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The situation in Belarus

Committee Opinion[1]
Committee on Legal Affairs and Human Rights
Rapporteur: Ms Marieluise BECK, Germany, Alliance of Liberals and Democrats for Europe

A. Conclusions of the Committee

The Committee on Legal Affairs and Human Rights strongly endorses the draft resolution and recommendation of the Committee on Political Affairs and Democracy on the situation in Belarus and congratulates its rapporteur, Mr Andres Herkel, for the clear and pertinent analysis of the situation and the strength of the conclusions drawn, including the call on the Belarusian authorities to release and rehabilitate all political prisoners and the invitation addressed to all member states of the Council of Europe to join the sanctions imposed by the European Union against Belarusian officials responsible for serious human rights violations.

From the point of view of the Committee on Legal Affairs and Human Rights, three amendments would further improve the Assembly's text.

B. Proposed amendments to the draft resolution

Amendment A (to the draft resolution)

In the draft resolution, paragraph 6.2, replace the words "that they were exposed to torture during the investigation to extract confessions, and reiterates that such an irreversible, cruel and inhuman penalty is unacceptable, however heinous the crimes" with the following words:

> *"that the investigation and the trial were marred by serious human rights abuses (including the use of torture in order to extract confessions), contradictions and gaps in the evidence presented at the trial; it calls on the competent authorities to carry out a full investigation of the allegations made in this context and to ensure true justice for the victims of the heinous acts of terrorism in question, and reiterates that such an irreversible, cruel and inhuman penalty is unacceptable, however heinous the alleged crimes"*

Amendment B (to the draft resolution)

In the draft resolution, replace paragraph 7.2 with the following sub-paragraph:

> *"refrain from putting pressure on political prisoners, guarantee proper legal and medical assistance to all prisoners and allow their families adequate access to them;"*

1. Reference to committee: Bureau decision, Reference 3594 of 20 November 2009. Reporting committee: Political Affairs Committee. See Doc. 12820. Opinion approved by the Committee on 23 January 2012.

Amendment C (to the draft resolution)

In the draft resolution, after paragraph 7.9, add the following sub-paragraph:

> *"hold to account the perpetrators as well as the instigators and organisers of the disappearances of Yuri Zakharenko, Victor Gonchar, Anatoly Krasovski and Dmitri Zavadski, in line with the Assembly's urgent request first made in Resolution 1371 (2004)"*

C. Explanatory memorandum by Ms Beck, rapporteur for opinion

1. I strongly endorse the draft resolution and recommendation of the Committee on Political Affairs and Democracy on the situation in Belarus and congratulate Mr Andres Herkel for the clear and pertinent analysis of the situation and the strength of the conclusions drawn, including in particular:

– the call on the Belarusian authorities to release and rehabilitate all political prisoners;

– the invitation addressed to all member states of the Council of Europe to join the sanctions imposed by the European Union against Belarusian officials responsible for serious human rights violations.

As regards the call to release and rehabilitate all political prisoners, I congratulate the Committee on Political Affairs and Democracy for its clear and unambiguous use of the term "political prisoner" in reference to political activists, human rights defenders, journalists and even ordinary citizens making use of their right to participate in peaceful demonstrations who ended up being imprisoned. In the framework of the preparation of my colleague Christoph Strässer's report on "Revisiting the issue of political prisoners", the Committee on Legal Affairs and Human Rights has held a hearing with eminent experts on the definition of political prisoners and has endorsed the definition proposed by the Secretary General's independent experts in 2001. This definition, which was first applied by the same experts to a list of cases of alleged political prisoners in Armenia and Azerbaijan on the strength of a mandate from the Council of Europe relating to those two countries' accession to the Council of Europe, appears to fit well the cases of the imprisoned Belarusian activists. From what we have been able to learn about the trials in question,[2] the independent experts' criteria[3] seem to be fulfilled, for example:

– imprisonment for "political crimes" (dissemination of criticism of the authorities via the media, the Internet or participation in peaceful demonstrations); disproportionately severe penalties for minor violations;

– imprisonment for "ordinary crimes" when charges were trumped up or altogether falsified for political reasons; proceedings marred by serious procedural violations during the investigation (including serious allegations of beatings and even torture) and during the trial itself (pressure on lawyers, on witnesses; violation of the rights of the defence).

As regards the "targeted sanctions" against officials responsible for acts of repression, I fully subscribe to the call of the Committee on Political Affairs and Democracy addressed to the competent bodies of the European Union to strengthen further these measures and that these also be addressed to all member states of the Council of Europe, including those that are not, or not yet, members of the European Union, to implement these sanctions. Experience shows that such targeted measures, which do not "punish" a country and its population as a whole but single out those officials who are personally responsible for acts of repression, are a particularly useful tool. Such persons are often corrupt and prefer enjoying the spoils of their actions abroad, preferably in safe, sunny and pleasant spots. Preventing them from so doing by a visa ban or a freezing of their foreign accounts may encourage them to refrain from being overly zealous in the persecution of opposition figures. Condemning them to stay in Belarus may even motivate them to act in order to improve the conditions in their own country.

2. From the point of view of the Committee on Legal Affairs and Human Rights, three amendments would further improve the Assembly's text.

