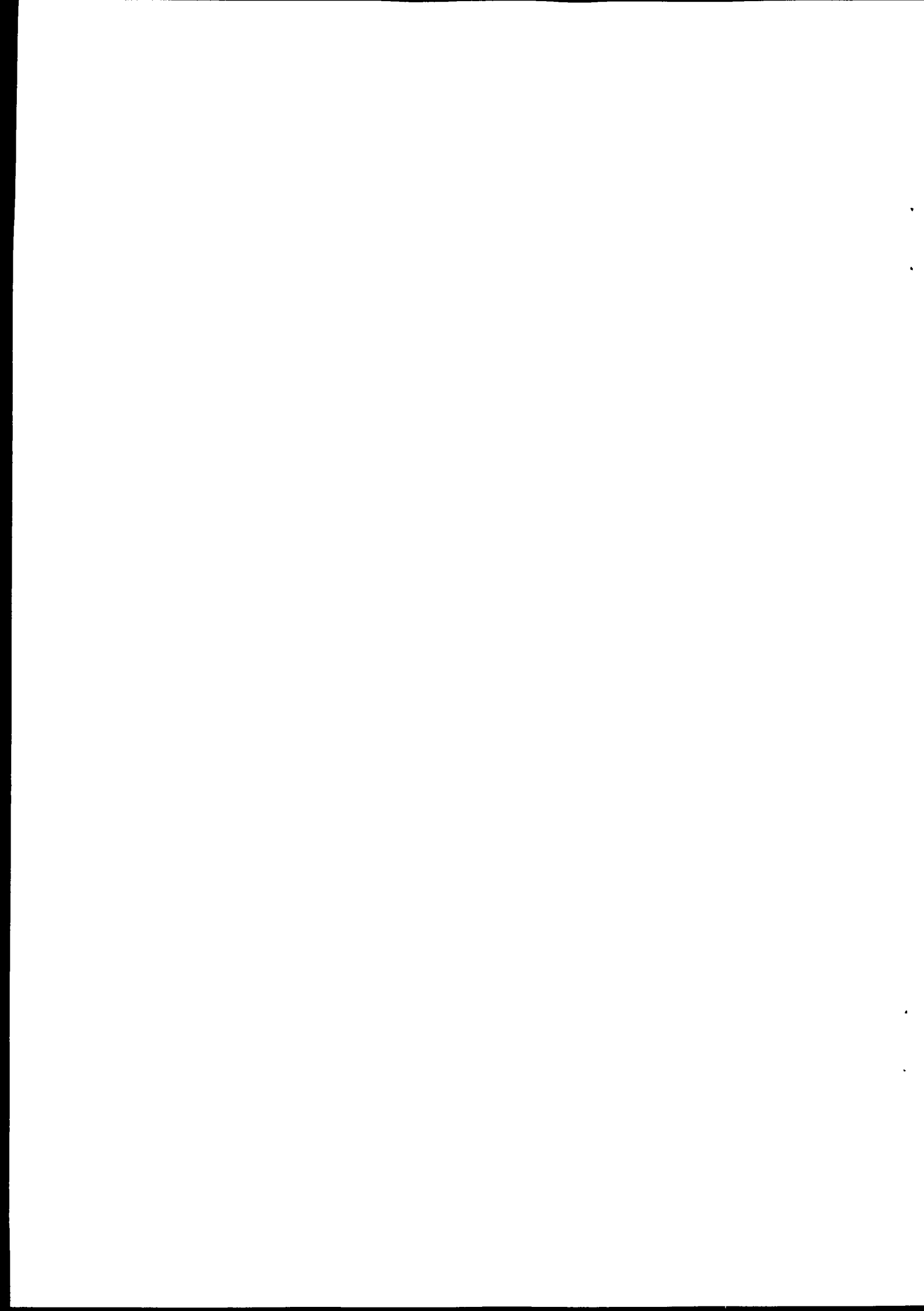
## **Belarus in the aftermath of the Presidential election of 19 March 2006**

Recommendation 1745 (2006)<sup>1</sup>

Referring to its Resolution 1496 (2006) on Belarus in the aftermath of the Presidential election of 19 March 2006, the Assembly invites the Committee of Ministers to hold a debate with the Assembly on the differences in the evaluation of the election in Belarus between different groups of observers.

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<sup>1</sup> *Assembly debate* on 13 April 2006 (14<sup>th</sup> Sitting) (see Doc.10890, report of the Political Affairs Committee, rapporteur: Mr Herkel). *Text adopted by the Assembly* on 13 April 2006 (14<sup>th</sup> Sitting).





