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## **Alleged secret detentions and unlawful inter-state transfers involving Council of Europe member states**

Opinion  
Political Affairs Committee  
Rapporteur for Opinion: Mr Peter Schieder, Austria, Socialist Group

### **Conclusions by the Political Affairs Committee**

1. The Political Affairs Committee wishes to extend its thanks to the Committee on Legal Affairs and Human Rights and especially to rapporteur Mr Dick Marty for the excellent quality of their work in the report on Alleged secret detentions and unlawful inter-state transfers involving Council of Europe (CoE) member states.
2. The Political Affairs Committee cannot but warmly welcome and encourage the work undergone to shed light on alleged secret detentions and unlawful inter-state transfers which run counter to the basic principles of the CoE: defending human rights and the rule of law in its member states.
3. The Political Affairs Committee is in agreement with the approach of the Committee on Legal Affairs and Human Rights, its conclusions and suggestions.
4. It strongly shares the view, in particular, that:
  - the fight against terrorism is an absolute necessity but must not be carried out in violation of fundamental principles of human rights;
  - there is urgent need to improve the international response to the threat of terrorism;
  - the member states of the CoE should fully cooperate in order to shed more light on the alleged secret detentions and unlawful inter-state transfers;
5. The Marty report gives very clear indications that CoE member states have behaved inappropriately. Human rights violations against specifically named individuals surely constitutes proof. In most cases however it is not possible to speak of proof in the strictly legal sense – and thus, very few states are likely to admit that what they did was wrong. For this specific reason, but also on account of general considerations, the Political Affairs Committee expressly supports the report's basic approach, which is not to condemn member states for errors or omissions or advocate imposing penalties on them, but to assist them in eliminating malfunctions, making improvements and averting any repetitions. The CoE is a political

organisation which needs to co-operate with governments in ensuring that their citizens' human rights and basic freedoms are protected at all levels.

6. The Political Affairs Committee takes the view that, in human rights matters, Europe also needs to display more self-confidence in its dealings with the United States. In this field, the CoE must encourage its member states and work as closely as possible with the European Union. The objective of closer European cooperation with the United States in many areas such as economy and defence, in transatlantic dialogue and within international organisations must not lead, in any European country, to acceptance of human rights compromises that are contrary to European values.

7. In this context, it again points out the need for the CoE and its member states to export its core values and promote them actively to all countries around the world and in all its international relations. It refers to the relevant Parliamentary Assembly decisions and activities, in particular as regards the CoE's role in the United Nations, combating the death penalty and pressing the case for an international court of human rights.

8. The Political Affairs Committee wishes to add some elements of analysis. While it appreciates that the report takes into consideration the actions undertaken by the CoE as a whole (Parliamentary Assembly, Secretary General, Venice Commission levels) on the matter of alleged secret detentions and unlawful inter-state transfers, it would highly appreciate seeing the action undertaken by the Secretary General of the CoE, concerning his use of power of inquiry under Article 52 of the European Convention on Human Rights (ECHR), being better taken into consideration and developed in the draft resolution, now that his supplementary report under Article 52 ECHR on the question of secret detention and transport of detainees suspected of terrorist acts, notably by or at the instigation of foreign agencies, has been made public on June 14, 2006.

9. Besides, the Political Affairs Committee believes that the instruments to control and guarantee human rights and fundamental rights are not efficient enough. Enforcement and monitoring mechanisms should be put in place to oblige a member state to implement recommendations under specific conventions. In that perspective, the CoE Secretary General's report on the use of his powers under Article 52 ECHR has reached the same conclusion and should therefore constitute a basis for further improvement by member states.

10. With the aim of improving the instruments to control and guarantee human rights and fundamental freedoms, the Political Affairs committee wishes to suggest that the Committee on Legal Affairs and Human Rights considers whether a revision of the ECHR might be an appropriate step to undertake and to invite the European Court of Human Rights to make proposals in that spirit.

11. Furthermore, the approach taken in Mr Marty's report concerning access by the Committee for the Prevention of Torture (CPT) to places of detention in Kosovo, should be moderated and viewed in the light of the recent developments achieved after the several month-long dialogue undertaken by the CoE's Secretary General with NATO's Secretary General.

12. The Political Affairs committee considers the CPT's reports as highly valuable for CoE member states and would invite the CPT to review its principle of strict confidentiality concerning them, when it is clear that a given member state shows signs of grave human rights abuse.

13. The CoE has a duty to ensure there are no blank spots in the human-rights map of Europe. This applies to bilateral agreements between individual European countries and the United States and NATO. The CoE must push for the European Convention on Human Rights to apply in all cases. Agreements must not allow anyone to derogate from it or other European conventions.

14. The Political Affairs Committee draws attention to the need, in this context, to shed more light on the role of secret services. It refers to relevant Assembly reports and decisions, in particular concerning political supervision of intelligence activities (see Recommendation 1402 (1999) on the '*Control of internal security services in CoE member states*') and to the analysis provided by the Secretary General of the CoE under his use of power of inquiry under Article 52 ECHR. In this connection, the question also arises whether European legal systems have appropriate penalties for human rights violations by secret services. It is worth considering whether this is not a matter that falls in the field of competence of the CoE Commissioner for Human Rights.

15. With these considerations in mind, the Political Affairs Committee suggests the following amendments:

### **Amendments to the draft resolution**

#### **Amendment 1**

In paragraph 15, add a new sentence at the end of the paragraph which would read as follows: "In that context we wish to commend the repeated efforts of the Secretary General of the Council of Europe and his clear line taken on the matter."