Amendment A

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2. See, for example, the detailed reports of the International Observation Mission of the Committee on International Control over the Human Rights situation in Belarus, http://hrwatch-by.org/en.

3. A summary is reproduced in the Appendix.

Amendment A concerns the recent death penalty case (paragraph 6.2 of the draft resolution). The proposed amendments strengthen the existing text in that they go beyond criticising the death sentence passed against the two alleged terrorists. The very application of the death penalty is of course inacceptable from the point of view of the Assembly, which strongly advocates universal abolition. But in the case of the two alleged terrorists, Vladislav Kovalev and Dmitry Konovalov convicted by the Supreme Court of the Republic of Belarus for carrying out the terrorist attack in the Minsk subway in April 2011, there are also serious doubts as to their guilt.

I have received a number of indications from Belarusian human rights defenders that cast serious doubts on the convictions of Mr Kovalev and Mr Konovalov.

– Both men were detained on 12 April 2012, the day after the explosion in the Minsk metro. The following morning, President Alyaksander Lukashenko violated their presumption of innocence by declaring that two men who had been detained had already confessed to carrying out the attack, as well as previous bomb attacks in Belarus. But I was informed that the two were not actually questioned until later that day.

– The case of the prosecution is built primarily on the confessions made by the two men during their stay in pre-trial detention. But during the trial, Vladislav Kovalev retracted his confession, which he claims was obtained under physical and emotional pressure. He stated that, during the interrogation, he heard Dmitry Konovalov screaming and assumed that he would also be tortured. His mother[4] claims that both men were beaten during the interrogation. There are reports that an ambulance was called during Dmitry Konovalov's interrogation and that, when Konovalov was detained, the emergency doctors were called in. They reportedly examined Konovalov and stated that he had many bruises and injuries, and they confirmed that he received those while he was being detained.

– The accusation claims that the motive of the attack was to "destabilise the situation in the Republic of Belarus". However, during the trial, Konovalov was not able to explain the term "destabilisation". His lawyers therefore find that his motive was not properly identified.

– I have also received indications that the video recordings purportedly showing the two accused in the vicinity of the place of the explosion just before had been tampered with.

– Last but not least, there are serious reports that witnesses and injured parties were put under pressure in order to prevent them from casting into doubt the official version of the facts. In particular, Aliaksandr Kruty, a representative of one of the injured persons from the April 11 blast, was arrested on 20 September and sent to a mental hospital allegedly for hooliganism. On 6 December, he was sentenced to compulsory psychiatric treatment.

To sum up, in view of the serious doubts about the integrity of the findings of guilt, the Assembly should not only oppose the execution of the two convicted men on the grounds of its principled opposition to the death penalty but also ought to point to the contradictions and gaps in the evidence presented at the trial and call on the competent authorities to carry out a full investigation of the allegations made in this context, in order to ensure true justice for the victims of the heinous acts of terrorism in question.

Amendment B

Amendment B is intended to complete the information provided on the treatment of political prisoners. They are exposed to severe pressure even after their conviction in court, with the aim of extracting "confessions" and breaking their personalities in order to eliminate them as opponents of the regime. Mr Andrei Sannikov and Mr Zmitser Dashkevich, for example, were threatened repeatedly with death and rape. State television broadcast defamatory and humiliating reports about their conditions of detention, which must also be understood as threats. Through transfers between prisons lasting several days, prisoners were exposed intentionally to extreme conditions of detention, life-threatening security risks and inadequate nutrition. At the same time, their lawyers and family members were kept in the dark about their whereabouts and the reasons for and duration of their transfer. In addition, prisoners are kept in isolation. Both the lawyer and family members of Andrei Sannikov were refused access; mail is either censored or not transmitted at all. For the political prisoners Mikalai Statkevich and Mikalai Autukhovich, the conditions of detention were made harsher in order to increase the pressure on them. Political prisoners are again and again punished under the pretext of petty violations of prison rules and subjected to detention in isolation and other restrictions.

Amendment C

4. Invited to testify before the Committee on Legal Affairs and Human Rights at its meeting on 23 January 2012.

Amendment C merely adds a reminder of another important outstanding issue, namely, the proper investigation of the four high-profile disappearance cases that were the subject of a previous report of the Parliamentary Assembly, prepared by our former colleague Christos Pourgourides.[5] In order to uphold the Assembly's authority, we should continue to use every opportunity to recall the fact that the senior officials named in our report - including the former minister of the interior, Mr Sivakov, the former prosecutor general, Mr Sheyman, and a senior OMON (special police forces) officer, Colonel Pavlichenko, suspected on the basis of strong indications presented in the report of being involved in the disappearances or in their official cover-up - have still not been held to account before a court of law, despite the Assembly's repeated demands.

5. Resolution 1371 (2004) and Recommendation 1657 (2004), Doc. 10062.

Appendix – Determination of objective criteria to identify "political prisoners" in Azerbaijan

[extract from document SG/Inf(2001)34 on Cases of alleged political prisoners in Armenia and Azerbaijan]

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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 (ECHR) and its Protocols, 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.

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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 ECHR 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.

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