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Russia delegation suspended from Council of Europe over Crimea

Russian delegates threaten to pull out completely from human rights body after being excluded from top assembly

The Guardian (10.04.2014) - An angry Russia said on Thursday that it would consider pulling out of the Council of Europe, Europe's leading human rights body, following a vote to suspend it from the council's parliamentary assembly.

The council's assembly backed a resolution to withdraw the voting rights of Russia's 18-member delegation. The ban lasts until the end of 2014. The assembly also terminated Russia's right to participate in election observation missions and turfed it off its most prestigious committees.

The resolution, adopted by 145 votes to 21, with 22 abstentions, was passed after a heated three-hour debate in Strasbourg. Russian members stormed out of the chamber before the vote took place. The assembly condemned Russia's annexation of Crimea, its military occupation of Ukrainian territory, and Moscow's "illegal so-called referendum" on the peninsula. This - and Moscow's ongoing threat of "military force" - constituted "beyond any doubt, a grave violation of international law", the assembly declared.

The 47-nation Council of Europe is separate from the EU and oversees the European court of human rights. Unusually, it brings together parliamentarians from both western and eastern Europe, as well as the countries of the former Soviet bloc. Russia has been a member since 1996. The decision to suspend Russia may provoke a sharp response from the Kremlin.

Speaking at a chaotic, ill-tempered press conference after the vote, the head of the Russian delegation, Alexey Pushkov, said Russia would consider terminating its membership of the assembly. A decision would be made in "the next two or three weeks", Pushkov said.

Several of his colleagues launched a venomous attack on European countries that had moved to punish Russia. Some Europeans had adopted a "pathologically biased approach" and had treated Russia - a "great country" - in a scornful and condescending manner. "Since arriving here a year and a half ago I haven't heard a nice word said about the Russian Federation," one complained.

Pushkov declined a request to speak in English, although he did answer one question in French. "We speak Russian," he said defiantly. He accused the United States, not a member of the assembly, of adopting double standards, after bombing Belgrade in the 1990s and invading Iraq. "It [the US] doesn't have a moral right to comment on our behaviour," Pushkov said.

A group of Conservative MPs led by Robert Walter led a charge to suspend Russia fully from the assembly. His amendment was defeated but another compromise resolution, based on a report by Austrian Stefan Schennach, was passed. It said Russian delegates should be suspended "in order to mark condemnation and disapproval of the Russian Federation's actions with regard to Ukraine". Russia is now barred from three important assembly bodies: its bureau, its presidential committee - made up of six or seven top figures - and standing committee.

The assembly said that Russia could be further punished with its credentials annulled if it did not reverse the annexation of Crimea and de-escalate the febrile situation in Ukraine. For the moment, however, delegates agreed that "political dialogue" with Russia was the best way to find compromise. There "should be no return to the pattern of the cold war", it concluded.

The council's parliamentary assembly has suspended the voting rights of the Russian delegation once before, from April 2000 to January 2001 over the situation in Chechnya. There have been other challenges, but in these cases the assembly reconfirmed Russia's credentials after a debate.

HRWF Footnote: On 16 March, HRWF was writing in its Newsletter on Russia:

(...) the Council of Europe must carefully examine the issue of the political transition in Ukraine. The Council of Europe should, furthermore, consider a motion to suspend Russian membership based on its actions in Crimea, which are at variance with Chapter I of the Statute of the Council.

This recommendation is endorsed by Human Rights Without Frontiers International (Brussels) and the International Centre for Policy Studies (Kyiv).

A dramatic vote at the Parliamentary Assembly of the Council of Europe

Council of Europe (15.02.2013) - It was the most dramatic vote in the history of the Parliamentary Assembly (PACE) of the Council of Europe: a vote on the definition of "political prisoner" and whether or not PACE had the responsibility to monitor the state of fundamental rights in member states.

