GUIDELINES ON THE DEFINITION OF POLITICAL PRISONERS

Background

In view of the particular attention paid to the problems of criminal and administrative prosecution for political reasons, the cases of which have been numerous in recent years in the former Soviet republics;

Taking into account the fact that the interrelated concepts of *political prisoner* and *prisoner of conscience,* suggested by the reputable international human rights organization Amnesty International, have been used regularly for over half a century;

Relying on the position of the Parliamentary Assembly of the Council of Europe (PACE) in regard to the adoption of the term *political prisoner* and the criteria for its practical use in the particular circumstances in a number of the European countries;

- We propose to further develop and refine the approach, approved by PACE Resolution #1900 (2012)[1], for the following purposes:

- Formulate clear and precise definitions for the regular use of these terms, which have been already widely used by many organizations, as well as political and public figures;

- Relate these concepts with the basic rules of criminal and administrative law and court procedure;

- Directly implement principles of international law and international human rights standards, since the problem under consideration falls, by its nature, within the force of basic international human rights treaties, particularly the International Covenant on Civil and Political Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms;

- Directly apply this approach in the analysis of the judicial and administrative decisions in specific cases of politically motivated prosecution, so as to use them in conjunction with the rules and procedures relating to the relevant areas of law;

- Recommend that organizations of civil society and international organizations address the public authorities in the countries where politically motivated prosecution occurs, demanding that the measures set out in these guidelines are taken.

[1] See: http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=19150&lang=en

Part I. Key Terms

1. Deprivation of Liberty

1.1. In these Guidelines, *deprivation of liberty* means detention or imprisonment of a person at any place if he/she is unable to leave it:

a) due to any kind of coercion applied by a public officer, or with the knowledge and connivance of a public officer, or a public authority[2], or

b) due to the enforcement of a decision taken by a judicial, administrative or other public authority or public officer.

2. Political Motivation

2.1 In these Guidelines, *political motivation* means the actual reasons for action or inaction, unacceptable in a democratic society, performed by the law enforcement bodies and judiciary and others with authority to achieve at least one of the following purposes:

a) consolidation or retention of power by those with authority;

b) involuntary termination or change in the nature of one's public activities.

3. Political Prisoner

3.1. A person deprived of liberty is to be regarded as a *political prisoner*, if at least one of the following criteria is observed:

a) the detention has been imposed solely because of their political, religious or other beliefs, as well as non-violent exercise of freedom of thought, conscience and religion, freedom of expression and information, freedom of peaceful assembly and association, and other rights and freedoms guaranteed by the International Covenant on Civil and Political Rights (ICCPR) or the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR);

b) the detention has been imposed solely for activities aimed at defending human rights and fundamental freedoms;

c) the detention has been imposed solely on the basis of gender, race, colour, language, religion; national, ethnic, social or class origin; birth, nationality, sexual orientation and gender identity, property or other status, or on other basis, or due to their firm links with communities united on this basis.

We consider it necessary to demand the immediate and unconditional release and full rehabilitation, with compensation for the harm inflicted, for this category of political prisoners.

3.2. A person deprived of liberty is also to be regarded as a *political prisoner*, if, as well as political reasons for their prosecution, at least one of the following criteria is observed:

a) the detention has been imposed in violation of the right to a fair trial, other rights and freedoms guaranteed by the International Covenant on Civil and Political Rights or the

[2] It also means activity of the local self-government.

European Convention for the Protection of Human Rights and Fundamental Freedoms;

b) the detention was based on falsification of evidence of the alleged offence, or imposed in the absence of the event or elements of the offence, or imposed in connection with an offence committed by another person;
c) the length of the detention or its conditions are clearly disproportionate (incommensurate) to the offence the person is suspected, accused or has been found guilty of;
d) the person has been detained in a discriminatory manner as compared to other persons.

