

BERLIN 2-3 JUNE CONFERENCE

“Europe without political prisoners”

NON PAPER Suggestions for Concrete Steps for Debate

Draft for feedback, 31 May 2014

In 2014 there are, once again, a growing number of people in Europe who are jailed for no other reason than for disagreeing with their government.

In Azerbaijan, we witness at this very moment a wave of repression against independent journalists, youth protesters, election observers, opposition leaders and Muslim believers, with many receiving long jail terms. In Russia, people who participated in peaceful protests in Moscow’s Bolotnaya Square after Vladimir Putin’s re-election in 2012 have received tough sentences. Many other activists and government critics have also been brought before the courts. Ukraine, until recently, held political prisoners. There are many political prisoners in Belarus.

Europe has the densest network of human rights NGOs in the world. All European states, with the exception of Belarus and Kosovo, are also members of the Council of Europe. They have thus signed and ratified the European Convention on Human Rights. They have committed themselves to respecting fundamental rights and freedoms. Belarus has accepted the human rights obligations of OSCE membership. But the problem persists, and is in fact getting much worse.

One concrete aim of the Berlin workshop is to brainstorm among practitioners and activists:

How to reverse this negative trend? A reflection on realistic and effective strategies for making Europe into a region without any political prisoners.

Focus on what different actors – civil society, media, think tanks, European governments, MPs, and others – can do towards this goal.

Launch the Europe-wide campaign “2015 For a Europe without political prisoners.”

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Who is a political prisoner in Europe today?

It is crucial to define the terms of the debate in order to target help and political focus: *who* are we talking about?

There are two very useful concepts that we can use:

1. Amnesty International's "prisoner of conscience"

It refers to people who have been jailed for their beliefs, origin, orientation or status, provided that they have neither used nor advocated violence. According to Amnesty International's latest reports, there are an estimated 19 prisoners of conscience in Azerbaijan, 14 in Belarus and 7 in Russia.

(At this moment there is no dedicated section on Amnesty International's website or list in its annual report where one can see total numbers of prisoners of conscience for each country or for all of Europe.)

2. The Council of Europe's [definition of a "political prisoner"](#)

This uses five criteria (see annex). It was developed in 2001 by a group of Council of Europe-appointed legal experts led by Stefan Trechsel, former president of the European Commission of Human Rights. It is based in part on the principles for identifying political prisoners formulated in 1989-90 by yet another president of the European Commission, Professor Carl Aage Norgaard. The European Commission of Human Rights was for decades one of the leading human rights bodies in the world, deciding whether a case would go to the European Court of Human Rights (ECtHR).

The Council of Europe definition was also adopted by the Parliamentary Assembly of the Council of Europe (PACE) in October 2012.

Unfortunately, PACE's first attempt in January 2013 to apply the definition to the situation in Azerbaijan failed. A draft resolution on the issue was rejected by a majority of votes.

The challenge today is to make the definition operational: what kind of mechanism can be created in the Council of Europe to assess cases on the basis of the definition?

Is it enough to appoint a new PACE rapporteur on political prisoners? Or is there a better way to establish whether there is a *systematic* pattern of politically motivated imprisonments in a member state and to help those affected?

How to mobilize the European public to focus on political prisoners?

Some recent prisoners have attracted Western media attention: Mikhail Khodorkovsky, Yulia Tymoshenko or Pussy Riot band members. Many have not, beyond the narrow circle of human rights defenders.

Monitoring of the European press in 2010-2013 shows that there were few mentions of the Council of Europe's work, and almost no reporting on the 2013 failure of the resolution on political prisoners in Azerbaijan. Many of the new prisoners are unknown outside the circles

of human rights organisations themselves. There is a need to generate greater public attention to politically motivated persecutions.

PROPOSAL I: A European website on political prisoners

We propose to create a website on political prisoners in Europe, supported by a coalition of human rights NGOs. This could help focus and mobilise public attention.

The website would highlight cases of people arrested for their views or on other politically motivated grounds in European countries.

In particular, it would include and consider as political prisoners for this project the following individuals, and make clear these sources:

- all prisoners of conscience recognized by Amnesty International,
- all *presumed* political prisoners identified by PACE rapporteurs,
- all other relevant cases identified by reputable human rights organisations, including Human Rights Watch, Reporters without Borders, the Committee to Protect Journalists, Article 19, as well as leading national human rights organisations, which have a methodology and resources and a definition to establish their lists.