To understand just how much was at stake on 3 October 2012 in PACE, it is important to understand what led to this vote.

In December 2009 the German member, Christoph Straesser, was given a mandate to present a "Definition of political prisoners" to PACE. He was appointed by the Committee on Legal Affairs and Human Rights

In June 2010 Straesser invited three respected international judges to the committee: one from Switzerland, one from the Netherlands, and one from Spain. Following the hearing, the committee agreed with a definition of political prisoner which Straesser presented in a memorandum.

This definition had in fact first been developed by legal experts appointed by the general secretary of the Council of Europe in 2001. It had been applied to two countries

– Armenia and Azerbaijan – and to hundreds of individual cases. It had been used in a number of PACE resolutions and by a succession of special PACE rapporteurs.

So why had this definition suddenly become controversial?

Azerbaijani members of PACE claimed that the definition had never been accepted in a formal vote by the whole assembly.

They also argued that as a result there was *no* definition, and thus Straesser was also unable to assess whether in fact there were any political prisoners in Azerbaijan at all.[1]

Then, on 13 April 2011 a group of 35 PACE members, led by Agustin Conde Bajen from Spain, submitted a motion which called on PACE to set up "objective criteria" on how to identify "a genuine political prisoner" before any report on an individual country is prepared.[2] The text stressed that this was urgent:

> "Because of their high importance, these criteria should be adopted by the Assembly before any report on political prisoners in a particular case or country is prepared, as a general definition has to be clear before, and not during or after, the preparation of an individual report.
>
> In the interest of all member states of the Council of Europe, the process of establishing criteria for the definition of a political prisoner should be considered without delay."

In fact, Christoph Straesser submitted such a definition without much delay to the legal committee in summer 2012. It was also narrowly accepted there.

Now something extraordinary happened. A number of PACE members suggested on 3 October 2012 that in fact the Assembly should not and did not have the right to discuss and vote on a definition after all.[3] An amendment was suggested (Amendment 2) that was designed to undermine all of Straesser's work. It stated:

> "The Parliamentary Assembly confirms that the interpretation and application of any criteria defining a political prisoner are the exclusive competence of the **European Court of Human Rights, which is the only authority to assess violations of fundamental rights and freedoms**, as stipulated in the European Convention for Human Rights and its Protocols."[4] [emphasis added]

Two remarkable things happened next.

First a majority of members of the very committee that had appointed Straesser in 2009 and had approved his definition twice before (in June 2010 and in June 2012) now decided that PACE had no authority "to assess violations of fundamental rights and freedoms."

Second, a number of the most prominent supporters of a definition to be adopted by the assembly "without delay" in April 2011 argued in October 2012 that the assembly should never do so.

Among those who changed their mind were some of the most prominent apologists of the Azerbaijani regime: Mike Hancock (UK), Tadeusz Iwinski (Poland), Patrick Moriau (Belgium), and Agustin Conde (Spain).

Suddenly Straesser faced the prospect that the definition he had presented, accepted for more than a decade before, reaffirmed in his committee in June 2010 and then approved in his committee in June 2012 would be undermined by an amendment arguing that the European Court of Human Rights, and not PACE, "is the only authority to assess violations of fundamental rights and freedoms."

The debate on the definition of political prisoners thus turned into a debate about the very legitimacy of *any* assessment of fundamental rights and freedoms in PACE.

The debate that took place on 3 October was one of PACE's most contentious. It was one of the most well-attended debates in the organization's history. It was also the one with the closest ever result at the end of the debate.

Below are excepted quotes and highlights from the debate. The full transcript from the assembly can be found on PACE's website (http://assembly.coe.int/Main.asp?link=/Documents/Records/2012/E/1210031530E.htm)

See the details of the votes at
http://www.esiweb.org/index.php?lang=en&id=156&document_ID=135

Footnotes

[1] See also ESI Picture story on Ilham the Magician.

