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**TEXTS ADOPTED
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Provisional versions

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Recommendations
2237 to 2240



Recommendation 2237 (2022)¹

Provisional version

Supporting a European perspective for the Western Balkans

Parliamentary Assembly

1. Strengthening democratic resilience and respect for the rule of law and human rights; promoting reconciliation and good neighbourly relations; and creating the conditions for stronger economic and social progress in the Western Balkans are a geostrategic investment in peace, stability and democratic security for the whole of Europe. The Parliamentary Assembly, therefore, firmly believes that helping Albania, Bosnia and Herzegovina, Montenegro, North Macedonia, Serbia and Kosovo*² meet their aspirations for closer European integration is important not only for the countries concerned but for the European continent, and will benefit all European citizens.

2. Noting that the revised EU enlargement methodology, introduced in 2020, puts an emphasis on democracy, rule of law and human rights, areas in which the Council of Europe has an unparalleled expertise, the Assembly believes that the Council of Europe should redouble its efforts to help the Western Balkan countries make tangible and measurable progress towards meeting the EU enlargement criteria.

3. In addition, the Assembly considers that the Council of Europe, as a political organisation, should play a greater role in promoting dialogue, inclusive regional co-operation, the normalisation of relations and the solution of bilateral differences and disputes, hand in hand with the European Union and other like-minded actors.

4. In the light of these considerations, the Assembly invites the Committee of Ministers to:

4.1. strengthen the political dimension of the strategic partnership between the Council of Europe and the European Union in relation to the Western Balkans;

4.2. further develop co-operation activities addressed to the Western Balkan countries in priority areas such as the rule of law and good governance, including efficiency, independence and accountability of the judiciary, anti-corruption, public administration reform, and civil participation in public decision making;

4.3. support civil society initiatives in the region, especially those relating to reconciliation;

4.4. consider strengthening and expanding the Council of Europe activities relating to confidence building measures and conflict prevention in the region;

4.5. step up the political dimension of its engagement in the Western Balkans, for instance by creating *ad hoc* working groups, taking the lead in promoting regional or bilateral dialogue, and supporting the implementation of agreements which are achieved thanks to the European Union's mediation or facilitation.

1. Assembly debate on 11 October 2022 (28th sitting) (see [Doc. 15609](#), report of the Committee on Political Affairs and Democracy, rapporteur: Mr George Papandreou). Text adopted by the Assembly on 11 October 2022 (28th sitting).

See also [Resolution 2456 \(2022\)](#).

2. *Throughout this text, all reference to Kosovo, whether to the territory, institutions or population shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.





Recommendation 2238 (2022)¹
Provisional version

Safe third countries for asylum seekers

Parliamentary Assembly

1. The Parliamentary Assembly refers to its [Resolution 2461 \(2022\)](#) “Safe third countries for asylum seekers” and emphasises the need for greater co-ordination among member States, in order to effectively protect human rights of asylum seekers and the right to asylum in Europe.
2. Welcoming Recommendation No. R(97)22 of the Committee of Ministers to member States containing Guidelines on the Application of the Safe Third Country Concept, the Assembly recommends that the Committee of Ministers:
 - 2.1. review this Recommendation in the light of relevant jurisprudence of the European Court of Human Rights, develop new standards to enable member States to improve their assessment of the safety of third countries and regularly up-date them in accordance with legal developments to come and future jurisprudence;
 - 2.2. consider setting standards on the transfer, return and readmission of asylum seekers and refugees, taking due account of the effective protection of their human rights under the European Convention on Human Rights (ETS No. 5) and their right to apply for and seek asylum under international refugee law;
 - 2.3. seek co-operation of the Council of Europe and its member States with the European Union Agency for Asylum, in order to prevent discrepancies in the application of the safe third country concept in Europe to the detriment of human rights and the right to apply for and seek asylum;
 - 2.4. invite member States to inform the Committee of Ministers about their practice regarding the safe third country concept as well as their practice as regards procedural means available to rebut the presumption of safety of a country.

1. *Assembly debate* on 12 October 2022 (31st sitting) (see [Doc. 15592](#), report of the Committee on Migration, Refugees and Displaced Persons, rapporteur: Ms Stephanie Krisper). *Text adopted by the Assembly* on 12 October 2022 (31st sitting).





Recommendation 2239 (2022)¹

Provisional version

The future of work is here: revisiting labour rights

Parliamentary Assembly

1. The Parliamentary Assembly refers to its [Resolution 2467 \(2022\)](#) “The future of work is here: revisiting labour rights” and underscores the need for member States to accommodate the wide-ranging societal, economic, and technological transformations in the world of work through law and practice. The Assembly believes that member States should contribute to the shaping of the future of work based on societal progress through a more flexible organisation of work strengthened by enhanced access to socio-economic rights, quality employment, inclusive social dialogue and sustainable development.

2. The Assembly appreciates the Committee of Ministers’ guidance to member States in the framework of its *Ad hoc* Working Party on improving the European Social Charter system (GT-CHARTÉ) as regards longer term substantive issues relating to the Charter, in particular the feasibility of adding new provisions to the Charter for enhanced protection of workers in non-standard forms of employment and for tackling challenges arising from new forms of work such as platform work and work involving artificial intelligence. In this context, the Assembly draws the attention of the Committee of Ministers to the recommendations it has formulated in the above-mentioned Resolution, notably those relating to work hours, telework and hybrid work, the right to disconnect, better recognition of unpaid work, occupational health and safety, training and skills policies, public institutional capacity building, the need for both national social dialogue as well as international minimum and harmonised labour standards and the promotion of the full application of the European Social Charter (ETS No. 35) and the revised European Social Charter (ETS No. 163) across Europe, including to the Council of Europe’s own staff.

1. *Assembly debate* on 14 October 2022 (34th sitting) (see [Doc. 15620](#), report of the Committee on Social Affairs, Health and Sustainable Development, rapporteur: Ms Selin Sayek Böke). *Text adopted by the Assembly* on 14 October 2022 (34th sitting).





Recommendation 2240 (2022)¹

Provisional version

Preventing vaccine discrimination

Parliamentary Assembly

1. Referring to its [Resolution 2468 \(2022\)](#) “Preventing vaccine discrimination”, the Parliamentary Assembly recommends that the Committee of Ministers:

- 1.1. establish a list of human-rights compliant and effective practices as regards the use of passes during the Covid-19 pandemic, with a special focus on the purposes for which they were used, the conditions under which they were issued and the period of their validity;
- 1.2. reflect on the impact of Covid passes, and in particular vaccine passes, on human rights and fundamental freedoms, and consider how best to ensure that such measures do not constitute discriminatory practices in light of Article 14 of the European Convention on Human Rights (ETS No. 5);
- 1.3. exchange information on these issues with other international organisations such as the United Nations, the World Health Organisation (WHO) and the European Union, and reflect, in co-operation with them, on the need to establish further common standards on measures to counter the Covid-19 pandemic.
- 1.4. provide input to the Intergovernmental Negotiating Body to draft and negotiate a WHO convention, agreement or other international instrument on pandemic prevention, preparedness and response, with the aim of ensuring its compatibility with Council of Europe human rights standards.

1. *Assembly debate* on 14 October 2022 (34th sitting) (see [Doc. 15608](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Ms Thórhildur Sunna Evarsdóttir; and [Doc. 15625](#), opinion of the Committee on Social Affairs, Health and Sustainable Development, rapporteur: Ms Carmen Leyte). *Text adopted by the Assembly* on 14 October 2022 (34th sitting).



Resolutions
2456 to 2468



Resolution 2456 (2022)¹

Provisional version

Supporting a European perspective for the Western Balkans

Parliamentary Assembly

1. Strengthening democratic resilience and respect for the rule of law and human rights; promoting reconciliation and good neighbourly relations; and creating the conditions for stronger economic and social progress in the Western Balkans are a geostrategic investment in peace, stability, and democratic security for the whole of Europe. The Parliamentary Assembly, therefore, firmly believes that helping Albania, Bosnia and Herzegovina, Montenegro, North Macedonia, Serbia and Kosovo^{*2} meet their aspirations for closer European integration is important not only for the countries concerned but for the European continent and will benefit all European citizens.
2. In Thessaloniki in 2003, concluding a historic Summit between the Western Balkans and the European Union, the European Union reiterated its unequivocal support for the European perspective of the Western Balkans. The prospect of EU membership acted as a catalyst for addressing challenges and introducing reforms.
3. Since Thessaloniki, the commitment to enlargement has been repeatedly confirmed at the highest political level, by both the European Union and the leaders of the region. The length of time that has elapsed, however, and failure to adequately reward progress have sapped political momentum and public enthusiasm. Surveys show that an increasing number of people in the Western Balkans, especially amongst the youth, are pessimistic about the prospects of EU accession. The European vision is losing its shine. In its place, ethno-nationalism has resurfaced, a very worrying development in a region in which the spectrum of violence still looms large.
4. The past few years have witnessed a geo-politicisation of the region, with the Russian Federation extending its political influence through an array of soft power tools, including economic investments, media presence, energy policy and vaccine diplomacy. Against the background of the Russian Federation's aggression against Ukraine – an open affront to international law and European values – there is a risk that this influence will be used as a wedge to deepen fractures and lead to further destabilisation. It is thus imperative not to lose focus on the Western Balkans, even if the need to support the European aspirations of other countries, such as Ukraine, Georgia, and the Republic of Moldova, has emerged in the meantime.
5. The Assembly calls for a new impetus to be given to the European Union enlargement process. In this context, it welcomes the opening of accession negotiations with Albania and North Macedonia on 19 July 2022. It also commends the diplomatic efforts which have yielded positive results in addressing bilateral disputes including the Prespa agreement between Greece and North Macedonia in 2018, the agreement which led to Bulgaria waiving its opposition to the opening of accession negotiations with North Macedonia in July 2022, and the agreement on freedom of movement reached on 27 August 2022 by Pristina and Belgrade in the context of the EU-facilitated dialogue.

1. *Assembly debate* on 11 October 2022 (28th sitting) (see [Doc. 15609](#), report of the Committee on Political Affairs and Democracy, rapporteur: Mr George Papandreou). *Text adopted by the Assembly* on 11 October 2022 (28th sitting).

See also [Recommendation 2237 \(2022\)](#).

2. ^{*}Throughout this text, all reference to Kosovo, whether to the territory, institutions or population shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.



6. The Assembly also urges the Western Balkans to address with resolve and without delay outstanding challenges, such as a polarised political climate which often affects the collaboration between political forces and sometimes leads to interinstitutional deadlocks and conflicts; serious rule of law and good governance issues which affect the independence and impartiality of the judiciary and the functioning of the public administration; issues relating to the rights of national minorities and minority communities and the persistence of cleavages along ethnic lines which affect many aspects of life; and problems relating to freedom of the media and media ownership. Greater efforts are also necessary to strengthen reconciliation and enhance civil society engagement.
7. Noting that the revised EU enlargement methodology, introduced in 2020, puts an emphasis on democracy, rule of law and human rights, areas in which the Council of Europe has an unparalleled expertise, the Assembly believes that the Council of Europe should redouble its efforts to help the Western Balkan countries make tangible and measurable progress towards meeting the EU enlargement criteria.
8. Furthermore, the Assembly considers that the Council of Europe, as a political organisation, should play a greater role in promoting effective and inclusive regional co-operation, the normalisation of relations and the solution of bilateral differences and disputes. This should be done hand in hand with the European Union and other like-minded actors.
9. In the light of the above, the Assembly calls on the European Union to:
 - 9.1. give fresh impetus to the enlargement process for the Western Balkans, rewarding progress in compliance with criteria and sparing no effort to promote a climate of trust and positive momentum;
 - 9.2. in the context of their strategic partnership and taking into account their common values and convergence of interests, intensify political dialogue with the Council of Europe on how to accelerate the European perspective of the Western Balkans, paying attention to the ownership and sustainability of the reforms, and the need to involve civil society;
 - 9.3. make full use of Council of Europe tools and expertise in the field of rule of law, democracy and human rights, especially in the context of benchmarking and the implementation of co-operation activities, including in the context of the Horizontal Facility for the Western Balkans and Turkey;
 - 9.4. continue to provide financial support to the Council of Europe for joint interventions in the region.
10. The Assembly calls on the authorities in Albania, Bosnia and Herzegovina, Montenegro, North Macedonia, Serbia and Kosovo to:
 - 10.1. work towards improving the political culture with a view to ensuring collaboration between political forces and institutions;
 - 10.2. further strengthen the efficiency, independence, impartiality and accountability of the judiciary;
 - 10.3. further improve the functioning of the public administration at all levels of governance and strengthen the professionalism, integrity and neutrality of the civil service;
 - 10.4. step up the fight against corruption;
 - 10.5. enhance the participation of civil society in political decision making;
 - 10.6. refrain from inflammatory discourse, including on ethnic grounds;
 - 10.7. protect and promote the rights of national minorities and minority communities;
 - 10.8. ensure freedom of the media and address outstanding issues relating to media ownership, while being vigilant against disinformation and other forms of interference with democratic processes, including via the media;
 - 10.9. be exemplary in promoting reconciliation;
 - 10.10. further align with the Common Foreign and Security Policy of the European Union, including in relation to the sanctions and other measures taken in response to the Russian Federation's aggression against Ukraine;
 - 10.11. support regional co-operation and rules-based multilateralism.
11. The Assembly calls on Council of Europe member States to:
 - 11.1. support the efforts of the Western Balkans to fully pursue their European vocation;

- 11.2. support the implementation of co-operation activities, including at parliamentary level, aimed at ensuring that the Western Balkans make further progress towards meeting the criteria for EU membership;
 - 11.3. contribute financially to Council of Europe co-operation activities in the region;
 - 11.4. contribute financially to the projects of the Council of Europe Development Bank targeting the Western Balkans;
 - 11.5. promote, through their diplomacy, reconciliation efforts and good neighbourly relations in the region.
12. As regards its own activities, the Assembly resolves to play a greater role in supporting a European perspective for the Western Balkans by:
- 12.1. holding debates on promoting a European perspective for the Western Balkans, with the participation of EU officials and leaders from the region;
 - 12.2. stepping up inter-parliamentary co-operation activities addressed to the countries concerned, aimed at enhancing democratic resilience, institutional capacity, the ownership and sustainability of reforms and civil society consultation and participation in the political decision-making process;
 - 12.3. developing initiatives offering the countries concerned an additional platform for parliamentary diplomacy aimed at promoting dialogue, reconciliation, confidence building and good neighbourly relations;
 - 12.4. strengthening consultation, co-ordination and co-operation with the European Parliament, including through enhanced political dialogue and the organisation of joint events and meetings.



Resolution 2457 (2022)¹
Provisional version

Raising awareness of and countering Islamophobia, or anti-Muslim racism, in Europe

Parliamentary Assembly

1. Islamophobia, or anti-Muslim racism (the two terms are used interchangeably in this text), is a form of racism, intolerance and discrimination against Muslims and those who are perceived as Muslims. While linked to religion, Islamophobia cannot be reduced to discrimination based on the grounds of religion, as it results from a “racialised” perception based on various markers that include ethnic or national origin, appearance and cultural characteristics, and may overlap with anti-immigrant sentiments, xenophobia and social class bias.
2. As highlighted by the European Commission on Racism and Intolerance (ECRI), anti-Muslim racism can be manifested, implicitly or explicitly, not only in individual attitudes and actions, but also structurally in policy initiatives or institutional arrangements. Its manifestations include prejudice, stigmatisation, discrimination (including profiling), hate speech and hate crime, as well as exclusion in key areas of life such as education, employment and housing.
3. Women are disproportionately affected by Islamophobia, as they face multiple and intersectional discrimination and are often more easily identifiable as Muslim. Measures to address anti-Muslim racism and discrimination should consistently be based on an intersectional approach, taking in consideration grounds of discrimination including gender, ethnic origin, migrant background, religion, sexual orientation, gender identity, gender expression and sexual characteristics.
4. The Parliamentary Assembly is deeply concerned by the constant increase in signs of Islamophobia in Europe, with a dramatic spike in recent years, as denounced by numerous human rights and equality bodies at European and global levels.
5. The Assembly condemns the use of Islamophobic rhetoric in public and political discourse, particularly by populist and far-right movements, but which often spreads to mainstream politics. It believes that stereotyping based on depicting Muslims as alien to, and incompatible with, European culture and values leads to further stigmatisation and exclusion. The Assembly also denounces racist and Islamophobic conspiracy theories, notably the fabricated idea that non-white and Muslims aim to outnumber the rest of the European population (the “Great replacement” theory).
6. The Assembly is convinced that Council of Europe member States should strive to create an open and inclusive society and address the root causes of anti-Muslim racism and discrimination, including stereotyping, prejudice, stigmatisation and scapegoating of individuals and groups perceived as different from the majority of the population.
7. Stressing that Islamophobia is a severe violation of human rights and human dignity, which undermines social cohesion and peaceful living together in Europe, the Assembly calls on Council of Europe member States to address it as a matter of priority, as a specific form of racism, and for its specific inclusion in antidiscrimination and antiracism action plans.

1. *Assembly debate* on 11 October 2022 (29th sitting) (see [Doc. 15616](#), report of the Committee on Equality and Non-Discrimination, rapporteur: Mr Momodou Malcolm Jallow). *Text adopted by the Assembly* on 11 October 2022 (29th sitting).



