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DOI: 10.25108/2304-1730-1749.iolr.2025.81.148-161
UDC: 343.1

PACE Resolution No. 1900 “Definition of a Political Prisoner” as a Conglomerate of Illogicalities and Errors

Abstract: Recently, there have been renewed attempts by certain “friends” of Azerbaijan to revive the long-standing and rather outdated issue of political prisoners, with the intention of applying it to individuals detained as a result of localized anti-terrorist measures aimed at restoring constitutional order throughout the entire territory of the state.

This carries the familiar stench of the same intelligence-service cesspools, disguising their patrons’ business projects of interference in the internal affairs of self-sufficient states and peoples under the togas of human rights defenders, worn over the cloaks of crusaders.

Since 2012, employing the same methodology of double standards, the scarecrow of PACE Resolution No. 1900 “Definition of a Political Prisoner” has been used for these purposes. However, Resolution No. 1900 (2012) “Definition of a Political Prisoner” and the Explanatory Memorandum thereto contain contradictions, illogicalities, and inaccuracies that preclude the application of this conglomerate for its intended purpose.

The notions of “political reasons” and “political motives” require clarification, as the existing definitions are fraught with ambiguous interpretation.

Despite repeatedly using the terms “evidence” and “burden of proof,” the drafters of both the Report and the Resolution ignore the provisions of national legal systems, reducing these concepts to an everyday, layperson’s level.

Keywords: political prisoner; PACE resolution; European Convention for the Protection of Human Rights and Fundamental Freedoms; burden of proof; political reasons and motives.

On 3 October 2012, the Parliamentary Assembly of the Council of Europe, acting upon the report of MP C. Strässer, adopted Resolution No. 1900 “Definition of a Political Prisoner,” thereby recognizing the existence of a political and legal category [8, pp. 41–42]. The recommended definition and its interpretation (PACE decisions being of a recommendatory and consultative nature) are presented in two aspects. The political and legal components are interconnected and interdependent; however, from our perspective, the contradictions and inaccuracies contained therein exclude the application of the resulting conglomerate for its intended purpose.

The author of these lines was present at the PACE session when Resolution No. 1900 was adopted, held a number of meetings with deputies from various countries and organizations, including Mr. Christoph Strässer, and presented his considerations; however…

It appears that the adoption of the stillborn recommendations of Resolution No. 1900 was facilitated by all PACE deputies, including those from Azerbaijan, who focused their efforts and expertise on its political aspect while completely ignoring the legal components.

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In order to assert the presence or absence of a phenomenon, it is first necessary to identify it, define its essence, structure, interrelations of its elements, and, most importantly, the methodology for its identification. Unfortunately, none of these issues were addressed by those who voted.

According to Article 3 of PACE Resolution No. 1900 (2012), a person deprived of personal liberty shall be regarded as a "political prisoner" in the following cases:

«a. if the deprivation of liberty has been imposed in violation of one of the fundamental rights guaranteed by the European Convention on Human Rights (ECHR) and its Protocols, in particular freedom of thought, conscience and religion, freedom of expression and information, and freedom of assembly and association;

b. if the deprivation of liberty has been imposed for purely political reasons, without connection to any offence;

c. if, for political motives, the length of detention or its conditions are clearly disproportionate to the offence of which the person is suspected or has been convicted;

d. if, for political motives, the person is detained on a discriminatory basis compared with other persons; or

e. if the deprivation of liberty is the result of judicial proceedings that were manifestly unfair and appear to be connected with the political motives of the authorities. »

According to Article 4 of the Resolution, "persons deprived of their personal liberty for terrorist offences shall not be considered political prisoners if the trial and conviction for such offences were carried out in accordance with national legislation and the European Convention on Human Rights" [8, pp. 41-42].

The adoption of the Resolution was preceded by an Explanatory Memorandum by Mr. C. Strässer, which, inter alia, contains the following provisions.

In particular, the report states that, with the participation of independent experts, criteria were developed allowing all offences to be divided into purely political, other political, and non-political crimes, and also to formulate the essence of the burden of proof, conclusions, and so forth.

