

**COUNCIL OF EUROPE
PARLIAMENTARY ASSEMBLY**

**Mr. Rene van der LINDEN
- President-**

Pece, February 28 ,2005

Motion for abolishing resolution No 1410 (2004) and investigating the controversial circumstances which lead to the adoption of the resolution on 23 November 2004

Dear M. Van der Linden,

the answer of Mr. Simon Newman, head of the Private Office on your behalf from 9 February 2005 is no adequate answer nor action refer to the serious subject we have informed you in our letter from 31 January 2005. Because of your education and your function your know best how the Assembly and its president has to act in a serious case like this.

A resolution is no dogma nor axiom, therefore a resolution can (and has to) be changed, replaced or abolished if facts change, new facts appear or if there is a serious and founded accusation of corruption like in our case.

A resolution which represents the view of the Assembly must be based on the Convention on Human Rights and strengthens the democratic principle of the rule of law. The controversial resolution 1410 (2004) violates Human Rights (Article 6 and Article 13 of the Convention). The resolution and its proposal of establishing a collective fund for repaying the Non- Slovenian savers brings the danger of prejudging the court-decision by questioning the independence and impartiality of the European Court of Human Rights.

Having in mind the very fact that the European Court for Human Rights has declared the first three applications of Non- Slovenian depositors (Applications No. 44574/98, 45133/98 and 48316/99) in the case of Ljubljanska banka admissible on April 8, 2004 and the fact that our application No. 65553/01 is a pending case before the Court, the controversial resolution 1410 based on the controversial report by prof Erik Juergens (Doc. No. 10135) **is unacceptable and represents an obstruction to the work of the judges in the aforementioned pending cases before the European Court of Human Rights by belittling the courts` admissibility- decision and prejudging and final courts` decision.**

The controversial resolution No. 1410 (2004) put an unnecessary burden on the European Court of Human Rights refer the judicial decision on the merits in the first three Ljubljanska banka cases. Either the European Court of Human Rights will protect the human rights of the Non- Slovenian depositors or the Court will confirm the controversial resolution and protect the credibility not only of Prof Erik Juergens, like the resolution is prejudging.

The controversial report by Prof Erik Juergens represents facts which give rise to a presumption of the existence of possible criminal offences of coercion against judicial officials. In his report Prof. Juergens expresses his opinion how the judges of the European Court of Human Rights should act in the particular case and what kind of decisions the judges should pass. The following facts speak for themselves:

Resolution 1410 (2004) based on the report by Prof Erik Juergens (Doc. 10135):

Paragraph 7

" However, notwithstanding the decision of the Court to declare two individual applications from Croatian depositors admissible, the assembly considers that the matter of compensation for so many thousands of individuals would best be solved politically, between the successor states, instead of an already overburdened Court. The Assembly therefore: ..."

It is of fundamental importance for the rule of law that a victim gets satisfaction vis-à-vis the offender. It is Human Right (Article 6 of the Convention) to have a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

Because of the admissibility decision of the Court published on 8 April 2004 and its reflection on the former paragraph 7 of the controversial resolution, the paragraph 7 was replaced by the amendment 1 tabled by Prof Juergens and some mislead members of the Standing Committee of the Socialist group. The former paragraph 7 had provided that only in the case if the Court would declare the applications inadmissible, the assembly proposes to set up a collective fund in order to compensate the depositors. Therefore it was the intention to push through *per fas et nefas* the controversial resolution based on the report by Prof Juergens, notwithstanding the Courts` admissibility decision.

The replaced paragraph 7 of the controversial resolution is not only unacceptable for us as the victims but violates the Article 6, 13 and 14 of the Convention. It is dangerous for principle of the rule of law if the argument of an overburdened Court will be enough to establish the practice to solve politically serious legal issues of violating human rights.