We consider it necessary to demand the immediate review of the actions and judicial decisions, taken against this group of political prisoners in accordance with their right to a fair trial and criteria a – d above.

3.3. A person is not to be regarded as a *political prisoner*, if, under the above circumstances, the person has committed:

a) a violent offence against persons, except in cases of self-defence or necessity;
b) a hate crime against a person or property; or the person has called for violent action on national, ethnic, racial, religious or other grounds.

Neither is a person recognized as a political prisoner, if their violent actions have pursued the abolition of the rights and freedoms guaranteed by the International Covenant on Civil and Political Rights or the European Convention for the Protection of Human Rights and Fundamental Freedoms, or the limitation of these rights and freedoms to a greater extent than is provided for by these agreements.

Section II. General Comments on Guidelines on Definition of *Political Prisoner*

A. Introduction

These Guidelines were developed by working group of human rights defenders from Azerbaijan, Belarus, Georgia, Lithuania, Poland, Russia and Ukraine, including: Emil Adelkhanov, Intigam Aliyev, Anna Baranovskaya, Lyudmila Vatskova, Anna Gerasimova, Valentin Gefter, Oleg Gulak, Sergey Davidis, Eldar Zeynalov, Yevgeny Zakharov, Inna Kuley, Aleksandra Matviychuk, Tatiana Revyako, Olga Salomatova, Valentin Stefanovich, Yelena Tonkacheva, Annagi Hajibeyli, Volodymyr Yavorsky.

The purpose of the Guidelines is to unify the approaches to the work of human rights organizations with respect to the definition and use of the term *political prisoner*.

The concept of *political prisoner* is increasingly found in international documents, media publications, and reports by national and international organizations. However, the concept is often understood in different ways. It is therefore in practice very difficult to determine whether a particular person can be deemed a political prisoner. On the other hand, the vagueness of the concept allows the states to avoid liability for cases of politically motivated prosecution, since it enables them to claim that such accusations are unfounded. The elaboration of agreed criteria and common application of them should help to solve this problem.

Developing these guidelines we relied on the experience of the Council of Europe, the international human rights organization Amnesty International, and national human rights organizations around the world.

B. Paragraph-by-Paragraph Commentary

1. Deprivation of Liberty

The term *deprivation of liberty* needs to be defined, so as to clearly separate political prisoners from other victims of politically motivated criminal or administrative proceedings. These Guidelines refer only to persons deprived of liberty in the course of politically motivated prosecution – for a period obviously exceeding the legal period of temporary detention.

Clearly not all victims of political persecution are political prisoners. This group does not include, for example, those who are ordered to do community work or those who receive a fine or restriction of their rights, unless this involves deprivation of liberty. Those persecuted for political reasons may also include persons who are exposed to extrajudicial pressure, or, instead of criminal penalties, to administrative measures resulting in some serious human rights violations. For example, this may be dismissal or refusal to employ a person, enrol them in an educational institution on instructions from the authorities, or travel (or non-disclosure) restrictions imposed during the period of investigation, restrictions on travelling abroad, etc. The list of such measures is quite long and it is probably not possible to provide an exhaustive list. Regardless of the form of coercion or repression, such persons may be deemed victims of politically motivated persecution. However, they can be regarded as political prisoners only where they have been deprived of liberty.

The above does not mean that persons, deprived of their liberty as a result of politically motivated prosecution, will be automatically called *political prisoners*. But this is one of the essential criteria for this term to be used.