[2] "Criteria for the definition of a political prisoner" (Doc. 12587), motion for resolution. 13 April 2011.
http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=12668&Language=EN

[3] Belgian MP Patrick Moriau and 5 other members (Pasquale Nessa - Italy, Agustin Conde - Spain, Øyvind Vaksdal - Norway, Younal Loutfi - Bulgaria, George Loukaides - Cyprus) proposed Amendment 2

[4] PACE, Verbatim transcript of the debate on 3 October 2012 at 3.30 pm.
http://assembly.coe.int/Main.asp?link=/Documents/Records/2012/E/1210031530E.htm

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Definition of the political prisoner

Council of Europe -

Draft Resolution

On 26 June 2012, the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe adopted the following resolution on the definition of a political prisoner:

1. The Parliamentary Assembly recalls that the notion of political prisoners was elaborated within the Council of Europe in 2001 by the independent experts of the Secretary General, mandated to assess cases of alleged political prisoners in Armenia and Azerbaijan in the context of the accession of the two States to the Organisation.

2. It notes with satisfaction that the general criteria put forward by the independent experts were approved by all stakeholders at the time, including the Council of Europe's Committee of Ministers and the Parliamentary Assembly.

3. The Assembly reaffirms its support for these criteria, summed up as follows:

"A person deprived of his or her personal liberty is to be regarded as a 'political prisoner':
a. if the detention has been imposed in violation of one of the fundamental guarantees set out in the European Convention on Human Rights and its Protocols (ECHR), in particular freedom of thought, conscience and religion, freedom of expression and information, freedom of assembly and association;
b. if the detention has been imposed for purely political reasons without connection to any offence;
c. if, for political motives, the length of the detention or its conditions are clearly out of proportion to the offence the person has been found guilty of or is suspected of;
d. if, for political motives, he or she is detained in a discriminatory manner as compared to other persons; or,
e. if the detention is the result of proceedings which were clearly unfair and this appears to be connected with political motives of the authorities." (SG/Inf(2001)34, paragraph 10)

4. Those deprived of their personal liberty for terrorist crimes shall not be considered political prisoners if they have been prosecuted and sentenced for such crimes according to national legislation and the European Convention on Human Rights (ETS No. 5).

5. The Assembly invites the competent authorities of all the member States of the Council of Europe to reassess the cases of any alleged political prisoners by application of the above-mentioned criteria and to release or retry any such prisoners as appropriate.

Explanatory memorandum by Mr Strässer, rapporteur

1. Introduction

1. This report is based on a motion "The definition of political prisoners" NOTE for which I was appointed rapporteur on 16 December 2009.

2. On 24 June 2010, this rapporteur mandate was initially merged by the Committee on Legal Affairs and Human Rights with the related topic of "Follow-up on the issue of political prisoners in Azerbaijan", NOTE for which I had already been appointed as rapporteur on 24 March 2009. For a variety of reasons, which at one stage included a change of title of the merged reports, NOTE the committee recently decided to invite me to submit a separate report on the present subject.

2. The historical context of the issue of political prisoners in the Council of Europe: the accession of Armenia and Azerbaijan

3. The issue of political prisoners in the Council of Europe dates back to the negotiations on the accession of Azerbaijan to the Organisation. Azerbaijan undertook, *inter alia*, "to release or to grant a new trial to those prisoners who are regarded as 'political prisoners' by human rights protection organisations". NOTE In November 2000, the Committee of Ministers adopted Resolutions Res(2000)13 and Res(2000)14 inviting simultaneously Armenia and Azerbaijan to become member States of the Council of Europe, to be confirmed when the date of the accession was fixed. In order to help reticent member States overcome their reluctance, at the time, to accept the accession of these two countries, a compromise solution was found within the Committee of Ministers, whereby it was also decided, in November 2000, that the Committee of Ministers would monitor,