Provisional edition

## **Poverty and the fight against corruption in the Council of Europe member states**

Resolution 1492 (2006)<sup>1</sup>

1. The Parliamentary Assembly notes that, despite the measures taken by Council of Europe member states, corruption is still very much present in certain European countries, where resources are often redirected to fuel parallel economies.
2. Corruption affects the functioning of public services with serious consequences for the management of public funds in general and for the judicial system in particular.
3. However, it can also be found in the private sector and creates many opportunities for misappropriation, with often disastrous consequences for the economic development of the country concerned.
4. Corruption therefore creates political instability precisely because of the ineffectiveness of the governments to fight against it and in the long term poses a threat to national and foreign investment.
5. The Assembly also regrets the fact that corruption is equally a problem in international governmental and non-governmental organisations.
6. As corruption is shrouded in secrecy, reliable and verifiable empirical data on its full extent are difficult to be obtained.
7. Corruption is also a major obstacle to economic and social development and to the eradication of poverty for many citizens and entails flagrant human rights violations affecting people's daily lives.
8. The Assembly takes note of the reply from the Committee of Ministers to Parliamentary Assembly Recommendation 1646 (2004) on "Improving the prospects of developing countries: a moral imperative for the world" as well as of the comments of the Group of States against Corruption (GRECO).
9. It believes that it is important for the governments of Council of Europe member states having not yet done so, to rapidly draw up practical plans of action not only for managing public finances but also for the administration of accounts in the private sector.
10. The Assembly therefore recommends that the governments of Council of Europe member states ask their public authorities and local and regional authorities to:
  - 10.1. simplify bureaucratic procedures so as to reduce waste in public spending, and to plan spending appropriately;

<sup>1</sup> Assembly debate on 10 April 2006 (9<sup>th</sup> Sitting) (see Doc.10834, report of the Social, Health and Family Affairs Committee, rapporteur: Mr Cousin). Text adopted by the Assembly on 10 April 2006 (9<sup>th</sup> Sitting).

- 10.2. lay down rules on disclosure by public officials of information concerning their income and assets;
- 10.3. alert them to the link between corruption, socio-economic rights and social exclusion and poverty;
- 10.4. make public authorities more accountable by publishing information concerning public funds and budgets;
- 10.5. make it compulsory for public authorities to produce annual accounts showing the apportionment of public funds and budgets;
- 10.6. establish strict rules on the award of procurement contracts, giving preference to public invitations to tender;
- 10.7. ensure that public officials receive adequate and regular pay and enjoy career plans that are both just and fair;
- 10.8. take the necessary steps to decentralise state institutions and grant local and regional authorities fiscal autonomy;
- 10.9. introduce more competition in major economic sectors;
- 10.10. guarantee the independence of the media.
11. The Assembly also recommends that the governments of member states:
  - 11.1. introduce efficient systems for processing complaints concerning corruption;
  - 11.2. take appropriate disciplinary action against people guilty of corruption, in both the private and public sectors;
  - 11.3. set up intensive, comprehensive training courses for judicial and law enforcement officials;
  - 11.4. increase the independence and transparency of the judicial system.
12. In the implementation of the recommendations set out in paragraphs 11 and 12 of this resolution, the Assembly invites member state governments to take account of the relevant Council of Europe anti-corruption standards and of the GRECO's recommendations in its first- and second-round evaluations.
13. The Assembly also invites those member states which have not yet done so to sign and ratify the treaties on fighting corruption and organised crime.
14. It also recommends that the national parliaments of member States:
  - 14.1. prepare legislation on the funding of political parties;
  - 14.2. appoint their own public auditor and public accounts committee;
  - 14.3. co-operate closely with civil society.



Provisional edition

## **Situation in the Middle East**

Resolution 1493 (2006)<sup>1</sup>

1. The Parliamentary Assembly welcomes the fact that the elections to the Palestinian Legislative Council on 25 January 2006, despite some shortcomings, were on the whole conducted in a well organised and democratic fashion and can be considered as fair and free.
2. The elections showed the commitment of the Palestinian people to the democratic process and constituted an important step forward in the creation of democratic institutions in the Palestinian territories and the consolidation of democracy.
3. However, the Assembly notes that democracy does not end with elections. Democracy has never been merely a procedural process such as holding elections, but represents a complex of substantive values that include basic principles promoted by the Council of Europe such as peace, tolerance, the sanctity of human life, the negation of violence as a political tool and respect for the rule of law.
4. The Assembly takes note of the choice of the Palestinian people.
5. At the same time, the Assembly underlines that the participation of the Palestinian parties in the political process is incompatible with involvement in armed or terrorist activities. Use of violence and terrorism cannot be accepted as a measure to achieve political goals.
6. In this regard, it is a matter of priority that Hamas, the winner of the parliamentary elections, renounces violence, disarms and recognises Israel's right to exist. Similarly, a newly appointed Palestinian Government has to take a clear stand on the peace negotiations and respect previous agreements.
7. The result of the parliamentary elections held in Israel on 28 March 2006 creates a new chance to resume a political dialogue and this opportunity must not be wasted. Kadima, the party which won the elections, and its partners in a future government have a great responsibility to seek a solution based on a bilateral agreement resulting from peaceful negotiations. Any unilateral action will not guarantee a sustainable settlement of the conflict and should not be undertaken.
8. The Assembly reaffirms its conviction that the Roadmap continues to be a valid reference for the peace negotiations and a two-state solution. In the framework of this respect for the Roadmap, the Assembly calls on the Palestinian authorities to dismantle the terrorist groups and their infrastructures.
9. It is essential that the dialogue and negotiations with a view to a peaceful settlement of the conflict be resumed.

