



Doc. 14079 – Compendium of written amendments
21/06/2016

(Final version)

Administrative detention

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A. Draft Resolution

1. The Parliamentary Assembly stresses the importance of the right to liberty and security guaranteed in Article 5 of the European Convention on Human Rights (ETS No. 5, "the Convention"). No one shall be deprived of his or her liberty except in the cases enumerated in the closed list of Article 5.1.
2. Recalling its Resolution 1707 (2010) on the detention of asylum seekers and irregular migrants in Europe, the Assembly stresses that under Article 5.1.f of the Convention administrative detention in immigration cases is only allowed if it is based on a precise, accessible legal framework ensuring that such detention has a prompt procedural purpose and respects protective standards such as certainty (including maximum duration) and necessity (being a means of last resort to carry out entry controls or to ensure expulsion effectively), all under the authority of a court of law.
3. The Assembly is concerned that administrative detention has been abused in certain member States for purposes of punishing political opponents, obtaining confessions in the absence of a lawyer and/or under duress, or apparently for stifling peaceful protests.
4. Regarding administrative detention as a tool to prevent terrorism or other threats to national security, the Assembly:
 - 4.1. recalls that purely preventive detention of persons suspected of intending to commit a criminal offence is not permissible under Article 5 of the European Convention on Human Rights as interpreted by the European Court of Human Rights;
 - 4.2. points out that mere restrictions (as opposed to deprivation) of liberty are permissible under Article 2 of Protocol No. 4 to the Convention (ETS No. 46), in the interests of national security or public safety and for the prevention of crime;
 - 4.3. notes that detention of persons suspected of constituting a threat to national security can be permissible as pretrial detention when there are reasonable grounds to believe that such a person has already committed a criminal offence, including specific offences criminalising certain preparatory actions for especially serious crimes, or actions aimed at supporting terrorist activities, for example the funding of, or propaganda or recruitment for a terrorist organisation.
5. The Assembly therefore calls on all member States concerned to refrain from:

Amendment 1

Tabled by Mr Tiny KOX, Mr George LOUCAIDES, Mr Nikolaj VILLUMSEN, Mr Andrej HUNKO, Mr Hışyar ÖZSOY

In the draft resolution, paragraph 3, after the words "member States" insert the following words: "and non-member States which have a special relationship with the Assembly,".

- 5.1. using administrative detention as a tool for the management of migration, beyond the narrow purposes permissible under Article 5 of the Convention;
- 5.2. placing political opponents, human rights activists or journalists in administrative detention in order to coerce or persuade them by other means into confessing a criminal offence;
- 5.3. placing participants of or persons intending to participate in peaceful protests in administrative detention in order to prevent them from taking part in a given protest or to deter them from participating in such protests in the future.
6. The Assembly encourages all member States to make use of available tools respecting human rights in order to protect national security or public safety, and to prevent crimes, including acts of terrorism. In particular, the Assembly recommends:
 - 6.1. the use of restrictions of liberty falling short of detention, such as restraining persons suspected of constituting a risk for national security from visiting certain places, or even obliging them to remain within a certain area in order to disrupt potentially dangerous activities; such restrictions could be enforced if need be by electronic tagging devices;
 - 6.2. the adoption, as needed, and the systematic enforcement of laws criminalising certain preparatory actions for especially serious crimes, or actions aimed at supporting terrorist activities, such as the funding of, or propaganda or recruitment for a terrorist organisation, as foreseen in the Council of Europe Convention for the Prevention of Terrorism and its Additional Protocol (CETS Nos. 196 and 217).
7. In applying alternative measures to administrative detention as specified in paragraph 6 above, the Assembly urges all member States to use utmost restraint.
8. In particular, the Assembly stresses that all restrictions to liberty must be:
 - 8.1. based on a clear, predictable legislative authorisation ensuring that they are necessary in a democratic society for the legitimate purpose pursued;
 - 8.2. respectful of the principle of non-discrimination, on any grounds specified in the European Convention on Human Rights and its protocols;
 - 8.3. open to timely challenge before a court of law as specified in Article 5 of the Convention.

9. Criminal law provisions aimed at penalising preparatory and other ancillary actions in support of terrorism must fulfil the requirements of Article 7 of the Convention (no punishment without law); in particular, they must be clear and predictable. Any pretrial detention ordered in enforcing such provisions shall respect the principles laid down by the Assembly in Resolution 2077 (2015) on the abuse of pretrial detention in States Parties to the European Convention on Human Rights.

Amendment 2

Tabled by Mr Tiny KOX, Mr Nikolaj VILLUMSEN, Mr Andrej HUNKO, Mr Hişyar ÖZSOY, Mr Georgios PSYCHOGIOS

In the draft resolution, after paragraph 9, insert the following paragraph:

"The Assembly resolves to further investigate in particular administrative detention by Israel of Palestinian citizens."