The definition of *deprivation of liberty* in the Guidelines is formulated in accordance with the international standards and is based, inter alia, on the practice of the various UN system institutions, using this term.[3]

[3] See, for example, Human Rights Fact Sheet #26, Working Group on Arbitrary Detention, http://www.ohchr.org/Documents/Publications/FactSheet26en.pdf, International Convention for the Protection of All Persons from Enforced Disappearance, December 20, 2006, http://www.ohchr.org/EN/HRBodies/CED/Pages/ConventionCED.aspx; Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), December 18, 2002, http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx; Body of Principles for the Protection of All Persons

It should be noted that international treaties and national laws do not always use the same terminology to refer to the concept of *deprivation of liberty*. They can define it as "arrest", "detention", "imprisonment", "isolation", etc. For this reason, in Resolution 1997/50, the UN Commission on Human Rights expressed their support for the use of the term *deprivation of liberty* in order to eliminate any differences in the interpretations of various terms.[4]

International law guarantees the right to liberty and security of person and determines cases where imprisonment is lawful. In addition to many other international treaties, this right is enshrined in Article 3 of the Universal Declaration of Human Rights, Article 9 of the International Covenant on Civil and Political Rights, and Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

The key criteria for the concept of *deprivation of liberty* are as follows:

1) Impossibility of leaving a certain place at will. This may be due to being under guard or for fear of a more severe punishment in the future. What is involved is a certain enclosed place or a place access to which is prohibited or restricted to anyone, including members of the public.

2) Definition of the reasons for being in this place. This criterion excludes cases when such a situation is not due to the actions or omissions of the authorities or their representatives. Cases where the Government and their representatives are not involved cannot, therefore, be considered within the context of political prisoners. Cases in which the Government fails to comply with their international obligations are a different matter which explains the legitimate interest of the international community to them. It does not matter whether the person is in custody pursuant to a formal decision or not. The criterion is the deprivation of liberty resulting from the acts or omissions of the public authorities.

The definition does not contain a comprehensive list of possible places of deprivation of liberty, since it is hardly possible to create such an exhaustive list due to differences in the terminology applied in different countries. For the definition of deprivation of liberty it is also immaterial whether the person is imprisoned in a private or a public place. Actions of the Government also refer to actions by bodies of local self-government.

Thus, for example, the UN Working Group on Arbitrary Detention determines whether the person was deprived of liberty in each individual case, depending on whether the person is kept in closed premises which the person is not allowed to leave.[5]

Following these criteria, deprivation of liberty should include *home detention* if the person is imprisoned in a place, which they cannot leave at will.

Also deprivation of liberty should include compulsory community service, work or labour education as a kind of criminal or administrative penalty, when a person is kept in a place, which they are not permitted to leave at will.

2. Political Motivation

Political motivation from the authorities is the crucial component of political persecution. Such motivation is a real threat to democracy and therefore requires special attention from civil society and the international community.

In these Guidelines, the term *political motivation* is used to refer to explicit or, more frequently, hidden causes of actions or omissions by the authorities in resorting to persecution. It is important to not only analyze the grounds given by the authorities, but to identify the real motives for their decisions.

This concept is clearly political rather than legal. However, it is possible for international human rights bodies, for example, the European Court of Human Rights, the UN Working Group on

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under Any Form of Detention or Imprisonment, UN Resolution # 43/173, December 9, 1988, http://www.un.org/documents/ga/res/43/a43r173.htm; European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 1987, http://www.cpt.coe.int/en/documents/ecpt.htm, etc.

[4] Commission on Human Rights resolution 1997/50, Question of arbitrary detention, http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-1997-50.doc

[5] See, for example, Opinion 1, Opinion 4 of the Working Group on Arbitrary Detention, Commission on Human Rights, Session 49, January 12, 1993, http://daccess-ods.un.org/TMP/342006.646096706.html.

Arbitrary Detention, etc. to establish the presence of political motivation. Therefore, identification of political motivation is certainly also of a legal nature, and the relevant evidence and arguments should be sufficiently conclusive.

