



Doc. 12305
22 June 2010

Islam, Islamism and Islamophobia in Europe

Committee Opinion¹

Committee on Legal Affairs and Human Rights

Rapporteur: Mr Rafael HUSEYNOV, Azerbaijan, Alliance of Liberals and Democrats for Europe

A. Conclusions of the committee

The Committee on Legal Affairs and Human Rights has taken note of the report on "Islam, Islamism and Islamophobia" prepared by the rapporteur of the Committee on Culture, Science and Education, Mr Mogens Jensen (Denmark, Socialist Group), and, on the whole, approves the draft resolution and the draft recommendation proposed.

The committee nevertheless wishes to propose a number of changes to reinforce the draft resolution and recommendation and to make them more balanced.

B. Proposed amendments to the draft resolution and draft recommendation

In the draft resolution:

Amendment A (to the draft resolution)

In the draft resolution, in paragraph 3, replace the last sentence with the following text:

"Both freedoms constitute the necessary requirements for a democratic society. However, they are not absolute and may be subject to limits imposed under strict control. Moreover, in accordance with Article 17 of the Convention, they must not be abused for the destruction or undue limitation of any of the rights and freedoms set forth in the ECHR."

Amendment B (to the draft resolution)

In the draft resolution, in paragraph 4, replace the last sentence with the following text:

"It regrets, however, the initiatives taken by a number of United Nations member states that have resulted in the Human Rights Council adopting resolutions on action against defamation of religions, and in particular Islam, as this strategy constitutes a threat to freedom of expression."

Amendment C (to the draft resolution)

In the draft resolution, in paragraph 6, replace the fourth sentence with the following text:

"In keeping with Article 11 of the ECHR, member states can limit the activities of such organisations, on condition that such limitations satisfy the requirements set forth in paragraph 2 of Article 11."

1. Reference to committee: Doc. 11558, Reference 3442 of 29 May 2008 and 26 April 2010. Reporting committee: Committee on Culture, Science and Education. See [Doc. 12266](#). Opinion approved by the committee on 21 June 2010.



Amendment D (to the draft resolution)

In the draft resolution, at the end of paragraph 10, add the following sentence:

"It reiterates that it is for the member states to sanction political statements that stir up fear and hatred of Muslims and Islam, while complying with the stipulations of the ECHR, in particular Article 10, paragraph 2."

Amendment E (to the draft resolution)

In the draft resolution, replace paragraph 11 by the following text:

"Recalling its [Resolution 1464 \(2005\)](#) on women and religion in Europe, the Assembly calls on all Muslim communities to abandon any traditional interpretations of Islam which deny gender equality and limit women's rights, both within the family and in public life. This is not compatible with human dignity and democratic standards; women are equal to men in all respects and must be treated accordingly, with no exceptions. Indeed, there can be no place for culturalism and relativism in the protection of universal human rights. Discrimination of women, even when based on anachronistic religious traditions, goes against, inter alia, Articles 8, 9 and 14 of the ECHR, Article 5 of its Protocol No. 7 as well as its Protocol No. 12."

Amendment F (to the draft resolution)

In the draft resolution, replace paragraph 12 by the following text:

"In this respect, the veiling of women, especially full veiling through the burqa or the niqab, is often perceived as a symbol of the subjugation of women to men, restricting the role of women within the society, limiting their professional life and impeding their social and economic activities. Neither the full veiling of women, nor even the headscarf, is recognised by all Muslims as a religious obligation of Islam, but they are seen by many as a social and cultural tradition. The Assembly considers in any event that any coercing of women by their community or their family into wearing special clothing in the name of social or cultural tradition should be regarded as physical and/or moral duress, which requires states to adopt measures to prevent and sanction such coercion."

Amendment G (to the draft resolution)

In the draft resolution, in paragraph 15, replace the first sentence by the following text:

"Female genital mutilation under the pretext of Islamic or other customs violates the right to physical and moral integrity of individuals, and especially children, under Article 8 of the ECHR, and further constitutes inhuman and degrading treatment under its Article 3."

In the draft recommendation:

Amendment H (to the draft recommendation)

In the draft recommendation, replace paragraph 3.13 by the following text:

"call on member states not to establish a general ban of the full veiling or other religious or special clothing, but to protect women from all physical and psychological duress as well as their free choice to wear religious or special clothing and ensure equal opportunities for Muslim women to participate in public life and pursue education and professional activities; legal restrictions on this freedom may be justified where necessary in a democratic society, in particular for security purposes or where public or professional functions of individuals require their religious neutrality or that their face can be seen."

Amendment I (to the draft recommendation)

In the draft recommendation, after paragraph 3.13, add a new paragraph worded as follows:

"step up efforts to ensure that a convention to combat violence against women, including domestic violence, comes into being as swiftly as possible."