8. Referring to its [Resolution 1840 \(2011\)](#) “Human rights and the fight against terrorism” and [Resolution 2031 \(2015\)](#) “Terrorist attacks in Paris: together for a democratic response”, the Assembly stresses that the fight against terrorism, vital for the safety of citizens and the protection of democratic institutions, must be conducted ensuring respect for human rights, the rule of law and the common values upheld by the Council of Europe.

9. The Assembly welcomes the adoption of the revised ECRI General Policy Recommendation No.5 on Preventing and combating anti-Muslim racism and discrimination and considers that it should be fully implemented by public authorities in Council of Europe member States and beyond to prevent and counter this form of racism.

10. The Assembly welcomes the adoption by the Committee of Ministers, on 20 May 2022, of Recommendation CM/Rec(2022)16 to member States on combating hate speech, and considers that it should be fully implemented by Council of Europe member States. The Recommendation contains indications to State authorities on countering hate speech through civil, administrative and criminal law as well as alternative measures. The Recommendation also includes guidance for other actors including public officials, political parties, internet intermediaries, media and civil society organisations.

11. The Assembly welcomes the unanimous decision by the United Nations General Assembly to proclaim 15 March as the International Day to Combat Islamophobia, as an opportunity both to commemorate victims of this form of discrimination and to raise awareness, with a view to preventing and countering anti-Muslim racism.

12. The Assembly acknowledges and supports the work of civil society organisations in countering all forms of racism, intolerance and discrimination, including Islamophobia. Referring to its [Resolution 2362 \(2021\)](#) and [Recommendation 2194 \(2021\)](#) “Restrictions on NGO activities in Council of Europe member States” the Assembly reiterates that non-governmental organisations (NGOs) make an essential contribution to the progress and development of democracy, the rule of law and human rights, and that Council of Europe member States are required, in particular, to ensure respect for the rights to freedom of expression, assembly and association.

13. Referring to its [Resolution 2222 \(2018\)](#) “Promoting diversity and equality in politics”, the Assembly reiterates that parliaments and other elected institutions should fully reflect in this particular context the complex diversity of European societies.

14. In the light of these considerations, the Assembly calls on Council of Europe member and observer States, as well as on all States whose parliaments enjoy observer or partner for democracy status to the Assembly, to:

14.1. regarding antiracism and antidiscrimination legislation and policies:

14.1.1. adopt action plans on preventing and combating Islamophobia or ensure that action plans on racism and discrimination refer to and address Islamophobia specifically;

14.1.2. improve data collection and ensure that equality data are available to support the design, implementation, monitoring and assessment of antidiscrimination legislation and policies. Equality data to prevent and counter Islamophobia should be disaggregated by gender, national and ethnic origin and religion, and should be collected anonymously, voluntarily and based on an individual's self-identification as belonging to certain groups;

14.1.3. ensure full enjoyment of the right to freedom of thought, conscience and religion as stipulated by Article 9 of the European Convention on Human Rights;

14.1.4. engage in co-operation and provide support to civil society organisations active in antiracism, equality and non-discrimination, including those working specifically on Islamophobia and representing Muslim individuals and communities;

14.1.5. encourage and support dialogue and co-operation between groups and communities of different religious backgrounds;

14.1.6. sign and ratify Protocol No. 12 to the European Convention on Human Rights (ETS No. 177) and the Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (ETS No. 189), if they have not already done so;

14.1.7. disseminate and fully implement ECRI's revised General Policy Recommendation No. 5 Preventing and combating anti-Muslim racism and discrimination, and strengthen co-operation with ECRI while fully supporting its monitoring activities;

14.1.8. disseminate and fully implement Recommendation CM/Rec(2022)16 of the Committee of Ministers to member States on combating hate speech;

14.2. regarding anti-terror measures:

14.2.1. ensure that counterterror legislation and policies are sufficiently circumscribed to avoid them being used in arbitrary and discriminatory ways;

14.2.2. refrain from applying unclear or overly broad definitions of "terrorism" and ensure that each constituent element of terrorism-related offences is precisely defined, in accordance with the principle of legality;

14.2.3. ensure that the application of counterterror measures is adequately justified, and that these measures are not applied automatically or beyond their legal purpose;

14.2.4. refrain from the dissolution of any institution, including Muslim civil society organisations, unless demonstrably necessary and proportionate, and ensure that judicial procedures are available to appeal dissolution decisions;

14.3. regarding awareness-raising, information and education:

14.3.1. conduct awareness-raising and information campaigns and activities targeting the general public to convey the message that preventing and combating Islamophobia, like any other form of racism, is the responsibility of all members of society;

14.3.2. provide public servants in all sectors of administration, including education, healthcare, law enforcement and the judiciary, with training on racism and discrimination issues, enabling them to prevent and react to discrimination and harassment linked to Islamophobia and other forms of racism;

14.3.3. ensure that school curricula, in particular in history, geography, literature and religion, as appropriate, include accurate information on the presence of Muslim people in Europe and their contribution to European culture and development.

15. The Assembly highlights that particular attention must be paid to preventing and countering discrimination against Muslim women, as detailed in [Resolution 1887 \(2012\)](#) "Multiple discrimination against Muslim women in Europe: for equal opportunities".

16. The Assembly calls on political leaders to speak out against Islamophobia and all other forms of intolerance, and on political parties to sign the Charter of European political parties for a non-racist and inclusive society as endorsed in its [Resolution 2443 \(2022\)](#).

17. The Assembly calls on the media and cultural industries, including the press, television and online news providers, to ensure accurate, unbiased reporting of news and information that are relevant to Muslim individuals and groups, and to refrain from negative stereotyping and stigmatisation of Muslims.

18. The Assembly invites the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) and its rapporteurs to pay due attention to manifestations of Islamophobia, in the context of racism and intolerance, when conducting monitoring procedures and periodic reviews of the membership obligations and commitments entered into by Council of Europe member States.



Resolution 2458 (2022)¹

Provisional version

Misuse of the Schengen Information system by Council of Europe member States as a politically-motivated sanction

Parliamentary Assembly

1. The Parliamentary Assembly recalls its [Resolution 1894 \(2012\)](#) “The inadmissibility of restrictions on freedom of movement as punishment for political positions” and stresses that since its adoption, many changes to the functioning of the Schengen Information System (SIS), including its reshaping into a more advanced version – SIS II – have been put in place.
2. The Assembly recalls that, in principle, States have a sovereign right under international law to decide on who shall be allowed to enter their territories. The European Convention on Human Rights (ETS No. 5) does not guarantee a right to entry to a specific State, as the European Court of Human Rights has repeatedly stressed.
3. New cases of allegedly unjustified alerts, including ones on politically motivated grounds, have been reported. The Assembly condemns such practices and recalls that member States of the Schengen Area are bound not only by the European Union legal order, but also by the European Convention on Human Rights, which shall “secure” the rights and freedoms guaranteed therein to “everyone within their jurisdiction”, notably the right to respect for private and family life and the protection against discrimination. This includes foreigners applying for a visa or seeking entry at the external border of the Schengen Area, all of whose member States are States Parties to the Convention.
4. The free movement of persons is one of the four basic freedoms of the European Union. The existence of the Schengen Area, based on the 1985 Schengen Agreement and the 1990 Schengen Convention, has strengthened this right by abolishing checks at internal borders, whilst subjecting the crossing of the European Union’s external border to more stringent controls and various preventive measures. In this respect, the SIS, whose purpose is to maintain a high level of security within the Schengen Area, is a key tool. Its good functioning depends on mutual trust between national authorities.
5. The Assembly notes that the current European Union legal framework on SIS II, by referring to the notion of a “threat to public policy or public security or to national security”, gives a large amount of discretion to the Schengen Area member States in deciding whether and in which circumstances they can place alerts in SIS II. It stresses that the use of alerts should not lead to any misuse of the system and should not infringe the human rights of third country nationals trying to enter the Schengen Area, in particular the right to respect for private and family life, the right to freedom of expression, the right to freedom of movement and the right to an effective remedy. If need be, additional measures should be taken to prevent misuse of the SIS and improve the protection of human rights of third-country nationals subject to alerts in the SIS.
6. Therefore, the Assembly calls on member States of the Schengen Area to:
 - 6.1. enter only accurate and lawful data in SIS II;
 - 6.2. make sure that the data in SIS are not entered for political reasons;

1. *Assembly debate* on 11 October 2022 (29th sitting) (see [Doc. 15600](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Ziya Altunyaliz). *Text adopted by the Assembly* on 11 October 2022 (29th sitting).



- 6.3. respect the principles of proportionality and individual assessment of each case, when issuing alerts in SIS II;
 - 6.4. introduce transparency and adequate monitoring and verification mechanisms concerning the interoperability of large-scale information systems so that the data registered in one system are not unduly used by the other systems;
 - 6.5. provide for persons subject to a SIS II alert effective and timely remedies against national administrative or judicial authorities' decisions which have been at the origin of the alert;
 - 6.6. observe the right of third-country nationals to be informed about the inclusion of an alert in SIS II;
 - 6.7. stop practices that prevent citizens of States not belonging to the Schengen Area from participating in the cultural, social and scientific activities in the Schengen Area and hamper free trade;
 - 6.8. avoid any misuse of SIS II that could prevent the establishment of commercial activities and a more effective investment co-operation;
 - 6.9. adjust their national legislations to ensure that administrative decisions on refusal to issue a Schengen visa due to political or other reasons are subject to judicial review in the relevant member State;
 - 6.10. take all measures to ensure that the use of SIS and related systems should not set an obstacle to the achievement of a greater unity between Council of Europe member States, as enshrined in the Council of Europe Statute (ETS No. 1);
 - 6.11. provide for persons subject to a SIS II alert the right to access data relating to them and to request the correction of inaccurate data or the deletion of data which have been unlawfully stored in SIS II;
 - 6.12. provide for such persons the possibility to bring effective legal action before the courts or other competent bodies in order to access, correct, delete or retrieve data, or to obtain, where relevant, compensation in connection with an alert relating to them;
 - 6.13. make use of the Supplementary Information Request at the National Entries network (SIRENE) to verify relevant information before denying admission or a short-term visa to a third-country national;
 - 6.14. enhance co-operation between the competent national authorities examining individual cases of alerts (courts, data protection controllers and other relevant bodies);
 - 6.15. establish a mediation (ombudsperson-type) body, whose main task would be to examine whether human rights standards have been observed by national authorities when entering an alert in SIS II or denying entry to third country nationals on the basis of such an alert;
 - 6.16. pay particular attention to alerts entered by States found in systematic breach of the rule of law by the European Commission or under the Parliamentary Assembly of the Council of Europe's monitoring procedure for the functioning of democratic institutions and the rule of law.
7. The Assembly also invites the European Union and calls on its member States to conclude as soon as possible the revision of the Schengen Evaluation Mechanism and to examine ways in which current and possible future deficiencies in the functioning of SIS II could be avoided. It invites the European Union to involve the European Parliament in these processes.
8. It also invites the European Union and calls on its member States to:
- 8.1. adopt guidelines on minimum common standards governing the SIS II alert procedure that would be applicable to third-country nationals as well as substantive criteria for issuing SIS II alerts;
 - 8.2. consider establishing a mediation (ombudsperson-type) body, whose main task would be to examine whether human rights standards have been observed by national authorities when entering an alert in SIS II or denying entry to third country nationals, or granting this competence to the European Ombudsman, the Fundamental Rights Agency of the European Union, the European Data Protection Supervisor or another European Union body.
9. The Assembly also calls on member States of the Schengen Area to collect and exchange data about current national practices concerning the use of SIS II alerts and their impact on human rights, and to co-operate in this respect also with Council of Europe member States which are not members of the European Union.



Resolution 2459 (2022)¹

Provisional version

The honouring of obligations and commitments by Türkiye

Parliamentary Assembly

1. In April 2017, the Parliamentary Assembly decided to place Türkiye under the monitoring procedure. Since then, it has closely followed the developments in the country in a spirit of dialogue and co-operation with the Turkish authorities. The Assembly has paid particular attention to the unaddressed structural deficiencies in the functioning of Türkiye's democratic institutions, as identified by Council of Europe monitoring mechanisms. The Assembly has undertaken to make a mid-term review of the monitoring procedure, focusing specifically on the implementation of the judgments of the European Court of Human Rights, the judiciary and challenges to the rule of law, and the preparation of the 2023 parliamentary and presidential elections.
2. Significant political developments have occurred since the adoption of the 2017 report: constitutional amendments establishing a presidential system were adopted in 2017 by 51,4% of the voters and a new political system was put in place. In recent years, worrying political developments have impacted the functioning of democratic institutions. In particular, it became challenging for members of the political opposition to exercise their elected mandates in a free and safe environment.
3. In reaction to these developments, the Assembly organised three debates under urgent procedure. The first in January 2019 on "The worsening situation of opposition politicians in Turkey: what can be done to protect their fundamental rights in a Council of Europe member State?" (see [Resolution 2260 \(2019\)](#)), the second in October 2020 on the "New crackdown on political opposition and civil dissent in Turkey: urgent need to safeguard Council of Europe standards" (see [Resolution 2347 \(2020\)](#)) and the third in April 2021 on "The functioning of democratic institutions in Turkey" (see [Resolution 2376 \(2021\)](#)).
4. Issues of concern identified by the Assembly include the independence of the judiciary, the separation of powers and checks and balances, restrictions on freedom of expression and of the media, the overly-broad interpretation of anti-terror legislation, the implementation of judgments of the European Court of Human Rights, restrictions on the protection of human rights, and infringement of the fundamental rights of politicians and (former) members of parliament from the opposition, and also lawyers, journalists, academics and civil society activists.
5. The Assembly also remains vigilant about the safeguard of women's rights and gender equality in Türkiye. In this context, it regrets the decision of the President of the Republic to withdraw from the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210, the "Istanbul Convention") in March 2021 and sincerely hopes that a way will be found for Türkiye to reintegrate the Istanbul Convention, which has become the gold standard in the fight against violence against women and domestic violence.
6. The Assembly acknowledges that Türkiye has faced and is still facing various and serious terrorist threats in a region that is unstable. However, the response to these threats must be in compliance with human rights, rule of law and democracy standards.

1. *Assembly debate* on 12 October 2022 (30th sitting) (see [Doc. 15618](#) and [Doc. 15618 Add.](#), report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: Mr John Howell and Mr Boriss Cilevičs). *Text adopted by the Assembly* on 12 October 2022 (30th sitting).



7. Moreover, Russia's aggression against Ukraine has added new concerns for regional security and stability. In this respect, the Assembly welcomes the mediation efforts undertaken by Türkiye with a view to resolving the conflict, and commends the role played by Türkiye in facilitating the signature of the United Nations-brokered Black Sea Grain Initiative of 22 July 2022.

8. Concerning the execution of the judgements of the European Court of Human Rights:

8.1. While acknowledging that Türkiye has implemented an important number of European Court of Human Rights rulings, the Assembly recalls that the implementation of all rulings of the Court is at the core of the protection of fundamental rights in all member States; the findings of the Court should be respected, and not disregarded. In this context, the Assembly calls on Türkiye to adopt a constructive approach and abide by its obligations in a spirit of good faith and in accordance with the principle of the rule of law.

8.1.1. In this respect, the Assembly was appalled by the aggravated life-sentence given to philanthropist Osman Kavala on 25 April 2022 by the 13th High criminal court, this, notwithstanding that the European Court of Human Rights had urged the Turkish authorities to release Mr Kavala having found his pre-trial detention unlawful and pursuing an ulterior purpose – namely to silence him and dissuade other human rights defenders.

8.1.2. On 2 February 2022, the Committee of Ministers decided to bring infringement proceedings against Türkiye over its failure to implement this ruling of the European Court of Human Rights – a rare procedure which had only been triggered once. While the Turkish authorities argued that Mr Kavala had been released in February 2020, the European Court confirmed, on 11 July 2022, that Türkiye had failed to implement the judgment by re-arresting Mr Kavala on charges based on facts that were similar, or even identical, to those that the Court had already examined in its judgment.

8.2. Reiterating its call on Türkiye to implement the court judgements, the Assembly will follow with close attention the activities of the Committee of Ministers with respect to the follow-up of the infringement proceedings under Article 46.4 of the European Convention on Human Rights (ETS No. 5). It calls on the support of member States to the Committee of Ministers to ensure that decisions in this respect will not undermine or jeopardise the effectiveness of the system of protection of fundamental rights and the credibility of the Court, as this would open the way to a dangerous and detrimental trend for other Council of Europe member States.

8.3. In this respect, the Assembly welcomes the decision of the Ministers' Deputies of 22 September 2022 related to the implementation of the Kavala judgment and its reference to the Assembly. It invites the President of the Assembly and the Chair of the Committee of Ministers to maintain close contacts and make full use of the means at their respective disposal, if Türkiye's failure to comply with its obligations should persist.

8.4. Noting that domestic procedures are still onward going, the Assembly underscores that the solution to the Kavala case lies in the hands of the Turkish judicial system. The latter has the capacity to find a legal solution and show a more diligent interpretation of the Court judgement, in compliance with its ruling and with international law. In the meantime, the Assembly reiterates its call for the release of Mr Kavala.