It should be noted that as a rule classification of a person subjected to persecution as a political prisoner does not per se depend on the person's motives. Otherwise, this concept would lose its specificity and functionality and would be too subjective to be applied in practice. It is not the motivation of the person's actions that is essential, but the evaluation of the actions as such. Also, generally speaking, the characteristic of the person is not important, although certain personal details about the person may bring more clarity when classifying them as a political prisoner. It is not important whether this person is an opposition politician, human rights defender, journalist or any other public figure, but it is rather the actions which the person has been accused of, the response of the authorities and the actual motivation of the actions taken by the authorities. The fact in itself of their opposition political activity cannot serve as a sustainable basis for viewing the person as a political prisoner, even in case of deprivation of liberty, although it provokes heightened public interest in the case.

Identification of political motivation is also necessary to highlight these situations against the general background of gross human rights violations. This does not mean that the latter cases are less important. But, most often, the social danger of violations of human rights and the rule of law, committed for political reasons, is much higher than that of other violations – due to a noticeable and real threat to the fundamentals of a democratic society.

The term *political motivation* here refers only to two main purposes of persecution out of a range of those possible since it is these two purposes that various forms of extra-judicial motivation and circumstances ultimately boil down to. The specific tasks or consequences of such persecution – such as removal or redistribution of property, or public campaigns (for example, pre-election, anti-corruption and counter-terrorism campaigns), in the course of which the person is "involved" in a show trial or sentenced to a disproportionately severe or explicitly discriminatory punishment – can serve as the background against which the motive or the commissioning emerges, resulting from at least one of the above mentioned purposes. The presence of at least one of the above signs indicates political motivation in the actions of the authorities, although often both of them may be observed.

Of course, the above "features" may accompany any persecution (including persecution without political motivation), but we can speak of politically motivated persecution in any specific case only if the authorities pursue certain political purposes, and this fact has been convincingly demonstrated.

3. Political prisoner

In accordance with these Guidelines, political prisoners are subdivided into two categories.

The difference between them lies both in the content of the charges laid against them, and in the nature of the demands on the authorities in order to change the legal position of political prisoners in each of these categories.

An essential aspect of the issue of politically motivated persecution is the legal measures proposed to the society and the state in order to change the situation. It is not enough simply to regard the individuals as political prisoners, compile lists, and describe the relevant criminal cases and life circumstances. We must look for some solution or other to the situation with politically motivated persecution involving deprivation of liberty and violations of the individual's human rights.

From our point of view, the role of a human rights community, including the international one, which is independent of the authorities or any political motivation, lies specifically in drawing up and persistently offering measures appropriate to the cases and personal circumstances of a given political prisoner with the aim of reinstating justice and the person's rights.

The ultimate result of civil and international activity should be the release of as many people subjected to politically motivated persecution as possible, at least from serving further detention, as

well as the identification and punishment of the persons in charge, in the event of wrongful prosecution, and the prevention of similar cases in the future.

The claim that a person is a *political prisoner* must be supported by *prima facie* evidence while the State must prove that:

a) the person was detained in full compliance with international human rights standards, so far as this relates to the merits of the case;

b) the requirements of proportionality and non-discrimination have been complied with;

c) the imprisonment was the result of a fair trial.

In view of the above, the Guidelines highlight the key requirements serving as the dividing line between the actions relevant to each of the two categories of political prisoners:

a) unconditional and immediate release and rehabilitation of political prisoners, the prosecution of whom is described in Article 3.1 of the Guidelines;

b) a fair trial, which includes a wide range of legal measures, such as a revision of the criminal or administrative proceedings in accordance with international standards, grant of pardon, amnesty, parole – for those political prisoners who are included in the broader category as defined in Article 3.2. of the Guidelines.

3.1.

The first category of political prisoners includes those traditionally considered to be prisoners of conscience. We can add to this group those mentioned in Item (b) of Article 3.1 which broadens the traditional understanding of this term to cover individuals prosecuted essentially for their non-violent human rights work.

The activities of people covered by Article 3.1 are legitimate and in a democratic society cannot be classified as an offence. These activities include peaceful protest and civil resistance that do not result in overt violations of the rights of other people. Yet in some countries such activities or membership in such a group may be viewed as an offense punished through deprivation of liberty which runs counter to international human rights standards.

