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Recent rise in national security discourse in Europe: the case of Roma

Committee Opinion[1]
Committee on Legal Affairs and Human Rights
Rapporteur: Mr Adrian NĂSTASE, Romania, Socialist Group

A. Conclusions of the committee

1. The Committee on Legal Affairs and Human Rights congratulates the rapporteur of the Political Affairs Committee, Ms Anne Brasseur, for her excellent report and approves the draft resolution as a whole.

2. The committee would nevertheless like to make a number of amendments geared to further reinforcing the draft resolution.

B. Proposed amendments to the draft resolution

Amendment A (to the draft resolution)

At the end of paragraph 7 of the draft resolution, add the following:

> *"The Assembly attaches the utmost importance to freedom of expression, inter alia in political debates on immigration. However, all forms of racial or ethnic discrimination are unacceptable. As the European Court of Human Rights has pointed out, freedom of expression can legitimately be restricted in the case of statements which are liable to prompt a feeling of rejection and hostility towards a given community, in accordance with Article 10, paragraph 2, of the European Convention on Human Rights."*

Amendment B (to the draft resolution)

After paragraph 8 of the draft resolution, add the following sentence:

> *"The Assembly also finds that the persons targeted by the above-mentioned discourse may invoke Article 8 of the Convention in order to defend their reputation and their honour."*

Amendment C (to the draft resolution)

After paragraph 9.1.3, add a new paragraph worded as follows:

> *"gather ethnic statistics accompanied by guarantees to prevent abuse, in accordance with ECRI recommendations, the opinions of the Advisory Committee of the Framework Convention for the Protection of National Minorities and the recommendations of the United Nations Committee for the Elimination of Racial Discrimination, and assess the results in order to improve the effectiveness of existing plans and programmes;"*

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1. Reference to committee: Bureau decision, Reference 3702 of 4 October 2010. Reporting committee: Political Affairs Committee. See Doc. 12386. Opinion approved by the committee on 5 October 2010.

Amendment D (to the draft resolution)

After paragraph 9.2.2, add a new paragraph worded as follows:

> *"where expulsion is concerned, apply a strict interpretation of the 'breach of the public order' justification as frequently used by the authorities when ordering expulsions, in accordance with the relevant case law of the European Court of Human Rights."*

C. Explanatory memorandum by Mr Năstase, rapporteur for opinion

1. I congratulate Ms Brasseur on her excellent report on the recent rise in national security discourse in Europe: the case of Roma.

2. I would, however, like to propose a number of amendments to the draft resolution in order to reinforce it.

Amendment A

I consider it necessary to weigh up the importance of freedom of expression in the context of the political debate against the imperatives of combating racial or ethnic discrimination. I therefore consider that we should quote Article 10, paragraph 2, of the European Convention on Human Rights ("the Convention") and recall that neither the politicians nor the media which transmit their political messages have absolute freedom of expression. I refer in particular to the relevant case law of the European Court of Human Rights.[2]

Amendment B

The rapporteur refers to a recent judgment of the European Court of Human Rights[3] in which persons of Roma origin complained, on the basis of Articles 8 and 14 of the Convention, of a violation of their honour and their reputation. They considered insulting and discriminatory certain passages of a book entitled *The Gypsies of Turkey* and a dictionary entitled *Turkish Dictionary for Pupils*. This judgment is interesting in that the Court recognised the Roma applicants' victim status, although in the case at issue, it did not find a violation.

Amendment C

At this point I wish to prevent states, in dealing with the situation of Roma, from pleading the absence of, or lack of access to, reliable statistics in order ultimately to advance figures and statistics which lack an inadequate factual basis. I think that it would be useful to incorporate part of the report by Mr Berényi on the situation of Roma in Europe and relevant activities of the Council of Europe[4] here. I also note that the same conclusion was reached very recently by the United Nations Committee on the Elimination of Racial Discrimination, in its final observations on France as part of its periodical examination of reports submitted by states parties to the International Convention on the Elimination of All Forms of Racial Discrimination.

Amendment D

I note that the "breach of public order" (or "public security") justification can sometimes be interpreted too broadly and invoked too abstractly by the national authorities to constitute grounds for an expulsion or other type of order. For this reason, I consider that we should recall that this ground can only be relied on within a strict context, backed by material reasons, within the meaning of the case law of the Strasbourg Court.[5]

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2. . See Le Pen v. France, Application No. 18788/09, judgment of 20 April 2010, a recent Court decision of inadmissibility regarding a French extreme right-wing politician, and also Féret v. Belgium (judgment finding non-violation of Article 10 of the Convention), Application No. 15615/07, judgment of 16 July 2009. In connection with the media, see also Jersild v. Denmark, Application No. 15890/89, Grand Chamber judgment of 23 September 1994.
3. . See Aksu v. Turkey, Application No. 4149/04, judgment of 27 July 2010 (not final).
4. . See Assembly Doc. 12174.
5. . See, mutatis mutandis, C.G .and others v. Bulgaria, No. 1365/07, judgment of 24 April 2008, Lupsa v. Romania, No. 10337/04, ECHR 2006-VII, and Prencipe v. Monaco, Application No. 43376/06, judgment of 16 July 2009.