Such a website would feature prisoners' photos, biographies and information on developments in their cases.

The aim would help raise awareness of political prisoners among the European public.

There might also be a separate section on *alleged* political prisoners. NGOs and human rights activists can submit information to the website administrator on who in their view should be included in this category and whose case would deserve to be looked at more closely. These would add pressure on the Council of Europe to find ways examine these prisoners' cases and establish whether there are systemic patterns of politically motivated persecutions.

How to support the families and lawyers of political prisoners?

Repressive governments target not only dissenters, but also their families and associates.

Families are often burdened with legal fees as they struggle through trials and appeals. Relatives and friends may lose their jobs or have reduced career opportunities. One example is the families of eight Azerbaijani youth activists sentenced in May 2014, who are now in dire financial circumstances.

Lawyers defending political prisoners face pressure from the authorities as well. In 2011, three lawyers who had defended activists and opposition figures were disbarred in Azerbaijan. Another well-known human rights lawyer was detained and beaten by Turkish police at the Ataturk airport as he was returning from an OSCE-sponsored conference. A fifth lawyer who represented families evicted from their homes as a result of Baku's urban reconstruction projects was arrested on extortion charges. He was later sentenced to 8 years in prison. In many cases, these courageous lawyers work pro bono for their clients.

PROPOSAL II: Find effective support mechanisms for families and lawyers of political prisoners

How can one most effectively mobilize support for families of political prisoners and their lawyers? What existing aid channels are there, and which organizations have already been involved? Where do gaps exist? Are there opportunities for better cooperation in raising the awareness of the need for support among different NGOs?

There appears to be a need for new support mechanisms, for ordinary people to contribute to them and for better ways to advertise them.

How can the Council of Europe's mechanisms be reformed?

There is a need to creating new, more effective mechanisms on the basis of the 2012 definition of political prisoners.

The Council of Europe is currently facing a serious credibility crisis over its response to political prisoners. Instead of being at the forefront of speaking forcefully against human rights violations, it sometimes presents a fig leaf to offenders. After the failure of the resolution on political prisoners in January 2013, President Aliyev has repeatedly claimed, including again this year in Brussels, that the Council of Europe “confirmed there were no political prisoners in Azerbaijan”.

There are several institutions which need to act to prevent such abuse. The Committee of Ministers, PACE, the Secretary General and the Human Rights Commissioner of the Council of Europe should also all be involved in helping to establish new permanent mechanisms to deal with systemic abuse that cannot be dealt with by the European Court on Human Rights.

PACE

The Parliamentary Assembly of the Council of Europe (PACE) has 636 members (318 representatives and 318 substitutes) from 47 European countries.

All PACE members are elected representatives of national parliaments. All of them have local constituencies they are accountable to. Their voting records and contributions to debates are freely accessible on the Council of Europe's website. And yet few voters in their local constituencies are aware of the issues their MPs discuss and vote upon in PACE.

Few think tanks write about the work of PACE. Few articles are published highlighting the results of votes. The work of those in PACE who make efforts on behalf of political prisoners is not sufficiently recognised. Without public attention, no sense of accountability is forged.

We propose to create “PACEWATCH”: a PACE-focused network of European think tanks, human rights NGOs and journalists writing on human rights issues.

The network would maintain its own online portal (www.pacewatch.org). The portal would show analysis and information on upcoming and past votes in PACE, as well as articles and analysis on issues discussed and voted upon.

It would post videos of key debates on human rights and political prisoners in the Council of Europe.

If MPs vote against resolutions on human rights, or do not attend key votes, this would be highlighted. The website can be used to mobilize MPs to attend PACE votes on important issues, since attendance has turned out to be a key issue in defeating critical resolutions.

The goal of the website would be to find ways to inform voters from local constituencies about their representatives' activities and votes in PACE, preferably in their own languages.

If this is a joint effort of different important human rights organisations it would help to attract attention to this site. There could be a network of "correspondents" across all PACE member states.

There are many possible inspirations for such work (the independent website *VoteWatch Europe* monitors and analyses votes and activities of the European Parliament and the Council of Ministers.)

Secretary General of CoE

On 24 June 2014 in Strasbourg, PACE members will cast their votes in the election of the Secretary General of the Council of Europe for a five-year term. The incumbent Thorbjorn Jagland, whose term expires on 30 September, is running for re-election. His main rival is Sabine Leutheusser-Schnarrenberger, Germany's former Justice Minister.