The requirement with respect to this category of political prisoners is therefore their unconditional and immediate release and the termination of persecution.

An important criterion here is specifically the non-violent nature of activities involved wth exercising and defending human rights and fundamental freedoms. In this context, the term *violence* is used in a broad sense that includes not only attempts to cause physical injury to any person, but also actions aimed at destruction of or damage to property. However, it should be noted that it does not include cases of “reactive” violence provoked by the original disproportionate use of physical force, special means and weapons, to which the authorities resorted despite the fact that the actions of the prisoner pursued no intent to cause any non-symbolic material damage or harm to anyone.

An essential feature of Article 3.1 is the fact that when including individuals in this category of political prisoners, it does not matter whether the actions of the authorities were politically motivated or not, although in many cases this motivation can be observed.

3.2.

The second category of political prisoners includes individuals who are prosecuted by the state for political reasons. It is political motivation that distinguishes this prosecution from other violations of human rights, showing the features listed in this section. Even one of these features, together with the authorities’ political motivation, makes it possible to view the person prosecuted as a political prisoner.

It should be emphasized once again that a person may be deemed a political prisoner only in case of deprivation of liberty.

3.2.a.

Here we are talking about violations of only those rights, which are guaranteed by the International Covenant on Civil and Political Rights and the Convention on the Protection of Human Rights and Fundamental Freedoms if the prosecution has resulted in the individual’s

deprivation of liberty. If political motivation is identified, it is sufficient to identify violation of at least one right, related to deprivation of liberty, for the person to be deemed a political prisoner. It is therefore important to establish a clear link between violations of the above mentioned rights of the individual and their deprivation of liberty.

Of significance in identifying and assessing instances of human rights abuse in a particular case can be judgments from the European Court of Human Rights or the United Nations Human Rights Committee which found such violations in the given or similar cases. One can also refer to the judgments of other international bodies which define violations of the right to liberty and security of person, for example, the UN Working Group on Arbitrary Detention. At least, as a general rule the victim of human rights violations is expected to file a complaint with these international bodies after exhausting effective domestic remedies. The results of an independent public inquiry, monitoring and legal expertise, undertaken by non-governmental or international organizations, the findings of independent international experts and other materials may also be used as proof of human rights violations.

3.2.b.

This clause refers to cases where deprivation of liberty looks legitimate formally, but is in fact based on false or falsified evidence – forged or specially prepared documents, false testimony, etc. In examining the case, the court ignores such important circumstances and does not reject the evidence as inadmissible. Such actions are often not viewed as a violation of the right to a fair trial or of any other right.

This is due to the fact that often international bodies, when assessing complaints of human rights violations, do not address the issue of assessing the evidence, especially when the formal fundamental aspects of the right to a fair trial have been complied with. That is why this clause is highlighted as a separate basis for recognizing a person as a political prisoner.

This category also includes cases when the individual, prosecuted on political grounds, committed no offense at all. This may be seen, in part, for example, in the context of Article 7 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which states that a person cannot be convicted of acts which do not constitute an offense. This provision takes into account not only the formal existence of legislation, establishing responsibility for such an offense, but also puts forward specific requirements as to the quality of such legislation. For example, the law should conform to international standards, should be clear, accessible, equitable and predictable. This obligation does not require any absolute legal certainty from the state, which is often impossible, but imposes certain obligations, so that the law enforcement process is not arbitrary, and everyone can foresee the illegality of certain actions.

In this context, a lot of problems arise over the criminal prosecution of officials for “abuse of authority” or “abuse of office”, since such wording of this crime may violate the requirements of Article 7 of the Convention for the Protection of Human Rights and Fundamental Freedoms.[6]

The requirements set out in Paragraph b) of Article 3.2. are broader than the guarantees set in Article 7 of the Convention for the Protection of Human Rights and Fundamental Freedoms, since they point not only to the absence of the law as the basis for prosecution, but also to the possible lack of other elements of the offense alleged against a political prisoner.