8.5. The Assembly also continues to follow the implementation of the Court judgement of December 2020 relating to the detention of opposition leader Selahattin Demirtaş (who has been in detention since 2016) and its supervision by the Committee of Ministers. The Court had also concluded that Article 18 of the Convention had been violated, and that Mr Demirtaş' detention sought an ulterior purpose, namely to stifle political debate. The Assembly reiterates its call for Mr Demirtaş' release. The Assembly also urges the authorities to ensure that Mr Demirtaş' individual application challenging his current detention, which has been pending before the Constitutional Court since 7 November 2019, be examined rapidly, and in a manner compatible with the spirit and conclusions of the Court's judgment, including in particular its reasoning under Article 18 of the Convention, as recalled by the Ministers' Deputies on 22 September 2022.

8.6. The Assembly has highlighted, in its previous resolutions, the restrictive environment for civil society organisations. In this respect, the Assembly is shocked by the conviction of Mr Kavala's co-defendants in the Gezi trial – all renowned persons, including architects, intellectuals, prominent civil society activists, including the Director of the Council of Europe School of Political Studies – to 18 years of prison. The Assembly calls for their immediate release and for their charges to be dropped.

9. Concerning the independence of the judiciary:

9.1. The Assembly recalls that the European Commission for Democracy through Law (Venice Commission), in its 2017 opinion, had concluded that the constitutional amendments establishing a presidential system did not guarantee the separation of powers and the independence of the judiciary, notably due to the composition of the Council of judges and prosecutors.

9.2. Despite steps taken by the authorities – including the adoption of an Action Plan on Human Rights in March 2021 and the Fourth Judicial Package in July 2021 – the authorities have not been able to address and redress some of the systemic issues which seriously undermine the functioning of the justice system:

9.2.1. The right to a fair trial (which represents 70% of the violations found by the Constitutional Court in individual application cases lodged since 2012) and, in particular, the violation of the right to a trial within a reasonable time (which was found in 90% of the rulings of the Constitutional Court in 2020 and 2021) should be secured. Noting that the Constitutional Court has launched a “pilot judgment procedure” and suspended these cases, the Assembly urges the authorities to take all necessary legal steps requested by the Constitutional Court to reduce the length of procedures.

9.2.2. In this context, the Assembly stresses the important role of the Constitutional Court in promoting the protection of fundamental freedoms, including the right to a fair trial, notably through the mechanism of individual applications, and calls for the strengthening of the Constitutional Court’s independence. The Assembly urges the authorities to ensure more effective and systematic implementation of its rulings by lower courts and welcomes the co-operation established with the Council of Europe to find common solutions.

9.2.3. The Assembly also remains concerned about the situation in prisons and calls on the authorities to implement the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and to authorise the publication of all its reports. It welcomes the commitment by the authorities to a zero-tolerance policy towards ill-treatment and torture, but nonetheless urges them to take more resolute and credible action to investigate thoroughly serious allegations of ill-treatment and torture. It also urges the authorities to pay attention to the situation of seriously ill prisoners, including former MP Aysel Tuğluk.

10. Concerning the upcoming presidential and parliamentary elections scheduled in 2023:

10.1. The Assembly values the commitment of the Turkish people to democratic processes through their high participation in elections and a vibrant political scene.

10.2. The Assembly however remains very concerned by the ongoing crackdown on members of the political opposition, including the procedures seeking to lift the parliamentary immunity (overwhelmingly of opposition parties), and more generally acts of violence suffered by opposition politicians which have put political pluralism and the functioning of democratic institutions at risk. The case against Canan Kaftancıoğlu, Head of the Republican People's Party (CHP) provincial branch of Istanbul, convicted to nearly 5 years in prison (and released under supervision) based on old Tweets, and for, *inter alia*, allegedly “insulting the President”, and the ban on her participating in political life, is yet another example of this restrictive and punitive environment in which opposition members are operating.

10.3. The Assembly will closely follow the ongoing procedure related to the attempt to close the Peoples' Democratic Party (HDP) – which is the third largest party in parliament – and to ban 451 HDP politicians from political life. The Assembly recalls that closures of political parties are a drastic measure which should occur only as a last resort. As already stressed in its [Resolution 2376 \(2021\)](#), the Assembly remains confident that the Constitutional Court will be guided by the strict regulations governing the closure of political parties in Türkiye, the case law of the European Court of Human Rights – where exceptions set out in Article 11 need to be construed strictly, with a limited margin of appreciation of Contracting States – and by the 1999 “Guidelines on the prohibition and dissolution of political parties, and analogous measures” of the Venice Commission.

10.4. The Assembly notes that the Turkish Parliament adopted, on 25 April 2022, amendments to the electoral law, regrettably without extensive consultations and debates and failing to reach a political consensus, as highlighted by the Venice Commission in June 2022 in its joint opinion (CDL-AD(2022)016) with the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE/ODIHR).

10.4.1. The Assembly welcomes the lowering of the electoral threshold from 10% to 7% – a long-lasting request from the Assembly – as well as new arrangements facilitating the participation of visually impaired persons in elections.

10.4.2. However, other provisions of this law are problematic: the Venice Commission raised concerns, *inter alia*, about the criteria required from political parties to qualify to stand for elections, which “favours larger and well-established political parties”, and the new composition of the district and provincial electoral boards: their judicial members will no longer be the three most senior judges in the province but determined “by drawing lots” from eligible judges. For the Venice Commission, this “potentially makes appointment more susceptible to political pressure and manipulation in light of the limited safeguards in the judicial appointment system to ensure the independence of judges”. This new regulation is also a major source of concern for the opposition.

10.4.3. Changes were also made in the legal provisions concerning the misuse of office in election campaigns; the Venice Commission recommended that “the President does not stand outside the party system but, rather, is part of it, there is no reason why s/he should not be subject to the restrictions in the same ways as other high public officials to prevent conflicts of interest and misuse of administrative resources”.

10.4.4. In light of the recommendations made by the Venice Commission, the Assembly urges the Turkish authorities to proceed to the proposed changes or, at the least, to implement the legislation in a spirit that will be conducive to a level playing field. The electoral legal framework should ensure equal opportunities for all political players, and this will constitute an important criterion to assess the fairness of the upcoming elections.

10.5. Another essential component of political debates and elections campaigns is freedom of expression. However, there are serious concerns about ongoing restrictions and legal proceedings hampering the exercise of this right. Recalling its previous requests and the Venice Commission’s 2016 opinion, the Assembly calls on Türkiye to, notably, amend Article 301 (Degrading Turkish Nation, State of Turkish Republic, the Organs and Institutions of the State) and Article 125 (insult to officials), as well as to abrogate Article 299 (Insult to the President) in accordance with emerging European consensus towards decriminalisation of defamation of the Head of State, and taking into account the judgment of the Court in the *Vedat Şorli v. Turkey* case and the Court’s case law.

10.6. In particular the overly-broad interpretation of the anti-terrorism law has undermined freedom of expression and fundamental rights. The Assembly reiterates its concerns that such interpretation of the law has been used as a tool to stifle political debate and the activities of civil society. Drawing inspiration from the amendment of Article 7 of the Anti-Terrorism Law in October 2019, the Assembly encourages the authorities to amend further articles of the Anti-Terrorism Law and the Criminal Code which have led to violations of the right to freedom of expression, to clarify that the exercise of the right to freedom of expression does not constitute an offence, in the same way that Article 7 now states that expressions of thought that do not exceed the boundaries of reporting or for the purpose of criticism shall not constitute criminal activity.

10.7. Media play an important role in election campaigns. Freedom of media, however, remains a challenge. The Assembly notes that long-standing issues remain problematic, such as attacks against journalists, the control of media by the State, the use or withholding of advertising funds as a means to marginalise and criminalise media critical of the regime. The Assembly is concerned by the draft amendment of Article 217/A to the Turkish Criminal Code that would criminalise the dissemination of “false or misleading information” and lead to prison sentences. For the Venice Commission, such amendment would amount to an interference with the freedom of expression which “would be neither ‘necessary in a democratic society’ nor proportionate to the legitimate aims of prevention of disorder and protection of national security, of health and of rights of others”. Beside its potential detrimental impact, namely, the chilling effect and increased self-censorship, this amendment could cause irreparable harm to the exercise of freedom of speech before elections. The Assembly is therefore very

concerned about the possible consequences of this legislation in view of the presidential and parliamentary elections planned in 2023 and urges the Turkish authorities, in light of the Venice Commission's urgent opinion of October 2022, not to enact this draft amendment to the Criminal Code.

10.8. The Assembly stresses that transparency and accountability are key for democracies and that transparency of party funding is important to ensure fair electoral competition. The Assembly regrets the lack of progress concerning the implementation of the recommendations of the Group of States against Corruption (GRECO) and urges the authorities to take action to increase transparency of party funding, to adopt a law on ethical conduct for members of parliament, to ensure transparency of the legislative process and to adopt measures to ensure parliamentary members' integrity. The Assembly also recalls GRECO's previous concerns about the weakened judicial independence, which impacts on the fight against corruption.

11. The Assembly notes that the change of the political system adopted in 2017 – while being a sovereign right of any member State – has seriously weakened the democratic institutions in Türkiye and made the system of checks and balances dysfunctional and deficient. The Assembly expresses the urgent need for reforms to restore the full independence of the judiciary and effective checks and balances. The Turkish authorities need to ensure that all conditions will be met to guarantee free and fair elections, including the ability of the opposition to operate, and journalists to work in an independent way. The Assembly remains at the disposal of the authorities to pursue a constructive dialogue. It resolves, in the framework of the monitoring procedure for Türkiye, to continue to follow the developments in the country concerning democracy, rule of law and human rights.



Resolution 2460 (2022)¹

Provisional version

The honouring of membership obligations to the Council of Europe by Hungary

Parliamentary Assembly

1. Hungary joined the Council of Europe on 6 November 1990 and has been an active member State of the Organisation ever since. It was the first of the former communist countries to ratify the European Convention on Human Rights (ETS No. 5, “the Convention”) in 1992 and subsequently has signed and ratified 94 Council of Europe treaties. Hungary exercised, for the second time since joining the Organisation, the Chairmanship of the Committee of Ministers from May to November 2021. It actively promoted, *inter alia*, the effective protection of national minorities issues and discussions on challenges related to digitalisation and artificial intelligence, which culminated with the formal approval of the Second Additional Protocol to the Convention on Cybercrime (ETS No. 185, “Budapest Convention”) on enhanced co-operation and the disclosure of electronic evidence (CETS No. 224) by the Committee of Ministers on 17 November 2021.
2. The Parliamentary Assembly has closely followed Hungary’s honouring of its Council of Europe membership obligations since 2013. In [Resolution 1941 \(2013\)](#), it expressed its deep concern about “the erosion of democratic checks and balances as a result of the new constitutional framework in Hungary” that had introduced “excessively concentrated powers, increased discretionary powers and reduced both the accountability and legal oversight of numerous government institutions and regulatory bodies in Hungary”. Although the Assembly decided not to open a monitoring procedure in respect of Hungary at that time, it resolved to closely follow the situation in Hungary. In subsequent resolutions, including [Resolution 2203 \(2018\)](#) adopted in the framework of the discussion on the 2018 periodic review report on Hungary, the Assembly has continued to follow developments in the country.
3. Since its accession to power in 2010, the coalition of the Hungarian Civic Alliance (Fidesz) and the Christian Democratic People’s Party (KDNP) has won four consecutive parliamentary elections and enjoyed, nearly continuously, a two-thirds parliamentary majority, which constitutes a unique situation among Council of Europe member States and contemporary democracies.
4. Since the adoption of the Fundamental Law (which is the official name of the new Hungarian Constitution) in 2011, the European Commission for Democracy through Law (Venice Commission) has expressed serious concerns about the impact of cardinal laws requiring two-thirds majorities on issues that are usually decided by simple majority and which should be left to the ordinary political process. The wide use of cardinal laws therefore impacts the “functionality of a democratic system” and cements the political preferences and the country’s legal order. It also undermines the ability of the parliament to adapt to new conditions and face new challenges within society in the future.
5. In addition, the safeguards foreseen in the Constitution – with qualified majorities designed to require the search for a broad agreement between the majority and the opposition on key issues – become inefficient in cases where a ruling coalition enjoys a two-thirds majority. This is in particular the case when appointing the highest judicial officials (notably members of the Constitutional Court, the President of the Supreme Court

1. *Assembly debate* on 12 October 2022 (31st sitting) (see [Doc. 15619](#), report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: Mr George Papandreou and Mr Eerik-Niiles Kross). *Text adopted by the Assembly* on 12 October 2022 (31st sitting).



(Curia) and the President of the National Office for the Judiciary (NOJ)) or adopting constitutional changes (11 since 2010). This situation severely restricts political pluralism – which is the hallmark of a democratic system – that should be embedded in the political system and State institutions.

6. The Assembly notes the valuable contribution of the Venice Commission, which has issued 23 opinions on Hungary since 2011, assessing the compliance of the Hungarian constitutional, legal and electoral framework with Council of Europe standards. The Assembly encourages the Hungarian authorities to pursue their co-operation with Council of Europe monitoring bodies and to implement their recommendations.

7. A two-thirds majority was once again achieved by the ruling coalition in the April 2022 parliamentary elections. This was done with 54% of the constituency and 52% of the party-list votes. Under these circumstances, it is incumbent on the authorities to ensure that the principles governing the proper functioning of democratic institutions are respected and safeguarded in good faith, including through effective checks and balances, meaningful dialogue with the opposition and co-operation with civil society organisations.

8. Hungary, like all countries, has had to face the Covid-19 pandemic. In recent months, it has also had to tackle the consequences of the Russian aggression in neighbouring Ukraine. The Assembly commends the people of Hungary for the great solidarity shown in the handling of the mass arrival of refugees from Ukraine since February 2022. The Assembly welcomes the decision of the authorities to allow persons fleeing the war and holding Hungarian citizenship to have access to the benefits provided to holders of temporary protection. However, it shares the concerns of the Council of Europe Commissioner for Human Rights concerning the situation of third country nationals and stateless persons excluded from this scheme.

9. The Assembly is also concerned that the country has been ruled under a special legal order since 2020. The parliament notably adopted, on 24 May 2022, the Tenth (constitutional) Amendment, allowing the government to trigger a “state of danger” in “cases of war or humanitarian catastrophes in neighbouring countries”, following the outbreak of war in Ukraine. The Assembly recalls that the use of special legal orders must be restricted to what is strictly necessary, proportionate and must be limited in time. It also stresses that parliamentary oversight, political deliberations involving all political forces in parliament and proper checks and balances are crucial in times of crisis.

10. The Assembly recalls the human rights issues raised in its previous resolutions related to policies and developments in the fields of migration, gender equality including gender-based violence, protection of national minorities including real representation within the Parliament of Hungary, academic freedoms, and the situation of LGBTIQ people. It welcomes the revocation of the disputed Act on transparency of organisations receiving support from abroad (Lex NGO) in April 2021, but the recent fines imposed on non-governmental organisations for their actions against the Child protection referendum could have a chilling effect on civil society organisations. Recalling its [Resolution 2203 \(2018\)](#), and [Resolution 2417 \(2022\)](#), the Assembly strongly encourages the Hungarian authorities to improve the standards in all these fields in light of the opinions of the Venice Commission, the case law of the European Court of Human Rights and the recommendations of the Commissioner for Human Rights, as well as to ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210, “Istanbul Convention”), which Hungary signed in 2014. The Assembly will continue to follow these issues closely.

11. *In the field of elections:*

11.1. With respect to the April 2022 parliamentary elections, the Assembly notes that, according to the Office for Democratic Institutions and Human Rights (ODIHR), “the electoral legal framework provides an adequate basis for the conduct of democratic elections but contains a number of omissions and key provisions that fall short of international standards and obligations, undermining its effectiveness and at times leading to legal uncertainty, mostly related to campaign rules and provisions for a level playing field”. ODIHR also notes that these elections were efficiently and professionally organised and the campaign was competitive. However, it highlighted a lack of transparency and insufficient oversight of campaign finances, as well as a lack of balance in monitored news coverage significantly limiting voters’ opportunity to make an informed choice, a highly negative campaign in tone characterised by a pervasive overlap between the ruling coalition and the government, and insufficient effective legal remedies for election disputes. ODIHR also noted that extensive and unregulated spending by entities other than the election contestants, including through advertisements on social media, largely favoured the ruling party. This echoes issues of concern previously identified by the Group of States against Corruption (GRECO) in the funding of political parties and electoral campaigns.

11.2. The Assembly notes that electoral amendments were adopted hastily in December 2020, by means of a cardinal law, under a state of emergency, without meaningful consultation – which is not in line with Venice Commission guidelines – and without reaching a broad political consensus.

11.3. While these amendments include some technical improvements, the Venice Commission assessed that their main effect would be “to favour the incumbents”. In particular, the obligation for political parties to appoint candidates in 71 (instead of 27, as was previously the case) out of 106 constituencies, raises questions. One impact of this is that it makes it more difficult for opposition and smaller parties to obtain a foothold and forces them to unite in heterogeneous coalitions. As regards the drawing up of the electoral map, the Assembly notes that constituency boundaries continue to be drawn by parliament and not by an independent and impartial commission, as recommended by the Venice Commission. To prevent gerrymandering, the process should be transparent, include all parties within the Parliament and be based on clear and widely accepted criteria.