C. Explanatory memorandum by Mr Huseynov, rapporteur

1. I congratulate Mr Mogens Jensen on his report on Islam, Islamism and Islamophobia. Before explaining in detail the different amendments proposed to the draft resolution and recommendation, I should like to highlight certain features which are at the very heart of Islam. The peculiarity of Islam is modesty. This encompasses the notions of justice and tolerance, which constitute the core values of the Council of Europe. In this respect, it ought to be noted that Islam shares common moral values with other preceding monotheist religions, and that it acknowledges the positive aspects of each of them, therefore conveying a message of reconciliation, peace and tolerance. There is no sign of violence in Islam, which is, in fact, a deeply humanist religion, promoting solidarity between human beings and the inestimable value of human life. Concerning women, their place in the family and the attitude of society towards them, it should be stressed that women have always been highly considered and any form of discrimination against them is to be rejected. The wearing of a niqab or burqa should therefore be perceived as a custom and not as a religious dogma; neither the coercion into wearing them nor their prohibition is acceptable. Furthermore, one of the main features of Islam is its great ability not only to preserve its traditions but, above all, to modernise and adapt itself to the progressive trends of life. The Koran, in which nothing could serve as a basis for contravening human rights, should be taken in any event as a reliable source of reference. In Aya 53 of Sura 39 (entitled "Az-Zumar") of the Koran, one of the wisest books, Allah instructed the Prophet to deliver the following message to those who have sinned: "Do not lose your hope!". I think that this message could constitute a *leitmotif* for deepening inter-religious dialogue and mutual understanding.

2. I wish to propose several amendments, relating to both form and substance, to the draft resolution and recommendation, in order to steer them towards what I believe to be more balanced texts.

Amendment A

The rapporteur thinks it useful to reiterate that Articles 9 and 10 of the European Convention on Human Rights ("ECHR") are not absolute and believes it necessary to make express mention of Article 17 of the ECHR, which may be an effective tool for removing racist, anti-Semitic or Islamophobic statements from the protection of Article 10.²

Amendment B

The purpose of this amendment is to point out that only a few United Nations member states have taken such initiatives (and not all the member states, as the draft implies) which have actually resulted in resolutions being adopted.³ The rapporteur feels that the reference to "reflecting theocratic standards" is unclear and lends to confusion and that it would be more relevant to state that the concept of defamation of religions is, in itself, a threat to freedom of expression.

Amendment C

The rapporteur believes that it is both useful and adequate here to reiterate the need for compliance with the second paragraph of Article 11, since the Court has already dealt with cases which appear to be of relevance in this context.⁴

Amendment D

The rapporteur thinks that a reference to Article 10, paragraph 2, of the ECHR is useful here. In particular, one very recent European Court decision of inadmissibility⁵ provides a perfect illustration of the juridical and legal possibilities available to member states for sanctioning hate speech of this kind.

Amendment E

The rapporteur deems it necessary to emphasise the rejection, by the Assembly, of any element of relativism or culturalism in the universal protection of human rights. Furthermore, it would not be advisable to exhaustively list provisions of the ECHR and its protocols, as a number of others may prove to be applicable (for example, Articles 2 and 3 with respect to "honour" crimes in particular).

2. See *Garaudy v. France*, Application No. 65831/01, 24 June 2003, and *Norwood v. the United Kingdom* (dec.), Application No. 23131/03, 16 November 2004.

3. See the last resolution to date (A/HRC/13/71), adopted on 25 March 2010.

4. See, *mutatis mutandis*, *Parti Nationaliste Basque – Organisation Régionale D'Iparralde v. France*, Application No. 71251/01, judgment of 7 June 2007; *Herri Batasuna and Batasuna v. Spain*, Application No. 25803/04, judgment of 30 June 2009, and *Refah Partisi v. Turkey*, Grand Chamber, Application No. 41340/98, judgment of 13 February 2003.

5. *Le Pen v. France*, Application No. 18788/09, 20 April 2010.

Amendment F

The rapporteur believes that the element of constraint is a key aspect of the problem, and that the Assembly should approach the debate from the point of view of domestic violence, against the backdrop of the positive obligations of the member states. In this connection, he refers to the Council of Europe's efforts to prepare a convention to combat violence against women. In addition, he wishes to clear up the confusion fuelled by paragraph 12 which states that "neither the full veiling of women, nor even the headscarf" is a "religious obligation", while subsequently stressing that no woman should be coerced into wearing "religious clothing".

Amendment G

The rapporteur wishes to point out that this concerns female genital mutilations, which in themselves constitute treatment contrary to Article 3 (see *Collins and Akaziebie v. Sweden*, Application No. 23944/05, 8 March 2007).

Amendment H

The rapporteur refers in this connection to his explanatory note regarding Amendment F, *in fine*.

Amendment I

Since the forced wearing of the niqab or the burqa has to be considered as a form of duress against women, the rapporteur believes that there are grounds for inviting the Committee of Ministers to speed up the process of drawing up and adopting the convention on preventing and combating violence against women and domestic violence