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Combating anti-Semitism in Europe

Opinion¹

Committee on Legal Affairs and Human Rights

Rapporteur: Mrs Renate WOHLWEND, Liechtenstein, Group of the European People's Party

A. Conclusions of the Committee

1. The Committee on Legal Affairs and Human Rights congratulates the Committee on Political Affairs and the Rapporteur, Mr Margelov, on having brought this important topic before the Assembly.
2. As observed by the Rapporteur of the Committee on Political Affairs, and as stated by the European Commission against Racism and Intolerance (ECRI) in its general policy recommendation No 9 on the Fight against anti-Semitism, anti-Semitism is far from rare and is even on the rise again in certain European countries.
3. This situation requires our full attention.
4. The Council of Europe has the moral duty - as the continent's "Human Rights watchdog", which was set up shortly after the darkest chapter of European history characterised by the mass-murder of the vast majority of Europe's Jews - to monitor closely any manifestation of anti-Semitism and to recall, as often as necessary, that anti-Semitism and the promotion thereof or incitement thereto are unacceptable in *all* circumstances worldwide.
5. The Parliamentary Assembly should call on Council of Europe member states to adopt and enforce robustly, in a consistent manner strict legal prohibitions on anti-Semitic hate speech and anti-Semitic acts of violence and discrimination, taking into account the relevant international norms and standards, notably the ECRI general policy recommendation No 9, as well as the case-law of the European Court of Human Rights (hereinafter "the Court").
6. The Committee on Legal Affairs and Human Rights gives its full support to the conclusions of the Rapporteur of the Committee on Political Affairs.

B. Amendments proposed by the Committee

Amendment A:

In paragraph 4, replace "naturally recognises" by "regrets".

¹ See Doc 11292 tabled by the Committee on Political Affairs.

Amendment B:

In paragraph 9, to add after “Racial Discrimination” the words “in its Article 4, the International Covenant on Civil and Political Rights in its Article 20”.

Amendment C:

After paragraph 9, add a new paragraph 10, which reads as follows:

“The Assembly strongly supports the work undertaken by ECRI in order to encourage all relevant actors in Europe to join their efforts in order to find an effective and lasting response to anti-Semitism, at all administrative levels (national, regional, local) and by including representatives of different communities, religious leaders, civil society organisations and other key institutions.”

Amendment D:

In paragraph 10, replace “invites” by “calls on”.

Amendment E:

Replace paragraph 10.1 as follows “robustly and consistently enforce legislation criminalising anti-Semitic and other hate speech, in particular any incitement of violence;”

Amendment F:

After paragraph 10.2 add a new paragraph 10.3 as follows:

“to make a criminal offence the public denial, trivialisation or condoning, with a racist aim, of crimes of genocide, crimes against humanity or war crimes in accordance with ECRI general policy recommendation N7;”

Amendment G:

In paragraph 10.4, replace the word “such acts” by “anti-Semitic motivations”

Amendment H:

After paragraph 10.4, add a new paragraph 10.5 “sign and ratify Protocol No 12 to the European Convention on Human Rights (ETS No. 177);”

Amendment I:

In paragraph 10.5 after “in schools” add “, in accordance with Recommendation 1720 (2005) on education and religion,”

Amendment J:

In paragraph 10.7, add at the end “and therefore sign and ratify the Additional Protocol to the Convention on Cybercrime concerning criminalisation of acts of a racist or xenophobic nature committed through computer systems (STE No. 189);”

Amendment K:

In paragraph 10.8, delete the words “during the second world war”.

Amendment L:

In paragraph 10.9, add at the end “in accordance with the Committee of Ministers’ Recommendation (2001) 6 on the prevention of racism, xenophobia and racial intolerance in sport;”

Amendment M:

In paragraph 10.10, replace “exercise self-discipline, even in case of stereotypes which have entered everyday speech” by “promote tolerance, mutual respect and counter anti-Semitic stereotypes and prejudices”.

Amendment N:

Replace paragraph 10.11 by “strengthen media self-control mechanisms aimed at preventing anti-Semitism and other forms of hate speech;”

C. Explanatory memorandum by Mrs Renate Wohlwend, Rapporteur

1. The Rapporteur would like to outline in a few words the relevant case-law of the Court as well as the work undertaken by the Steering Committee for Human Rights (CDDH) in its Committee of experts for the development of Human Rights (DH-DEV)².

2. In Recommendation (97) 20, the Committee of Ministers defined hate speech as follows: “*the term ‘hate speech’ shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, **anti-Semitism** or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin*” (emphasis added)³. On the other hand, the DH-DEV, which reports to the CDDH, notes that no universally acknowledged definition of hate speech exists, and that member states’ legislation does not interpret this concept uniformly⁴.