on a regular basis, democratic developments in both countries. Armenia and Azerbaijan joined the Council of Europe on 25 January 2001.The Committee of Ministers subsequently approved, on 31 January 2001, the Secretary General's initiative to appoint three distinguished "independent experts" NOTE who would examine lists of cases of alleged political prisoners drawn up by Armenian and Azerbaijani human rights non-governmental organisations (NGOs). NOTE Before so doing, the independent experts, acting in a quasi-judicial capacity, undertook the task of determining who could "be defined as a political prisoner on the basis of objective criteria in the light of the case-law of the European Court of Human Rights and Council of Europe standards". NOTE They then examined 716 cases listed with a view to determining whether or not the detainees in question were indeed "political" prisoners, on the basis of a set of pre-established criteria to which all relevant Council of Europe bodies, including the Azerbaijani authorities, agreed. Twenty-three cases on the original list of 716 were given priority and dealt with by the independent experts as so-called "pilot cases". By April 2003, many of the 716 cases were resolved and the list was reduced to 212 cases, which were the subject of the experts' second mandate. In July 2004, the experts submitted their final report to the Secretary General. In addition to the 20 opinions on the pilot cases, they adopted 104 opinions concerning the 212 cases referred to them. They concluded that 62 persons were political prisoners, whereas 62 were not, or no longer. NOTE

4. Since 2001, when Azerbaijan joined the Council of Europe, the Parliamentary Assembly has considered the issue of political prisoners in Azerbaijan on four occasions: in January 2002, June 2003, January 2004 and June 2005 NOTE –always triggered by the situation in Azerbaijan and on the basis of the objective criteria developed by the Secretary General's independent experts.

3. The notion of "political prisoner" as defined by the Council of Europe's independent experts and reconfirmed by the Committee on Legal Affairs and Human Rights

5. Judge Stefan Trechsel presented his and his colleagues'findings regarding the definition and criteria for the term of "political prisoner" at a hearing before the Committee on Legal Affairs and Human Rights on 24 June 2010 in Strasbourg. NOTE The independent experts based their work on that carried out by Professor Carl Aage Nørgaard, then President of the European Commission of Human Rights, who had been invited by the United Nations Security Council to identify "political" prisoners in Namibia in 1989/90. Professor Nørgaard's close collaborator, Andrew Grotrian, was also among the experts testifying at the hearing on 24 June. The third expert at the hearing was Mr Javier Gómez Bermúdez, Judge, President of the Criminal Chamber of the Audiencia Nacional (Spain). Following the discussion with the experts, the committee approved the conclusions of my introductory memorandum NOTE and invited me to continue working on the basis of these objective criteria.

6. During the discussion, agreement was reached among the experts that persons convicted of violent crimes such as acts of terrorism cannot claim to be "political prisoners" even if they purport that they have acted for "political" motives. Mr Gómez Bermúdez specified that this principle is applicable in democratic States with legitimate governments, where there could not be any talk of "legitimate resistance"such as that of the French "Résistance" during the Second World War. This argument is reinforced by Article 17 of the European Convention on Human Rights (ETS No. 5, "the Convention"), entitled "Prohibition of abuse of rights". NOTE

7. In short, the following framework has been developed by the independent experts and endorsed by the committee; it differs according to the nature of the offence for which the person in question is imprisoned.

3.1. Purely political offences

8. These are offences which only affect the political organisation of the State, including "defamation" of its authorities or similar misdeeds.