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<sup>1</sup> *Assembly debate* on 11 April 2006 (11<sup>th</sup> Sitting) (see Doc.10882, report of the Political Affairs Committee, rapporteur: Mr Margelov). *Text adopted by the Assembly* on 11 April 2006 (11<sup>th</sup> Sitting).

10. The international community, and in particular the Quartet (the European Union, the United Nations, the Russian Federation and the United States) should actively contribute to the creation of conditions which would enable the resumption of contacts between both parties to the conflict, while remaining firm on their requirements from the new Palestinian Authority Government to commit to the principles of non-violence, recognition of Israel and acceptance of previous agreements and obligations.
11. The Assembly strongly urges the leaders of Hamas to:
  - 11.1. clearly and without reservation or delay renounce violence, recognise the state of Israel within secure internationally recognised borders, and express support for the Middle East peace process as outlined in the Oslo accords;
  - 11.2. disarm and renounce engagement in armed groups' activities;
  - 11.3. condemn terrorist actions;
  - 11.4. support and enhance the democratic process in the Palestinian Authority.
12. The Assembly calls on the Government of Israel to:
  - 12.1 express commitment to the resumption of negotiations and political dialogue on the basis of the Roadmap;
  - 12.2. halt military operations and extrajudicial executions of militants of Palestinian extremist organisations without delay;
  - 12.3. refrain from unilateral action;
  - 12.4. put an immediate end to the expansion and construction of illegal settlements;
  - 12.5. review its position concerning the construction of the security wall taking into account the decision of the International Court of Justice;
  - 12.6. recognise the rights of the Palestinian people to live freely and safely in their own independent state with international recognised borders.
13. Subject to paragraphs 9 and 10, the Assembly calls on the Israeli and Palestinian sides to :
  - 13.1. resume contacts and engage in a meaningful peace process and negotiations;
  - 13.2. co-operate with international mediators.
14. The Assembly calls on the Quartet to actively contribute to the creation of a positive climate enabling the resumption of peace negotiations.
15. The Assembly resolves to continue facilitating contacts between members of the Palestinian Legislative Council and the Knesset at parliamentary level. In this regard, it reaffirms its support to the establishment of a Tripartite Forum within the Parliamentary Assembly with a view to discussing questions of common interest.
16. Furthermore, the Assembly decides to associate more closely members of the Palestinian Legislative Council in the work of the Parliamentary Assembly and its committees beyond the framework of Assembly Resolution 1245 (2001) and invite them systematically to plenary sessions of the Assembly.
17. Subject to respect of the above-mentioned principles, the Assembly also instructs its Bureau to consider the possible establishment of a Co-operation Agreement between the Palestinian Legislative Council and the Assembly.
18. The Assembly believes that the Committee of Ministers should reaffirm its commitment to the establishment of negotiations of the peace process with all possible diplomatic and political efforts.



Provisional edition

## **Stop trafficking in women before the FIFA World Cup**

Resolution 1494 (2006)<sup>1</sup>

1. The Parliamentary Assembly is very concerned about the announcement made by certain NGOs who predict that between 30,000 and 60,000 women and young girls may fall victim to trafficking for the purposes of sexual exploitation during the FIFA World Cup, which will take place in Germany between 9 June and 9 July 2006.
2. The Assembly considers it important to avoid confusing the concepts of trafficking, prostitution and immigration, which must be dealt with separately and appropriately. It reiterates that trafficking in human beings is defined in international conventions as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”
3. It must be remembered that trafficking constitutes a violation of human rights and an intolerable infringement of the dignity of its victims. The Assembly strongly condemns this practice, which consists of treating human beings as objects, and calls for the protection of the victims of trafficking.
4. The Assembly reiterates its firm intention to eradicate this scourge and restates its commitment to do so, as reflected in the text of the Council of Europe Convention on Action against Trafficking in Human Beings. It therefore welcomes the adoption, on 3 May 2005, of this Convention which sets out measures for the prevention of trafficking, the protection of victims and the prosecution of traffickers. In particular, it points out that the Convention provides for a recovery and reflection period of thirty days and measures to assist the victims of trafficking.
5. However, it notes that to date only 26 member states of the Council of Europe have signed the Convention and no state has ratified it. It deeply regrets the fact that the European Community has not acceded to it either.
6. It is delighted that FIFA supports various humanitarian causes, such as the protection of the rights of children and the fight against racism. In its capacity as World Cup organiser, FIFA must also assume its responsibility to condemn the exploitation of women, which sometimes, highly regrettably, accompanies the holding of sports events, and therefore to denounce any activities that threaten human rights.

<sup>1</sup> *Assembly debate* on 12 April 2006 (12<sup>th</sup> Sitting) (see Doc.10881, report of the Committee on Equal Opportunities for Women and Men, rapporteur: Mrs Vermot-Mangold ). *Text adopted by the Assembly* on 12 April 2006 (12<sup>th</sup> Sitting).

