Parliamentary Assembly
Assemblée parlementaire
https://pace.coe.int

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Doc. 12650
21 June 2011

Living together in 21st-century Europe: follow-up to the report of the Group of Eminent Persons of the Council of Europe

Committee Opinion[1]
Committee on Migration, Refugees and Population
Rapporteur: Mr Arcadio DÍAZ TEJERA, Spain, Socialist Group

A. Conclusions of the committee

1. The Committee on Migration, Refugees and Population congratulates the rapporteur of the Political Affairs Committee, Mr Latchezar Toshev, on his report and supports the draft recommendation proposed.

2. The committee is of the view that "living together" is, and will continue to be, one of the most important political and social challenges in Europe. To meet the challenge, political leadership will be essential.

3. As clearly indicated by the Political Affairs Committee, the Group of Eminent Persons' report will "provide a fresh impetus to, and generate a higher political commitment for, a range of current and future Council of Europe activities". The report provides a catalogue of steps which if implemented can lead to a substantial contribution towards not just "living together" but rather benefiting from and enjoying "living together".

4. The committee considers that it is essential for the Parliamentary Assembly and the Committee of Ministers of the Council of Europe to fill, at least in part, the crisis of leadership so clearly indicated in the report of the Group of Eminent Persons, and to provide responses and action by the Council of Europe, whether this be in terms of parliamentary action, monitoring, standard setting or co-operation activities. The Committee on Migration, Refugees and Population, for its part, stands ready to provide whatever assistance it can in this respect.

5. Notwithstanding the full support of the committee for the report of the Political Affairs Committee, it would like to put forward a number of amendments in order to strengthen the response of the Assembly, in particular in areas concerning the rights of migrants.

B. Proposed amendments to the draft recommendation

Amendment A (to the draft recommendation)

In the draft recommendation, paragraph 6, after the words "People coming" delete the word "lawfully".

Explanation: Persons coming lawfully and unlawfully should be expected to have similar behaviour. If the text is not changed the insinuation is that only regular migrants (those coming lawfully) should respect democracy, human rights, the rule of law, etc. Furthermore, many people come lawfully and then lapse into an irregular

1. Reference to Committee: Reference 3752 of 11 March 2011. Reporting committee: Political Affairs Committee. See Doc. 12631. Opinion approved by the committee on 21 June 2011.

status (visa overstayers for example). Irregular migrants exist in all member states, and in some countries in substantial numbers. It is not possible to ignore their existence when dealing with rights and responsibility issues, thus the rapporteur proposes removing the word “lawfully” from the text to reflect a *de facto* situation which must be dealt with.

Amendment B (to the draft recommendation)

In the draft recommendation, after paragraph 14.5, insert the following sub-paragraph:

> *“address the democratic deficit resulting from the lack of democratic participation of migrants, Roma and other groups susceptible to marginalisation;”*

Explanation: Democratic participation is a major issue and one on which the Assembly has focused in the past, including in the recent debate on the state of democracy in Europe. It is therefore essential to mention this democratic deficit.

Amendment C (to the draft recommendation)

In the draft recommendation, after paragraph 16.6, insert the following sub-paragraph:

> *“examine the steps needed to guarantee the basic rights of irregular migrants and their children, recognising that many of these persons are exploited and cannot or will not be returned to their countries of origin;”*

Explanation: The Assembly has spoken up on many occasions about rights issues affecting irregular migrants. While this is a difficult subject for governments and for the Council of Europe, the Assembly has maintained a firm position that there are serious rights and rule of law based issues linked to the existence in Europe of a large number of persons without status who cannot be returned to their countries of origin. Under these circumstances, member states have to find rights-based solutions, and the Council of Europe, as the organisation in Europe defending human rights, must not exclude this issue from its agenda.

Amendment D (to the draft recommendation)

In the draft recommendation, at the end of paragraph 19, add the following sentence:

> *“Following this conference, an action-based agenda for the Council of Europe should be set during a Ministerial Session, and this should feed into any future Council of Europe Summit of Heads of State and Government.”*

Explanation: The importance of this amendment is to ensure that there is high-level follow-up to the many good ideas that have been launched and which could still come forward after the Conference proposed by the Assembly. The Conference of the Assembly should not be the end of the process but rather the beginning of an intergovernmental commitment.