3. The Court has developed an important and evolving body of case-law as regards the dissemination of hate speech (for a detailed overview of the case-law, the Rapporteur refers to the DH-DEV report on Hate speech (especially point 3.3)).

4. The Court excludes speech that is clearly racist, xenophobic or negationist from the scope of the Convention’s protection of freedom of speech, especially anti-Semitic agitation. It bases its reasoning on Article 17 of the Convention, the aim of which is to “*withdraw the benefit of these rights from those who wish to use the Convention guarantees since their aim is to call into question the values that the Convention protects*”⁵. It has held that “*(t)he denial or rewriting of this type of historical fact [in the case concerned, the atrocities of the National Socialist regime] undermines the values on which the fight against racism and anti-Semitism are based and constitutes a serious threat to public order*”, adding that “*Denying crimes against humanity is therefore one of the most serious forms of racial defamation of Jews and of incitement to hatred of them*”⁶. The Court ultimately ruled that “*there can be no doubt that concrete expressions constituting hate speech, which may be insulting to particular individuals or groups, are not protected by Article 10 of the Convention*”⁷.

5. In the Garaudy case, the Court in effect took the view that “*Such acts [in this case denial of the Holocaust] are incompatible with democracy and human rights because they infringe the rights of*

² See the DH-DEV report on hate speech (GT-DH-DEV_A(2006)008).

³ See Committee of Ministers Recommendation R (97) 20 on “hate speech”; it is worth noting that the Committee on Legal Affairs and Human Rights has adopted a draft recommendation in which it states “*In addition, bearing in mind the considerable work done on hate speech by the Steering Committee for Human Rights (CDDH), particularly its Committee of Experts for the Development of Human Rights (DH-DEV), the Assembly suggests to the Committee of Ministers that it instruct the CDDH to revise its Recommendation (97) 20 or to prepare guidelines taking into account new developments on this subject, notably as regards the Court’s case-law.*”; see Mr Bartumeu Cassany’s report on decriminalisation of defamation, Doc 11305.

⁴ On the subject of hate speech in general, see the report of the Committee of Experts for the Development of Human Rights (DH-DEV) on hate speech (GT-DH-DEV_A(2006)008).

⁵ *La Cour européenne des droits de l’homme face au discours de haine*, Mario Oetheimer, *Revue trimestrielle des droits de l’homme*, January 2007, No. 69, pp. 63-80 (in French only). See with regard to racist speech the principle laid down since the Jersild c. Denmark case, 23.09.1994, § 35. With regard to negationism, see the Lehideux and Isorni v. France judgment, 23.09.1998, § 53.

⁶ See the Garaudy v. France judgment, 24.06.2003.

⁷ See the Gündüz v. Turkey judgment, 04.12.2003, § 40.

others. Its proponents indisputably have designs that fall into the category of aims prohibited by Article 17 of the Convention⁸.

6. In its report, the DH-DEV notes that in the Garaudy case, the Court associated the fight against racism and anti-Semitism with the fundamental values of the Convention considering that "by so doing, it incorporated a range of contemporary political activities, namely those designed to combat racism and anti-Semitism, into the body of values to be protected as a matter of priority"⁹.

7. The Rapporteur draws attention to the framework decision in which the European Union Interior Ministers have recently decided to criminalise incitement to racism in all EU member states¹⁰. It was, however, not possible to reach a consensus to impose criminalisation of the simple negation of the Holocaust.

8. However, the Court's position allows for the criminalisation of the negation of the Holocaust, and possibly of the negation of other genocides.

9. In the context of the fight against anti-Semitism, the Rapporteur also believes that it is important to call on the member states to sign and ratify Protocol No. 12 to the European Convention on Human Rights (ETS No 177) as well as the Additional Protocol to the Convention on Cybercrime concerning criminalisation of acts of a racist or xenophobic nature committed through computer systems (ETS No 189).

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Reporting committee: Political Affairs Committee

Committee for opinion: Committee on Legal Affairs and Human Rights

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Secretariat of the committee: Mr Drzemczewski, Mr Schirmer, Ms Maffucci-Hugel, Ms Heurtin, Ms Schuetze-Reymann

⁸ See the inadmissibility decision in the case of Garaudy v. France, 24.06.2003; also see the Lehideux and Isorni v. France judgment of 23.09.1998, §§ 53 and 47, in which the Court ruled that there was a "category of clearly established historical facts – such as the Holocaust – whose negation or revision would be removed from the protection of Article 10 by Article 17".

⁹ See the report of the Committee of Experts for the Development of Human Rights (DH-DEV) on hate speech (GT-DH-DEV_A(2006)008), § 67.

¹⁰ See *EU agrees new racial hatred law*, BBC News, 19 April 2007.