3.2.c.

This clause emphasizes the fact that politically motivated prosecutions are often distinguished by such factors as the length and conditions of the detention (pre-trial or pursuant to a court order), although they regularly occur in any legal practice. It is important for the assessment of such disproportionate (inadequate) response to link the use of the “harsh” conditions of the individual’s detention specifically with the authorities’ political motivation.

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[6] See Report on the relationship between political and criminal ministerial responsibility, Adopted by the Venice Commission at its 94th Plenary Session (Venice, 8-9 March 2013), http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)001-e

In certain cases, the inadequacy of punishment may be a violation of human rights. Thus, the European Court of Human Rights, assessing the need for state intervention in human rights in a democratic society, evaluates, among other aspects, also the proportionality of the intervention. Also, when evaluating a possible violation of the right to liberty and security of person, the reasonableness of the detention length is examined. This issue is discussed in paragraph a) of Article 3.2 of the Guidelines. However, not all cases of disproportionate deprivation of liberty lead to a violation of human rights being established. That is why this situation is highlighted as separate grounds for recognizing a person as a political prisoner.

This clause deals with the decision of a judicial or non-judicial authority on enforcement measures (penalties) applied to such person, no matter what kind of offense they committed or whether an offence was committed or not.

It is important that the measures applied to this person were, clearly and objectively, disproportionate to the offense. This disproportion or inadequacy is seen, for example, through a comparative analysis of the case with similar offenses. This most often refers to a relatively more severe judicial or administrative decision (punishment) imposed by the authorities, in the presence of politically motivation in their actions.

3.2.d.

The concept of selective justice is common in the USA[7], but it also has grounds in the European legal system. It is based on the legal principle of equality before the law, which is established at constitutional level in many countries.

This refers to a situation when, in apparently similar circumstances, the prosecution and punishment differ from many other cases due to political motives. In the absence of such motives, the nature of the government's actions would probably be considerably different; for example, the government would not have punished the persons prosecuted at all or the punishment would have been much more lenient.

In these circumstances, it is immaterial whether the person is in fact guilty. The determining factor is whether the penalty is applied against them in a discriminatory manner, when compared to other individuals. In such cases, it is necessary to show that criminal or administrative law has been applied selectively or in an obviously discriminatory manner, when compared with other persons in a relatively similar situation.

The abovementioned selectivity factor is determined, for example, by comparing the penalty (or other legal consequences of the persecution) with similar offenses in national case law, as well as with the case law and the standards of international justice.

3.3.

Even under the circumstances specified in Articles 3.1 and 3.2, the person may be not regarded as a political prisoner if they committed the actions specified in Article 3.3. It does not matter whether these actions were included in the charges against this individual or not. In any case, such actions must be related to the charges upon which the person was deprived of liberty.

The fact and nature of such actions should be identified and proven with a high probability; they should be based not only on the data of the official investigation carried out by the authorities, due to the doubts about their objectivity, but also on independent monitoring materials, expert reports, etc.

This does not mean that the rights of the individuals "excluded" from the category of political prisoner on these grounds are violated to a lesser extent, or that defence of their rights does not need public attention. However, the specific features of the offenses committed by the persons subjected to politically motivated imprisonment make us separate them from the narrower category of political prisoners, the protection of whom we are first and foremost concerned with.

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[7] See the opinion of the Supreme Court of the U.S. as of May 13, 1996, PETITIONER *v.* CHRISTOPHER LEE ARMSTRONG et al., http://www.law.cornell.edu/supct/html/95-157.ZO.html.