Purely political crimes include (para. 8) "… offences that affect only the political organization of the state, including 'defamation' of state authorities or similar offences." At the same time, the report further notes (para. 9) that "not all offenders imprisoned for such offences are 'political prisoners,' since … political statements sometimes exceed the limits set by the Convention, for example when they incite violence, racism, or xenophobia."

Further, the same paragraph of the report literally states the following: "Since the Convention must be interpreted consistently, without contradictions, a person punished in accordance with Article 10(2) of the Convention cannot be considered unlawfully deprived of liberty under Article 5 and therefore cannot be considered a political prisoner. However, it should be understood that punishment for political statements which, in principle, are not protected by Article 10 may nevertheless constitute a violation of the Convention (and thus lead to the detainee being considered 'political') if the punishment is disproportionate, discriminatory, or the result of an unfair trial" [2].

A similar approach is reflected in section 3.2 of the report, "Other Political Offences," which classifies as such criminal acts "… where the offender acts for political motives (rather than for personal gain), and the offences harm not only the interests of the state but also other individuals - for example, terrorist acts. It is evident that the state under whose jurisdiction such acts were committed has not only the right but also a positive obligation to prosecute such crimes. Consequently, persons

serving sentences for such offences or detained on suspicion of having committed them are not political prisoners. However, exceptions may arise similar to those described above, where the punishment is disproportionate, discriminatory, or the result of an unfair trial."

Section 3.3 of the report (para. 11), entitled "Non-Political Offences," states verbatim: "Persons deprived of their liberty in connection with non-political offences (i.e., any other offences where neither the actus reus nor the mens rea has a political dimension) are, as a rule, not political prisoners. Again, exceptions to this rule exist. A person convicted of non-political offences may be a political prisoner if, in depriving the person of liberty, the authorities were guided by political motives. This may be evident where the sentence is absolutely disproportionate to the offence and/or where the proceedings were manifestly unfair" [2].

Thus, as in the preceding provisions, the issue of recognizing a person as a "political prisoner" is linked to the disproportionality and discriminatory nature of punishment, as well as to the unfairness of judicial proceedings.

Section 3.4, "Burden of Proof," states (para. 12):

"The allocation of the burden of proof is particularly important in this area, where much depends on the 'political' or other motives of the offender or the authorities. Independent experts of the Council of Europe applied the following agreed approach: those who claim that a particular person is a political prisoner must present relevant case materials. These materials are then transmitted to the state concerned, which in turn has the opportunity to present evidence refuting these claims. As summarized by Stefan Trechsel, 'if the respondent state cannot demonstrate that the person has been deprived of liberty in full compliance with the requirements of the ECHR as interpreted by the European Court of Human Rights, insofar as the substance of the case is concerned, that the requirements of proportionality and non-discrimination have been met, and that the deprivation of liberty resulted from a fair trial, the person concerned shall be considered a political prisoner.'"

Further, paragraph 13 of the same section states that "…the bodies authorized to determine the political nature of detention may also apply mutatis mutandis (with the necessary distinctions; with appropriate modifications arising from the circumstances — author's note) the case-law of the European Court of Human Rights with regard to findings of fact in situations where the respondent State refuses to cooperate and to provide documents or other information that lies within the exclusive possession of the authorities" [7].

Section 3.5 of the report, entitled "Summary of the Criteria," lists the factors under which a person deprived of liberty should be considered a "political prisoner" and specifies a number of procedures required for such recognition. In particular, paragraph 15 of this section states: "The claim that a person is a 'political prisoner' must be substantiated by prima facie evidence (evident and sufficient proof that appears credible in the absence of rebuttal — author's note), and the State is obliged to demonstrate that the detention was carried out in full compliance with the requirements of the ECHR as interpreted by the European Court of Human Rights, insofar as the substance of the case is concerned, that the requirements of proportionality and non-discrimination were respected, and that the deprivation of liberty resulted from a fair trial."

Of particular interest is paragraph 16 of Section 3.5 of the Report, which states the following: "A careful analysis of the criteria shows that a person recognized as a 'political prisoner' is not necessarily 'innocent.' The 'political' aspect of the case may consist, for example, in the selective application of the law, or in a disproportionately severe punishment compared with persons convicted of similar offences outside a 'political' context, or, finally, in unfair proceedings which may never-

theless result in the deprivation of liberty of a guilty person. The recognition of a detainee as 'political' therefore does not necessarily require his or her immediate release — a new, fair trial may well be the most appropriate remedy. However, given the length of time that many such prisoners have already spent in detention, their immediate release, even if they are in fact 'guilty' of the offences imputed to them, is often the only means of dispelling suspicions that the harsh treatment of the individual is due to 'political reasons'" [2].

