



Doc. 13214 – Compendium of written amendments

(Final version)

Keeping political and criminal responsibility separate

Contents	Page
A. Draft Resolution	2

A. Draft Resolution

1. The Parliamentary Assembly considers that democracy and the rule of law require that politicians shall be effectively protected from criminal prosecutions based on their political decisions. Political decisions shall be subject to political responsibility, the ultimate judges being the voters.
2. The Assembly also reconfirms its principled opposition to all forms of impunity, as expressed in its Resolution 1675 (2009) on the state of human rights in Europe: the need to eradicate impunity. Consequently, politicians shall be held to account for criminal acts or omissions they commit both in their private capacity and in the exercise of their public office.
3. The distinction between political decision-making and criminal acts or omissions must be based on national constitutional and criminal law, which in turn should respect the following principles, in line with the conclusions of the European Commission for Democracy through Law (Venice Commission):
 - 3.1. criminal proceedings should not be used to penalise political mistakes or disagreements;
 - 3.2. politicians should be accountable for ordinary criminal acts in the same way as ordinary citizens;
 - 3.3. substantive national rules on ministerial criminal responsibility must comply both with Article 7 of the European Convention on Human Rights (ETS No. 5, "the Convention") and other requirements derived from the principle of the rule of law, including legal certainty, predictability, clarity, proportionality, and equal treatment;
 - 3.4. in particular, wide and vague national criminal law provisions on "abuse of office" can be problematic, both with regard to Article 7 of the Convention and other basic requirements under the rule of law, and they can also be particularly vulnerable to political abuse;
 - 3.5. politicians should, as a rule, be held criminally liable for acts or omissions committed in the exercise of their office when they act for personal gain or violate fundamental rights of others;
- 3.6. As regards procedure, to the extent that charges brought against politicians are of a "criminal" nature according to Article 6 of the Convention, the same fair trial requirements must apply both to ordinary criminal

Amendment 1 Tabled by the Committee on Political Affairs and Democracy

In the draft resolution, replace paragraph 3.5 with the following paragraph:

"national provisions on "abuse of office" should be interpreted narrowly and applied with a high threshold, by reference to additional criteria, such as, in cases involving economic interests, intent of personal gain; they should only be invoked against politicians as the last resort and the level of sanctions should be proportional to the legal offence and not influenced by political considerations;"

procedures and to the special impeachment procedures which exist in a number of Council of Europe member States;

- 3.7. special rules for impeachment of ministers must not be in breach of basic principles of the rule of law. As such rules are susceptible to political abuse, they call for extra caution and restraint as to the manner in which they are interpreted and applied.
4. Concerning Ukraine, the criminal cases brought against former Prime Minister Yulia Tymoshenko and former Interior Minister Yuri Lutsenko have given rise to severe criticism by the international community. The Assembly is deeply troubled by the manner in which the country's criminal justice system is abused for the persecution of political opponents. It considers that in both cases the principles on the separation of political and criminal responsibility have been violated.

Amendment 2

(If adopted, amendment 5 falls)

Tabled by the Committee on Political Affairs and Democracy

In the draft resolution, delete paragraph 4.

Amendment 5

(Falls if amendment 2 is adopted)

Tabled by Mr Volodymyr PYLYPENKO, Mr Ivan POPESCU, Mr Tedo JAPARIDZE, Ms Guguli MAGRADZE, Ms Nadezda GERASIMOVA

In the draft resolution, replace paragraph 4 with the following paragraph:

"The Assembly condemns any abuses in the criminal justice system of the member states holding ex-or acting ministers criminally liable, as they turn the judiciary into the persecutor of political opponents. In such a case there is a danger that the principles of keeping political and criminal responsibility separate can be violated."

5. In view of the above, the Assembly:
- 5.1. invites the legislative bodies of those member States whose criminal law still includes broad abuse-of-office provisions to consider abolishing or redrafting such provisions, with a view to limiting their scope in line with the recommendations of the Venice Commission;
- 5.2. invites the competent authorities of those member States whose constitutions provide for special impeachment procedures for ministerial criminal responsibility to ensure that they are interpreted and applied with the degree of caution and restraint recommended by the Venice Commission;
- 5.3. urges the Ukrainian authorities to take specific measures to ensure the effective independence of the judiciary, in particular by implementing the recommendations of the Venice Commission in this respect and by speedily and comprehensively executing the relevant judgments of the European Court of Human Rights.

Amendment 3

Tabled by the Committee on Political Affairs and Democracy

In the draft resolution, before paragraph 5.1, insert the following paragraph:

"urges governing majorities in member States to refrain from abusing the criminal justice system for the persecution of political opponents."

