



Doc. 13079 – Compendium of written amendments

(Final version)

The follow-up to the issue of political prisoners in Azerbaijan

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A. Draft Resolution

1. The Parliamentary Assembly recalls that the definition of "political prisoner" 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 countries 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, the Parliamentary Assembly and the Armenian and Azerbaijani authorities. The Assembly reaffirms its support for these criteria.
3. The Assembly notes that the issue of political prisoners is still not resolved in Azerbaijan, despite the continuous efforts of the Assembly, which adopted Resolutions 1359 (2004) and 1457 (2005) and Recommendation 1711 (2005) specifically on this topic. It fully subscribes to the conclusions and recommendations of the Council of Europe Commissioner for Human Rights following his visits to Azerbaijan in March 2010 and September 2011.
4. The same is true for a number of persons on the second list of 107 so-called "forgotten" political prisoners whose fate came to light only after the final report of the independent experts.
5. In addition, a number of new cases have arisen since the completion of the independent experts' work concerning politicians and activists linked to the opposition, as well as journalists, bloggers and peaceful protesters sentenced to heavy prison terms.
6. In a number of cases, the prisoners have already spent such a long time in detention that they ought to be released as a matter of non-discrimination vis-à-vis other prisoners convicted of similar crimes, even if the verdicts against them, following controversial trials, were deemed to be justified.

Amendment 1

Tabled by Mr Michael MCNAMARA, Lord John E. TOMLINSON, Mr Jean-Pierre MICHEL, Mr Stefan SCHENNACH, Mr Björn von SYDOW

In the draft resolution, after paragraph 3, insert the following paragraph:

"It regrets that the Azerbaijani authorities prevented the Rapporteur from carrying out a fact-finding visit to Azerbaïdjan, which had been duly authorised by the Committee on Legal Affairs and Human Rights."

Amendment 2

Tabled by Mr Michael MCNAMARA, Lord John E. TOMLINSON, Mr Jean-Pierre MICHEL, Mr Stefan SCHENNACH, Mr Björn von SYDOW

In the draft resolution, after paragraph 4, insert the following paragraph:

"Whilst the vast majority or the persons on the original list of 716 alleged political prisoners assessed by the Independent Experts is no longer in prison, several cases are still not resolved, including three in which the Independent Experts' conclusion was that they were indeed political prisoners."

Amendment 3

Tabled by Mr Michael MCNAMARA, Lord John E. TOMLINSON, Mr Jean-Pierre

MICHEL, Mr Stefan SCHENNACH, Mr Björn von SYDOW

In the draft resolution, after paragraph 6, insert the following paragraph:

"In yet another group of cases, persons are still in prison, who were convicted as lowly accessories in illegal acts whose organisers and leaders have long been set free after they had been recognised as political prisoners by the Independent Experts. Some of these cases had inadvertently not been brought to the attention of the Independent Experts; others were arrested only after the completion of the Experts' work."

7. In several cases, humanitarian grounds, including the age of some prisoners and their deteriorating state of health, require their immediate release from prison, independently of any other criteria.
8. The Assembly is aware of the fact that any prisoner considering that his or her case fulfils the criteria of the definition of political prisoner can in principle lodge an application with the European Court of Human Rights.
9. The Assembly notes that, in a number of such cases, the European Court of Human Rights has already found violations of the European Convention on Human Rights (ETS No. 5). The cases of other alleged political prisoners are still pending before this jurisdiction, whilst yet other prisoners were induced to refrain from applying to the Court in good time by promises of an amnesty which then did not materialise.
10. The Assembly recognises that it is not competent to decide on the merits of individual cases of alleged human rights violations. But it considers that it is duty-bound to investigate allegations of systemic problems in the field of human rights protection in all member States and to analyse and evaluate, from a legal and political point of view, any cases or groups of cases which may shed light on patterns of human rights violations that need to be addressed by appropriate legal and political action.

Amendment 4

Tabled by Mr Michael MCNAMARA, Lord John E. TOMLINSON, Mr Jean-Pierre MICHEL, Mr Stefan SCHENNACH, Mr Björn von SYDOW

In the draft resolution, after paragraph 10, insert the following paragraph:

"It notes that the Rapporteur has carefully studied well over one hundred cases included on a consolidated list of presumed political prisoners prepared in cooperation with a number of Azerbaijani and international non-governmental organisations, lawyers and prisoners' family members."

Amendment 5

Tabled by Mr Michael MCNAMARA, Lord John E. TOMLINSON, Mr Jean-Pierre MICHEL, Mr Stefan SCHENNACH, Mr Björn von SYDOW

In the draft resolution, after paragraph 10, insert the following paragraph:

"The Assembly notes that, in a large number of these cases, the Azerbaijani courts have clearly violated fundamental fair trial rules. These transgressions include failures to react to alleged ill-treatment of accused persons during pre-trial

detention, to hear witnesses called by the defence, to respect the presumption of innocence, as well as discriminatory, excessively harsh, treatment of accused persons linked to opposition groups."

11. The Assembly notes that several persons on the consolidated list of presumed political prisoners or on earlier versions of such lists have been set free on different grounds, such as presidential pardons, for health reasons or simply following the expiration of their prison terms.
12. In view of the above considerations, the Assembly invites the Azerbaijani authorities to:
 - 12.1. speedily resolve the cases of those persons included on the consolidated list who are still in prison, without demanding admissions of guilt or public repentance as preconditions, by:
 - 12.1.1. immediately releasing presumed political prisoners who have already served several years of their sentence, in application of the provisions of the Criminal Code relating to conditional release;
 - 12.1.2. releasing or retrying presumed political prisoners who were convicted in breach of fair trial principles;
 - 12.1.3. releasing on humanitarian grounds all presumed political prisoners who are seriously ill;
 - 12.1.4. releasing or retrying presumed political prisoners who were involved in certain political events only to a minor and very secondary degree, as the persons presumed to have instigated the events have themselves already been pardoned;
 - 12.1.5. releasing presumed political prisoners who have no connection with the events in question other than that they are relatives, friends, or mere acquaintances of leading members of former governments;
 - 12.2. take appropriate measures in order to ensure that no new cases of political prisoners, deemed as such by application of the criteria referred to above, are created, in particular by:
 - 12.2.1. refraining from arresting and prosecuting participants in peaceful demonstrations;
 - 12.2.2. refraining from criminalising the expression of political and religious views in the media, including through the Internet; however, hate speech and inciting violence shall remain subject to prosecution in accordance with the case law of the European Court of Human Rights;
 - 12.2.3. eliminating torture and other forms of ill-treatment of suspects in police custody and pre-trial detention;
 - 12.2.4. allowing all suspects to be assisted by a freely chosen lawyer;
 - 12.2.5. ensuring that all searches and seizures are performed in the presence of truly independent witnesses.