The election is a good opportunity to draw attention to the issue of political prisoners in the Council of Europe. In particular, both candidates should be urged to lend explicit support to the definition of political prisoners that was adopted by PACE in October 2012, and to outline concrete ideas on how one might prevent the Council of Europe being used to legitimize systemic repression of dissent.

Committee of Ministers of CoE

The Committee of Ministers is composed of the foreign ministers (and their permanent diplomatic representatives in Strasbourg) from the 47 member states. It is the decision-making body of the Council of Europe and, together with PACE, the guardian of the Council of Europe's values. The Committee is also entrusted with overseeing the enforcement of judgments by the European Court of Human Rights.

Unlike PACE, however, the Committee of Ministers has been largely silent on specific human rights violations in member states. One challenge is to move member states to become more active in the Committee and to speak out forcefully against systematic violations of the Council's values.

Both the Committee of Ministers and the Secretary General should commit themselves to organizing an independent investigation whenever there is a clear discrepancy between the assessments of PACE rapporteurs and of reputable human rights organisations.

Precedents and inspirations: European Commission of Human Rights

Until 1998 there existed the European Commission of Human Rights. It played a key role in assisting the European Court of Human Rights from 1953 to 1998. Commission members were elected by the Committee of Ministers and would hold office for six years (during which time they were to act independently, without allegiance to any state).

Its role was to consider if a petition was admissible to the Court. If so, the Commission would examine the petition to determine the facts of the case and look for parties that could help settle the case in a friendly manner.

If a friendly settlement could not take place, the Commission would issue a report on the established facts with an opinion on whether or not a violation had occurred.

A Committee of three people determined the admissibility of a petition. For difficult decisions, however, a Chamber consisting of seven people handled it.

The Commission was not a court. Its opinions had influence on the basis of the credibility of its members.

Precedents and inspirations: The Council of Europe experience 2001-2005

In the early 2000's, the Council of Europe used three separate mechanisms to address the issue of political prisoners:

Panel of experts (2001-2004)

There was a panel of experts appointed by the Secretary General that worked only on the issue of political prisoners. It examined individual cases in Armenia and Azerbaijan. This mechanism appeared inspired by the European Commission of Human Rights and was indeed led by the Commission's former president, Stefan Trechsel. However, it only looked at cases in two countries during a specific period and was discontinued in 2004 after this work was done. Its work was crucial to support the efforts of other institutions of the Council of Europe in those years, including:

Special PACE rapporteurs

There were special PACE rapporteurs for political prisoners (in Azerbaijan), appointed by the Committee for Legal Affairs and Human Rights. There were two rapporteurs before 2005 and one rapporteur in 2009-2013.

The Ago Group

There was also a special monitoring group ("Ago Group") set up by the Committee of Ministers and composed of diplomats which looked into human rights issues and political prisoners in Azerbaijan.

After a new wave of repression in Azerbaijan after 2009, only one of these mechanisms was recreated. PACE appointed a rapporteur on political prisoners. However, his draft resolution was rejected in an unprecedented plenary vote.

Currently, none of these three mechanisms are in use.

PROPOSAL III: Establish a standing Expert Commission on Political Prisoners

The Council of Europe needs a new professional and credible mechanism to address the issue of political prisoners.

The mechanism must be potentially applicable to any member state where a systemic pattern of repression is suspected. Its work must be compatible with the work of other institutions (the Court and rapporteurs) and complement their work. A new Expert Commission on Political Prisoners could meet both requirements.

The initiative for creating such a panel can come from the Secretary General or the Committee of Ministers. The panel then would be set up by the Committee of Ministers, which is authorized to set up “advisory and technical committees or commissions.”¹ This would require a two-thirds majority of votes cast with a minimum of 24 votes in favour.² No member state would have a veto.

This panel would become active if one of the following Council of Europe institutions finds a systemic pattern of politically motivated repression!

The proposed panel on political prisoners could be composed of 3 to 7 experts. These should be former judges, presidents of national courts or senior human rights lawyers. They would act in their individual capacity. The panel would receive necessary resources and a budget for travel, translation, legal aid, and other expenses.

Several institutions would have the right to independently appeal to this Expert Commission to begin work and examine the situation and cases in any country where they are suspecting systemic repression.