7. With the World Cup imminent, and given the acute nature of the problem of trafficking, men and women politicians alike, as well as sports organisations, must immediately take all the necessary measures to prevent trafficking and to protect its victims. In order to achieve this, the Assembly favours a non-discriminatory and humane approach and therefore rules out any proposal to set up a temporary visa system applicable only to women.

8. Consequently, it welcomes and supports the European Parliament's decision to promote the "Red card to forced prostitution" campaign run by the German National Council of Women and to ask the European Commission and the member states of the European Union to campaign throughout Europe so as to inform and educate the general public, and in particular football fans, about forced prostitution in the context of world sports events.

9. It backs the European Parliament's call for the states that will be affected by this problem, especially Germany, to set up a multilingual helpline to allow the victims of trafficking to request emergency assistance. The emergency phone number should be prominently displayed, with guidance in every language, in the various means of transport and on the various routes used by people who are travelling.

10. It urges the member states of the Council of Europe to:

10.1. sign, if they have not already done so, and ratify the Council of Europe Convention on Action against Trafficking in Human Beings as soon as possible, so that it may come into force at the earliest opportunity and have the broadest possible impact;

10.2. implement without delay the main provisions of the Convention, such as the victim identification process and the recovery and reflection period of thirty days for the benefit of victims, paying special attention to presumed victims who are in the process of being identified as such;

10.3. help victims by setting up, for example, multilingual information, reception and assistance centres, and by ensuring that the police treat women victims of trafficking in human beings as victims and not as illegal immigrants;

10.4. consider the possibility of holding responsible those who use the services provided by victims of trafficking.

11. The Assembly calls upon the European Community to sign and ratify the Council of Europe Convention on Action against Trafficking in Human Beings as soon as possible. It urges the European Commission to initiate without further delay the internal procedure making it possible for the European Community to sign and ratify this Convention. It asks the Council of the European Union to take the decision to sign and ratify the Convention.

12. It asks the Congress of Local and Regional Authorities to join the fight against trafficking in human beings. It calls on the municipal authorities of the World Cup host cities to denounce trafficking and to put in place multilingual information and reception units for victims.

13. It calls on FIFA to commit itself to a strong condemnation of trafficking in women, supporting for instance the Council of Europe's campaign to combat trafficking in human beings.

14. Finally, it encourages the media and professional footballers to condemn trafficking in women and to take part in that campaign.



Provisional edition

## Combating the resurrection of nazi ideology

Resolution 1495 (2006)<sup>1</sup>

1. In May 1945, the Allied Powers defeated the nazi German regime and put an end to Hitler's "national-socialism", the most cruel and barbaric regime that Europe had ever known.
2. More than just a defeat of the nazi armies, the Victory of the Allies was a triumph over the nazi xenophobic doctrine of "natural inequality" of races according to which persons of "German blood" were a "master race" with a special, heroic destiny and were accordingly entitled, in the quest for "living space", to subjugate, dominate or exterminate other "races" and peoples.
3. The Parliamentary Assembly pays special tribute to the glory of all those who fought in the ranks of the anti-Hitler coalition and saved humanity from the nazi "new order". Grateful Europeans will never forget their courage and sacrifices which delivered Europe from the nazi rule. It opened the path to developing a community of free, sovereign and peaceful nations in Western Europe after the end of the Second World War. Many parts of Europe had to suffer further oppression under Communist rule. The changes in Eastern Europe opened up the chance for them to join the community of states based on democracy and the rule of law.
4. The Assembly mourns the loss of millions of innocent victims of the nazi aggression and racial policies. The horrors of *Shoah* and the nazi plans and policies of physical extermination or enslavement of entire nations must never be forgotten..
5. The Assembly regrets the death and suffering of millions of humans, civilian and military, in nazi Germany and in its satellite countries, hostages of criminal acts and policies of their leaders.
6. The criminal nature of the nazi policies and actions was overwhelmingly substantiated and irrevocably condemned by the Nurnberg International Military Tribunal in 1945-46. Key figures of the nazi party and State apparatus were found guilty of massive crimes against peace, war crimes and crimes against humanity. The main components of the nazi machinery of mass murder, such as the leadership corps of the nazi party, Gestapo, SD and SS, were declared criminal organisations.
7. The rulings of the Nurnberg Tribunal remain of great historical importance. The principles recognized at the Nurnberg Tribunal form a cornerstone of modern international law, and led to the drafting of major international legal instruments such as the UN Genocide Convention (1948), the Universal Declaration of Human Rights (1948), the Convention on the Abolition of the Statute of Limitations on War Crimes and Crimes against Humanity (1968), the Geneva Convention on the Laws and Customs of War (1949) and its

<sup>1</sup> *Assembly debate* on 12 April 2006 (13<sup>th</sup> Sitting) (see Doc.10766, report of the Political Affairs Committee, rapporteur: Mr Margelov). *Text adopted by the Assembly* on 12 April 2006 (13<sup>th</sup> Sitting).

supplementary protocols (1977) and the European Convention on Human Rights (1949), as well as to the creation of institutions for the effective implementation and adjudication of these rights, i.e. the United Nations Human Rights Commission, the European Court of Human Rights, the Special Criminal Tribunals and the International Criminal Court.