C. Explanatory memorandum by Mr Díaz Tejera, rapporteur for opinion

> *“One aspect of the immense and wonderful colour and mystery of life is that groups of people differ from each other in their customs, their way of life, their faith, the colour of their skin and their way of dressing and so on … This ‘otherness’ of different communities can of course be accepted with understanding and tolerance as something that enriches life; it can be honoured and respected, it can even be enjoyed.”Václav Havel, President of the Czech Republic*

1. The rapporteur agrees with the Political Affairs Committee that the report of the Group of Eminent Persons of the Council of Europe is timely. It is not too late for Europe to tackle the issue of “living together” in a way that builds bridges rather than having to repair them, which remains a real concern.

2. The Council of Europe is in the middle of a reform process. The wealth of ideas put forward in the report of the Group of Eminent Persons provides a platform for the Council of Europe to use its expertise, diversity and strength to tackle many of the issues raised.

3. The rapporteur will confine himself to addressing a limited number of key issues which are of particular concern to the Committee on Migration, Refugees and Population. These are instances where the rapporteur considers that the Council of Europe and its Parliamentary Assembly can produce added value to the work already under way in Europe, and where the Council of Europe and its Assembly can have a significant impact.

The crisis of leadership

4. The crisis of leadership has been highlighted by the Group of Eminent Persons and by the Political Affairs Committee as something which has to be overcome. It is essential that the Assembly, as "the conscience of Europe", leads the way in this matter, and that the Committee of Ministers, while taking into account national positions, manages to develop strategies for the common good of the people living in the 47 member states of the Council of Europe.

Hyphenated Europeans

5. What does it mean to be a hyphenated European? For the rapporteur, it is the ties that bind and not the differences that are important. The concept of a hyphenated European provides a positive starting point for building bridges. It is a concept worthy of exploring and the rapporteur considers that the Committee on Migration, Refugees and Population, and the Assembly as a whole, should keep the concept in mind in its work. It could even examine the concept in a future report.

Excluded population / Europe's invisible community

6. The rapporteur welcomes the fact that the Group of Eminent Persons have tackled this matter and considers that the Assembly's own concerns on the issue should be given further attention; see, for example, Resolution 1509 (2006) on the human rights of irregular migrants and Resolution 1568 (2007) on regularisation programmes for irregular migrants.

7. It should be recalled that the issue is one of both human rights and the rule of law. The rapporteur understands perfectly the political difficulties of tackling irregular migration, both from the perspective of the rights of irregular migrants and also that of returning irregular migrants to their country of origin. It is for this reason that "leadership" on the matter is required. However, if an organisation such as the Council of Europe, with its human rights stamp, is not willing to or cannot make progress on this matter, then one has to ask the question, "Who can?" The Assembly should be ready to continue its work on this and to encourage the Committee of Ministers to adopt a transversal approach in attempting to solve at least some of the most difficult and important human rights issues faced by irregular migrants and their children.

Democratic participation

8. The rapporteur fully supports the calls to strengthen the work carried out by the Council of Europe. This work is built on the solid foundation of two conventions which need to be ratified by more member states and made better known: the European Convention on Nationality (ETS No. 166) and the Convention on the Participation of Foreigners in Public Life at Local Level (ETS No. 144). The rapporteur recalls that the Assembly gave prominence to this issue of the democratic participation of migrants during its debate on the state of democracy in Europe in 2008. The rapporteur fully supports the idea of launching a campaign by the Assembly to bring about further signatures and ratifications of the two Council of Europe instruments mentioned above. Any such campaign should, however, be carried out hand in hand with parallel initiatives supported by the Committee of Ministers.

Awareness raising

9. The Group of Eminent Persons' report is peppered with references to the need to raise awareness of the different issues highlighted therein. To give some examples, greater awareness is needed that diversity is here to stay, that rising intolerance has to be tackled, that prejudice against Roma cannot continue, that popular attitudes towards migrants are largely based on distorted views, and so on.

10. The Council of Europe has a great deal of experience in running campaigns such as the "All different – all equal" campaigns and the "Dosta!" ("Enough!") campaign. The rapporteur fully supports calls to build on these experiences, mobilising not just youth through the European Youth Centre but also local authorities, through the Congress of Local and Regional Authorities, parliamentarians through the Assembly, governmental representatives through the steering committees and other committees, and non-governmental

organisations (NGOs) through the international NGO network of the Council of Europe, but also using the high profiles of the different monitoring bodies, such as the European Committee of Social Rights, the European Commission against Racism and Intolerance and the Advisory Committee on the Framework Convention for the Protection of National Minorities (ETS No. 157). Furthermore, one should not ignore the high-profile work of the Council of Europe Commissioner for Human Rights and the contribution he could make.