- PACE rapporteurs of any committee; the president of PACE; or the PACE bureau.
- The Council of Europe’s Commissioner for Human Rights.
- The Secretary General.
- A number (to be determined) of member states of the Committee of Ministers

A new PACE rapporteur on political prisoners could also ask the Commission to examine – with more resources than a rapporteur will ever have – whether there is a pattern of systemic repression, which would make his or her political work easier.

To see if there is a systematic pattern of abuse, the commission’s work would consist of investigating individual cases in a quasi-judicial capacity, but not leading to legally binding

¹ In accordance with Article 17 of the [Statute of the Council of Europe](#): “The Committee of Ministers may set up advisory and technical committees or commissions for such specific purposes as it may deem desirable.”

² See Article 20.d. of the [Statute of the Council of Europe](#).

judgements. Suggestions for cases to examine would be submitted both by the Council of Europe's own institutions and by local and international NGOs or human rights defenders.

The panel would select a limited number of pilot cases and examine them first. Then, it would complete draft opinions on whether these individuals are political prisoners according to the PACE 2012 definition and ask the authorities of the country for feedback. After this, it would finalize its opinions and set a reasonable deadline for the authorities to react by granting a release or retrial and carrying out reforms to stop systemic abuse of this kind.

After the deadline, either the Secretary General or a PACE rapporteur for political prisoners or the Commissioner for Human Rights should assess whether the authorities have acted on the findings of the experts.

If this is not the case, the Assembly and the Committee of Ministers should consider sanctions, including a boycott of official Council of Europe meetings in this country and loss of voting rights. Also, no such country would be able to assume the chairmanship of the Council of Europe as long as the situation is not resolved.

A similar panel of legal experts was already successfully used by the Council of Europe in 2001-2004 for Azerbaijan. The combined efforts of the experts and PACE rapporteurs led to the determination that there were 62 presumed political prisoners in Azerbaijan and to the release of hundreds of alleged political prisoners in the country.

Currently in the case of Azerbaijan, PACE did already adopt a resolution on 23 January 2013 stating that there were not only individual cases but in fact a systemic pattern of arrests.³ The Council's Commissioner for Human Rights has also identified "selective criminal prosecution" of dissenters in Azerbaijan.⁴ Either of these findings would in the future automatically trigger the Commission to look into the situation more closely.

PROPOSAL IV: On the future of the Russian delegation in PACE

In April 2014, following Russia's annexation of Crimea and military involvement in the Ukraine crisis, PACE voted to suspend the voting rights of the Russian delegation until the end of the year.

It should be considered to link the restoration of voting rights to progress on other human rights issues, not limited to Ukraine, and in particular to addressing all concerns about political prisoners.

PROPOSAL V: On the Azerbaijani chairmanship of the Committee of Ministers

On 14 May, Azerbaijan assumed the six-month chairmanship of the Committee of Ministers. There is consensus among human rights NGOs that the situation with political prisoners has markedly deteriorated in Azerbaijan. This has also been publicly confirmed by various

³ PACE Resolution 1917 (2013) "[The honouring of obligations and commitments by Azerbaijan](#)", 23 January 2013, para. 14.

⁴ Nils Muiznieks, "[Freedom of expression, assembly and association deteriorating in Azerbaijan](#)", 23 April 2014.

institutions of the Council of Europe. On 29 April, the Council's Human Rights Commissioner Nils Muiznieks issued a [statement on Azerbaijan](#), in which he condemned “unjustified or selective criminal prosecution of journalists and others who express critical opinions.”

On 22 May, Secretary General Thorbjorn Jagland published an [op-ed in *European Voice*](#), in which he conceded that Azerbaijan was “known in Western capitals for stifling journalists and locking up opposition activists” and maintained that the Council of Europe was not blind to violations. The same day, ECtHR issued a [judgment](#) saying that the Azerbaijani authorities had arrested opposition leader Ilgar Mammadov to “silence and punish” him for criticising the government.

On 23 May, PACE President Anne Brasseur [spoke in Baku](#), mentioning a “more than worrying state of affairs” in Azerbaijan, criticising the deterioration of freedom of expression, assembly and association, and calling on the government to release Ilgar Mammadov.

There is a consensus on the seriousness of the problem. There should now also be an appropriate reaction.

One clear measure to be considered now would be to hold no Council of Europe meetings and events in Azerbaijan until Ilgar Mammadov, on whom the ECtHR has already ruled, is released.