As a lyrical digression, it should be noted that Azerbaijani researchers, using a similar methodology, conditionally calculated the number of political prisoners as of 2019 in France and the United States, as a result of which the lists included more than 11,000 and 100,000 persons, respectively. Unfortunately, these data were not in demand in Azerbaijan [12].

Let us now attempt to identify correlations between the Resolution, the report, and its sections. The report refers to "purely political crimes," "other political crimes," and "non-political crimes"; however, such a classification is absent from the Resolution. It is more than evident that this division is conditional, as it contradicts the foundations of criminal law, the provisions of the ECHR, and the judgments of the European Court of Human Rights, which are regarded as having prejudicial force.

Among "purely political crimes," defined as affecting "… only the political organization of the state," the report mentions only "defamation" of public authorities or similar offences; however, it does not specify which acts fall within this category.

At the same time, the same section of the report (para. 9) notes that not all persons deprived of liberty for so-called "political crimes" are "political prisoners" if they were punished in accordance with Article 10(2) of the Convention, "Freedom of Expression," which contains a reservation concerning restrictions prescribed by law and necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Logically, these assertions should have been reflected in paragraph "a" of the Resolution as well, which lists as fundamental rights guaranteed by the ECHR freedom of thought, conscience and religion (Article 9), freedom of expression and information (Article 10), freedom of assembly and association (Article 11), and other rights.

This would have been fair and objective, since Article 9 "Freedom of thought, conscience and religion," Article 10 "Freedom of expression," Article 11 "Freedom of assembly and association," as well as Article 2 "Right to life," Article 5 "Right to liberty and security," Article 6 "Right to a fair trial," Article 7 "No punishment without law," and others all contain reservations regarding restrictions prescribed by law and necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others [3, pp. 6, 8-9, 11-13].

It is more than obvious that all sections of the report concerning the artificial classification of crimes into purely political, other political, and non-political contain illogicalities according to which, even if a person does not fall under the proposed criteria, he or she will nevertheless be considered a "political prisoner" if "… the punishment is disproportionate, discriminatory, or the result of an unfair trial" and "… if, in depriving the person of liberty, the authorities were guided by political motives."

Thus, it follows that virtually any person may be designated (labeled) a "political prisoner"; however, for actual recognition, a number of procedures stipulated in the Report are required. Un-

fortunately, the temporal aspects in Mr. C. Strässer’s Explanatory Memorandum are blurred, as a result of which, in all cases, initial declarations are perceived and used a priori.

As for the truisms set out in the Report as criteria, the overwhelming majority of them have never been disputed by anyone; the situations described may have occurred elsewhere, but not in Azerbaijan. In any event, none of the existing or previous lists concerning Azerbaijan contain or have ever contained such “political prisoners.” Moreover, the arbitrary deprivation of liberty without connection to an offence is itself considered a crime under the legislation of the Republic of Azerbaijan, as provided for in Article 292 of the Criminal Code [9].

A similar nature characterizes paragraphs “c” and “d” of Article 3 of the Resolution, which recognize persons as “political prisoners” “… if, for political motives, the length of detention or its conditions are clearly disproportionate to the offence of which the person is suspected or convicted” (para. “c”) and “… if, for political motives, the person is detained on a discriminatory basis compared with other persons” (para. “d”) [8, p. 41].

Meanwhile, the periods of detention of suspects, accused persons, and convicted individuals are strictly defined by law, and any violation of these periods by the prosecution or the administration of a penitentiary institution constitutes a criminal offence in itself [10].

Proportionality is determined by the court on the basis of statutory requirements taking into account the individual’s personality, age, family status, character references, prior convictions, and other subjective and objective circumstances specified in the Criminal Procedure Code and the Criminal Code.

