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Keeping political and criminal responsibility separate

Motion for a resolution

several Assembly members

This motion has not been discussed in the Assembly and commits only those who have signed it

The Assembly finds it necessary to distinguish between political and criminal responsibility. Political decisions shall be judged by parliament and ultimately the voters at the next elections. Criminal acts shall give rise to prosecution, no matter by whom they are committed. Provisions in criminal law effectively criminalising political decision making blur the line between political and criminal responsibility and are open to abuse.

In Ukraine, criminal charges have been filed against a former Prime Minister and several members of her government for “abusing authority or office” and “exceeding authority or official powers” during their term in office. In Iceland, a former Prime Minister is being tried for failing to take appropriate ministerial action during the 2008 banking crisis. In addition, in a number of countries hit by the current debt crisis, calls have been heard to criminally prosecute those seen as politically responsible for it.

In addition to the issue of the possible selective prosecutions, in particular in the Ukrainian example, such cases could amount to the effective criminalisation of political decisions.

Criminalising political decision-making as such violates the rule of law and democratic principles to which all Council of Europe member states are committed to. At the same time, there must be no impunity of political actors who commit or participate in such ordinary crimes as murder, abduction, embezzlement, theft and corruption. As regards crimes specifically concerning the political sphere (such as the prohibition of preparing a war of aggression), these must be narrowly defined and require clear evidence of criminal intent.

Holding governments and their members to account politically is the prerogative of parliaments and ultimately of the electorate. Criminal responsibility must be established by impartial and independent courts, on the basis of prior, clear and narrowly-construed provisions of criminal law. In the light of the above development the Assembly considers that clear European standards need to be developed on the delimitation of criminal and political responsibility.

Signed (see overleaf)



Signed¹:

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1. ALDE: Alliance of Liberals and Democrats for Europe
EDG: European Democrat Group
EPP/CD: Group of the European People's Party
SOC: Socialist Group
UEL: Group of the Unified European Left