Secondly Azerbaijan should officially agree to the appointment of a new PACE rapporteur on political prisoners and commit itself to cooperation.

Thirdly, the Secretary General and the Committee of Ministers should establish an Expert Commission as outlined above.

PROPOSAL VI: An EU visa panel for human rights violators

The European Union has the power to sanction human rights violators. One type of sanctions (“restrictive measures”) are travel bans.

Traveling to the EU is not an inherent right. It is a privilege that governments are free to deny. Sanctions can be proposed by member states and the High Representative for Foreign Policy, who can also act together with the European Commission.

The body responsible for imposing sanctions is the Council of Ministers. It does so by adopting – unanimously – a document called a “decision”. For travel bans, no additional legislation is necessary, and member states are obliged to directly implement the Council's decision. The EU needs to develop a forward-looking policy of denying entry and visa to human rights violators from Russia, Azerbaijan and other states.

To do this, member states could sponsor an independent commission of senior former judges, who would make annual recommendations to the Council of Ministers on who should be barred from entry.

This proposal avoids two pitfalls: it is not summary justice and it provides a mechanism for appeal. The independent commission would review its recommended blacklist annually,

providing room for appeal. The whole process would also ensure transparency. This would increase pressure on EU governments to act, spur debates, and create a credible process that human rights defenders can use.

Conclusion: A campaign “2015 For a Europe without political prisoners”

Many of the most respected human rights organisations have their roots in campaigns on behalf of political prisoners: Amnesty International (the 1961 letter by Peter Berenson on “The forgotten prisoners”), Human Rights Watch (the Helsinki committees to support dissident in Eastern Europe and the Soviet Union).

After the end of the Cold War it seemed for a short moment as if this particular problem no longer haunts Europe. Now it has returned.

This is a test of the ability and compassion of European civil society, and of the organisational capacity of human rights defenders. A reactive approach is clearly no longer enough.

Combined efforts pay off. Concrete initiatives and proposals can be brought together under the banner of a Europe-wide campaign “2015 For a Europe without political prisoners.”

Such an effort would be a joint effort of different independent human rights NGOs. The strategy could encompass all the various element in this paper:

- highlighting stories of individual victims better;
- mobilising support for victims, their families and lawyers;
- mobilising think tanks and NGOs to monitor and analyse PACE and its members;
- taking back and using existing mechanisms in the Council of Europe;
- setting up a new mechanism in the Council of Europe to look into systemic imprisonments on political grounds in member states,
- institutionalising a process for visa bans for human rights offenders by the EU.

Annex: Resolution 1900 (2012) Final version – The definition of political prisoner

Author(s): Parliamentary Assembly

Origin: Assembly debate on 3 October 2012 (33rd Sitting) (see [Doc. 13011](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Strässer). Text adopted by the Assembly on 3 October 2012 (33rd Sitting).

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 States to the Organisation.
2. The Parliamentary Assembly notes that the criteria put forward by the above-mentioned experts were inspired by, *inter alia*, the specific circumstances of the civil war in Namibia in 1989. They were applied to cases with regard to two countries during their accession to the Council of Europe and have not until now been subject to comprehensive debate or explicit approval by the Parliamentary Assembly.
3. The Assembly reaffirms its support for these criteria, summed up as follows:

“A person deprived of his or her personal liberty is to be regarded as a ‘political prisoner’:

- a. if the detention has been imposed in violation of one of the fundamental guarantees set out in the European Convention on Human Rights and its Protocols (ECHR), in particular freedom of thought, conscience and religion, freedom of expression and information, freedom of assembly and association;*
- b. if the detention has been imposed for purely political reasons without connection to any offence;*
- c. if, for political motives, the length of the detention or its conditions are clearly out of proportion to the offence the person has been found guilty of or is suspected of;*
- d. if, for political motives, he or she is detained in a discriminatory manner as compared to other persons; or,*
- e. if the detention is the result of proceedings which were clearly unfair and this appears to be connected with political motives of the authorities.”*
(SG/Inf(2001)34, paragraph 10).

4. Those deprived of their personal liberty for terrorist crimes shall not be considered political prisoners if they have been prosecuted and sentenced for such crimes according to national legislation and the European Convention on Human Rights (ETS No. 5).
5. The Assembly invites the competent authorities of all the member States of the Council of Europe to reassess the cases of any alleged political prisoners by application of the above-mentioned criteria and to release or retry any such prisoners as appropriate.