



## Resolution 1950 (2013)<sup>1</sup>

Final version

# Keeping political and criminal responsibility separate

Parliamentary Assembly

1. The Parliamentary Assembly considers that democracy and the rule of law require that politicians shall be effectively protected from criminal prosecutions based on their political decisions. Political decisions shall be subject to political responsibility, the ultimate judges being the voters.
2. The Assembly also reconfirms its principled opposition to all forms of impunity, as expressed in its [Resolution 1675 \(2009\)](#) on the state of human rights in Europe: the need to eradicate impunity. Consequently, politicians shall be held to account for criminal acts or omissions they commit both in their private capacity and in the exercise of their public office.
3. The distinction between political decision making and criminal acts or omissions must be based on national constitutional and criminal law, which in turn should respect the following principles, in line with the conclusions of the European Commission for Democracy through Law (Venice Commission):
  - 3.1. criminal proceedings should not be used to penalise political mistakes or disagreements;
  - 3.2. politicians should be accountable for ordinary criminal acts in the same way as ordinary citizens;
  - 3.3. substantive national rules on ministerial criminal responsibility must comply both with Article 7 of the European Convention on Human Rights (ETS No. 5, “the Convention”) and other requirements derived from the principle of the rule of law, including legal certainty, predictability, clarity, proportionality and equal treatment;
  - 3.4. in particular, wide and vague national criminal law provisions on “abuse of office” can be problematic, both with regard to Article 7 of the Convention and other basic requirements under the rule of law, and they can also be particularly vulnerable to political abuse;
  - 3.5. national provisions on “abuse of office” should be interpreted narrowly and applied with a high threshold, with reference to additional criteria, such as, in cases involving economic interests, the intent of personal gain; they should only be invoked against politicians as a last resort and the level of sanctions should be proportional to the legal offence and not influenced by political considerations;
  - 3.6. as regards procedure, to the extent that charges brought against politicians are of a “criminal” nature according to Article 6 of the Convention, the same fair trial requirements must apply both to ordinary criminal procedures and to the special impeachment procedures which exist in a number of Council of Europe member States;
  - 3.7. special rules for impeachment of ministers must not be in breach of basic principles of the rule of law. As such rules are susceptible to political abuse, they call for extra caution and restraint as to the manner in which they are interpreted and applied.

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1. *Assembly debate* on 28 June 2013 (27th Sitting) (see [Doc. 13214](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Omtzigt; and [Doc. 13251](#), opinion of the Committee on Political Affairs and Democracy, rapporteur: Mr Van der Maelen). *Text adopted by the Assembly* on 28 June 2013 (27th Sitting).



4. In view of the above, the Assembly:

- 4.1. urges governing majorities in member States to refrain from abusing the criminal justice system for the persecution of political opponents;
- 4.2. invites the legislative bodies of those member States whose criminal law still includes broad abuse-of-office provisions to consider abolishing or redrafting such provisions, with a view to limiting their scope in line with the recommendations of the Venice Commission;
- 4.3. invites the competent authorities of those member States whose constitutions provide for special impeachment procedures for ministerial criminal responsibility to ensure that they are interpreted and applied with the degree of caution and restraint recommended by the Venice Commission;
- 4.4. urges the competent authorities of those member States which have been condemned for violation of Article 18 of the Convention (prohibition of misuse of power in restricting the rights and freedoms) to take specific measures to ensure the effective independence of the judiciary and speedily and comprehensively execute the relevant judgments of the European Court of Human Rights.