It is also well known that there are no and cannot be identical, completely equivalent crimes and offenders, if only because such a factor as time exists. Despite outward similarity, acts and persons, as elements of being, differ in essence, which the court is obliged to take into account when determining the term of imprisonment. Courts are required to substantiate their decisions regarding the length of sentences in the adopted judicial acts, and such decisions may be appealed in accordance with the procedure established by law; unsupported allegations of disproportionality constitute interference with the administration of justice.

This also applies to case-law, which is persistently being introduced into legal systems where, by definition, it does not exist, cannot exist, and should not exist [4, pp. 157–166].

The assertion that a person is detained on a discriminatory basis compared with other persons is likewise contrived. Conditions of detention are determined by normative acts that are uniform for all persons deprived of liberty. Places of detention are also uniform, and their selection is regulated by law rather than by subjective “political motives of the authorities.”

As for the assertion that a person should be classified as a “political prisoner” “… if the deprivation of liberty is the result of judicial proceedings that were manifestly unfair (violation of Article 6 of the European Convention on Human Rights — author’s note) and this is connected with the political motives of the authorities” (para. “e” of Article 3), it requires more detailed analysis.

Thus, according to Article 455 of the Criminal Procedure Code of the Republic of Azerbaijan, one of the grounds for reviewing judicial acts on the basis of newly discovered circumstances related to violations of rights and freedoms is a finding by the European Court of Human Rights that the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms were violated by the courts of the Republic of Azerbaijan in criminal proceedings, simplified pre-trial proceedings, or complaints brought by way of private prosecution [10].

Article 459 of the Criminal Procedure Code, "Decision on the review of a case on the basis of newly discovered circumstances related to violations of rights and freedoms following the establishment by the European Court of Human Rights of a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms in criminal proceedings before the courts of the Republic of Azerbaijan," provides as follows:

"The Plenum of the Supreme Court of the Republic of Azerbaijan, having reviewed judicial acts in the cases provided for in Article 455.0.2 of the Criminal Procedure Code, shall have the right to adopt one of the following decisions:

– full or partial annulment of the judicial acts of the relevant courts of first instance, appellate and cassation levels, as well as judicial acts adopted by way of additional cassation, rendered in violation of rights and freedoms, and referral of the materials of simplified pre-trial proceedings or enforcement materials in private prosecution complaints for review by the relevant court of first or appellate instance;

– amendment of the decision of the cassation court and/or the decision rendered by way of additional cassation in the cases provided for in Articles 421.1.2 and 421.1.3 of the Criminal Procedure Code;

– annulment of the decision of the cassation court and/or the decision rendered by way of additional cassation and adoption of a new decision" [10].

Consequently, any assertions of unfairness of judicial proceedings are possible only after the case has been reviewed by the Plenum of the Supreme Court of the Republic of Azerbaijan in proceedings based on newly discovered circumstances concerning violations of human rights and freedoms and after the completion of the judicial procedures provided for in Article 459 of the Criminal Procedure Code of the Republic of Azerbaijan.

Prior to that, there are no legal grounds for asserting the unfairness of judicial proceedings and, accordingly, no grounds for classifying a person as a "political prisoner."

In our case with PACE Resolution No. 1900, however, the cart has clearly been placed before the horse, as is also confirmed by Article 5 of the Resolution, which states the following: "…the Assembly invites the competent authorities of all Council of Europe member States to re-examine all cases in which there may be political prisoners, applying the above-mentioned criteria and, depending on the outcome, either to release such prisoners or to conduct a new trial" [8, p. 42].

As a result, a person is first recognized as a "political prisoner" on the grounds of an unfair trial, disproportionality, and discrimination in the deprivation of liberty, and only thereafter is it proposed to conduct a new judicial review in order to substantiate what were initially unsubstantiated allegations.

From the content of the Resolution it is evident that all grounds for recognizing a person as a "political prisoner" are linked to "political reasons" and "political motives of the authorities"; however, this link is determined arbitrarily. More precisely, neither the methodology for identifying "political reasons and motives" nor the substantive content of these concepts is defined in the Report or in the Resolution, which artificially generates opportunities for arbitrary interpretations and assertions, observed each time "political prisoners" are declared.