11.4. As a result of the recent legal changes and the unaddressed deficiencies of the electoral legislation identified by the Venice Commission, ODIHR and GRECO in the past, the Assembly concludes that the current electoral framework does not ensure a level playing field conducive to fair elections. It also concludes, in light of ODIHR findings, that the legal framework to conduct referendum campaigns is inadequate and challenges voters’ ability to make informed choices.

11.5. The Assembly therefore urges the Hungarian authorities to address without further delay the issues identified by ODIHR and the Venice Commission, and in particular to significantly reduce the number of single-member constituencies and counties in which each party needs to nominate candidates, and to enhance the transparency of the funding of political parties and electoral campaigns, including on social media.

12. *In the field of the judiciary and the rule of law:*

12.1. As regards the judiciary, Hungary has an efficient and well-functioning judicial system, as noted by the Council of Europe European Commission for the efficiency of justice (CEPEJ). Nevertheless, while acknowledging that the Venice Commission stated that a number of powers of the President of the National Office of the Judiciary (NOJ) had been transferred to the National Judicial Council (NJC), which resulted in the improved accountability of the President of the NOJ, it also stated that the powers of the NOJ President were still extensive and concentrated in the hands of just one person. The Assembly therefore remains concerned about long-standing issues related to the independence of the judicial system, including the imbalance of powers between the NOJ and the NJC and the concentration of powers in the hands of the President of the Supreme Court (Curia).

12.2. The Assembly regrets that the December 2020 amendments pertaining to the judiciary were adopted without public consultation and during a state of emergency, severely restricting the fundamental rights to gather, discuss, protest, and demonstrate, as pointed out by the Venice Commission.

12.3. While the judicial reforms introduced in 2019 and 2020 failed to address previously identified structural problems concerning the imbalance of powers, the Assembly reiterates previous recommendations made in 2012 by the Venice Commission.

12.4. The Assembly in particular takes note of the latest opinions of the Venice Commission highlighting that:

12.4.1. the 2019 reform, allowing members of the Constitutional Court to become members of the Curia without the involvement of the NJC, could open the door to a politicisation of the Supreme Court;

12.4.2. the procedure for the appointment of the President of the Curia could pose “serious risks of politicisation and important consequences for the independence of the judiciary, or the perception thereof by the public, considering the crucial role of his/her position in the judicial system”, in light of the limited guarantees of independence applying after his/her appointment;

12.4.3. the power of the NOJ President to decide on the temporary transfer of any judge to State institutions and their reintegration in the judiciary could lead to judges being ‘promoted’ to higher judicial functions by a decision of the NOJ President, thus circumventing the procedural guarantees of regular application procedures;

12.4.4. despite detailed rules, the lack of transparency concerning the discretionary powers of the NOJ President and court presidents to allow bonuses to judges could lead to arbitrary decisions or self-censorship by judges.

12.5. In line with the recommendations issued by the Venice Commission, the Assembly therefore asks the Hungarian authorities to:

12.5.1. set up clear, transparent and foreseeable conditions for the seconded judges to be assigned to a higher position after the period of secondment;

12.5.2. remove the prerogative of the President of the Curia to mandate temporary presiding judges, or at least to eliminate any margin of discretion in their selection;

12.5.3. abolish the possibility to adopt the authoritative type of uniformity decisions, while recalling that any unification competence of the Curia must comply with fundamental principles of the separation of powers;

12.5.4. with respect to the changes brought to the complex case allocation system in 2020, clarify the criteria for the President of the Curia to increase the members (from three to five) of adjudicating panels for certain types of cases and to make the opinion of the relevant college and the Judicial Council public and binding in order to ensure the transparency of the process and increase the trust of citizens in the good and impartial functioning of the judiciary;

12.5.5. repeal the amendments to Law LXXIX relating to child protection adopted on 23 June 2021 that prohibit any depiction or discussion of diverse gender identities and sexual orientations in the public sphere, including schools and the media.

12.6. The Assembly also recalls the [interim resolution of the Committee of Ministers of 9 March 2022](#) on the implementation of the *Baka v. Hungary* ruling. The Assembly takes note of the declaration made by the Minister of Justice of Hungary that this case resulted from a one-time constitutional reform which was a unique event in the constitutional development of Hungary that is completed. However, it recalls that the Committee of Ministers strongly urged the authorities to “introduce the required measures to ensure that a decision by Parliament to impeach the President of the Curia will be subject to effective oversight by an independent judicial body in line with the European Court’s case law, as well as to evaluate the domestic legislation on the status of judges and the administration of courts”, including the evaluation of the guarantees and safeguards protecting judges from undue interference.

12.7. The Assembly therefore urges the Hungarian authorities to strengthen the self-governance of the judicial system and guarantee its independence more effectively. It calls for the strengthening of the role and independence of the National Judicial Council and the extension of its powers to ensure effective oversight of the NOJ President, in line with the recommendations of the Venice Commission.

12.8. The Assembly welcomes the progress achieved in fighting money laundering and financing of terrorism, in compliance with the recommendations made by MONEYVAL, which has upgraded Hungary’s rating from “partially compliant” to “largely compliant” in several areas. This should inspire the authorities to address other deficiencies and establish legal frameworks that ensure transparency and accountability, in particular when fighting corruption, in line with GRECO’s recommendations. This notably requires improving the level of transparency and consultation in the legislative process, adopting codes of conduct or ethics for members of parliament and government, reviewing the format of asset declarations and the broad immunity enjoyed by MPs and strengthening rules governing conflicts of interest and whistle-blowers’ protection.

12.9. The recent creation of “public-interest trusts”, is very worrying. These trusts will manage a large amount of public and private funds without supervision by the State audit. Also of concern is the absence of legal provisions governing the prevention of conflict of interests of board members (appointed for life by the government). These problems should be addressed by the authorities, in line with the Venice Commission’s recommendations.

12.10. The Assembly is also concerned by the use of the Pegasus spyware, whereby several hundred individuals, including journalists, lawyers and politicians, were subject to secret surveillance. It calls on the Hungarian authorities to urgently revise the National Security Services Act governing secret surveillance, urging them to ensure that it provides for an independent external oversight and sufficient safeguards against abuses and possible violations of the right to privacy and family life, and calls for the implementation of the *Szabó and Vissy v. Hungary* judgment of 2016.

13. *In the field of media:*

13.1. The Assembly reiterates its concerns about the media. The establishment, in 2018, of a conglomerate of over 470 media outlets – the Central European Press and Media Foundation (“KESMA”) – has led to greater media market concentration. The overwhelming distribution of advertising by the State or State-owned companies to pro-governmental medias has resulted in

distorted media pluralism and state capture of media. The Assembly asks the authorities to ensure fair and transparent distribution of such advertising expenditure, including on social media. In addition, the Assembly is highly concerned by the decision taken by the Media Council not to renew the licence of the independent radio station *Klubrádió* in 2020 due to failings, which has resulted in discriminatory measures and a shrinking space for alternative media.

13.2. Recent legislation about the “dissemination of false information” relating to the Covid-19 pandemic has placed additional pressure on journalists, who could face a three-year prison sentence. The Assembly calls on the Hungarian authorities to repeal this law and to fully and effectively guarantee access to public information and to suppress statutory provisions that have a chilling effect on freedom of expression, including by decriminalising defamation.

13.3. In addition, the Assembly encourages the Hungarian authorities, in line with Venice Commission recommendations, to improve the media environment by strengthening the functional independence of the Media Council, reducing the term of office of the Media Authority’s president, and withdrawing some of his/her powers of appointment. The Assembly also invites the Hungarian authorities to consider implementing a more open and pluralistic appointment procedure for Media Council members, including by allowing civil society groups to participate in the nomination process.

14. The undisputed exercise of power by the same coalition, which since 2010 has enjoyed almost continuously a two-thirds majority, has, over time, in the current constitutional framework, significantly reduced the efficiency of the system of checks and balances and strengthened the ruling coalition’s influence on State bodies and key independent institutions. The recent changes in the electoral law have further reduced the fairness of the electoral process, and thus weakened the ability of the system to safeguard political pluralism and foster political alternatives. The Assembly concludes that the cumulative effects of the measures that negatively impact the independence of the judiciary, the situation of media, transparency and accountability of State institutions, overall undermine the functioning of democratic institutions. It acknowledges, however, that despite this restrictive environment, there is an effective parliamentary opposition as well as a vibrant civil society. The Assembly remains therefore confident that the authorities can restore the necessary conditions for a fully pluralistic, democratic society with full respect of the rule of law, in co-operation with the Council of Europe monitoring and expert bodies, and the Venice Commission. It takes note, in this respect, of the authorities’ declared commitment to democratic values.

15. The Assembly notes that the Hungarian Parliament adopted 17 legislative modifications in September 2022. These laws aim at improving the functioning of democratic institutions by strengthening the transparency of the legislative process by demanding public dialogue and consultation, tightening the rules of conflict of interests in public trust funds and setting up an independent anti-corruption authority. The Assembly invites the Hungarian authorities to request the expertise of the Council of Europe relevant bodies and take into account their recommendations so as to ensure the compliance of the adopted measures with Council of Europe standards.

16. In the light of the long-standing issues pertaining to the rule of law and democracy that remain largely unaddressed by the authorities, the Assembly resolves to continue to closely follow the developments with regard to the functioning of democratic institutions and the rule of law in Hungary and decides to open a monitoring procedure in respect of Hungary until the above-mentioned concerns are addressed in a satisfactory manner.



Resolution 2461 (2022)¹
Provisional version

Safe third countries for asylum seekers

Parliamentary Assembly

1. Recalling the right to apply for and seek asylum under the 1951 Convention relating to the Status of Refugees (1951 Refugee Convention) and, for member States of the European Union, under Article 18 of the European Union Charter of Fundamental Rights, the Parliamentary Assembly notes with concern a tendency of returning or transferring asylum seekers to third countries without clarity on the safety of the respective third country, the legality of the return, and the existence and availability of certain objective protection standards.
2. The Assembly emphasises that Article 31, paragraph 1 of the 1951 Refugee Convention, stipulates only that penalties shall not be imposed on account of an illegal entry or presence of refugees or asylum seekers who came directly from a territory where their life or freedom was threatened. Effectively depriving asylum seekers of access to fair and efficient asylum determination and treatment in line with international standards is not permissible as it may expose them to risk of refoulement and other rights violations. Hence, asylum seekers are not required to apply for protection in the first safe country of arrival and cannot be penalised for not doing so.
3. Referring to Conclusion No. 58 (XL) of the Executive Committee of the United Nations High Commissioner's Programme, the Assembly recognises the importance of clarifying the legal situation and protection of refugees and asylum seekers, who move in an irregular manner from countries in which they have already found protection, in order to seek asylum or permanent resettlement elsewhere.
4. Whereas it is important for asylum seekers and member States alike to clarify in a timely manner which State is responsible for processing an asylum application, the Assembly is aware that the safe third country principle under Article 33 of the recast Asylum Procedures Directive of the European Union, according to which a EU member State can declare inadmissible an application for international protection if a country which is not a member State is considered as a safe third country for the applicant, does not apply among non-member States. This situation may cause legal uncertainty to the detriment of asylum seekers.
5. The Assembly recalls Recommendation No. R(97)22 of the Committee of Ministers of the Council of Europe to member States which contains Guidelines on the Application of the Safe Third Country Concept and enumerates criteria to assess whether a country can be considered as safe, among others "observance by the third country of international human rights standards relevant to asylum as established in universal and regional instruments" and "the third country will provide effective protection against refoulement and the possibility to seek and enjoy asylum". Since adoption of the Recommendation, there have been many legal developments.
6. Welcoming the relevant jurisprudence of the Court of Justice of the European Union (No. C-564/18, Nos. C-924/19 and C-925/19), the Assembly reaffirms that the return of an asylum seeker to a safe third country requires a connection to that country beyond the mere transit by the person concerned.

1. *Assembly debate* on 12 October 2022 (31st sitting) (see [Doc. 15592](#), report of the Committee on Migration, Refugees and Displaced Persons, rapporteur: Ms Stephanie Krisper). *Text adopted by the Assembly* on 12 October 2022 (31st sitting).

See also [Recommendation 2238 \(2022\)](#).



7. Welcoming the relevant jurisprudence of the European Court of Human Rights in the cases *Ilias and Ahmed v. Hungary* (No. 47287/15), *M.K. and Others v. Poland* (Nos. 40503/17, 42902/17 and 43643/17) and *M.S.S. v. Belgium and Greece* (No. 30696/09), the Assembly emphasises that competent authorities in member States must analyse, before returning or expelling an asylum seeker to a third country, whether this person would have proper access to an effective asylum procedure in the country concerned without being exposed to the risk of inhuman and degrading treatment or torture in violation of Article 3 of the European Convention on Human Rights (ETS N° 5) or of being subjected to chain-refoulement.

8. Welcoming the work of the European Union Agency for Asylum towards a co-ordinated approach within the European Union to evaluate the safety of third countries, the Assembly believes that co-ordinated efforts should also be taken at the level of the Council of Europe. Therefore, building on this work and taking into consideration the recent jurisprudence of the European Court of Human Rights, the Assembly encourages the development of new and up-to-date criteria at the Council of Europe level to assess the safety of third countries.

9. The Assembly also emphasises that no absolute presumption of safety can be made, as the situation in a safe country can deteriorate to a standard that renders the country in question unsafe. In this respect, the European Court of Human Rights clarified in *M.S.S. v. Belgium and Greece* ([GC], No. 30696/09) that applicants must be able to challenge the presumption that a country is safe in his or her particular circumstances without bearing the entire burden of proof. In the Chamber judgement *Ilias and Ahmed v. Hungary* (No. 47287/15), the Court stated that the burden of proof must not, in light of Article 13 of the European Convention on Human Rights, be reversed to the applicants' detriment. Therefore, referring to considerations of the European Court of Human Rights, the Assembly encourages the development of procedural requirements at the Council of Europe level for the asylum seeker to have a fair possibility to rebut the presumption of safety.

10. The Assembly recognises that the monitoring of safe third country decisions is essential to improve member States' practice and to strengthen the rights of asylum seekers and refugees. Therefore, the Assembly encourages member States to establish objective and independent monitoring mechanisms to monitor national law and practice in this regard.

11. Recalling [Resolution 2409 \(2021\)](#) "Voluntary relocation of migrants in need of humanitarian protection and voluntary resettlement of refugees", the Assembly welcomes the current discussion on relocation and resettlement of asylum seekers between European Union member States and beyond, while encouraging member States to undertake further efforts in this regard. Such engagement would prioritise solidarity over the recourse to the safe third country concept.

12. The Assembly invites the Special Representative of the Secretary General of the Council of Europe for Migration and Refugees to support greater co-ordination and co-operation among member States in applying the safe third country concept in the context of asylum.



Resolution 2462 (2022)¹

Provisional version

Pushbacks on land and sea: illegal measures of migration management

Parliamentary Assembly

1. The Parliamentary Assembly recalls its [Resolution 2299 \(2019\)](#) and its [Recommendation 2161 \(2019\)](#) “Pushback policies and practice in Council of Europe member States” and the subsequent reply by the Committee of Ministers ([Doc. 15088](#)), in which it welcomed the Assembly’s continued attention to migrants and asylum seekers. The term “pushbacks” is “in line with the violent and physical nature of the practices involved”, and it “may be applied broadly to cases of non-respect of human rights obligations related to refusal of entry into a country of persons seeking protection, the *refoulement* of those already within a territory, collective expulsion, obligations to carry out screenings, and other hostile action aimed to deny entry into European countries at land and sea borders”. Pushback practices are also linked to “pullbacks”, which consist in agreements between States aiming to retain migrants on one side in exchange for financial or economic advantage.
2. The Assembly notes that the Committee of Ministers stressed in its reply that the right to seek asylum must be respected, underscoring that asylum seekers have the right to an individual and fair examination of their applications by the competent authorities”. The Committee of Ministers reiterated the obligation of the State receiving the asylum application to “ensure that return of the asylum seeker to his/her country of origin or any other country will not expose him/her to a real risk of the death penalty, torture or inhuman or degrading treatment or punishment, persecution, or serious violation of other fundamental rights which would, under international or national law, justify granting protection”. Article 3 of the European Convention on Human Rights (ETS No. 5) and Article 4 of its Protocol No. 4 (ETS No. 46) prohibit member States of the Council of Europe returning migrants and asylum seekers to another country without an individual assessment as to whether this is safe.
3. The Assembly recalls its [Resolution 2379 \(2021\)](#) “Role of parliaments in implementing the United Nations global compacts for migrants and refugees” and [Resolution 2408 \(2021\)](#) “70th anniversary of the 1951 Refugee Convention: the Council of Europe and the international protection of refugees”, where it agreed to support world efforts in protecting the right to asylum enshrined in the 1951 United Nations Convention Relating to the Status of Refugees (“the Refugee Convention”) and other relevant international instruments.
4. The Assembly deplores the profound disregard of international standards on the matter in some countries, combined with the instrumentalisation of migration flow for political purposes in others, and concludes that the right to asylum continues to be breached. Border pushbacks have now taken on worrying proportions, taking place routinely on land and in the more deadly environment of the sea, becoming a pan-European problem which pertains to at least half of the member States. Allegations are no longer limited to just one or two countries, or one or two incidents, but have become widespread and, most worryingly, part of tolerated policy. Pushbacks from Croatia to Bosnia and Herzegovina, from Greece to Türkiye, from Malta and Italy to Libya, from Hungary to Serbia, and from Poland to Belarus render the plight of migrants and refugees even harsher, heightening the risk to lose one’s life in an extremely perilous journey.