8. Modern Europe has been conceived as a total rejection of the nazi ideas and principles, with the aim to exclude that such horrendous crimes as those committed by the nazi regime in the name of "racial superiority" may ever be repeated. The Council of Europe, as the oldest European political organisation aimed at protecting and furthering democracy, human rights and the rule of law, has a special responsibility in preventing the resurgence of the nazi ideology.

9. Against this background, the Assembly is extremely worried over some developments which indicate that the public awareness of the danger of the nazi ideology and its rejection by society are weakening.

10. The Assembly is particularly concerned as regards:

10.1. cases of desecration of memorials and graves of soldiers of the anti-Hitler coalition;

10.2. attempts to rehabilitate, justify and even glorify those who participated in the war on the nazi side, especially in the ranks of groupings found to be criminal organisations at the Nurnberg Tribunal;

10.3. the use of nazi symbols such as the fascist "swastika", flag, uniform, etc., and others with clear indication to them;

10.4. denial or minimizing the significance of the crimes committed by the nazi regime, in particular of the *Shoah*.

11. Furthermore, the Assembly is worried by political and social phenomena which, while making no direct reference to the nazi regime, should be seen in the light of its ideology, such as:

11.1 the growing number of manifestations of racial, ethnic and religious intolerance in daily life, including, inter alia, desecration of Jewish cemeteries and attacks on religious sites;

11.2. attempts to create, through the media, a negative perception of some ethnic or religious groups;

11.3. growing support for political parties and movements with a xenophobic agenda.

12. Moreover, the Assembly is worried that such manifestations do not always receive enough attention and response on behalf of the political leaders and that public opinion seems now more receptive to racist, xenophobic and extremist ideas.

13. In this connection, the Assembly deems it necessary to recall that Hitler's ideas, outrageous as they look today, found sympathy and support in many European countries.

14. The Assembly believes that it is urgent to step up co-ordinated action in order to resist efforts aiming at revitalising nazi ideology, to fight xenophobia, intolerance and hatred based on racial and ethnic grounds, political and religious extremism and all forms of totalitarian action. The Council of Europe must play the leading role in this process.

15. In this context, the Assembly welcomes the relevant activities already conducted by various Council of Europe bodies, in particular by the European Commission against Racism and Intolerance (ECRI), but believes that, in order to bring about concrete results, these activities need to be re-oriented to include a wider involvement of society.

16. The Assembly resolves to organise an international conference in order to carefully study the recurrence of racist and nationalist phenomena in European societies, exchange best experiences and develop common approaches in combating the resurrection of the nazi ideas.

Provisional edition

## **Belarus in the aftermath of the Presidential election of 19 March 2006**

Resolution 1496 (2006)<sup>1</sup>

1. The Assembly strongly condemns the undemocratic conduct of the Presidential election of 19 March 2006 in Belarus as well as the wave of intimidation, violence and persecution that has hit Belarusian democratic forces before, during and after the vote.
2. The Assembly recalls that, in its Resolution 1482 (2006) on the Situation in Belarus on the eve of the Presidential election, the Assembly affirmed that, in light of the situation in Belarus in the field of democracy, rule of law and human rights, there could not be any change in its policy towards the Belarusian regime and that the lifting of the suspension of Special Guest Status for the Belarusian Parliament was not on the agenda.
3. In that Resolution, the Assembly also clarified that *'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'*.
4. The Assembly deeply regrets that, despite its readiness to open communication channels, the March vote was used by the current Belarusian leadership as a further opportunity to show its blatant disregard for the standards and values promoted by the Council of Europe. Candidates did not have equal freedom to campaign and the conduct of the vote was fraudulent and totally lacked transparency. Refusal of the Belarusian authorities to issue visas for international observers from Council of Europe member states, limitation of the rights of observers contrary to Council of Europe standards, the lack of opposition representatives in the electoral commissions at all levels, the manipulative influence of the administration and the abuse of the practice of early voting, in particular, give rise to the most serious concerns, which should also be addressed through the revision of the relevant Belarusian legislation.
5. In these circumstances, and having taken note of the preliminary findings of the OSCE/ODIHR International Observation Mission, the Assembly is bound to conclude that the electoral results did not reflect the real will of the Belarusian people. As a consequence, the popular protest which ensued was a legitimate and courageous gesture which deserves the Assembly's solidarity and represents an important sign of political awareness. The Assembly further encourages Belarusian democratic forces to remain united and to continue in their efforts to raise support for democratic values among the Belarusian population at large. It reiterates that the primary objective of its policy should be ending the isolation of the Belarusian people by promoting contacts with democratic political forces, civil society and ordinary citizens.

<sup>1</sup> *Assembly debate* on 13 April 2006 (14<sup>th</sup> Sitting) (see Doc.10890, report of the Political Affairs Committee, rapporteur: Mr Herkel). *Text adopted by the Assembly* on 13 April 2006 (14<sup>th</sup> Sitting).