This is one side of the issue. The other lies in the fact that no form of human activity is immune from errors and abuses, as evidenced by overturned convictions after the serving of 20-year prison sentences in such proclaimed "strongholds of democracy" as the United States, the United

Kingdom, France, and others. There have also been executions of innocent persons convicted due to errors or abuses by representatives of judicial and law-enforcement bodies.

Indeed, in the broad sense, the State must bear responsibility for errors and abuses committed by its representatives, which it does by paying compensation to victims, followed by recourse claims against those responsible, and by offering written or oral apologies.

However, this does not mean that the State itself is an accomplice to the violations and abuses committed, as some may believe. Yet paragraph "e" of Article 3 of Resolution No. 1900 states precisely this: if it merely appears (seems — author's note) that deprivation of liberty resulted from an obviously unfair trial connected with the political motives of the authorities, the person is recognized as a "political prisoner" [8, p. 42].

At the same time, paragraphs "b," "c," and "d" refer to political reasons and motives underlying unlawful actions and decisions, yet the authorities as such are not mentioned. Meanwhile, unlawful actions and decisions by a representative of authority committed for personal gain, career advancement, or other private motives cannot be considered to have a political basis, which in each specific case must be subject to confirmation or refutation.

Neither Resolution No. 1900 nor the Report by Mr. C. Strässer explains what should be understood by "political reasons" and "political motives." Only paragraph 10 of Section 3.2 of the Report notes that personal gain is incompatible with political motives; however, the concept of personal gain itself is not defined.

Nevertheless, independent experts of the Council of Europe and a number of human rights defenders have proposed their own similar definitions of "political reasons" and "political motives," although these definitions are also heterogeneous. Thus, "…political motives of the authorities… are understood as the motives of representatives of power capable of influencing the actions and decisions of law-enforcement bodies and courts, connected with their стремление to consolidate power or intimidate representatives of other political movements, to create or maintain certain public sentiments, or to seize or acquire state property" [6].

As can be seen, this formulation separates law-enforcement bodies and courts from representatives of power whose motives and reasons for actions and decisions are capable of classifying a person as a political prisoner.

Another definition states that "…political motives… are understood as identified or evidentially substantiated unlawful influence on decision-making (action or inaction) by law-enforcement bodies or their officials for the purposes of: consolidating or preserving the political or economic power of certain individuals, groups, or state institutions; terminating or altering the lawful official, socio-political, or other activities of the persecuted person or third parties; seizing, redistributing, or acquiring private or corporate property in favor of the State or third legal or natural persons; conducting mass campaigns against certain types of offences committed by specific categories or groups of persons" [6].

In this case as well, officials of law-enforcement and judicial bodies are not classified as "bearers" of political motives or political reasons of the authorities; power is viewed as a higher-level entity, while law-enforcement and judicial officials are regarded as executors of the motives and reasons of the authorities.

In this context, particular interest attaches to the criteria developed at the request of the United Nations by the former President of the European Commission of Human Rights, Carl Aage Nørgaard, who, inter alia, included the motive of the offender — that is, whether the offence was

committed for political motives (for example, to achieve or prevent the achievement of objectives of a political organization, institution, or body) or for personal motives; the link between the offence and the pursued political objective, such as the immediacy of the connection or proportionality between the offence and the objective pursued; whether the act was committed pursuant to an order or with the sanction of an interested organization, institution, or body, and others [6].

Thus, it may be asserted that the concepts of "political reasons" and "political motives" require further specification, since existing definitions are fraught with ambiguous interpretation.

PACE Resolution No. 1900 does not contain procedures for transforming a person suspected of committing an offence or convicted by a court into a "political prisoner." Article 5 merely notes that "the Assembly invites the competent authorities of all Council of Europe member States to re-examine all cases where there may be political prisoners, applying the above-mentioned criteria and, depending on the outcome, either to release such prisoners or to conduct a new trial."

Thus, "there may be" — that is, they may or may not exist. An original premise for a prescriptive act.