9. Not all offenders who are imprisoned for such offences are"political prisoners". The test is whether the detention would be regarded as lawful under the European Convention on Human Rights as interpreted by the European Court of Human Rights ("the Court").As a rule, "political" speech, even very critical of the State and the powers in place, is protected by Article 10 – there is no "pressing social need" in a "democratic society", in the terms of Article 10, to suppress such speech. NOTE But there are cases in which political speech exceeds the limits set by the Convention, for example when it incites violence, racism or xenophobia. NOTE It should be noted that, whenever the Court has found the repression of such speech acceptable under the Convention, the penalties handed down by the national courts were largely symbolic. As the Convention must be interpreted coherently, without contradictions, a person punished in accordance with Article 10 paragraph 2 of the Convention cannot be seen as being held unlawfully under Article 5 and could therefore not be considered as a political prisoner. But it is understood that punishment for political speech that is in principle not protected by Article 10 can still be a violation of the Convention (and thus give rise to the prisoner in question being "political") when the punishment meted out is disproportionate, discriminatory or the result of an unfair trial.

3.2. Other political offences

10. These are offences where the perpetrator acts with a political motive (and not one of personal gain), and the offence does not only damage the interests of the State, but also those of other individuals – for example acts of terrorism. Obviously, the State under whose jurisdictions such acts were committed is not only entitled, but is even under a positive obligation to prosecute such offences. Consequently, persons who are serving a sentence for such an offence or detained on remand on suspicion of having committed such an offence are not political prisoners. But the same exceptions as above can arise, where the punishment meted out is disproportionate, discriminatory, or the result of an unfair trial.

3.3. Non-political offences

11. Persons who are imprisoned in connection with non-political offences (that is, all other offences where neither the *actus reus* nor the *mens rea* has a political connotation) are, as a rule, not political prisoners. Again, there are exceptions to this rule. A person convicted of a non-political offence can be a political prisoner when there is a political motive on the side of the authorities to imprison the person concerned. This can become apparent when the sentence is totally out of proportion with the offence and/or when the proceedings are clearly unfair.

3.4. Burden of proof

12. The distribution of the burden of proof is particularly important in such an area where much depends on the "political"or other motivation of either the perpetrator or the authorities. The agreed approach of the Council of Europe's independent experts was the following: it is in the first place for those alleging that a specific person is a political prisoner to present a *prima facie* case. This material is then submitted to the State concerned, which will in turn have the opportunity to present evidence refuting the allegation. As summed up by Stefan Trechsel: NOTE

"unless the respondent State succeeds in establishing that the person concerned is detained in full conformity with ECHR requirements as interpreted by the European Court of Human Rights, as far as the merits are concerned, that the requirements of proportionality and non-discrimination have been respected and that the deprivation of liberty is the result of fair proceedings, the person concerned will have to be regarded as a political prisoner."

13. Those mandated to establish the political character of a detention can also apply, *mutatis mutandis*, the Court's case law on factual inferences in cases in which the respondent State fails to co-operate by making available documents or other information that is in the exclusive possession of the authorities. NOTE

3.5. Summary of the criteria NOTE

14. *"A person deprived of his or her personal liberty is to be regarded as a 'political prisoner':*

a. *if the detention has been imposed in violation of one of the fundamental guarantees set out in the European Convention on Human Rights and its Protocols (ECHR), in particular freedom of thought, conscience and religion, freedom of expression and information, freedom of assembly and association*;
b. *if the detention has been imposed for purely political reasons without connection to any offence;*
c. *if, for political motives, the length of the detention or its conditions are clearly out of proportion to the offence the person has been found guilty of or is suspected of;*
d. *if, for political motives, he or she is detained in a discriminatory manner as compared to other persons; or,*
e. *if the detention is the result of proceedings which were clearly unfair and this appears to be connected with political motives of the authorities."*

15. The allegation that a person is a "political prisoner" must be supported by *prima facie* evidence; it is then for the detaining State to prove that the detention is in full conformity with requirements of the Convention as interpreted by the European Court of Human Rights in so far as the merits are concerned, that the requirements of proportionality and non-discrimination have been respected and that the deprivation of liberty is the result of fair proceedings.