The second paragraph of Article 3.3 is designed at protecting against abuse of one's rights. This provision ensures that a person cannot be regarded as a political prisoner if their actions are deliberately aimed at anti-democratic goals. Article 30 of the Universal Declaration of Human Rights, Article 5 of the International Covenant on Civil and Political Rights, Article 17 of the Convention for the Protection of Human Rights and Fundamental Freedoms contain the similar wordings. In practice, such a wording is most often used to legitimately restrict freedom of speech, freedom of association and peaceful assembly, or the right to free elections. Not considering these people to be political prisoners does not mean that their rights should not be respected, especially the right to liberty and security of person. The grounds for detention must comply with international human rights standards. In any case, the state must prove that its intervention is proportionate, when it comes to depriving a person of liberty, even when referring to the abuse of one's rights.

This is especially true for those individuals who cannot be regarded as political prisoners – to people legally prosecuted for committing terrorist acts or other politically motivated acts of violence, if the alleged offense and the defendant's guilt have been proven in compliance with the standards of the right to a fair trial.

3.3.a.

This paragraph of the Guidelines includes cases of violence on the part of the person prosecuted, which makes it impossible for them to be regarded as a political prisoner. It is important whether their guilt was established in court in compliance with standards for the right to a fair trial.

However, when applying this criterion, one should keep in mind two important exceptions, due to which, in the absence of political motivation in the actions of the authorities, often result in no criminal proceedings being initiated, or the person being acquitted, or released from liability. Otherwise, in the presence of political motivation, the public authorities may deliberately ignore the circumstances that justify self-defence or extreme necessity.

Justifiable *self-defence* is the legitimate protection of the human person and rights of the defendant and others, as well as of the legally protected interests of society and the state, from a socially dangerous assault by inflicting harm on the attacker. The main distinguishing feature of self-defence, differentiating it from other circumstances precluding criminality, is that the harm is inflicted on the attacker not on others. For example, such defence can be seen in situations where law enforcement officers use clearly unlawful actions, operating, *inter alia*, in accordance with an illegal order.

Extreme necessity implies cases in which a person, in order to prevent damage to their personal interests and interests of others, the society and the state, is forced to harm other protected interests. Extreme necessity differs from self-defence, since harm is caused not to the person who created the risk of damage, but to third parties. In view of this, the doctrine of "the lesser evil" should be applied: the harm caused must be less than the harm prevented.

3.3.b.

This clause excludes recognition of a person as a political prisoner if they have committed a hate crime. The grounds for this limitation can be found in Article 20 of the International Covenant on Civil and Political Rights.

A hate crime may be a crime committed both against person and against property. This is the only case where, when defining whether the individual can be regarded as a political prisoner, the motivation of the crime committer should be studied, since this motivation is an integral part of this type of crime.

The term "hate crime" or "bias/prejudice crime" refers to a type of criminal offenses rather than to any specific offense specified in the Criminal Code. A hate crime can be committed in a country, in which no special criminal sanctions are envisaged in connection with prejudice or bias. This term expresses a concept rather than a legal definition.

Hate crimes invariably consist of two components: a crime and bias/prejudice motivation.[8]

The first component of a hate crime is an act which constitutes a crime against a person or property in accordance with the provisions of criminal law (regardless of the motivation). If no main crime has been committed, there can also be no hate crime.

The second component of a hate crime is certain motivation ("bias/prejudice") under the influence of which the criminal act was committed. It is this component, the bias/prejudice motivation that distinguishes hate crimes from ordinary crimes. It means that the offender chooses the object for their crimes deliberately, on the basis of a certain protected feature.

It is also important that calls to violence may, on the grounds mentioned in this clause, serve as the reason for not including a person in the category of political prisoners – even if there is no provision in national law that equates such calls (the so-called "hate speech") to criminal offenses.

Note that here we are talking only about criminal offenses of this type, and this clause does not apply to other types of offenses.

[8] See, for example, Hate Crime Laws – A Practical Guide, OSCE/ODIHR, 2009, http://www.osce.org/odihr/36426?download=true.