Paragraph 11

"Croatian depositors have put their case before the European Court of Human rights in Strasbourg, essentially on the basis of article 14 of the European Convention on Human Rights, discrimination, and on the basis of article 1 of the first protocol (unlawful expropriation). The Court has not yet heard these cases. It is uncertain if it will consider them admissible, concerning the fact that the Convention was not applicable in the states concerned at the moment that the problem at issue was created. "

Courts` admissibility decision refer the Ljubljanska banka case, cite : "The court observes that although, generally, the withdrawal of money from the foreign- currency savings account was increasingly restricted in the 1980s and in the early 1990s by the SFRJ, the authorities of Slovenia, after its accession to independence on 25 June 1991, also legislated on the matter. The National Assembly of the Republic of Slovenia continued to do so after 28 June 1994, when the Convention and Protocol No. 1 entered into force in respect of Slovenia, notably by introducing amendments to the 1991 Constitutional law on 27. July 1994 (Official Gazette no. 45/94)... Regarding being had to the content of the 1994 Constitutional law, the court considers that the Slovenian Government` s plea of inadmissibility on the ground of lack of jurisdiction *ratione temporis* must be dismissed. "

Paragraph 45

" The rapporteur would suggest that there is no easy answer to the question if the head office of Ljubljanska banka is in fact liable. At the same time it is clear that even if the legal question is decided negatively for the Ljubljanska banka head office a claim on Slovenia to make good the guarantee to all depositors for many hundreds of millions of D. Marks including the accumulated interest would invoke economic and political problems for Slovenia that would be difficult to solve. "

Every state has to fulfil its obligations. The actual example refer the ČSOB bank, shows that Slovakia had to fulfil its obligation. The court was not interested in if the repayment would invoke a political and economic problem difficult to solve for Slovakia. To establish the practice of political and economic problems as an

acceptable reasons why a state does not has to fulfil its obligation vis-à-vis foreigners, gives a wrong and dangerous signal especially in the territory of former Yugoslavia !

Paragraph 50

" And the protection against expropriation guaranteed by the European convention on human rights, even if it were applicable to the case in point, which the rapporteur doubts, was in any case not applicable under the FSRY."

Paragraph 51

" Thus a rapporteur of the committee on Legal affairs and Human Rights cannot express opinions, which hold any legal substance without recreating the world of illusions in which the problem of non refunded depositors was originally created. "

Addendum to the report, Paragraph 21

"As far as such legal grounds have been put forward they are of a very complex nature, and only partials linked to human rights, especially to the protection of property. It must be recalled that the problem has been put before the assembly as a human right as issue. "

Addendum to the report, Paragraph 24

"Certainly , as regards point of law, a general position can be taken by the Committee on legal affairs and Human rights- such as that in this case it is at best uncertain whether Article 1 of the first Protocol to the European convention on Human rights can be invoked in this case."

The aforementioned paragraphs are disproved by Courts` admissibility decision refer the Ljubljanska banka case, cite " As to the matter of compliance with Article 1 of Protocol No. 1 raised by all three applicants and with Article 14 of the Convention taken together with Article 1 of Protocol No. 1 raised solely by Mr. Kovačić, the Court considers, in the light of the parties` submissions, that the complaints raise serious issues of fact and law under the Convention , the determination of which requires an examination of the merits. The court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. "

Addendum to the report, Paragraph 7

"In addition, a case is pending since 2001 before the European court of human rights in an appeal by three private depositors from Croatia. The appeal is based especially on the violation of article 1 of the first protocol of the European convention on human Rights. It is expected that the Court will rule on the admissibility of this appeal by January 2004. Even if the appeal is declared admissible, it will take a long time before the Court has made a decision in the case..."

The rapporteur knows how much time the Court will take to make a decision ? How ?

Addendum to the report, Paragraph 25

"... The Conclusion I had reached was that a political solution should be found for this problem,..."

The resolution is seriously controversial and contradictory in itself by proposing introducing the practice of leaving the Court deal with the issue from the legal point of view, while at the same time advising that the problem should be politically tackled through negotiations, irrespective of the legal background.

Having in mind the aforementioned paragraphs of the controversial report by Prof Erik Juergens, which represent a resolution of the Parliamentary Assembly and regarding the fact that the European Court of Human Rights works closely with the institutions of the Council of Europe especially with the Committee on Human Rights and Legal Affairs the controversial resolution is prejudging the courts' decision, hampering and belittling the work of the judges, in fact it represents a coercion against judicial officials. The resolution endangers the credibility of the Assembly and harms seriously the reputation of the European Court of Human Rights by questioning the courts' independence and impartiality.