According to Mr. C. Strässer's Report, the algorithm for the emergence of "political prisoners" consists of the following interrelated stages (procedures):

- "…those who claim that a particular person is a political prisoner must submit relevant case materials";
- "…these materials are then transmitted to the relevant State…";
- "…which, in turn, has the opportunity to submit evidence refuting these claims";
- "…the assertion that a person is a 'political prisoner' must be supported by prima facie evidence…";
- "…the State is obliged to demonstrate that the detention was carried out in full compliance with the requirements of the ECHR as interpreted by the European Court of Human Rights, insofar as the substance of the case is concerned, that the requirements of proportionality and non-discrimination were respected, and that the deprivation of liberty resulted from a fair trial";
- "…if the respondent State cannot prove that the person has been deprived of liberty in full compliance with the requirements of the ECHR as interpreted by the European Court of Human Rights, insofar as the substance of the case is concerned, that proportionality and non-discrimination were observed, and that the deprivation of liberty resulted from a fair trial, the person concerned shall be regarded as a political prisoner";
- "Bodies authorized to establish the political nature of detention may also apply, mutatis mutandis, the case-law of the European Court of Human Rights as regards findings of fact in situations where the respondent State refuses to cooperate and to provide documents or other information that lies within the exclusive possession of the authorities" [2].

Let us examine the viability of these procedures in the same sequence.

As a rule, the initiative to recognize a person as a "political prisoner" belongs to human rights and party organizations, other associations of a political nature, and similar entities. Recently, perceiving the status of "political prisoner" as a means of release from punishment or reduction of its term, the detained or convicted persons themselves, their relatives, and defence counsel have also begun to pursue such efforts.

Any sophisticated pickpocket may declare that he stole a briefcase from a luxury Mercedes for political reasons, as a protest against injustice, corruption, suppression of freedoms, and the like.

History knows many such "expropriators," some of whom later headed parties, states, and governments, without changing their convictions. Is this not a precedent?

In any case, the ground for initiating a process to recognize a person as a political prisoner is clearly present. This is not exaggeration, but a conclusion drawn solely from the Explanatory Memorandum.

The Report does not specify to whom the relevant case materials should be submitted before being transmitted to the State, nor does it define what documents qualify as such. Nevertheless, a practice has emerged whereby such materials are submitted to national human rights organizations specializing in the issue of political prisoners and maintaining their records, followed by periodic publication of compiled lists [1].

In some cases, applications for recognition of a person as a political prisoner are submitted directly to international human dimension institutions, which coordinate their actions with certain national human rights organizations depending on established connections and prevailing sympathies.

Case materials consist of copies of procedural documents (verdicts, rulings, records, motions, etc.) obtained from defence counsel, suspects, accused persons, or convicted individuals, or from open information databases of law-enforcement or judicial bodies.

It appears that these documents, with the exception of defence motions, in the vast majority of cases will not contain evidentiary information regarding the political nature or political reasons for deprivation of liberty, although there may be obvious cases later assessed in judgments of the European Court of Human Rights.

Issues of evidence and proof, which are fundamental in any form of interaction, are addressed ambiguously in the Report. Thus, opponents of the authorities need only present assertions supported by so-called prima facie evidence, while "…the State is obliged to prove that the detention was carried out in full compliance with the requirements of the ECHR as interpreted by the European Court of Human Rights…, that the requirements of proportionality and non-discrimination were observed, and that the deprivation of liberty resulted from a fair trial."

According to the view of Stefan Trechsel, reflected in the Report, if the State cannot prove the above assertions, "…the person is considered a political prisoner" [2].

As is known, in one of its meanings, prima facie denotes evident and sufficient proof that appears credible in the absence of rebuttal and is presented as a rebuttable presumption "in the absence of evidence to the contrary." That is, it is proof sufficient to initiate proceedings, but not always sufficient to render a decision.

According to paragraph 13 of the Report, "…bodies authorized to establish the political nature of detention may also apply, mutatis mutandis, the case-law of the European Court of Human Rights with regard to findings of fact in situations where the respondent State refuses to cooperate and to provide documents or other information that lies within the exclusive possession of the authorities."