1. *Assembly debate* on 12 October 2022 (31st sitting) (see [Doc. 15604](#), report of the Committee on Migration, Refugees and Displaced Persons, rapporteur: Mr Pierre-Alain Fridez). *Text adopted by the Assembly* on 12 October 2022 (31st sitting).



5. Furthermore, the Assembly calls upon the Council of Europe observer and member States, as well as States whose parliament enjoys the observer or partner for democracy status to the Assembly, to respect international obligations and to enhance interstate solidarity. They should work together to guarantee the right to asylum, including member States from Central and Northern Europe. Interstate solidarity is key for a stronger Europe from political, economic, social, and cultural perspective. Migration is a natural societal phenomenon and should be addressed collectively as a continent, in order to manage migration flows in an orderly way that helps to promote the social and occupational inclusion of migrants, while benefiting fully from its positive consequences.

6. The Assembly welcomes the Recommendation of the Council of Europe Commissioner for Human Rights, Ms Dunja Mijatović, “[Pushed beyond the limits. Urgent action needed to stop pushbacks at Europe’s borders](#)”, where she addressed the role of members of parliament in preventing human rights violations at the borders, noting that parliamentarians can play an important role in preventing pushbacks, in line with their wider role as guarantors of human rights, both as legislators and as those responsible for carrying out democratic oversight of government action.

7. The Assembly underscores the importance of well-functioning independent border monitoring mechanisms at national and European levels. It forewarns, however, against the risk of paying lip service to the principle of independence by those national authorities that try to undermine the independence of such bodies by making them either dependent on the government for funding, by imposing membership in oversight committees for government-friendly entities, by restricting their access to the border or migrant retention facilities, or by limiting their actions through other means. It recalls the importance of democratic checks and balances and of independent monitoring in its fullest form.

8. The Assembly notes that the European Union is often the main destination of migrants arriving to Europe. The European Union institutions should, therefore, serve as guarantors of international human rights protection regarding the right to asylum and the prohibition of *refoulement*. The European Border and Coast Guard Agency (Frontex) should be called upon to enhance its capacity to deal with allegations of pushbacks and allow for thorough investigation to bring those responsible for pushbacks to justice. The Assembly underscores that effective border control and the protection of fundamental rights are fully compatible. The work of the Fundamental Rights Officer of Frontex should be, therefore, supported and its monitoring capacity enhanced.

9. The Assembly deplores the use of anti-smuggling legislation against human rights defenders and people engaged in search and rescue operations on land and at sea, making access to asylum for people on the move harder to reach. Right to asylum includes the right to be informed about asylum procedures, including by civil society organisations, advocacy groups, human rights defenders and specialised legal aid institutions. States must ensure that the functioning of such bodies is not *de facto* prohibited by criminalising their actions.

10. The Assembly calls on member States to encourage changes at European level to achieve a sustainable reception process shared with other member States, in accordance with the principle of solidarity referred to in Article 80 of the Treaty on the Functioning of the European Union, based on shared responsibility. The Assembly therefore calls upon the Council of Europe member States to change their legislation and practice in order to promote a multilateral policy of putting in place legal pathways to all European countries on the basis of shared responsibility, to promote solidarity with the countries most affected by the influx of migrants by sea and by land, and thereby contribute to putting an end to pushbacks.

11. The Assembly welcomes the decisions taken by regional courts in some countries, ruling in favour of refugees, migrants and asylum seekers who had been pushed back outside the European Union’s external borders, underscoring that the practice of pushing back asylum seekers gave rise to a violation of the principle of human dignity.

12. The Assembly calls for changes to the law and practice in the Council of Europe member States to stop pushbacks at land and sea and to codify the principle of *non-refoulement* in national legislation. In specific terms, it asks member States to take measures to prevent pushbacks, to protect the victims of pushbacks, to prosecute those responsible for pushbacks and to improve international co-operation and co-ordination between border authorities, police, and other bodies in charge of border protection, as follows:

12.1. as regards prevention:

12.1.1. to prevent all forms of “pushback” and “pullback” actions regarding migrants, refugees, and asylum seekers. Priority should be given to ensuring that border management is aligned with international law and human rights obligations. The Assembly underscores the need to

ensure the individual assessment of protection needs and of the safety of a return in order to prevent violation of Article 3 of the European Convention on Human Rights and of the prohibition of collective expulsions, as enshrined in Article 4 of Protocol No. 4 to the Convention;

12.1.2. to establish secured access to border checkpoints, notably representatives of national prevention mechanisms should have full access to the checkpoints and retention facilities, where such exist, to ensure full respect of international asylum norms;

12.1.3. to make the national legislation and policies human rights-compliant and to amend migration legislation with a view to prevent and prohibit pushbacks and the denial of right to asylum;

12.1.4. to make the relevant legal framework accessible, precise and clear to all migrants, refugees and asylum seekers, available, as much as possible, in languages for them to understand the procedure. Relevant and effective means of redress should be in place in cases of denial of asylum in first instance;

12.1.5. considering that the civil society's role in upholding and advancing democratic values and fundamental rights, including the right to asylum, is crucial, especially as they play an important role in documenting cases of pushbacks, to encourage and support their participation in the independent monitoring mechanisms at national and European levels. Independent border monitoring mechanisms should be able to verify misconduct by State border police and report on it to the competent judicial authorities. Council of Europe member States must respect the role of non-governmental organisations and human rights defenders in conformity with their commitments, as set out in Committee of Ministers [Recommendation CM/Rec\(2007\)14](#) on the legal status of non-governmental organisations in Europe;

12.2. as regards protection:

12.2.1. to develop specific programmes to protect the victims of pushbacks, possibly in the framework of the Council of Europe Action Plan on Protecting Vulnerable Persons in the Context of Migration and Asylum in Europe (2021-2025) and to ensure that effective complaints mechanisms for the victims are in place. Urgent measures must be taken to ensure the protection of most vulnerable migrants and refugees: children, women, people with disabilities, and elderly people. An absolute prohibition of pushbacks of migrant children should be in place in all Council of Europe member States;

12.2.2. States members of the European Union should take measures to bring the European Union law and practice in compliance with human rights standards, as mentioned in the Assembly [Resolution 2416 \(2022\)](#) "European Union Pact on Migration and Asylum: a human rights perspective". This should include legal guarantees clearly established in the 1951 Refugee Convention and the European Convention on Human Rights. Practices violating the right to apply for asylum should stop;

12.3. as regards prosecution:

12.3.1. to ensure that allegations of pushbacks are fully investigated and those responsible are held to account to dissuade the continuation of such practices. The Assembly reiterates, therefore, the importance of the prohibition of torture or inhuman or degrading treatment and the prohibition of collective expulsions, which apply also during emergency situations;

12.3.2. to comply with judgments of national courts and of the European Court of Human Rights, including their interim measures, in relation to pushbacks and refusing access to asylum and even to an asylum procedure, and to follow up recommendations of national independent bodies such as ombudspersons, as stated in [Resolution 2299 \(2019\)](#), keeping in mind that codifying the principle of *non-refoulement* in national legislation is key;

12.4. as regards international co-operation and co-ordination:

12.4.1. to strengthen international co-operation and co-ordination in the fields of border protection, on the one hand, and migration management, on the other. This is of great relevance as regards search and rescue operations at sea which should be effective, saving lives being the primary objective. International co-operation and co-ordination at sea should, therefore, be further enhanced to prevent human tragedy at Europe's maritime borders;

12.4.2. co-operation between border police authorities should include specialised training on the application of international standards in access to an asylum procedure, to ensure that relevant measures are in place for any individual indicating their need to seek international protection. New technological means can be used to improve access to relevant procedures and provide relevant information to asylum seekers in various languages;

12.4.3. to enhance international co-operation at regional and world levels to take stock of the real progress on the right to asylum. The work of the United Nations Special Rapporteur on the Human Rights of Migrants, the United Nations High Commissioner for Refugees follow-up actions to ensure full compliance with the 1951 Refugee Convention and its 1967 Protocol, the actions of the Council of Europe Commissioner for Human Rights and of the Special Representative of the Council of Europe Secretary General on Migration and Refugees must guide public policies, in addition to the relevant treaty bodies;

12.4.4. to further develop international co-operation between EU and non-EU countries' border police structures, with the participation of Frontex, with the aim of upgrading the competences of border police in the Council of Europe member States as regards the right to asylum, in full compliance with the 1951 Refugee Convention and its 1967 Protocol, the European Convention on Human Rights, and other relevant treaties. Redress measures for failure to respect the law should be clearly stated and applied.

13. The Assembly welcomes the new initiatives aimed at ensuring protection of Europe's borders in full respect of fundamental rights and dignity of those who attempt to cross the borders. It calls for an open and constructive discussion based on the findings of the feasibility study that was launched for setting up a robust and independent human rights monitoring mechanism at the external borders of the European Union on 4 May 2022.

14. Finally, the Assembly calls for stronger commitment to upholding human rights standards at Europe's borders. Time has come for parliamentarians to stand up against pushbacks, to call for the sharing of responsibility in the management of migration between the different member States and to follow the developments closely both at the national and European levels.



Resolution 2463 (2022)¹

Provisional version

Further escalation in the Russian Federation's aggression against Ukraine

Parliamentary Assembly

1. Eight months have elapsed since the Russian Federation launched a large-scale invasion of Ukraine. This brutal and inhumane aggression is provoking immense suffering, destruction and displacement, to a level unseen in Europe since the Second World War. This aggression must be unequivocally condemned as a crime in itself, as a violation of international law and as a major threat to international peace and security.
2. In the past few weeks, the Russian Federation has taken political, military and rhetorical steps which indicate a further escalation of the aggression. Marred by blatant intimidation of voters and held on the front lines of an ongoing armed conflict, the so-called referendums held in the Ukrainian regions of Donetsk, Kherson, Luhansk and Zaporizhzhia between 23 and 27 September 2022, illegally supported and voted for by the Russian Duma, are a travesty, in contravention of international law and contrary to any substantive and procedural standards for holding referendums. They must be considered null and void and with no legal or political effects.
3. Similarly, the attempted annexation of these regions by the Russian Federation is an affront to international law. The Parliamentary Assembly strongly condemns this blatant attempt to incorporate territory belonging to another sovereign State through force and coercion and reiterates its firm support for the sovereignty, independence and territorial integrity of Ukraine within its internationally recognised borders. The Assembly recalls that the Russian Duma had voted in favour of the invasion and annexation of Crimea, and notes with great concern that it also validated these more recent illegal attempted annexations. This is further attestation that the Russian Duma cannot be treated like an equal partner among free and fairly elected parliaments of democratic countries and that the Russian political parties that have previously voted for illegal decisions encroaching on the sovereignty and territorial integrity of Ukraine and other countries shall be treated and recognised as groups and entities that support external aggression and therefore share all responsibilities of the consequences of that aggression.
4. While continuing its illegal occupation and militarisation of the nuclear power plant in Zaporizhzhia, the leadership of the Russian Federation has increased threats of nuclear warfare. In addition to being abhorrent and reckless, such threats are in breach of international law and incompatible with the responsibilities of a nuclear power holding a permanent seat in the United Nations Security Council. In this regard, the Assembly should look into the issue of the seat of the Russian Federation in the United Nations Security Council.
5. The humanitarian situation in Ukraine remains dire. Almost 5 800 civilians are estimated to have died and one third of Ukrainians have been forced from their homes since 24 February 2022. Prisoners of war held by the Russian Federation's armed forces or by affiliated armed groups face torture and ill-treatment, and in some cases are being tried and sentenced to death, in clear contravention of international humanitarian law. The Assembly calls on the Russian Federation to allow humanitarian missions of the United Nations, International Committee of the Red Cross, Council of Europe or any other international organisation or member State to facilitate the exchange of prisoners of war and the release of political prisoners. The

1. *Assembly debate* on 13 October 2022 (32nd sitting) (see [Doc. 15631](#)), report of the Committee on Political Affairs and Democracy, rapporteur: Mr Emanuelis Zingeris). *Text adopted by the Assembly* on 13 October 2022 (32nd sitting).



Assembly is outraged by the discovery of mass graves in cities and towns liberated by the Ukrainian forces, and firmly condemns all war crimes. The Assembly welcomes the exchange of prisoners in Istanbul at the initiative of Türkiye.

6. The continued use of long-range artillery by the Russian military to hit towns and cities across Ukraine has caused massive destruction and death. On 10 October 2022, a barbaric set of missile attacks targeted several Ukrainian cities, hitting public squares, playgrounds and residential buildings. With these indiscriminate attacks, Russia aims to advance its terrorist policy to suppress the will of Ukrainians to resist and defend their country and provoke maximum harm to civilians. The role of the illegitimate Lukashenko regime in helping the Russian Federation's aggression against Ukraine must not be forgotten. The recent announcement that Belarusian troops would deploy alongside Russian ones is deeply concerning and must be widely condemned.

7. Meanwhile, the climate in the Russian Federation is one of increasing repression. The authorities have implemented a far-reaching crackdown on civil liberties based on intimidation and open persecution, with the goal to provoke a state of terror in the general public for political purposes. Democratic figures are being repressed or killed, the system of opposition parties has been destroyed, the judiciary is not independent and many media and civil society organisations, such as Memorial International, have been closed down. Despite the many draconian measures passed in recent years, anti-war demonstrations and protests have been breaking out across the country. Amongst the most prominent public figures being persecuted for voicing criticism against the war is Vladimir Kara-Murza, who has been detained since April 2022. On 10 October 2022, the Assembly was honoured to award Mr Kara-Murza with the 2022 Václav Havel Prize, affirming support for his courage and determination to create a peaceful, democratic Russia. The Assembly calls on the Russian authorities for the immediate release of Vladimir Kara-Murza. The Assembly also calls for a review of cases of other political prisoners opposed to President Putin, in the Russian Federation and in other countries, and for their release (including Mikheil Saakashvili, Ukrainian citizen and former President of Georgia).

8. President Putin's announcement of a partial mobilisation on 21 September 2022 is yet another sign of escalation, which has created tensions in the country. Protests at draft centres have at times turned violent, and hundreds of thousands of Russian men have attempted to flee the country to avoid a potential callup. The apparent deliberate attempt by the Russian authorities to disproportionately focus their mobilisation campaign on ethnic minority groups, including the population of Dagestan and Crimean Tatars who are mobilised in the Ukrainian territories temporarily occupied by Russia, is of great concern to the Assembly. It is also unacceptable that detainees across Russia are being sent to fight in Ukraine.

9. The unleashing of a war of aggression by a permanent member of the United Nations Security Council poses a challenge to global governance. The Assembly deeply regrets that on 30 September 2022 the United Nations Security Council was not able to adopt a resolution condemning the recent referendums due to the Russian Federation's veto, notwithstanding no other negative votes. In this context, the Assembly notes the increasing support for a reform of the United Nations Security Council and welcomes a greater role for the United Nations General Assembly including in issues relating to maintaining international peace and security.

10. In this respect, the Assembly wholeheartedly welcomes the passage on 12 October 2022 by the United Nations General Assembly, by a three-fourths majority, of the resolution entitled "Territorial integrity of Ukraine: defending the principles of the Charter of the United Nations", which recalls the obligation of States under Article 2 of the United Nations Charter to refrain from the threat or use of force against the territorial integrity of any State, condemns the organisation by the Russian Federation of illegal so-called referendums, and declares that subsequent attempted illegal annexation of these regions have no validity under international law.

11. The Assembly reiterates its full support for Ukraine and emphasises the importance for the international community to work together for the country's recovery and long-term peaceful and prosperous future. At the same time, the Assembly calls for a comprehensive system to hold the Russian Federation and its leadership accountable for this aggression and the violations of international human rights and international humanitarian law committed in this context.

12. The Black Sea blockade was over after the Black Sea Grain Initiative brokered by Türkiye and the United Nations. This deal has been a contribution to the solution of the global grain and food crisis and its continuation is important for the sustainability of global food security. The Assembly, therefore, invites member States to continue providing political support for the efficient implementation and prolongation of this process.

13. In the light of the above considerations, while reiterating its relevant resolutions and recommendations adopted since the beginning of the large-scale aggression, the Assembly calls on Council of Europe member States to:

13.1. reiterate their unwavering support for the independence, sovereignty and territorial integrity of Ukraine, within its internationally recognised borders and that any peace talks can only take place on the conditions set by Ukraine;

13.2. unequivocally condemn the so-called referendums held in the Ukrainian regions of Luhansk, Donetsk, Zaporizhzhia and Kherson between 23 and 27 September 2022, and to refrain from recognising any effects of them;

13.3. condemn the Russian Federation's attempted annexation of the regions of Luhansk, Donetsk, Zaporizhzhia and Kherson as a violation of international law and a major threat to international peace and security, and to avoid recognising any effects of it;

13.4. be firm and united in exerting a policy of maximum pressure on the Russian Federation to immediately cease its aggression;

13.5. support financially the reconstruction of Ukraine and provide necessary air defense systems;

13.6. ensure a comprehensive system of accountability for serious violations of international law arising from the Russian Federation's aggression against Ukraine actively co-operating with the Ukrainian authorities on this issue, and, in this context:

13.6.1. speed up the establishment of a Special (*ad hoc*) International Tribunal to prosecute the crime of aggression against Ukraine;

13.6.2. establish a system to examine the measures to ensure and secure accountability for Russia's violations and abuses of human rights and international humanitarian law;

13.6.3. set up a comprehensive international compensation mechanism, including an international register of damage and actively co-operate with the Ukrainian authorities on this issue;

13.6.4. recognise Russian political parties that have previously voted for illegal decisions encroaching on the sovereignty and territorial integrity of Ukraine, and other countries, as groups and entities that support external aggression and therefore share all responsibilities of the consequences of the aggression;

13.7. declare the current Russian regime as a terrorist one.

