Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 1354 (2003)[1]

Conviction of Grigory Pasko

Parliamentary Assembly

1. The Parliamentary Assembly recalls that democracy is based on freedom of the press and freedom of expression. These freedoms must not be curtailed by the intimidation and prosecution of critical journalists such as Mr Pasko.

2. The Assembly welcomes the liberation of Mr Pasko from prison in February 2003, whilst regretting that he was not freed earlier. The Assembly notes with interest that a third supervisory appeal to the President of the Supreme Court Presidium was filed by Mr Pasko on 16 April 2003 and that Mr Pasko has also filed a complaint with the European Court of Human Rights aimed at establishing his innocence, clearing his good name and establishing that the Russian authorities violated several of his rights under the European Convention on Human Rights throughout the proceedings taken against him.

3. The Assembly is deeply concerned at the unusual features of the prosecution, trial and conviction of Mr Pasko by the different tribunals of the Russian military court system, including the apparently flawed search of Mr Pasko's flat; the reliance of the conviction on a secret decree, the subsequent abolition of which remains unclear; unusual discrepancies between indictments and convictions; and other "fair trial" issues (for example, doubts as to the independence of experts and witnesses and alleged breaches of the rights of the defence).

4. The Assembly finds that the most important conclusion to be drawn from Mr Pasko's case is that the definition of what constitutes a state secret must be clarified and, first and foremost, made public. It is unacceptable that whilst the (public) Federal Law on State Secrets contains some three dozen broadly drafted items, their detailed wording is contained in a secret decree by the Minister of Defence (Decree No. 55:96) which mentions some 700 instances of such secrets. This gives the security services wide latitude in prosecuting treason cases, thus providing a formidable instrument of intimidation against courageous journalists such as Mr Pasko and researchers such as Mr Nikitin, who was finally acquitted in September 2000 after having been prosecuted for more than four years on the basis of Decree No. 55:96.

5. The Assembly therefore calls on its colleagues in the Russian State Duma to initiate a law ensuring that secret decrees containing elements of penal law can never again become the basis for criminal convictions.

6. Mr Pasko's case also exposes a number of serious shortcomings, and the need for greater transparency, in proceedings brought before military courts, particularly in treason cases where the secret nature of information, as determined by military experts, is of crucial importance. While cooperation between the members of the court, the special services pressing for prosecution and the experts required for the necessary determinations is essential, it is even more important than in ordinary criminal cases to guard jealously the adversarial nature of criminal trials. The right of the defence to contest and comment on all information on which the judgement may be based is a necessary requirement for a fair trial in all criminal cases, but even more so in the special case of a military court. The legitimacy of the very existence of separate military courts in a state governed by the rule of law depends on whether these courts respect all the procedural guarantees that exist in ordinary criminal courts.

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1. Text adopted by the Standing Committee, acting on behalf of the Assembly, on 25 November 2003 (see Doc. 9926, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Bindig).

7. The Assembly therefore calls on the competent authorities of all countries in which journalists have recently been subjected to prosecution on espionage charges to clearly and narrowly define the scope of official secrecy in public laws and regulations, in order to eliminate legal uncertainty. In so doing, they shall give due consideration to the legitimate need of the public to be informed of any illicit behaviour by state organs, including the armed forces, in particular when this constitutes a threat to human rights, the environment, or other vital interests of the people.

8. The Assembly also calls on the Governments of those countries which have maintained separate military courts to ensure that the same procedural safeguards that exist in ordinary criminal courts – in particular, those guaranteed under Articles 6 and 7 of the European Convention on Human Rights – are fully applied in the military court system.