#### **Amendment 2**

Add a new paragraph after paragraph 15 which would read as follows: "The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment should be invited to review its principle of strict confidentiality concerning its reports when the situation in a given member state clearly shows sign of grave human rights abuse".

#### **Amendment 3**

After the new paragraph 16, add yet another paragraph which would read as follows: "The Assembly believes that broader rights should be attributed to the institution of the Commissioner for Human Rights of the Council of Europe, in order for it to be more closely involved in any investigations on violations of human rights the PACE might carry out in the future".

#### **Amendment 4**

In paragraph 19 add a new sub-paragraph, 19.7., which would read as follows: " review, together with European States, their bilateral agreements in order to avoid creating direct or indirect *de jure* or *de facto* exemptions in applying European conventions to which Council of Europe member states are parties".

#### **Amendment 5**

In paragraph 21, add at the end of the paragraph after the word "forthcoming." a new sentence which would read: "The Secretary General's inquiry under Article 52 ECHR should be a first basis of information on which member states should build upon".

#### **Amendment 6**

In paragraph 23, line 4, after the words "human rights" add ", democracy and respect for the rule of law".

### **Amendments to the draft recommendation**

#### **Amendment 1**

After paragraph 4.2. add a new paragraph, which would read: "In light of what has been stated in Parliamentary Assembly's Resolution ...(2006) paragraph 12, the Assembly recommends that the Committee of Ministers should consider amending article 11, paragraph 1 of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment which reads that '*the information gathered by the Committee in relation to a visit, its report and its consultations with the Party concerned shall be confidential*'".

*Reporting Committee:* Political Affairs Committee.

*Reference to Committee:* Ref. 3153, 25.11.05

*Draft Opinion* unanimously adopted by the Committee on 26 June 2006

Members of the Committee : Mr Abdülkadir **Ateş** (Chairman), Mr Konstantion **Kosachev** (Vice-Chairman), Mr Zsolt **Németh** (Vice-Chairman), Mr Giorgi Bokeria (Vice-Chairman), Ms Birgir Ármannsson, Mr Giuseppe Arzilli, Mr Claudio Azzolini, Mr Miroslav Beneš, Mr Radu-Mircea Berceanu, Mr Gerardo Bianco, Mr Alexandër **Biberaj**, Mr Luc **Van den Brande**, Ms Beáta Brestenká, Ms Anna Čurdová, Mr Noel Davern, Mr Dumitru Diacov, Mr Michel Dreyfus-Schmidt, Mr Adri Duivesteijn, Ms Josette Durrieu, Mr Mikko **Elo**, Mr Joan Albert **Farré Santuré**, Mr Per-Kristian **Foss**, Mr Jean-Charles **Gardetto**, Mr Charles Goerens, Mr Daniel **Goulet**, Mr Andreas Gross, Mr Jean-Pol Henry, Mr Joachim **Hörster**, Mr Renzo Innocenti, Mr Ivan Ivanovski, Mr Tadeusz **Iwiński**, Mr Elmira Jahić (alternate: Mr Sead **Avdic**), Mr Ljubiša Jovašević, Mr Ivan Kalezić (alternate: Mr Ivan **Brajović**), Mr Oleksandr Karpov, Mr Oskars Kastēns, Mr Yuriy Kostenko, Ms Darja **Lavtižar-Bebler**, Mr Göran **Lindblad**, Mr Younal Loutfi, Mr Mikhail **Margelov**, Mr Tomasz Markowski (alternate: Mr Zbigniew **Girzyński**), Mr Dick **Marty**, Mr Frano **Matušić**, Mr Murat Mercan, Mr Jean-Claude Mignon, Mr Marko **Mihkelson**, Ms Nadezhda Mikhailova (alternate: Mr Ivan **Ivanov**), Mr **Mirzazade**, Mr João Bosco **Mota Amaral**, Ms Natalia Narochitskaya (alternate: M. Victor **Kolesnikov**), Ms Carina **Ohlsson**, Mr Boris Oliynyk, Mr Theodoros Pangalos (alternate: Mr Konstantinos **Vrettos**), Ms Elsa Papadimitriou, Ms Porteiro Garcia (alternate: Mr Pedro **Agramunt**), Mr Christos **Pourgourides**, Mr Gordon **Prentice**, Mr Gabino **Puche**, Mr Lluís Maria **de Puig**, Mr Jeffrey Pullicino Orlando, Lord **Russell-Johnston**, Mr Peter **Schieder**, Mr Ingo **Schmitt**, , Mr Adrian **Severin**, Ms Hanne Severinsen, Mr Samad Seyidov, Mr Leonid **Slutsky**, Mr Michael Spindelegger, Mr Rainer **Steenblock**, Mr Zoltán **Szabó**, Baroness Taylor of Bolton (alternate: Lord **Tomlinson**), Mr Mehmet **Tekelioğlu**, Mr Tigran Torosyan, Mr José **Vera Jardim**, Ms Biruté Vesaitė, Mr Varujan **Vosganian**, Mr David **Wilshire**, Mr Bart van Winsen, Mr Wolfgang **Wodarg**, Ms Renate Wohlwend (alternate: Ms Doris **Frommelt**), Mr Marco Zacchera, Mr Krzysztof Zaremba (alternate: M. Karol **Karski**).

*Ex-officio:* MM. Mátyás **Eörsi**, Mats Einarsson,

N.B. : The names of the members who took part in the meeting are printed in **bold**

*Head of the Secretariat :* Mr Perin

*Secretaries to the Committee:* Mrs Nachilo, Mr Chevtchenko, Mrs Sirtori-Milner, Mlle Pieter