14. Given the unprecedented gravity of the Russian Federation's aggression as a threat to international peace and security, the rules-based international order, international law and the most basic values which are the foundation of the Council of Europe, the Assembly appeals to the Heads of State and Government of Council of Europe member States to gather in the fourth Summit in the history of the Organisation and put the issue of accountability of the Russian Federation, as well as support to Ukraine, high on the agenda of the Summit.

15. Furthermore, while reiterating its previous recommendations addressed to the Russian Federation since the outbreak of its aggression against Ukraine, the Assembly calls on the Russian Federation to:

15.1. cease its aggression against Ukraine immediately and unconditionally;

15.2. completely and unconditionally withdraw its occupying forces, including its military and proxies, from the territory of Ukraine within its internationally recognised borders;

15.3. withdraw its troops from the territory of Georgia and the Republic of Moldova;

15.4. comply strictly with its obligations under international law, international human rights law and international humanitarian law, including with regard to the treatment of prisoners of war;

15.5. immediately stop attacks against civilians, including indiscriminate attacks against populated areas, targeted killings and abductions, torture, rape and sexual violence, and investigate all allegations of such crimes;

15.6. fully withdraw from all Ukraine's nuclear facilities, stop and refrain from making them the target of any military activity and co-operate fully with the International Atomic Energy Agency to ensure their safety and security;

15.7. stop threatening recourse to nuclear weapons and commit not to use them;

- 15.8. stop using energy as a blackmail tool;
 - 15.9. stop supporting hacking attacks on democratic countries and their institutions;
 - 15.10. stop interfering with electoral processes and refrain from financing anti-European activities of extremist pro-Russian parties and movements in democratic countries;
 - 15.11. co-operate with the investigations and proceedings that have been established by the International Criminal Court and the International Court of Justice and comply with their decisions;
 - 15.12. co-operate with UN treaty bodies, submitting reports and information to them when required to do so, allowing country visits and complying with their recommendations;
 - 15.13. co-operate with the Commission of Inquiry on Ukraine and the Special Rapporteur on human rights in Russia, which have been set up by the Human Rights Council, and comply with their recommendations;
 - 15.14. comply with the recommendations set out by the Moscow Mechanism of the Organization for Security and Co-operation in Europe (OSCE), and laid down in the reports on Violations of International Humanitarian and Human Rights Law, War Crimes and Crimes Against Humanity Committed in Ukraine (1 April-25 June 2022) and on Russia's Legal and Administrative Practice;
 - 15.15. co-operate with proceedings before the European Court of Human Rights, implement outstanding judgements and those which the Court will adopt for acts committed before 16 September 2022;
 - 15.16. adopt without delay effective general measures to address the structural and systemic problems identified by the European Court of Human Rights and the Committee of Ministers with regard to freedom of assembly, freedom of expression and the right to liberty in the Russian Federation, including by repealing or amending laws that have only exacerbated such problems, including the laws on "foreign agents", "undesirable organisations", "extremism" and "fake information on the Russian military";
 - 15.17. co-operate with the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), as long as the Russian Federation remains a Party to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126), and allow the monitoring of the reported political prisoners' state of health and conditions of detention pending their release or re-examination of their cases.
16. The Assembly asks the OSCE to continue to evaluate, through the Moscow Mechanism or other appropriate tools, the violations of international humanitarian and human rights law, war crimes and crimes against humanity committed in Ukraine; the human rights situation in the Russian Federation; and the Russian Federation's aggression against Georgia and the Republic of Moldova.
17. In the light of the gravity of the international situation, the Assembly calls on international organisations to consider appropriate measures to avoid that the Russian regime uses staff of Russian nationality as a vehicle to support the Russian Federation's aggression against Ukraine, spread false information and Russian narratives about it and to influence these organisations' political decisions.
18. As regards its own work, the Assembly should continue to follow developments relating to the Russian Federation's aggression against Ukraine.



Resolution 2464 (2022)¹

Provisional version

The impact of Brexit on human rights on the island of Ireland

Parliamentary Assembly

1. The Good Friday Agreement, which ended three decades of conflict in Northern Ireland, described the United Kingdom and Ireland as “partners in the European Union”. The United Kingdom’s withdrawal from the European Union has shaken the delicate balance created by the peace process and threatened the common human rights space previously shared by all people on the island of Ireland.
2. Brexit has caused serious concerns regarding human rights protection in Northern Ireland and is leading to a misalignment of rights north and south of the border. It has cast a shadow over important provisions of the Good Friday Agreement, specifically related to birthright and just and equal treatment of both communities. In parallel, the lack of progress in implementing some of the human rights provisions of the Good Friday Agreement has compounded the problem: the establishment of a Northern Ireland Bill of Rights and the passage of a law to promote the Irish language remain unfulfilled promises.
3. The introduction by the UK Government on 22 June 2022 of a bill to overhaul the 1998 Human Rights Act has exacerbated the situation. The proposal would add hurdles for those seeking redress in courts, privilege specific rights over others, and challenge the role of the European Court of Human Rights, raising an issue of compatibility with the European Convention on Human Rights (ETS No. 5), a cornerstone of the Good Friday Agreement.
4. Brexit has also reignited deep-seated tensions in Northern Irish society, furthering political division and contributing significantly to the paralysis of devolved institutions. The Parliamentary Assembly notes that Brexit repercussions have been at the heart of the institutional impasse and the political crisis of 2022. It regrets that some political parties, especially the Democratic Unionist Party, use these repercussions to further deny the people of Northern Ireland a functioning Executive and Assembly.
5. While the Ireland/Northern Ireland Protocol (“Protocol”) was introduced to limit the consequences of Brexit and avoid a return to a hard border, and while it has had an overall positive economic effect on Northern Ireland, the related rhetoric has been divisive. Polls repeatedly show that the Protocol is not a primary concern for the population, and yet the Protocol is used as a pretext to hold public institutions hostage.
6. The Assembly notes with concern that, despite the European Union’s willingness to find joint solutions with the United Kingdom within the framework of the Protocol, and despite both sides stressing the importance of continued engagement, the UK Government introduced a bill on 13 June 2022 to unilaterally change core elements of the Protocol. Described as a “clear breach of international law” by the European Commission, the move risks further destabilising the delicate post-Brexit situation on the island of Ireland. Article 2 of the Protocol, which guarantees the non-diminution of rights as a result of Brexit, must be safeguarded.
7. The fragility of Northern Ireland’s current institutional framework is abundantly clear. While power-sharing arrangements emanating from the Good Friday Agreement guarantee inclusivity, the current structures entrench divisions along sectarian designations. Continued implementation of the reforms set out in

1. *Assembly debate* on 13 October 2022 (33rd sitting) (see [Doc. 15615](#), report of the Committee on Political Affairs and Democracy, rapporteur: Mr George Katrougalos). *Text adopted by the Assembly* on 13 October 2022 (33rd sitting).



the “New Decade, New Approach” agreement will be important, and all parties should consider ways to transcend sectarian approaches to politics. In this respect, the Assembly welcomes the UK Government’s recent steps to limit the instability of this system, including the passage of the Northern Ireland (Ministers, Elections and Petitions of Concern) Act 2022.

8. More than two decades after the Good Friday Agreement, the failure to properly and thoroughly address the legacy of the Troubles has had a direct impact on reconciliation and human rights on the island of Ireland, causing pain and frustration in society and sending discouraging signals regarding the pursuit of justice. All parties concerned should honour their obligations under the European Convention on Human Rights and implement, in good faith and as soon as possible, a process consistent with the principles agreed to in the Stormont House Agreement.

9. In this respect, there are serious concerns regarding the compatibility of the Northern Ireland Troubles (Legacy and Reconciliation) Bill introduced by the UK Government on 17 May 2022, with the European Convention on Human Rights. The Assembly welcomes the Committee of Ministers’ decision to ask additional information from the United Kingdom authorities on the compliance of the bill with the Convention. The Assembly also expresses concern that neither the Government of Ireland nor the Northern Ireland Human Rights Commission were consulted in the preparation of this Bill, despite the latter being the main body in charge of overseeing human rights in Northern Ireland under the Good Friday Agreement and part of the “dedicated mechanism” to oversee the UK Government’s commitment to protecting equality and human rights in a post-Brexit Northern Ireland.

10. The Assembly expresses regret over the fact that many people in Northern Ireland continue to experience residential and school segregation. Without addressing such systemic divisions, the laudable work of civil society organisations working across community lines will be left treating the symptoms, and it will be hard to move past the sectarian divides that have marked previous generations.

11. While violence has greatly decreased in recent decades, the tensions deriving from Brexit may contribute to a re-emergence of paramilitarism. In order to bring paramilitarism to an end, it is crucial that policing and justice measures are complemented by actions to tackle the systemic socio-economic issues facing Northern Ireland.

12. In light of the above, the Assembly calls on the United Kingdom to:

12.1. ensure that the withdrawal from the European Union does not result in any diminution of rights for the people of Northern Ireland, in line with its international commitments, nor to a misalignment of rights between north and south on the island of Ireland;

12.2. make use of the “dedicated mechanism” established to ensure that Brexit does not result in any diminution of rights set out in the Good Friday Agreement, in particular by seeking and heeding the advice of the members of this mechanism, of the Equality Commission for Northern Ireland and of the Northern Ireland Human Rights Commission;

12.3. seek, in a constructive spirit, all practical solutions in order to ensure the smooth and efficient implementation of the Protocol, and refrain from unilateral actions which undermine international law;

12.4. reconsider its current proposal to repeal the Human Rights Act and reaffirm its commitment to the European Convention on Human Rights;

12.5. propose a way forward to address the legacy of the Troubles that is in line with European Convention on Human Rights standards on effective investigations, with the Good Friday Agreement, and with the devolution of justice in Northern Ireland; to ensure this is the fruit of wide consultations with victims’ groups, political forces in Northern Ireland and in Ireland, and relevant human rights bodies;

12.6. implement the recommendations of the Committee of Ministers and of the Committee of Experts of the European Charter for Regional or Minority Languages (ETS No. 148) regarding appropriate legislation to protect and promote the Irish language;

12.7. continue to support ways of making Northern Ireland institutions more stable and more resistant to political turbulence, in line with the “New Decade, New Approach” agreement, as well as less reliant on sectarian designations.

13. The Assembly calls on Ireland and the United Kingdom to continue to make the implementation of the Good Friday Agreement an utmost priority, and to work together in a co-operative, constructive and forward-looking spirit.

14. The Assembly calls on the authorities and political forces in Northern Ireland to:
 - 14.1. work together to ensure the smooth and efficient implementation of the Protocol in Northern Ireland, which had largely supported remaining in the European Union, and contribute constructively to the Protocol negotiations;
 - 14.2. refrain from using divisive and inflammatory rhetoric surrounding the Protocol, and instead make full use of the significant advantages the Protocol has already provided, and can continue to provide, to the Northern Irish economy and to efforts to build a more prosperous future for all communities in Northern Ireland;
 - 14.3. return to power-sharing immediately, so as to enable proper governance in Northern Ireland, and refrain from political acts which undermine the ability of Northern Ireland's institutions to function;
 - 14.4. work to address the systemic socio-economic issues facing Northern Ireland, not only to improve lives but also to create the necessary conditions for the demolition of peace walls and help put an end to paramilitarism;
 - 14.5. promote policies that limit residential segregation and take all necessary steps to promote greater mixing in schools by finally taking decisive steps towards integrated education;
 - 14.6. ensure that the teaching of history pursues the goals of peace and reconciliation, taking an approach based on multiple perspectives which respect the diversity of viewpoints and cultural differences, including by making use of Council of Europe expertise on the teaching of history;
 - 14.7. co-operate constructively with the authorities in Ireland and in the United Kingdom on addressing the legacy of the Troubles and to further support efforts to shed light on the past, such as the work being carried out by the Police Ombudsman;
 - 14.8. consult and make use of relevant Council of Europe bodies with expertise in minority language rights, and to apply, as appropriate, their recommendations in order to make use of European standards and best practices.
15. The Assembly also calls on the European Union to continue to seek, in a constructive spirit, all practical solutions to minimise the adverse impacts of Brexit and ensure the smooth and efficient implementation of the Protocol.



Resolution 2465 (2022)¹

Provisional version

The fight for a level playing field – ending discrimination against women in the world of sport

Parliamentary Assembly

1. Substantial progress has been made in the field of sport in recent years as regards gender equality and combating discrimination. Female athletes are beginning to gain greater prominence in the media, some women's sports competitions have sparked worldwide interest and equality in sport is becoming a major topic. The Parliamentary Assembly welcomes these developments and encourages further efforts in this direction.
2. The world of sport, however, is not yet free from violence, sexism and gender discrimination. It continues to be dominated by men. The #metoo movement, which has sent ripples through the sports world, has helped to bring human rights abuses of this kind to light. Sports federations have been called upon to act and implement measures to prevent and detect violence and support survivors. The Assembly reiterates its firm commitment to preventing and combating all forms of gender-based violence and to promoting the ratification and implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210, "Istanbul Convention"). It supports "Start to talk", the Council of Europe's call for action to public authorities, the sports movement and other actors to take appropriate preventive and protective measures to put a stop to the abuse of and violence against children. It also reiterates the support given by its [Resolution 2420 \(2022\)](#) to FIFA's (International Federation of Association Football) plans to create an independent multi-sport centre or agency to promote safe sport, protect and support survivors, and tackle impunity.
3. Inequalities in pay, treatment, access and status between women and men are still common in both professional and non-professional sport. Women, in all their diversity, are poorly represented in decision-making bodies. Women have less access to sport because of gender inequalities in relation to resources, time and lack of infrastructure. Sexist comments and stereotyped images of female athletes, questioning their "femininity", regularly appear in the media and on social networks. The Assembly condemns the hate speech and sexism directed at female athletes, including LGBTI athletes.
4. Female athletes must be recognised in all their diversity so that appropriate measures to prevent and combat discrimination can be implemented. Taking into account the intersectional dimension paves the way for a targeted response and proper policies. The Assembly calls for efforts to promote access to sport for all women and notes that discrimination against LGBTI women has a negative impact on women in general. The Assembly condemns the use of sport as a means of controlling women's bodies.
5. Sport can be an important vehicle for changing attitudes and for fostering respect and diversity. It can contribute to social cohesion through its universality and raise collective awareness of continuing gender inequalities in our societies. It can also have benefits in terms of health and empowerment.
6. There is therefore a pressing need in the field of sport to prevent violence and discrimination, promote gender equality, invest in sport for all, encourage participation and put an end to the invisibility of women. Men have an important role to play in preventing and combating discrimination against women, in all their diversity, in sport.

1. *Assembly debate* on 13 October 2022 (33rd sitting) (see [Doc. 15611](#), report of the Committee on Equality and Non-Discrimination, rapporteur: Ms Edite Estrela). *Text adopted by the Assembly* on 13 October 2022 (33rd sitting).