6. In this respect, the Assembly restates the unique role that could be played by a Council of Europe's Information Office/Centre based in Belarus to support the democratisation process and demands that the establishment of such a structure becomes a priority for the Council of Europe.

7. Finally, the Assembly welcomes the decision of the European Union to enforce a package of selected restrictive measures towards the current Belarusian leadership, which are fully in line with PACE Resolution 1482 (2006), as well as to intensify its support for the Belarusian civil society and ordinary citizens, including by facilitating their right to travel and study in EU member states. Likewise, the Assembly welcomes the proposal of the European Parliament to set up an international commission to investigate the disappearances of Yuri Zakharenko, Victor Gonchar, Anatoly Krasovsky and Dmitry Zavadsky.

8. In light of the above, the Assembly reiterates the still relevant recommendations laid down in its Resolution 1482 (2006) and Recommendation 1734 (2006) on the Situation in Belarus on the eve of the Presidential election.

9. In addition, the Assembly calls on the Belarusian authorities to:

9.1. immediately release all those detained in connection with the March Presidential elections;

9.2. disclose information on all those who have been arrested and those who have received medical treatment after the dispersal of the peaceful demonstrations;

9.3. conduct a transparent investigation into the abusive use of force by police and security forces against peaceful demonstrators;

9.4. refrain from further intimidation, harassment and persecution against peaceful protesters and opposition supporters, including those taking the form of dismissal from employment, non-renewal of employment contracts or expulsion from universities;

9.5. open a genuine dialogue with relevant international institutions, including the European Commission for Democracy through Law (Venice Commission), with a view to amending the Belarussian Electoral Code to make it consistent with Council of Europe standards, and addressing the malpractice of the administration in electoral matters, well in advance of the next elections;

9.6. accede to the opposition's demand for a re-run of the presidential election and ensure the pre-conditions exists for it to be free, fair and respectful of international standards.

10. The Assembly calls on its member states to:

10.1. facilitate access to university institutions for Belarusian citizens;

10.2. set up appropriate systems to allocate scholarships and traineeships to Belarusian students, including the Council of Europe and other international organisations of which they are members;

10.3. introduce flexible visa regimes in favour of those Belarusians representing civil society and students.

10.4. endorse exchanges between the political parties of the Belarusian opposition and relevant political parties in Council of Europe countries, as well as between groups in civic society.

11. The Assembly also calls on its member states which are not EU members to align themselves with the package of sanctions recently decided by the European Union, in particular as regards the visa-ban against a number of Belarusian officials and the freezing of assets.

12. Being convinced that significant progress in the respect of democratic values, the rule of law and human rights in Belarus could not be achieved without the active support of the Russian Federation, the Assembly asks its Political Affairs Committee to establish a framework for dialogue and structured co-operation with the representatives of the Russian Federation to the Assembly involving also the Committee of Ministers, in order to find ways to achieve such support.

13. The Assembly calls on the Secretary General of the Council of Europe to:

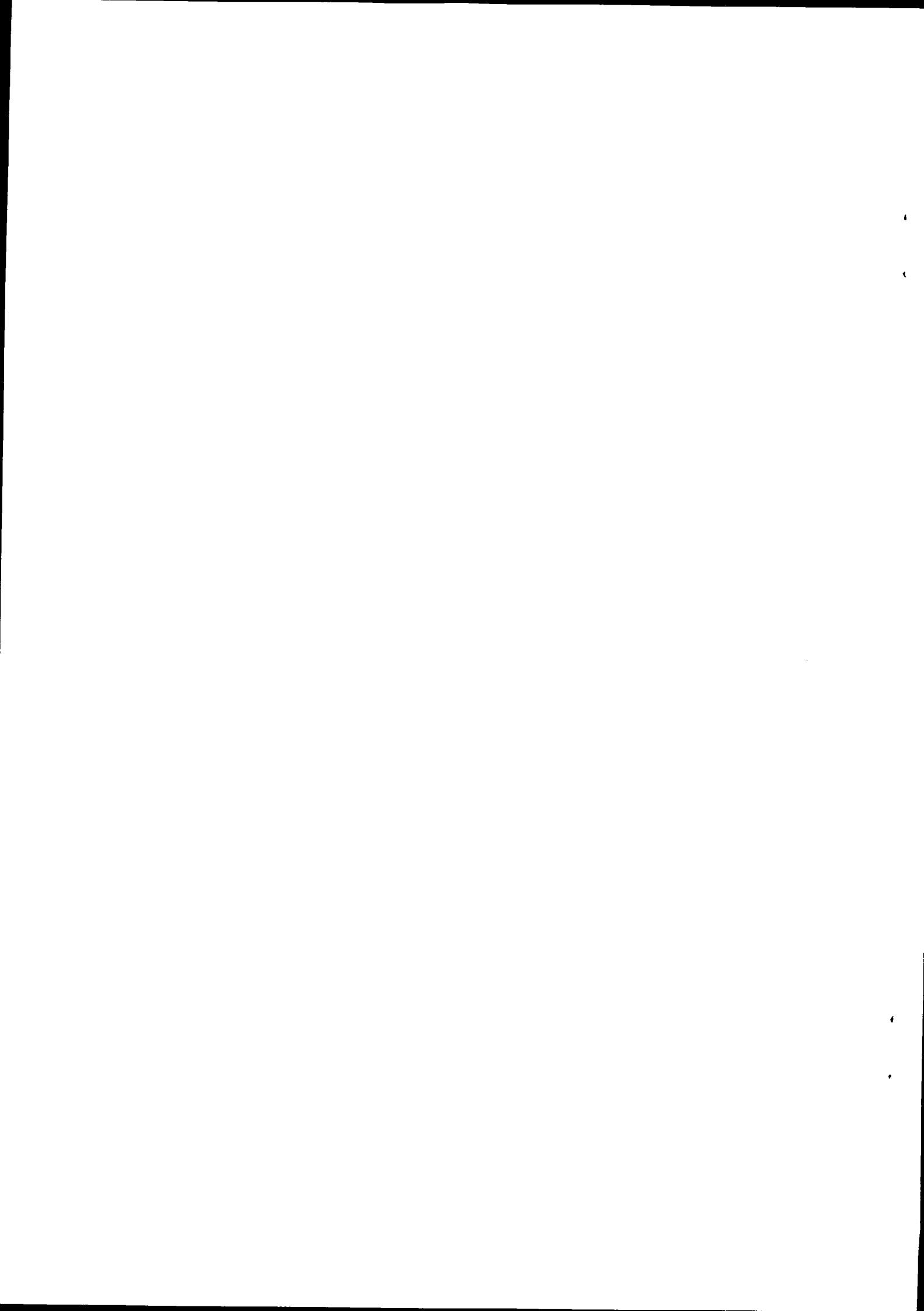
13.1. enable Belarusian students and young graduates to conduct internships and study periods at the Council of Europe;