The concept of mutatis mutandis (Lat.) — with what must be changed having been changed; with due regard to the relevant differences; with modifications arising from the circumstances — allows for the application by analogy of judgments of the European Court of Human Rights [7]. In our case, mutatis mutandis is proposed to be applied by bodies authorized to establish the political nature of deprivation of liberty "…in situations where the respondent State refuses to cooperate and

to provide documents or other information that lies within the exclusive possession of the authorities" (para. 13 of the Report). It follows that if the respondent State does cooperate with the initiators of the process of recognizing a person as a political prisoner and provides all necessary documents, mutatis mutandis cannot be applied. Secondly, the application of case-law and mere reference to particular judgments of the European Court are not the same thing. Thirdly, even if a person or organization refers to precedents of the European Court in its assertions, this does not exhaust the issue, since the evidentiary weight of such assertions in a dispute with the respondent State does not increase, while opposing arguments remain subjective.

Each party substantiates its conclusions and presents its evidence, sometimes the same evidence but with different evaluations. An impartial arbiter capable of determining the correctness of one of the parties is absent; such an arbiter is not defined in the Resolution or the Report, which makes it possible to disregard opposing arguments.

However, the central issue in this situation is, in our view, the problem of proof and evidence, which in both the Report and the Resolution is artificially camouflaged by general, untenable, and unenforceable slogan-like assertions.

Thus, while repeatedly using the terms "evidence" and "proof," the drafters of both the Report and the Resolution ignore the provisions of national legislation, reducing these concepts to a common, everyday level. Meanwhile, according to Article 124 of the Criminal Procedure Code of the Republic of Azerbaijan, evidence in criminal proceedings consists of reliable data (information, documents, objects) obtained by the court or by a party to the criminal process. Such information, documents, and objects may be admitted as evidence if there are no doubts as to their authenticity, source, and the circumstances of their acquisition; cases of inadmissible evidence are listed in Article 125 of the Criminal Procedure Code. The sufficiency of evidence and the rules for its collection, verification, and evaluation are also determined by law (Articles 143–145 of the Criminal Procedure Code). According to Article 138 of the Criminal Procedure Code, proof consists of the collection, verification, and evaluation of evidence in order to establish circumstances relevant to the lawful, well-founded, and fair resolution of the accusation. The burden of proving the grounds for bringing a person to criminal responsibility and his or her guilt rests with the prosecutor [10].

Natural and legal persons, which may include human rights defenders and human rights organizations, have the right to submit objects and documents, as well as oral or written information, which may be recognized as evidence. However, recognition of information, objects, and documents as evidence is carried out by bodies conducting criminal proceedings and only in the course of judicial proceedings. Evidence is also collected (Article 143.1 of the Criminal Procedure Code) through interrogations, confrontations, seizures, searches, inspections, expert examinations, identification procedures, and other procedural actions during the preliminary investigation and trial [10].

Thus, from the content of Section 3.4 of the Report it follows that the burden of proof is placed on the State, since "…those who claim that a particular person is a political prisoner must submit relevant case materials." Nothing is said about evidence and, consequently, about proof within the described procedure; nor is it specified what the "relevant materials" must contain. The respondent State is presented with "relevant materials" that, in essence, merely raise the question of the reasons for allegedly unlawful treatment of a potential political prisoner; the State begins to justify itself, as a result of which the "political prisoner" procedure is launched without any grounds or evidence. As a rule, the State provides evidence refuting the allegations raised, but in most cases

such evidence is ignored, since it is evaluated in accordance with political settings rather than legal provisions, and the question is transformed into an assertion.

If all the illogicalities and rhetorical digressions (in the second sense of the word) intended to camouflage the true objectives of the drafters are removed from the Report and the Resolution, there remains only a primitive scheme of crude interference in the internal affairs of the State [5, pp. 173-184].

Nevertheless, PACE Resolution No. 1900 has already been adopted; however, as Azerbaijani researchers rightly note, it is not a dogma and, in order to function, must be supplemented with genuine provisions aimed at the real protection of human rights and freedoms, rather than politically biased, opportunistic assertions [11, pp. 112-117].

It appears that the initiative in this direction should originate from Azerbaijan, which would sweep away speculative insinuations against it, demonstrate genuine interest in resolving the issue, and show the existence of the necessary potential to do so.