7. In the light of these considerations, the Assembly calls on Council of Europe member and observer States, as well as on all States whose parliaments enjoy observer or partner for democracy status to the Assembly, to:

- 7.1. As regards combating violence against women and girls, in all their diversity, including in the field of sport,
 - 7.1.1. take measures to prevent violence against women and girls, including LGBTI women, in sport at all levels including in schools and sport organisations;
 - 7.1.2. provide support to survivors of violence, with an independent and specialised structure;
 - 7.1.3. train sports personnel at all levels to prevent all forms of gender-based violence;
 - 7.1.4. ensure that perpetrators of violence are prosecuted and put an end to impunity in this area;
 - 7.1.5. launch awareness-raising campaigns on preventing and combating gender-based violence, including at major sporting events;
 - 7.1.6. collect, analyse and publish data on violence against women and girls in sport;
 - 7.1.7. ratify and implement the Istanbul Convention, if they have not yet done so;
 - 7.1.8. ensure the safety of all at sporting events;
- 7.2. implement the revised European Sports Charter of the Council of Europe, if they have not yet done so;
- 7.3. accede to the Council of Europe's Enlarged Partial Agreement on Sport, if they have not yet done so;
- 7.4. As regards combating gender-based discrimination and gender stereotypes:
 - 7.4.1. implement Committee of Ministers Recommendation CM/Rec(2019)1 on preventing and combating sexism;
 - 7.4.2. implement Committee of Ministers Recommendation CM/Rec(2022)16 on combating hate speech;
 - 7.4.3. invest in education on gender equality, train teachers in these issues, including in the field of sport, and incorporate a gender perspective in sports education from an early age;
 - 7.4.4. prevent and combat sexism and gender stereotypes and all forms of gender-based discrimination, in particular by adopting legislation, codes of conducts and by organising awareness-raising campaigns, including at major sporting events;
 - 7.4.5. ensure the collection, analysis and publication of data on discrimination in sport at all levels, and contribute to international initiatives to collect and share data for the purposes of research, awareness raising and the development of public policies and sports practices;
 - 7.4.6. recognise the fact that women from diverse backgrounds, LGBTI women, women with disabilities, from a migration background or diverse religious affiliations are subjected to multiple discrimination;
 - 7.4.7. abolish discriminatory policies against LGBTI athletes and respect the human rights of female athletes in all their diversity;
 - 7.4.8. ensure full and equal access to the practice of sport to all women, and to this end, allow transgender and intersex athletes to train and compete in sports competitions consistent with their gender identity;
 - 7.4.9. prevent and combat harassment of LGBTI athletes and prevent and combat lesbophobia, biphobia, transphobia and interphobia in sport;
 - 7.4.10. combat the hypersexualisation of female athletes, including in the media;
 - 7.4.11. promote inclusive and non-discriminatory media coverage of sporting events;
- 7.5. As regards the development of sport for all women and girls:
 - 7.5.1. implement Committee of Ministers Recommendation CM/Rec(2015)2 on gender mainstreaming in sport;

- 7.5.2. invest in the development of sport for all, at local and national level, and consider it as a means of integration and emancipation, work to ensure equal opportunities for women and girls in all their diversity to participate in sports activities;
 - 7.5.3. appoint ambassadors for gender equality in sport to carry out awareness-raising activities in the media and with young athletes;
 - 7.5.4. ensure that sports facilities incorporate a gender dimension in their design;
 - 7.5.5. support and encourage the broadcasting of women's sports competitions;
 - 7.6. make the adoption and implementation of gender equality strategies, including a commitment to eliminating gender-based discrimination, violence and sexism and to ensuring equal pay, a condition for obtaining funding for federations and clubs;
 - 7.7. call on federations and clubs to prohibit gender-discriminatory practices, in particular as regards dress codes, where they are not justified by the sport itself;
 - 7.8. promote women's participation in programmes designed to train sports coaches and referees and support women's access to these positions;
 - 7.9. adopt a gender-sensitive approach in the preparation of budgets to be allocated to sports federations and structures.
8. The Assembly calls on sports federations to:
 - 8.1. engage in the fight against gender-based violence and discrimination and take appropriate action against perpetrators;
 - 8.2. support the practice of sport by women and girls in all their diversity and promote athletes' work-life balance;
 - 8.3. ensure full and equal access to the practice of sport to all women, and to this end, allow transgender and intersex athletes to train and compete in sports competitions consistent with their gender identity;
 - 8.4. promote the participation of women, in all their diversity, in the governing bodies of sports federations, notably through the adoption of quotas aimed at achieving 40% representation.
 9. The Assembly supports the continuation of the joint Council of Europe and European Union "All in: Towards gender balance in sport" project. It calls for its funding to be reinforced and its tools and recommendations implemented.
 10. The Assembly expresses its backing for civil society organisations combating gender-based discrimination and violence against women in sport and calls for these organisations to be given support.



Resolution 2466 (2022)¹
Provisional version

The honouring of membership obligations to the Council of Europe by Romania

Parliamentary Assembly

1. Romania joined the Council of Europe in 1993. Upon accession, it entered into a number of commitments which were subject to monitoring by the Parliamentary Assembly until 1997 and then to post-monitoring dialogue between 2000 and 2002. Romania is a party to a number of core Council of Europe Conventions including the European Convention on Human Rights (ETS No. 5); the Framework Convention for the Protection of National Minorities (ETS No. 157); the European Convention for the Prevention of Torture and Inhuman Treatment or Punishment (ETS No. 126); the Criminal Law Convention on Corruption (ETS No. 173); the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on Financing of Terrorism (CETS No. 198), the European Social Charter (ETS No. 163) and it is subject to monitoring mechanisms attached to these legal instruments. In 2019, Romania was selected by the Monitoring Committee for a periodic review report on its compliance with the obligations imposed on every Council of Europe member State in the field of democracy, rule of law and human rights. Periodic monitoring reports are prepared, over time, on all member States which are not subject to specific monitoring procedures.
2. Since its accession to the Council of Europe, Romania has made important progress with regard to the functioning of democratic institutions and respect for human rights. The irreversibility and sustainability of this progress was put into question by the developments of 2017-2019, particularly in the areas of the judiciary and the fight against corruption. However, the Assembly notes with satisfaction that this reversal has been successfully overcome and Romania has returned to the path of reforms.
3. The Assembly commends the Romanian authorities for demonstrating political will and commitment to fully respect their obligation to comply with democratic standards, as confirmed by their continued co-operation with Council of Europe monitoring mechanisms and the Assembly's Monitoring Committee in the framework of the periodic monitoring review.
4. The Assembly appreciates the ongoing structural reforms of the Romanian judicial system aimed at addressing a number of concerns formulated, *inter alia*, by the European Commission for Democracy through Law (Venice Commission) and the Group of States against Corruption (GRECO). The Strategy for the Development of the Judiciary for 2022-2025 adopted by the government on 30 March 2022 sets clear objectives in this respect and is accompanied by a monitoring mechanism.
5. In terms of judicial independence, the dismantling of the Section for Investigating Criminal Offences within the Judiciary on 11 March 2022 marked an important step, and should be commended. However, some issues related to the new system for investigation and prosecution of criminal offences within the judiciary still need to be addressed. While the competence to investigate offences committed by magistrates has now been transferred to designated prosecutors within the Prosecutor's Offices attached to the High Court of Cassation and Justice and the courts of appeal, it is expected that sufficient resources will be allocated to the investigations of complex corruption cases in order to ensure the efficiency of the new system.

1. *Assembly debate* on 13 October 2022 (33rd sitting) (see [Doc. 15617](#), report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: Ms Edite Estrela and Ms Krista Baumane). *Text adopted by the Assembly* on 13 October 2022 (33rd sitting).



6. Furthermore, safeguards must be established to ensure judicial independence and prevent any risk of politicisation. These include the procedure for the appointment of designated prosecutors which needs to ensure their integrity, competence and impartiality. At the same time the Assembly welcomes the efforts within the judiciary to combat corruption and in particular the adoption by the Superior Council of Magistracy of the Integrity Plan.

7. Concerning the three justice laws, namely on the Status of Magistrates, on the Organisation of the Judiciary and on the Superior Council of Magistracy, which were submitted to the parliament, the Assembly takes note of the setting up by the parliament of the Joint Parliamentary Committee for the examination of laws in the field of justice and invites the authorities to follow the recommendations formulated by the Venice Commission and GRECO, in particular with regard to the civil and disciplinary liability of magistrates, competitions for admissions in the judiciary and rules on the status as well as appointment and removal of specialised and high-ranking prosecutors.

8. Regarding the fight against corruption, the Assembly welcomes the adoption by the government, in December 2021, of the Anti-Corruption Strategy for 2021-2025 and it notes with satisfaction the increased effectiveness of the investigation and sanctioning of medium and high-level corruption. In particular, the National Anti-Corruption Directorate should be commended for continuing the positive trend in terms of the number of indictments and the reduction of the backlog of cases despite insufficient human resources, which is the consequence of very strict criteria for prosecutors' appointments and in particular seniority requirements. Furthermore, it should be noted that the value of assets confiscated by the National Agency for the Management of Seized Assets increased considerably over the last year.

9. The Assembly notes that amendments to the Criminal Code and Criminal Procedure Code aimed at bringing both laws into line with the Constitutional Court's decisions with regard, *inter alia*, to corruption related crimes, abuse of office and supervision methods, are under preparation. The Assembly hopes that they will be submitted to the parliamentary procedure without undue delay.

10. The Assembly notes with concern that Romania is among the States with the largest number of unexecuted judgments of the European Court of Human Rights; this number increased in 2021 to 409 compared to 347 in 2020. Some cases reveal the existence of structural dysfunctions and should be addressed as a matter of priority.

11. The situation concerning media freedom and pluralism needs to be strengthened. In particular, the use of public funds by political parties to finance media and influence their content on the basis of secret contracts is of utmost concern. It potentially undermines the principle of free media and the proper functioning of democratic institutions. Emblematic cases of threats, instances of harassment and violence against critical journalists, reveal serious problems concerning freedom of expression.

12. The Assembly notes with satisfaction the overall progress accomplished by Romania with regard to protection and respect for human rights. In particular, it welcomes the recent adoption of the amendment to Article 369 of the Criminal Code, extending the grounds for hate speech and hate crimes in line with Council of Europe standards. The Assembly also commends the Romanian Parliament for having revised its Rules of Procedure in June 2022 allowing for more efficient prosecution of hate speech among politicians.

13. The Assembly commends Romania for its commitment to protect the rights of persons belonging to national minorities. According to the reports of the monitoring mechanism of the Framework Convention for the Protection of National Minorities, Romania can be considered as an example of good European practices in this area. There are clear improvements, as provided by Article 195 of the Administrative Code adopted in 2019, especially for the localities with more than 20% of population belonging to a national minority, with regard to the right to use their mother tongue in the relations with the local authorities, and the obligation of the respective authorities to provide the citizens with, *inter alia*, bilingual forms, public information and bilingual inscriptions. Some difficulties still exist, particularly with regard to the financial and administrative obstacles to the implementation of these provisions of the Administrative Code. There are also some concerns that some amendments introduced into the Administrative Code may limit minority language rights in small communities.

14. However, regarding the Roma minority, the Assembly notes with concern that a number of programmes, strategies and action plans have not had the expected impact on the inclusion of Romanian citizens belonging to this minority and that Roma continue to occupy the most disadvantaged position in the labour market; despite sustained efforts of governmental and non-governmental stakeholders meant to improve their living standards, the material situation of Roma is well below average in the country; they are also affected by shortages in social housing.

15. Since the invasion of Ukraine by the Russian Federation on 24 February 2022, Romania has been confronted with large waves of refugees from that country. Over 2,25 million Ukrainians have fled to Romania to date. While the majority transited the country, about 81 000 decided to stay. Romania is to be commended on its swift reaction and its assistance to a large number of people in need of international protection.
16. In consequence, the Assembly calls on the Romanian authorities:
17. in the field of the judiciary, to:
 - 17.1. continue the ongoing reform respecting the deadlines established by the Strategy for the Development of the Judiciary for 2022-2025;
 - 17.2. take into account the recommendations and to address the concerns formulated by the Venice Commission and GRECO in the preparation of draft justice laws;
 - 17.3. ensure inclusiveness in the legislative process; to carry out meaningful consultations with all stakeholders and to try to accommodate different opinions;
 - 17.4. ensure proper safeguards into the new system of investigation and prosecution of criminal offences in the judiciary, following the dismantling of the Section for Investigating Criminal Offences within the Judiciary, with a view to guaranteeing judicial independence;
 - 17.5. continue the implementation of already adopted measures aimed at increasing the efficiency and quality of the justice system, including increasing the recruitment of magistrates, redistributing the courts' workload and increasing the digitalisation of the justice system;
18. in the field of the fight against corruption, to:
 - 18.1. pursue implementation of the National Anti-Corruption Strategy and ensure determined political support for its effectiveness;
 - 18.2. amend the Codes of Criminal Law and Criminal Procedure in line with the decisions of the Constitutional Court and the recommendations of the Venice Commission in respect of deadlines established by the National Anti-Corruption Strategy;
 - 18.3. address effectively the issue of human resources shortages within the National Anti-Corruption Directorate;
19. in the field of the execution of judgements of the European Court of Human Rights, to:
 - 19.1. step up efforts to implement the Court's judgments, in particular those concerning nine principal cases subject to the Committee of Ministers' enhanced supervision procedure, and over 300 repetitive cases;
 - 19.2. consider exploring the feasibility of organising training sessions in co-operation with the Council of Europe on the implementation of the Court's rulings;
 - 19.3. consider exploring the feasibility of organising training sessions in co-operation with the Parliamentary Assembly Co-operation Unit on legislative follow-up to the Court's decisions;
20. in the field of media, to:
 - 20.1. ensure proper implementation of the existing legislation on access to information;
 - 20.2. ensure full independence of the National Audiovisual Council by establishing clear professional criteria for the selection of its members and to ensure adequate budgetary resources;
 - 20.3. ensure full transparency of media ownership;
 - 20.4. ensure specific safeguards for editorial independence and to introduce legal requirements to disclose secret contracts between political parties and the media on the basis of which public funds are transferred to the latter;
 - 20.5. ensure proper investigation and punishment of perpetrators in cases of harassment or intimidation of journalists;
21. in the field of minorities and vulnerable groups, to:
 - 21.1. condemn without reservation, investigate and prosecute any discriminatory remarks and behaviour, and to eliminate hate speech from public discourse;
 - 21.2. continue efforts aimed at better integration of Romanian citizens belonging to the Roma minority.

22. In conclusion, the Assembly recognises that Romania has made substantial progress towards its compliance with Council of Europe standards in areas crucial for the functioning of democratic institutions, in particular the judiciary and the fight against corruption. However, the question of sustainability and irreversibility of the reforms as well as of the effectiveness of the reforms will have to be confirmed by the proper implementation of legislation.

23. Against this background, the Assembly invites its Monitoring Committee to continue following the developments in the country in the framework of a future periodic review, and to report back to the Assembly if developments so warrant.



Resolution 2467 (2022)¹

Provisional version

The future of work is here: revisiting labour rights

Parliamentary Assembly

1. Across Europe and worldwide, work has been and is likely to remain central to human life. It ensures subsistence, access to autonomous living and enjoyment of various benefits and rights. Work can also give meaning to one's life and underpin one's dignity by offering a role in society and contributing towards shared prosperity: work binds us all together. In recent years, new technologies and the Covid-19 pandemic have radically transformed the world of work, affecting the organisation of work, workers and workplaces. As we see a massive shift towards atypical forms of employment and increased teleworking, some fundamental aspects of labour rights and policies require an open societal debate to correct imbalances so that no-one is left behind and economic security is guaranteed to all.

2. The Parliamentary Assembly notes that this new reality has led to substantive changes in working conditions and relations between employers and employees, with direct and indirect effects on health, well-being, and socio-economic rights of people at work. While it acknowledges the possibility of positive productivity effects, it views with concern many situations of precarious employment and discriminatory practices at work, in particular regarding women with care-giving responsibilities. The changing nature of jobs also impacts workers' rights to organise and to bargain collectively, as well as the functioning of trade unions, and amplifies the risk of abusive recourse to surveillance or worker control technologies. Furthermore, given that globalisation of work weakens the reach of national social protection systems and individual protections across borders, the Assembly sees an urgent need to mainstream higher minimum labour standards worldwide, including basic occupational health and safety norms, under the guidance of the International Labour Organization (ILO).

3. Moreover, the societal emphasis on paid work fails to mirror the complexity of human nature and life. It turns a blind eye to the huge amount of unpaid work that billions of women around the globe offer to society by caring for children and other household members (usually the elderly): in most countries women still do two-thirds of all unpaid care work, a trend further worsened during the pandemic. Such an approach also depreciates paid care work, as well as volunteer work. The Assembly therefore advocates for a rehaul of labour policies to ensure a better recognition of unpaid work and build a more socially just society.

4. Telework has stormed like a tidal wave into the world of work during the Covid-19 pandemic. The Assembly is convinced that telework will stay a permanent feature of work organisation for knowledge workers, mostly in the form of hybrid arrangements which combine online and physical presence at the workplace. Governments and their social partners (employers, employees and professional associations/trade unions) are therefore called upon to facilitate and better accommodate increased recourse to telework on a permanent basis by providing a level playing field and maximum flexibility for both workers and their employers through legislative measures, while guaranteeing that socio-economic rights are well protected. In this context, the Assembly insists on telework policy orientations that maintain and enhance the protection of socio-economic rights as set out in the European Social Charter (ETS No. 35) and the revised European Social Charter (ETS No. 163).

1. *Assembly debate* on 14 October 2022 (34th sitting) (see [Doc. 15620](#), report of the Committee on Social Affairs, Health and Sustainable Development, rapporteur: Ms Selin Sayek Böke). *Text adopted by the Assembly* on 14 October 2022 (34th sitting).

See also [Recommendation 2239 \(2022\)](#).



5. The Assembly notes research and data evidence that point to the changing work culture with a new generation of workers who value flexibility of working hours and location and a reduction of working time much more than their predecessors. The Assembly further notes a need to better define “the right to disconnect” through national legislation, as well as at European and international levels. Greater autonomy for workers, and more regard to workers’ own preferences, has been shown to result in higher productivity, which is beneficial to all social partners – workers, employers and society at large.

6. The Assembly is concerned that stress levels have been escalating in many workplaces, with dramatic consequences for both individuals and society at large. Recognising stress at work as our collective challenge, it reiterates the recommendations formulated in its [Resolution 2267 \(2019\)](#) “Stress at work”, in particular as regards “a stress-reducing organisation of work with shorter, four-day weeks (with 28 to 32 work hours per week), flexible work time options, greater autonomy, teleworking possibilities and job-sharing schemes, notably for working parents and carers”.