13.2 encourage the further involvement of Belarusian civil society and NGOs in the activities of the Council of Europe.

14. The Assembly invites the Venice Commission to make proposals on how to amend the Belarusian Electoral Code and address the malpractice of the administration in electoral matters, with particular reference to the issues of the role of independent observers, the composition of the electoral commissions and the practice of early voting, if necessary by liaising with the appropriate Belarusian authorities.

15. Finally, the Assembly invites the Youth Centres of the Council of Europe to encourage the further involvement in their activities of young people and youth organisations from Belarus.





Provisional edition

## **Refugees and displaced persons in Armenia, Azerbaijan and Georgia**

Resolution 1497 (2006)<sup>1</sup>

1. The Parliamentary Assembly, referring to its Recommendation 1570 (2002) on the situation of refugees and displaced persons in Armenia, Azerbaijan and Georgia, believes it is necessary to resume consideration of the issue since, despite certain isolated examples of progress, it continues to be a serious obstacle to the development of countries in the region in economic, socio-political and health terms.
2. It is difficult to gauge the number of refugees and displaced persons in the region. By law or by virtue of administrative practice, the three countries tend to recognise the descendants of persons displaced in various capacities within the region as "refugees" or "displaced persons", with the result that the total number of refugees and displaced persons never seems to decrease. The majority of refugees and displaced persons are in that situation because of the Nagorno-Karabakh conflict and deportations between Armenia and Azerbaijan. Many others were displaced as a result of the conflicts in Abkhazia and South Ossetia, not to mention the Chechens who took refuge in the southern Caucasus because of the conflicts in Chechnya.
3. The fact remains that there are still substantial urgent humanitarian needs. These are obliging the three countries to make maximum use of their own capacity for providing assistance at a time when donations from the international community are waning.
4. The Assembly notes that some of the people concerned have been able to return to within Georgia's acknowledged borders. The Assembly congratulates the Georgian Government on its efforts to find a solution to its internal conflicts and extends its support to this process. Nevertheless, security concerns still prevail in both South Ossetia and Abkhazia and there is still much to be done to increase confidence and to create preconditions for large-scale voluntary returns.
5. The Assembly is, however, bound to point out that the efforts made by Armenia, and Azerbaijan to find a solution to the Nagorno-Karabakh conflict have not as yet produced results. These efforts are continuing. It deplores the frequent incidents along the ceasefire line and the border incidents, which are detrimental to refugees and displaced persons as well as to local people, and regrets the clearly insufficient co-operation between these two countries over the fate of missing persons.
6. The Assembly would also draw attention to the presence of numerous landmines resulting from the Nagorno-Karabakh conflict which are still injuring and, occasionally, killing people.
7. Enabling refugees and displaced persons to return voluntarily to the regions from which they came remains one of the main objectives of conflict settlement.

<sup>1</sup> *Assembly debate* on 13 April 2006 (15<sup>th</sup> Sitting) (see Doc. 10835, report of the Committee on Migration, Refugees and Population, rapporteur: Mr Cilevičs). *Text adopted by the Assembly* on 13 April 2006 (15<sup>th</sup> Sitting).

