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**Issues of implementation of PACE Resolution
no. 1900(2012) “The definition of ‘political prisoner’”
in national criminal and criminal procedural legislation**

Abstract: Implementation of the provisions of European law in part of observance rights and freedoms of individual in national legislation through fair trial is one of the priority directions of further development of Azerbaijan Republic as an open democratic society – law-based state.

Existing form of PACE Resolution no. 1900(2012) contradicts the requirements of fair trial that stipulates in Article 6 of European Convention on Human Rights while reserving the meaning of politically committed instrument of interference in home affairs of sovereign states.

Problem of implementation of PACE Resolution no. 1900(2012) in national criminal and criminal procedural legislation might be solved only after resolution of the issues concerning period, in duration of a person will be considered a victim (political prisoner) etc.; on recognition as political prisoner of a person sentenced for terrorism on framed up accusation; on transmission of a person from one category of political prisoners in other one, and hundreds of other issues concerning the notions, criteria, procedures, temporal and spatial aspects, liability of the parties, burden of evidence, paradoxical pardoning of innocents etc.

Keywords: implementation; political prisoners; PACE; national legislation; fair trial; criteria; discrimination; rights and freedoms of man.

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Being joined in 2001 into the Council of Europe, Azerbaijan took commitments on further development of pluralistic democracy, protection of human rights and civil liberties, administration of fair trial, improvement of legislation and others, for performance of which had been made reforms adapted to economic, political and administrative realities of the country.

On 24 June 2014 in session of PACE the President of Azerbaijan Republic Mr. I.H. Aliyev noted that Azerbaijan fulfilled and continues to honour all its commitments under the Council of Europe, and still consider that there is no development without democracy and transparency.

Thus, it determined that implementation of the provisions of the European law in part of observance of the rights and liberties of person in national legislation through carrying out of fair trial is one of the priority directions of further development of Azerbaijan Republic like an open democratic society – law-based state.

In recent decades the problem of fair trial is associated by scientists and practitioners of number of countries with issue on political prisoners, relatively legal definition of which its core and elements, until 2012 there are no single opinion, normative act that would regulate this issue. In this connection it has been used in opportunistic purposes for interference in domestic affairs other states [5, p. 114-124].

Ob 26 June 2012 PACE adopted the Resolution no. 1900(2012) “The definition of ‘political prisoners’”, by which separate aspects of the problem, though declaratively, was resolved [4, p. 41-42].

In addition, there have been remained unsolved the issues of procedures, parameters (characteristic), notions, burden and subject of proof, liability, proportionality of punishment and others, which make difficult and in some case



exclude the legal application and implementation PACE Resolution no. 1900(2012) in national legislation all without exception European countries.

In particular, decision of PACE became to contradict to the systems of national criminal and criminal procedural legislations in part of the tasks, grounds of criminal liability, their principles, terms, participation, evidences and proving, observance of rights and legal interests of participants of criminal process, time etc.

In general, PACE Resolution no. 1900(2012) became to contradict to the requirements of fair trial that stipulated in Article 6 of the European Convention on Human Rights while reserving the meaning of politically committed instrument of interference in domestic affairs of sovereign states. Our assertions based on the following.

As it known, first time, a term ‘political prisoner’ was determined and used by leading international non-governmental human rights institutions “International Amnesty”, and later “Human Rights Watch” that transformed it from notion of ‘prisoner of conscience’, which was offered in 1961 to human rights community by Peter Benenson. According to supplemented definition of “International Amnesty”, “any person who has been jailed because of their political, religious or other conscientiously-held beliefs, ethnic origin, sex, color, language, national or social origin, economic status, birth, sexual orientation or other status, provided that they have neither used nor advocated violence. Wherein prisoners of consciences are considered to be people who use violence or propagade violence and emnity”.

Later, “International Amnesty” included prisoners of conscience in a list of political prisoners, and under political prisoners had become to understand “... any prisoner, in case of which is presence of serious political element. They can be the motivation of prisoner’s actions, the actions themselves or the reasons, which have been induced the authority to imprison him” [6].



Dictionary on human rights published by “Human Rights Watch” were listed the following criteria to determine the notion “political prisoner”:

“1) person detained without bringing of accusation after political unrests, demonstrations or acts of civil disobedience, which: a) is considered to be detained for expression his/her views or opposition to government without applying a violence, or b) illegally detained for belonging to a certain group;

2) person falling under foregoing categories, but who can later be charged with ordinary crimes under obviously false pretences;

3) person relating to both categories and accused and sentenced without fair trial or due process of law;

4) person is detained without accusation in commission of any violent act, but accused or suspected in belonging to a group protected and committed violent crimes against state”.