7. As automation, artificial intelligence applications and digital labour platforms progress further, they could present new forms of inclusion by offering additional job opportunities for persons marginalised in traditional labour markets. To embrace this trend with confidence and avoid any precariousness that could result for workers concerned, the Assembly believes that member States should introduce essential legal safeguards regarding irregular working hours and income, remedy a lack of access to basic social protection and collective bargaining rights and to the judicial system where relevant, as well as discrimination caused by the use of opaque algorithms. The Assembly also notes that the growing cross-border mobility of labour, including teleworking with the employer and employee based in different countries, has implications on labour and tax laws across jurisdictions that need to be addressed.

8. Drawing lessons from the pandemic, the major trends in the world of work and selected examples of good practice in member States, the Assembly emphasises the importance of increasing flexibility (in terms of workplace location and working hours) in the organisation of work in order to serve the new needs of workers, employers and labour markets in a balanced manner. With a view to adjusting their existing regulatory frameworks and labour policies, better protecting socio-economic rights, enhancing public health and ensuring personal well-being at work, the Assembly recommends that member States:

8.1. improve minimum labour standards and defend essential socio-economic rights, in particular basic occupational health and safety norms, worldwide, and:

8.1.1. ensure full implementation of the ILO’s core conventions and guidelines;

8.1.2. pursue implementation of the United National Sustainable Development Agenda 2030, in particular its Goal 8 seeking to achieve inclusive and sustainable economic growth, full and productive employment, as well as decent work;

8.1.3. seek harmonisation of regulatory frameworks across different jurisdictions for platform work, notably concerning employment status, social protection, access to basic social rights, as well as working time, pay, dispute resolution, personal data protection and privacy;

8.1.4. guarantee adequate corporate social responsibility of multinational enterprises operating on their territory and beyond;

8.1.5. update national strategies in this regard to cover new forms of work and fragmentation of work;

8.1.6. build up institutional capacity to ensure that national labour inspectorates have sufficient powers, resources and training to better control occupational safety in the new era of work by prioritising prevention and risk-based approaches;

8.1.7. ensure that national laws and collective agreements clearly define the responsibility of the employer for the protection of the occupational health and safety of employees, and, in the context of teleworking, takes into account both the psychosocial and ergonomic risks;

8.2. screen, assess and adjust their labour legislation and policies in the light of the European Social Charter requirements and the evolving needs of labour markets, in particular:

8.2.1. concerning work organisation, examine options for shortening work weeks and/or daily working hours while maintaining the same pay, so as to shift focus from hours worked to results, to cater more flexibly for those multitasking at work and using job-sharing arrangements, to enable high-intensity work, to accommodate atypical forms of work while protecting socio-economic rights, to support working parents and to contribute to a socially and environmentally sustainable development;

- 8.2.2. with regard to telework and hybrid work:
- 8.2.2.1. ensure that specific legislation is in place to balance the needs and priorities of workers, employers and society as a whole, while giving as much autonomy as possible to workers and their individual work preferences;
 - 8.2.2.2. define and codify in law the right to disconnect from work, and the obligation for employers to prevent occupational burnout;
 - 8.2.2.3. study environmental and public health benefits of enhanced teleworking and consider schemes for mandatory teleworking a few days a week for knowledge workers, aimed at alleviating local transport flows, reducing pollution and saving energy and other resources;
 - 8.2.2.4. provide adequate equipment and compensate incremental costs for workers engaged in telework, and achieve fair sharing of productivity and cost benefits accrued through remote or hybrid work;
 - 8.2.2.5. ensure that workers teleworking full-time or in a hybrid set-up are not penalised or discriminated against;
- 8.2.3. with a view to optimising the national social partnership structure and dialogue:
- 8.2.3.1. include self-employed workers, reach out to those involved in unpaid care work and migrant workers, and correct the (mis)definition of employment status of those involved in the platform economy;
 - 8.2.3.2. improve access of workers in atypical forms of employment and in platform work to collective bargaining and professional associations/trade unions, information and training and protection from intrusive surveillance technologies;
 - 8.2.3.3. negotiate all legal frameworks with all social partners and formally institutionalise these social dialogue mechanisms;
 - 8.2.3.4. study options for using digital instruments and public policy to improve freedom of association and to support labour organisations;
- 8.2.4. as regards action fostering decent work and quality employment for decent and dignified living, while ensuring that digital transformation of work benefits all and no one is left behind:
- 8.2.4.1. launch a public debate to upgrade the social contract to a society centred on human needs, solidarity, public interest and rights;
 - 8.2.4.2. invest public resources and engage private enterprises in strengthening people's employability through lifelong learning schemes, reskilling and upskilling programmes, and institutional efforts for the creation of decent and sustainable work, in line with the ILO's Centenary Declaration for the Future of Work;
 - 8.2.4.3. enhance public investment in digital infrastructure so that quality digital tools be accessible to all;
 - 8.2.4.4. consider implementing personal training accounts for all workers, entailing positive obligations for all employers to set up skills development plans or training for current workers and potential workers including young NEETs ("not in education, employment or training"), persons in unpaid work or in unemployment, and the retired persons who wish to continue working but need to upgrade their skills;
 - 8.2.4.5. give labour policies a more prominent role in managing the economy and mitigating socio-economic inequalities, based on better policy coherence and support for fundamental rights at national, European and international levels;
 - 8.2.4.6. if they have not yet done so, ratify the European Social Charter and its Additional Protocol Providing for a System of Collective Complaints (ETS No. 158), lift any existing reservations to the Charter, scale up political support to the implementation of the Charter and the European Convention on Human Rights (ETS No. 5) and promote the full application of these fundamental treaties across Europe, including to the Council of Europe's own staff;

- 8.2.4.7. root out abusive employment practices such as unpaid employment trials and zero-hours contracts, harmonise the protection of rights for different categories of workers by reducing differences in tax treatment for different types of contract and guarantee universal minimum social coverage for all;
 - 8.2.4.8. seek better recognition of unpaid work by making it more visible, by providing more family-friendly policies (such as working hours adaptation and affordable and accessible childcare for working parents, with extra financial support for the vulnerable), by clarifying the monetary value of such work (measuring and estimating monetary worth) and by better supporting it through social benefits or a basic income approach alongside public provision of quality healthcare services accessible by all;
 - 8.2.4.9. update national legislation and strategies on occupational health and safety to better cover new forms of work, different categories of workers (including the self-employed) and increased mobility of workers between workplaces and across borders;
 - 8.2.4.10. ensure that workplaces are free from all kinds of harassment and online surveillance;
 - 8.2.4.11. design new policies with a multidimensional equality focus and revisit the age-related nature of work so as to guarantee the inclusiveness of the labour market and effective implementation of non-discrimination principles;
- 8.2.5. consider the need for new institutional structures and build public capacity so as to identify trends, emerging risks, and regulatory needs, and to assess the impact of the structural transformation of work in terms of environmental and social sustainability (including gender, age, skills diversity, etc.) as well as professional evolution (the quality of work);
- 8.2.6. encourage local authorities to provide online market platforms for businesses in their region to sell online.



Resolution 2468 (2022)¹

Provisional version

Preventing vaccine discrimination

Parliamentary Assembly

1. The Parliamentary Assembly recalls its work carried out in response to the Covid-19 pandemic and the measures taken to counter it, in particular the following resolutions: [Resolution 2329 \(2020\)](#) “Lessons for the future from an effective and rights-based response to the Covid-19 pandemic”, [Resolution 2338 \(2020\)](#) “The impact of the Covid-19 pandemic on human rights and the rule of law”, [Resolution 2383 \(2021\)](#) “Covid passes or certificates: protection of fundamental rights and legal implications”, [Resolution 2361 \(2021\)](#) “Covid-19 vaccines: ethical, legal and practical considerations”, [Resolution 2424 \(2022\)](#) “Beating Covid-19 with public health measures” and [Resolution 2455 \(2022\)](#) “Fighting vaccine-preventable diseases through quality services and anti-vaccine myth-busting”.

2. The Assembly recalls that during the Covid-19 pandemic, Council of Europe member States have imposed various measures to restrict access to their territories (such as Covid passes, quarantine or self-isolation, bans on entering their territory, obligation to register or to carry out Covid-19 tests shortly before or after arrival, etc.). Some of them also decided to restrict access to public venues (such as bars, restaurants, sport and leisure facilities, event venues and others) or even to some means of public transportation.

3. The Assembly recalls that, in accordance with the European Convention on Human Rights (ETS No. 5, the “Convention”), while public health may constitute a legitimate purpose justifying restrictions on the rights to respect for private and family life (Article 8), freedom of assembly and association (Article 11) and freedom of movement (Article 2 of Protocol No. 4 to the Convention, ETS No. 46), any restrictions on the aforementioned rights must be “prescribed by law”, “necessary in a democratic society” and proportionate to the legitimate aim pursued.

4. The Assembly notes that compulsory vaccination can raise issues under international human rights standards, in particular the right to respect for private life (Article 8 of the Convention) and the right to give free and informed consent to any intervention in the health field, which is enshrined in the Convention for the protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Biomedicine: Convention on Human Rights and Medicine (ETS No. 164, the “Oviedo Convention”). The Assembly notes that the starting position for a vaccine is that it should not automatically be generally mandatory, but that mandatory vaccination may sometimes be appropriate; for example, for special professions such as those exposed to vulnerable populations. The Assembly also notes the cases pending before the European Court of Human Rights concerning mandatory vaccination for specific workers.

5. The Assembly recalls the information document “Protection of human rights and the ‘vaccine pass’” issued by the Secretary General of the Council of Europe, the “Statement on human rights considerations relevant to ‘vaccine pass’ and similar documents” issued by the Council of Europe Committee on Bioethics (DH-BIO) and the statement “Covid-19 vaccination, attestations and data protection” issued by the Council of Europe Consultative Committee of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (T-PD).

1. *Assembly debate* on 14 October 2022 (34th sitting) (see [Doc. 15608](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Ms Thórhildur Sunna Ævarsdóttir; and [Doc. 15625](#), opinion of the Committee on Social Affairs, Health and Sustainable Development, rapporteur: Ms Carmen Leyte). *Text adopted by the Assembly* on 14 October 2022 (34th sitting).

See also [Recommendation 2240 \(2022\)](#).



6. The Assembly notes that the use of Covid passes, and in particular of vaccine certificates, entails risks of infringements of human rights and fundamental freedoms. Those risks are further exacerbated when there are inequalities in access to vaccination against Covid-19. In this regard the Assembly welcomes the United Nations General Assembly Resolution A/RES/76/175 “Ensuring equitable, affordable, timely and universal access for all countries to vaccines in response to the coronavirus disease (COVID-19) pandemic”. Moreover, the introduction and the use of Covid passes has in many instances led to distinct treatment of persons who have been vaccinated against Covid-19 and those who have not, as well as to possible discrimination between persons vaccinated with different vaccines. This may amount to unlawful discrimination within the meaning of Article 14 of the Convention if it does not have an objective and reasonable justification. The Assembly recalls that any inequality in treatment must pursue a legitimate aim and be proportionate; proportionality requires a fair balance between protecting the interests of the community (the legitimate aim) and respect for the rights and freedoms of the individual.

7. Referring to its [Resolution 2383 \(2021\)](#), the Assembly again stresses that measures such as the introduction of a Covid pass must be applied only in a context of fighting the pandemic and in compliance with the European Convention on Human Rights. There should also be clear and well-established scientific evidence showing that the adoption of such measures lowers the risk of transmission of SARS-CoV-2 to an acceptable level from a public health point of view. Any system of Covid passes should be limited in time according to the requirements of the public health emergency. Moreover, as stressed in Assembly’s [Resolution 2424 \(2022\)](#), vaccination certificates should primarily be used for “their designated purpose of monitoring vaccine efficacy, potential side effects and adverse events.

8. The Assembly recognises the introduction of the European Union Digital Covid Certificate (EUDCC), as an instrument for facilitating freedom of movement within the European Union within the context of the various travel restrictions during the Covid-19 pandemic, and that this type of system has also been used by numerous non-EU Council of Europe member States and other States.

9. The Assembly further notes that the EUDCC was also used to limit and to grant freedom of movement in the European Union and in some public venues. It is concerned that such practices may lead to discrimination and other violations of human rights and fundamental freedoms.

10. The Assembly notes that although the European Medicines Agency (EMA) has granted conditional authorisation for the marketing of only six vaccines, some member States of the Council of Europe administered other vaccines, including those listed only by the World Health Organisation (WHO) under its Emergency Use Listing process or approved by national authorities. The Assembly is worried that the use of Covid and vaccine passes may lead or might have led to discrimination in travelling and access to public venues between persons vaccinated with different vaccines, including those which have been approved only by the EMA, and those which have been listed only by the WHO.

11. The Assembly notes with satisfaction that the recognition of WHO-listed vaccines is now more and more widely accepted within the European Union. However, European Union member States are free to limit access to public venues and to impose additional restrictions on non-European Union citizens’ access to their territory, which may lead to discrimination.

12. In the Assembly’s view, vaccination against Covid-19 has made a major contribution to overcoming the pandemic. This has facilitated the lifting of various Covid-19 related restrictions and therefore indirectly restored the full enjoyment of many fundamental freedoms. Nevertheless, the pandemic is not yet over and new public health measures may be necessary in the future which risk leading to infringements on human rights and fundamental freedoms. The Assembly therefore calls on all the member States to:

12.1. refrain from imposing further restrictions to individuals’ human rights and fundamental freedoms, unless it is strictly necessary to achieve the legitimate aim pursued. All restrictions must be compliant with the requirements stemming from the Convention and the case law of the European Court of Human Rights, namely that they must be prescribed by law; they should be in force for the shortest possible time; they must be proportionate to the pursued aim; and they must be effective;

12.2. take full account of the latest scientific evidence and expert knowledge, including that from WHO, when deciding on restrictions to human rights and fundamental freedoms or on relaxation of such restrictions;

12.3. treat equally all people vaccinated against Covid-19 by a vaccine approved either by the EMA or listed by WHO, whose evaluation under the Emergency Use Listing procedure enables a thorough assessment of the quality, safety and effectiveness of vaccines;

12.4. mutually recognise Covid passes issued by other Council of Europe member States;

- 12.5. refrain from preventing individuals from exercising their human rights and fundamental freedoms because they have not been vaccinated or because they have been vaccinated with a vaccine which is not approved by the EMA;
 - 12.6. avoid discrimination between those who have been vaccinated against Covid-19 and those who have not or cannot be vaccinated, either for medical or other reasons;
 - 12.7. refrain from imposing restrictions that undermine the right to seek asylum, which is a basic human right, and replace the requirement of having a valid Covid pass with testing, quarantine, access to vaccination and/or other reasonable and proportionate measures;
 - 12.8. follow WHO advice and refrain from imposing blanket travel bans, which have proven to be ineffective from a public health perspective, and which may interfere with the right to family life and, in cases concerning children, with the best interests of the child, and disproportionately impact individuals and families from countries that have been undermined in equitable access to vaccines;
 - 12.9. discontinue the use of Covid passes for other uses than those which are strictly necessary to achieve a legitimate public health purpose;
 - 12.10. work together with organisations dealing with undocumented migrants to ensure that they have equal access to vaccination, with particular regard to the challenges which undocumented migrants may face, such as not having a social security number, a national identity number, or in some cases a home address. Due consideration should also be given to the situation of undocumented migrant children who are unaccompanied or separated from their parents, bearing in mind the need for their informed consent. The Assembly calls on member States to adopt specific safeguarding policies to ensure that personal data is not transmitted to immigration authorities;
 - 12.11. ensure that the design and implementation of national vaccination plans **and rollouts** secure an ethical and equitable distribution of vaccines and avoid any discrimination on the basis of age, health, gender, race, religion, legal or socio-economic status, ability to pay, location and any other factor. Priority access should be given to groups in vulnerable situations, including persons over 65 years old and those under 65 with underlying health conditions.
13. The Assembly calls on Council of Europe member States which have not yet ratified the Oviedo Convention and/or Protocol No. 12 to the European Convention on Human Rights (ETS. No. 177) to do so without delay.
 14. The Assembly also calls on Council of Europe member States which do not belong to the European Union to recognise the European Union Digital Covid Certificate.
 15. The Assembly invites the European Union and its member States to:
 - 15.1. refrain from imposing additional restrictions to free movement, including to that of EUDCC holders, unless strictly necessary to achieve a legitimate public health purpose;
 - 15.2. require the EUDCC only as a measure of last resort and to reassess its usefulness on a regular basis in the light of an epidemiological assessment;
 - 15.3. elaborate common standards as regards the length of validity of the EUDCC;
 - 15.4. respect the fundamental rights enshrined in the Charter of Fundamental Rights of the European Union, when implementing Regulation (EU) 2021/953 of the European Parliament and of the Council of 14 June 2021 on a framework for the issuance, verification and acceptance of interoperable COVID-19 vaccination, test and recovery certificates (EU Digital COVID Certificate) to facilitate free movement during the COVID-19 pandemic, and other related EU legal acts;
 - 15.5. develop the necessary technical solutions to recognise proof of recovery from Sars-CoV-2 from a country other than a person's usual place of residence.
 16. Finally, the Assembly calls on all Council of Europe member States and other States to:
 - 16.1. ensure proper funding to WHO;
 - 16.2. submit their national regulatory systems to the WHO Global Benchmarking Tool in order to allow them to become WHO-listed authorities.