8. The Assembly welcomes the fact that Azerbaijan, Armenia and, to a lesser extent, Georgia have now embarked on programmes for the local integration of their refugees and displaced persons. These programmes have the twofold advantage of enabling these communities to regain their dignity by living in decent conditions and working, which allows them to contribute to the development of the regions that have taken them in, and of preparing them for voluntary return under the best possible social, health and psychological conditions.

9. There are still, however, many obstacles to the success of these programmes: poverty is endemic, particularly in rural areas, and malnutrition a cause for concern; unemployment is still very high; access to means of production and to property is problematical; the infrastructure, especially of collective centres or areas hosting larger numbers of displaced persons, is often in a deplorable condition, which is an additional obstacle to development; schools are still being used to shelter refugees and displaced persons, whereas they should be used for children's education, and the health services are still inadequate. In these circumstances, it is impossible to continue providing humanitarian assistance and to care for refugees and displaced persons without international aid.

10. International humanitarian assistance is therefore still needed and must be supplemented, and gradually replaced, by international development aid, not just to meet the urgent needs of refugees and displaced persons but also for the benefit of the local population.

11. The Assembly therefore calls on the member states of the Council of Europe:

11.1. to provide financial support for the efforts of Armenia, Azerbaijan and Georgia to deal with the situation of refugees, including those who have obtained citizenship, and displaced persons, by helping to rehabilitate buildings and build roads, water and electricity supply infrastructure, hospitals and schools, so as to enable these communities to be more effectively integrated while facilitating the development of the regions in which they live, without forgetting the local population, who are often likewise living below the poverty line, while ensuring that financial resources are allocated to support initiatives regarding the protection of human rights and reconciliation efforts in these three countries;

11.2. to continue to provide humanitarian aid where needed, while working on more medium- and long-term solutions to improve the living conditions, self-reliance and integration of the displaced persons;

11.3. to offer their good offices in order to try and achieve a permanent settlement of the conflicts which are still raging and which impede the development of the entire region.

12. The Assembly also calls on Armenia, Azerbaijan and Georgia:

12.1. to focus all their efforts on finding a peaceful settlement of the conflicts in the region with a view to creating conditions for the voluntary return of refugees and displaced persons to their places of origin, safely and with dignity;

12.2. actively to pursue their policy of locally integrating refugees and displaced persons, but not in the occupied territories, always in consultation with them, and with the understanding that these countries will guarantee their right to return voluntarily as soon as conditions permit, which, for Georgia, includes strengthening and adopting clear policies and related measures for the local integration of refugees as well as IDPs;

12.3. to refrain from the use of refugees and displaced persons for political aims;

12.4. to make the return of displaced persons a priority and do everything possible in their negotiations so as to enable these people to return in safety even before an overall settlement;

12.5. to co-ordinate better the efforts of the international and non-governmental organizations on the ground in alignment with governmental policies and development plans;

12.6. to bring their legislation into compliance with the Geneva Convention relating to the Status of Refugees, the European Convention on Nationality and the UN Convention on the Reduction of Statelessness by fully implementing their provisions;

12.7. to continue their policies of encouraging international aid projects in sectors where there are needs to be met;

12.8. to rapidly conclude the negotiations under way with the Council of Europe Development Bank with a view to membership of the Bank;

12.9. to co-ordinate their refugee and IDP aid policies and development policies in order to take account of the practical, financial and other opportunities that the European Union could offer them as part of its "new neighbourhood policy";

12.10. to step up an inter-regional dialogue by introducing confidence-building measures and arranging regular consultation between government departments responsible for the specific problems of refugees and displaced persons;

12.11. to continue their efforts to adapt their legislation in order to assure refugees and displaced persons the same political, civil, economic and social rights as the local population, without prejudicing their status;

12.12. to re-consider practices of automatically admitting the descendants of refugees and displaced persons as refugees and displaced persons themselves, so as to facilitate their local integration;

12.13. to prepare the ground, in mutual consultation and in consultation with international and non-governmental organisations, particularly the United Nations High Commissioner for Refugees and the International Committee of the Red Cross, for the voluntary return of refugees and displaced persons by establishing what their needs will be on the spot and seeking to make an objective estimate of the actual number of people who could and would be willing to return initially;

12.14. to continue their efforts to achieve a peaceful and permanent settlement of the disputes, on the basis of norms and principles of international law, if necessary calling on the good offices of other countries, including those in the region, and international organisations;

12.15. to develop practical co-operation as regards the investigation of the fate of missing persons and to facilitate the return of identity documents and the restitution of property in particular, making use of the experience of handling similar problems in the Balkans.

13. The Assembly calls on Georgia to grant a more durable status to recognized refugees, including Chechen refugees, to provide them with greater certainty about their future and to facilitate their local integration.

14. The Assembly calls on Azerbaijan to adopt legislation to provide subsidiary protection to displaced persons fleeing war situations, or to persons in need of international protection who do not have access to the asylum procedure.

15. The Assembly welcomes the full implementation of the 1999 Refugee Law by Armenia, providing for a complementary form of protection, and encourages legislative plans to extend the definition of "refugee" in law to include all persons in need of international protection.