In 2011 Council of Europe determined that “person deprived liberty falls within notion ‘political prisoner’, if: a) deprivation of freedom was applied in breach of one of the main rights guaranteed with European Convention on Human Rights and its Protocols, in particular, freedom of speech, conscience and religion, freedom of expression and information, as well as freedom of assembly and associations”;

b) deprivation of freedom was applied on obviously political reasons without connection to any offence;

c) on political motives the duration of imprisonment and its conditions are obviously disproportionate concerning offence, in which a person was recognized guilty or is suspected;

d) person deprived freedom on political motives in discrimination basis in compliance with other persons;

e) deprivation of liberty is a result of proceedings with obvious violations of procedural guarantees that linked with political motives of authorities” [6].



Experts of the Council of Europe do not distinguish separately the notion of “prisoner of conscience” and attach main significance to political motive of power, but not political element, which, according to the definition of “International Amnesty”, might be manifested from both sides.

According to opinion of the experts of Council of Europe, “assumption that a person is ‘political prisoner’ must be confirmed by ‘primary’ (prima facie) evidences, and then the state applying deprivation of liberty is obliged to prove that imprisonment corresponds in full to the requirements of the European Convention on Human Rights like they are interpreted by the European Court on Human Rights concerning merits that the requirements of proportionality and non-discrimination were observed and deprivation of liberty was a result of fair procedural proceedings” [3, p. 69-75].

According to PACE Resolution no. 1900(2012), 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”.



According to cl. 4 of the Resolution, “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” [4, c. 41-42].

Let’s consider compliance of foregoing definitions to logics and reality.

Criminal Code (hereinafter the CC) of Azerbaijan in Chapter 32 “Crimes against justice” contains the Article 290 “Attraction of obviously innocent to a criminal liability”, Article 292 “Illegal arrest, imprisonment or holding in custody”, Article 294 “Falsification of proofs”, Article 295 “Issuance of obviously illegal sentence, decision, determination or ruling” etc. All these crimes’ components are concerned the cases being contained in the notion of ‘political prisoner’.

The first two paragraphs of PACE Resolution are more or less clear understandable. Doubtlessly, person deprived liberty on reason of birth, sex, race, language, national or social origin, sexual orientation and other characteristic of identity is a victim unless he/she defends his/her rights through violence, propaganda of violence and enmity.

It is no wonder that practically all rights and freedoms that specified in the European Convention on Human Rights and Protocols thereto contain provisos on restrictions established by law and necessary in democratic society in interests of public safety, protection of public order, health and moral or for protection of rights and freedoms other persons.

So, Article 2 “Right to life” of the European Convention for the Protection of Human Rights and Fundamental Freedoms says that “Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary: (a) in defence of any person from unlawful violence; (b) in order to effect a lawful arrest or to prevent the



escape of a person lawfully detained; (c) in action lawfully taken for the purpose of quelling a riot or insurrection”.

Article 8 “Right to respect for private and family life” of the Convention says that “there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others”.

Part two of the Article 9 “Freedom of thought, conscience and religion” of the European Convention says that “no restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others”.

Paragraph 2 of Article 10 “Freedom of expression” stipulates that “the exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary”.

Paragraph 2 of Article 11 “Freedom of assembly and association” says that “no restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the



exercise of these rights by members of the armed forces, of the police or of the administration of the State”.

Provisos are contained in Article 5 “Right to freedom and security”, Article 6 “Right to a fair trial”, and Article 7 “No punishment without law” and some others [2].

Assertion on deprivation of freedom applied on political reasons without links to any crime is clear, but contrived. This is possible only if frame of Democracy Protection Act, but not in Azerbaijan. In addition, deprivation of freedom without link to crime is the crime that stipulated in the Criminal Code.

Duration of imprisonment and its conditions are in direct connection with accusation and current Criminal Code, and consequently it is impossible to go out beyond of its frames.

The same nature has assertion on deprivation of freedom on discrimination basis as court cannot overstep the sanctions sizes, when imposes a sentence.

In our standpoint the issue of implementation of PACE Resolution no. 1900(2012) in national criminal and criminal procedural legislation might be resolved only after solution of matters concerning the period, during of which a person will be considered a victim (political prisoner) etc.; on recognition of a person as political prisoner who sentences for terrorism on trumped-up charges; on transmission of person from one category of political prisoners into other one, and also hundreds of other issues in part of the notions, procedures, temporal and spatial aspects, liability of the parties, burden of proving, paradoxical pardoning of innocents etc.

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