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The article was submitted: *2025 November 10*
Accepted for publication: *2025 November 21*

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DOI: 10.25108/2304-1730-1749.iolr.2025.81.148-161
UOT: 343.1

AŞPA-nın 1900 saylı “Siyasi məhbusun tərifi” qətnaməsi alogizmlər və səhvlər konqlomeratı kimi

Xülasə: Son zamanlar Azərbaycanın “dostlar” tərəfindən ölkəmizin bütün ərazisində konstitusiya quruluşunun bərpası üzrə həyata keçirilmiş lokal xarakterli antiterror tədbirləri nəticəsində saxlanılan şəxslərə qarşı istifadə etmək məqsədilə, kifayət qədər köhnəlmiş “siyasi məhbus” məsələsi çarxını yenidən fırlatmaq cəhdləri müşahidə olunur.

Bu, öz ağalarının müstəqil dövlətlərin və xalqların daxili işlərinə müdaxiləyə yönəlmiş biznes layihələrini səlibçi cübbələrinin üzərindən geyindikləri “insan hüquqları müdafiəçisi” tounu ilə pərdələyən xüsusi xidmət orqanlarının həmin o «çirkab quyularından» gələn üfunətdir.

2012-ci ildən bəri həmin ikili standartlar metodikası ilə, qeyd olunan məqsədlər üçün AŞPA-nın 1900 saylı “Siyasi məhbusun tərifi” qətnaməsi bir müqəvva kimi istifadə edilməkdədir.

Lakin, 1900(2012) saylı “Siyasi məhbusun tərifi” qətnaməsi və ona dair izahlı Memorandumda ziddiyyətlər, alogizmlər və qeyri-dəqiqliklər mövcuddur ki, bunlar da yaranmış bu “konqlomeratın” təyinatı üzrə tətbiqini qeyri-mümkün edir.

“Siyasi səbəblər” və “siyasi motivlər” anlayışları konkretləşdirilməlidir, çünki mövcud tərifl ər birmənalı olmayan yozumlara yol açır.

Həm “Məruzə”, həm də “Qətnamə” müəllifləri “sübut” və “sübutetmə” terminlərindən dəfələrlə istifadə etsələr də, milli qanunvericiliklərin müddəalarını görməzdən gələrək bu anlayışları adi məişət səviyyəsinə endirirlər.

Açar sözlər: siyasi məhbus; AŞPA qətnaməsi; İnsan hüquqlarının və əsas azadlıqların müdafiəsi haqqında Avropa Konvensiyası; sübutetmə yükü; siyasi səbəblər və motivlər.

Məqalə daxil olmuşdur: *10 noyabr 2025-ci il*
Çapa qəbul edilmişdir: *21 noyabr 2025-ci il*

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DOI: 10.25108/2304-1730-1749.iolr.2025.81.148-161
УДК: 343.1

Резолюция ПАСЕ № 1900 «Определение политического заключенного» как конгломерат алогизмов и ошибок

Аннотация: В последнее время отмечаются поползновения «друзей» Азербайджана раскрутить маховик порядком замшелого вопроса о политзаключенных с прицелом его использования в отношении лиц, задержанных в результате антитеррористических мероприятий локального характера по восстановлению конституционного строя на всей территории нашего государства.

Душок из тех же выгребных ям спецслужб, камуфлирующих бизнес-проекты хозяев по вмешательству во внутренние дела самодостаточных государств и народов, тогами защитников прав человека поверх накидок крестоносцев.

С 2012 г. при той же методике двойных стандартов в указанных целях задействуется жупел резолюции ПАСЕ № 1900 «Определение политического заключенного».

Однако, Резолюция № 1900(2012) «Определение политического заключенного» и пояснительный Меморандум к ней содержат противоречия, алогизмы и неточности, исключающие применение образовавшегося конгломерата по предназначению.

Понятия «политические причины» и «политические мотивы» подлежат конкретизации, поскольку существующие определения чреваты неоднозначным толкованием.

Неоднократно употребляя термины «доказательство» и «доказывание» разработчики и «Доклада» и «Резолюции» игнорируют положения национальных законодательств, сводя эти понятия до житейско-обывательского уровня.

Ключевые слова: политический заключенный; резолюция ПАСЕ; Европейская конвенция о защите прав и основных свобод; бремя доказывания; политические причины и мотивы.

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Дата поступления: *10 ноября 2025 г.*
Дата принятия в печать: *21 ноября 2025 г.*