11. By bringing into play all of these different actors the Council of Europe can ensure a major impact and relevance for such a campaign on the theme of "living together".

The Roma

12. Concerning the Roma, the rapporteur highlights the steps taken by the Assembly to encourage political participation by the Roma, including the agreement signed in early 2011 between the European Roma and Travellers Forum and the Assembly, which aims at enhancing co-operation. Recently the Assembly once again noted "with concern that Roma remain extremely under-represented in elected bodies and that their participation in public and political life is limited" and urged member states to "enhance political participation and representation of Roma both at national and local level, inter alia, by providing Roma with the necessary identity documents, removing institutional discrimination and legal barriers and/or by allocating reserved seats to Roma representatives in parliament as well as in local and regional elected bodies" (Resolution 1740 (2010)). Member states need to take steps at the local, regional and national levels to ensure meaningful political participation of persons belonging to this group. The Council of Europe, including its Parliamentary Assembly and Congress, can do a lot to promote this.

Detention of irregular migrants and asylum seekers

13. Once again, the rapporteur is pleased that this issue has been taken up by the Group of Eminent Persons' report. This is a high priority for the Committee on Migration, Refugees and Population, and reference can be made to the recent work of the Assembly on this in Resolution 1707 (2010) on the detention of asylum seekers and irregular migrants in Europe.

14. European detention rules are needed to supplement the European Prison Rules (which only apply to criminals). The Council of Europe, through its experience with the European Prison Rules and through the work of the European Committee for the Prevention of Torture (CPT), is in a good position to prepare these. Similarly there are very good reasons for looking further at the issue of alternatives to immigration detention and possible best practices in Europe. Another idea which merits further attention is that of better equipping parliamentarians to carry out individual detention visits in their own countries. This is a right many parliamentarians have, but they are ill-equipped to carry out this work. The Committee on Migration, Refugees and Population has already worked on this issue in the past and could easily follow this up.

Standard setting on living together and integration

15. The Group of Eminent Persons' report recommends that the Council of Europe should, in its future standard-setting activities, develop guidelines addressing both rights and responsibilities, and the links between them. It also recommends a code of good practice on "living together in diversity and freedom in Europe". The rapporteur fully supports these proposals. The rapporteur is highly conscious of the difficulties, particularly in Europe, of examining the issue of rights of migrants, as well as the failure of relevant international or European instruments to attract signatures and ratifications. There is thus an important gap which somehow needs to be addressed and filled. One ambitious way in which this could be done is through a framework convention on integration/living together, covering both rights issues and responsibilities issues. Drawing on the experience on the Framework Convention for the Protection of National Minorities, which created the frame around which national minority issues are now examined in Europe, would allow an examination of rights and responsibility issues in the context of integration and living together. This is important not just for migrants but also for the host society. The rapporteur considers that this issue, even if it may be politically ripe for dealing with at the moment, merits further consideration.

16. As a first step, the rapporteur fully supports the proposal for the issue to be examined though a code of good practice on living together, but considers that there is a need and a place for the Council of Europe to be more ambitious in the long term.

High level meeting / Conference

17. The rapporteur welcomes the proposal to convene a conference involving the Secretary General, representatives of the Committee of Ministers and of the Group of Eminent Persons and the Assembly. He considers, however, that this must not be seen as the end of a process, but rather the beginning of the process of implementing many of the ideas that have been put forward by the Group of Eminent Persons and by the Political Affairs Committee, along with further ideas that could come out of the proposed conference. It is essential that there is a strong intergovernmental follow-up, and thus, the rapporteur suggests that the issue should be considered at a ministerial session, and should also be pursued as a priority in any future summit of heads of state and government of the Council of Europe.

Conclusions of the rapporteur

18. The rapporteur considers that the Parliamentary Assembly – and the Council of Europe in general –has to seize upon the Group of Eminent Persons' report as a golden opportunity to tackle the issue of living together in Europe.

19. The dangers of divisiveness and of living in social isolation are obvious. The Council of Europe, with its panoply of human rights responses at different levels (civil, political, and governmental), can play a major role, in particular if the work of its different bodies can be combined and focused in the same direction.