Although Prof Juergens is reported to the Dutch officials responsible for combating economic crime and corruption since 15 March 2003 because of his controversial report in the case of Ljubljanska banka and facts which gives rise to a presumption of the existence of possible illegal activity including corruption or of a serious failure to comply with the obligations of officials and although the former president of the assembly was informed detailed about the serious accusations against Prof Juergens refer the controversial report and asked several times- also by the Croatian and Bosnian delegations- to postponement further deliberations and voting by the Standing Committee and PACE until the Court decides on the legal aspects of the issue by a judicial decision, the procedure of the controversial report by Prof Juergens was continued.

The Dutch ministry of justice is informed and has to investigate if there is a case of non- respect of obligations or serious failure to comply with the obligation of officials refer the report of Prof Juergens and we do deeply hope that the Dutch officials are not unwilling to investigate the serious accusations based on the Criminal Law Convention on Corruption against Prof Erik Juergens, prominent member of PACE and Dutch parliamentary official. We do expect the answer of the Dutch minister of justice refer this serious subject, soon.

It has to be investigated by the Assembly too if there is a case of non- respect of obligations or serious professional wrongdoings refer the former president of the Assembly, because the per fas et nefas continue of the procedure in the Standing Committee in this serious circumstances of the presumption of the existence of possible illegal activity including corruption was not in the light of the Criminal Law Convention on Corruption.

It has to be stressed that the Parliamentary delegations of the Republic of Croatia and of Bosnia and Herzegovina have sent a letter refer this serious subject to the member of the Standing Committee on 18 November 2004 and it has to be stressed that the Croatian, Bosnian and Macedonian members of the Standing Committee have tabled an amendment to delete paragraph 7 in its entirety in the draft resolution, which was dismissed. It has to be stressed that the members of the Croatian and Bosnian Delegation were not present at the voting on 23 November 2004 refer the resolution based on the report by Prof Juergens.

The members of the Standing Committee cannot be accused for adopting this controversial resolution because they have been misled by the intentionally uncorrected and misleading report by Prof Erik Juergens, a prominent member of PACE with great influence and maybe they have been misled too by a case of non- respect of obligations or serious failure to comply with the obligation of the former president of the Assembly, because the controversial report was tabled for voting at the Standing Committee notwithstanding the serious accusations against Prof Juergens.

The controversial and contradiction ally nature of the resolution based on the report by Prof Erik Juergens is explainable with the controversial and contradict ional situation of abusing democratic instruments - like a resolutions of PACE- to ensure an undue advantage for mighty bank corporation KBC bank NV and its NLB by establishing a political solution of the issue to conceal or disguise the banking fraud in the case of Non - Slovenian depositors of former Ljubljanska banka.

As it is written in the preamble of the Criminal Law Convention on Corruption: Corruption threatens the rule of law, human rights and endangers the stability of democratic institutions, therefore you will understand and support our remedies for combating corruption that threatens our human rights.

An effective fight against corruption requires increased, rapid and well- functioning international co-operation, therefore we do believe that the informed authorities for combating economic crime and corruption in the Netherlands and in Belgium as well as the Assembly and you as its new president , the CECD and GRECO are not unwilling to take action in this serious case because of the involvement of the mighty Belgian-

German KBC bank NV and a prominent member of PACE, Prof Erik Juergens, who is obviously abused to protect above all the financial interests of the involved banks.

As Christians and democratic Europeans we do believe in the rule of law and we protect our rights only in democratic way. The Council of Europe has launched a major campaign for combating corruption. A number of major legal instruments have been adopted, like the Criminal Law Convention on Corruption but the effectiveness of these legal instruments depends on our good moral. Organized crime and corruption can be combating effectively with "organized good" by creating a culture opposed to corruption through high moral values and ethical standards.

Refer to our letter from January 31, 2004 we ask you once again to investigate this serious subject and to abolish the resolution 1410 because of the aforementioned facts. We thank you very much for your understanding and your support and we expect your answer soon.

Yours sincerely,

Danica Šekrst-Dinjar
Danica Šekrst- Dinjar

Juraj Šekrst
Juraj Šekrst

cc.

- ECHR, refer application No. 65553/01
- National delegations of PACE
- General secretary of Council of Europe, Mr Terry Davis
- Committee of the Ministers CM
- GRECO
- CECD
- Ministry of justice of the Netherlands