Amendment 4

(If adopted, amendment 6 falls)

Tabled by the Committee on Political Affairs and Democracy

In the draft resolution, replace paragraph 5.3 with the following paragraph:

"urges the competent authorities of those member States which have been condemned for

violation of Article 18 of the European Convention of Human Rights (prohibition of misuse of power in restricting the rights and freedoms) to take specific measures to ensure the effective independence of the judiciary and speedily and comprehensively execute the relevant judgements of the European Court of Human Rights."

Amendment 6

(Falls if amendment 4 is adopted)

Tabled by Mr Volodymyr PYLYPENKO, Mr Ivan POPESCU, Mr Tedo JAPARIDZE, Ms Guguli MAGRADZE, Ms Nadezda GERASIMOVA

In the draft resolution, replace paragraph 5.3 with the following paragraph:

"urges member-states of the Council of Europe to more actively implement the recommendations of the Venice Commission to ensure the effective and independent model of legal proceedings and the prompt and full execution of the judgments of the European Court of Human Rights;"

Amendment 7

Tabled by Mr Luca VOLONTÈ, Mr Thierry MARIANI, Mr Peter van DIJK, Mr Viorel-Riceard BADEA, Mr Kimmo SASI, Mr Andrzej HALICKI, Mr Marek KRZAKAŁA, Ms Anne-Mari VIROLAINEN, Mr Robert WALTER, Mr Robert NEILL, Mr Joachim HÖRSTER, Mr Axel FISCHER, Mr Erich Georg FRITZ, Mr Serhii SOBOLIEV, Mr Cezar Florin PREDĂ, Mr Arcadio DÍAZ TEJERA, Mr José MENDES BOTA, Mr Roel DESEYN, Mr Emanuelis ZINGERIS, Ms Marietta de POURBAIX-LUNDIN, Mr Volodymyr ARIEV, Mr Márton BRAUN, Mr László KOSZORÚS, Mr Péter HOPPÁL, Ms Katalin CSÖBÖR, Mr Gergely GULYÁS, Mr Pedro AGRAMUNT, Ms Sylvi GRAHAM, Ms Ingjerd Schie SCHOU, Mr Gábor Tamás NAGY, Mr Imre VEJKEY, Mr João Bosco MOTA AMARAL, Mr Valeriu GHILETCHI, Mr Terry LEYDEN, Ms Orinta LEIPUTÉ, Ms Ana GUȚU, Ms Carmen QUINTANILLA, Mr Robert BIEDROŃ, Ms Inese LĪBIŅA-EGNERE, Sir Edward LEIGH, Mr Otto CHALOUPKA, Mr Giorgi KANDELAKI

In the draft resolution, after paragraph 5.3, insert the following paragraph:

"urges the Georgian authorities to take specific measures to ensure the effective independence of the judiciary and in this respect regrets the repeated verbal attacks by the Minister of Justice on individual judges who refuse the prosecutor's office requests. The Minister of Justice should refrain from attacking judges' personalities or decisions. The Assembly also calls upon the Government of Georgia to comply with the

opinion of the Venice Commission on its initiative to set up a commission on miscarriage of justice.

Amendment 8

Tabled by Mr Luca VOLONTÈ, Mr Thierry MARIANI, Mr Peter van DIJK, Mr Viorel-Riceard BADEA, Mr Kimmo SASI, Mr Andrzej HALICKI, Mr Marek KRZAKAŁA, Ms Anne-Mari VIROLAINEN, Mr Robert WALTER, Mr Robert NEILL, Mr Joachim HÖRSTER, Mr Axel FISCHER, Mr Erich Georg FRITZ, Mr Serhii SOBOLIEV, Mr José MENDES BOTA, Mr Cezar Florin PREDA, Mr Arcadio DÍAZ TEJERA, Mr Roel DESEYN, Mr Emanuelis ZINGERIS, Mr Volodymyr ARIEV, Mr Márton BRAUN, Mr László KOSZORÚS, Mr Péter HOPPÁL, Ms Katalin CSÖBÖR, Mr Gergely GULYÁS, Mr Pedro AGRAMUNT, Ms Sylvi GRAHAM, Ms Ingjerd Schie SCHOU, Mr Gábor Tamás NAGY, Mr Imre VEJKEY, Mr João Bosco MOTA AMARAL, Mr Valeriu GHILETCHI, Mr Terry LEYDEN, Ms Orinta LEIPUTÉ, Ms Ana GUȚU, Ms Carmen QUINTANILLA, Mr Robert BIEDROŃ, Ms Inese LĪBIŅA-EGNERE, Sir Edward LEIGH, Mr Otto CHALOUPKA, Mr Giorgi KANDELAKI

In the draft resolution, after paragraph 5, insert the following paragraph: "Concerning Georgia, the prosecution and, in particular, the pre-trial detention of former Prime Minister and leader of the main opposition party UNM, Ivane Merabishvili, as well as the prosecution and charging of more than 100 former officials and opposition members, is a matter for concern. The Assembly considers the link publicly made on several occasions by the current Prime Minister between these prosecutions and the rhetoric of the opposition as a sign of selective justice."