16. A good look at the criteria shows that someone recognised as a "political" prisoner is not necessarily "innocent". The "political"aspect of a case may reside, for example, in the selective application of the law, or in disproportionately harsh punishment in comparison with persons without a "political" background convicted of a similar crime, or finally in unfair proceedings which may nevertheless have resulted in the conviction of a guilty person. Recognition of a prisoner as "political" does not therefore necessarily require his or her immediate release – a new, fair trial may well be the most appropriate remedy. This said, given the length of time many such prisoners have already spent in prison, their urgent release, even if they are actually "guilty" of the crimes they were accused of, is now often the sole means to dispel the suspicion that the person is being treated particularly harshly for "political" reasons.

3.6. General acceptance of the independent experts' criteria

17. The criteria summed up above were provided to all concerned. As is stated in the Secretary General's information document on the results of the work of the independent experts, "[n]o substantial objections were raised to these criteria". NOTE At its 765th meeting on 21 September 2001, the Deputies "welcomed the Secretary General's independent experts' report on alleged political prisoners and Armenia and Azerbaijan as it appears in document [SG/Inf(2001)34 and Addenda I and II] …" and adopted the following declaration on this matter:

"The Committee of Ministers of the Council of Europe welcomes the news that the President of the Republic of Azerbaijan has issued on 17 August 2001 a decree pardoning 89 **political prisoners**, 66 of whom have been released and 23 of whom have had their sentences reduced …" (bold added to underline that the term "political prisoner"was used by the Committee of Ministers itself)

18. Three years later, at the close of the independent experts'second mandate, the Secretary General's information document reiterates that "[t]hese criteria were accepted by the Azerbaijani authorities and all Council of Europe instances." NOTE The Parliamentary Assembly's subsequent resolutions were also based on the generally accepted criteria developed by the independent experts. NOTE

19. During my present rapporteur mandate, several attempts were made at committee level to reopen the question of the definition of political prisoners. NOTE But I continue to hold the view that any such attempt at "reinventing the wheel" would merely deflect from the important task at hand of assisting Azerbaijan in solving, at long last, its problem of political prisoners, as highlighted in my draft report entitled "Follow-up on the issue of political prisoners in Azerbaijan". NOTE

4. Conclusions

20. I am fully convinced that the independent experts'criteria, which have already been applied to hundreds of cases, with the acceptance of all sides, have proved to be legally sound, fair and operative. They are founded on and reflect basic standards of the European Convention on Human Rights and on the case law of the European Court of Human Rights. They are also non-discriminatory; in particular, they are not country-specific, even though they were developed and first applied in the context described above of the accession of two new member States to the Council of Europe. More recently, they were applied by the Committee on Legal Affairs and Human Rights in its opinion on the situation in Belarus adopted during the January 2012 part-session. NOTE

21. Any definition includes elements which require an evaluation, or an assessment, of facts and thereby some subjective elements. Definitions and criteria are only tools, they must be applied by human beings. If we were to demand a "definition" that could be fed into a computer, which would automatically produce "objective" results for each individual case, we would fundamentally misunderstand the nature of the Assembly's work.

22. It would be a grave mistake for the Assembly to renege on the *acquis* of the existing definition and to enter into an endless, theoretical general discussion. This would clearly be a step backwards, which would raise suspicions, however unjustified, about the real reasons for opening such a debate which is potentially endless and most likely fruitless.

23. In this context, I would like to repeat, for the benefit in particular of our Spanish and Turkish colleagues, that it is perfectly clear that terrorists, whether they belong to the ETA, to the PKK or any other terrorist organisation, do not fall under the definition of political prisoners, even if they claim that they have committed their heinous crimes for "political" motives. However, persons accused of terrorist crimes who were, for political motives – this time on the side of the authorities –, convicted on the basis of an unfair trial using tainted evidence (such as "confessions" obtained under torture, or witnesses acting under duress) may well be presumed"political" prisoners if there are sufficient indications that such violations have indeed taken place.

24. I therefore call on the Assembly to reaffirm the existing definition of political prisoners as proposed in the draft resolution.