



pace

Parliamentary Assembly Council of Europe

Search

- News
Documents
Index A-Z

The News

- Latest news
Newsletter

Meetings

- The week ahead
Session calendar
Conferences and colloquies
All meetings

Documents

- Adopted texts
Working documents
Reports under preparation
Verbatim records
How to search?

Functioning

- PACE in brief (PDF)
- Origin
- Working structure
- Procedures
- Committees
Rules of procedure
Secretariat

Members

- List from A to Z
By political group
By national delegation
By committee
Other bodies
Members since 1949

Political groups (www)

- EPP/CD
SOC
EDG
ALDE
UEL

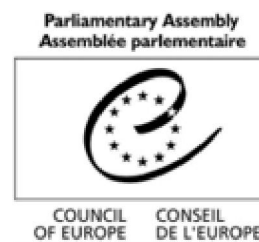
Links

- Council of Europe
National parliaments
International partners

Download

- PACE's logo
Photographs

Parliamentary Assembly Assemblée parlementaire



Doc. 9417

22 April 2002

Legal situation of the Roma in Europe

Opinion

Committee on Migration, Refugees and Demography

Rapporteur: Mr Boriss Cilevičs, Latvia, Socialist Group

I. Conclusions of the committee

Member states should be urged:

a. to refrain from applying and legitimising regulations and practices which might hinder fair implementation of the right to asylum of Roma applicants, and in particular consider every claim individually on the basis of its merits;

b. to recognise systematically, in their status determination procedures that persecution may not only originate from the authorities of the country of origin of an asylum seeker, but also from actors with no link to the state and over which it exercises no control;

c. to refrain from implying measures aimed at preventing potential Roma asylum seekers from reaching their territory (visas, pre-screening);

d. to ensure effective access to status determination and fair procedures in particular for Roma asylum seekers from Kosovo, and if they do not meet the refugee definition as set out in the Convention relating to the Status of Refugees (1951), consider the possibility of granting other available temporary protection;

e. to contribute to the financing of projects targeting the improvement of the situation of displaced Roma in the Yugoslav Federal Republic in the framework of the National Strategy for Resolving the Problem of Refugees and Displaced Persons;

f. to not imply any discriminatory measures on migration of Roma population.

The Monitoring Committee should ensure, in the framework of the monitoring procedure:

that the member states fully comply with their obligation to protect those whose life is in danger.

II. Amendments proposed on behalf of the committee

The Committee on Migration, Refugees and Demography, based on the analysis made by its Rapporteur, proposes the following amendments to the draft recommendation on the legal situation of the Roma in Europe, contained in the report presented by Mr Tabajdi on behalf of the Committee on Legal Affairs and Human Rights (Doc. 9397 revised):

Amendment 1:

At the end of the second sentence of paragraph 3, add the following words:

"as well as crossing the borders and access to asylum procedures".

Amendment 2:

In paragraph 7, replace the end of the last sentence from the words "because of its specific nature..." with the following sentence:

"In the meantime, several states have adopted formal rules or systematically implemented practices which are clearly aimed at preventing Roma from entering these countries, and are directly or indirectly discriminatory in respect to Roma."

Amendment 3:

In the second sentence of paragraph 10, delete the words "and/or political parties" and add after the first sentence the following:

"Incentives should be provided to mainstream political parties to include Roma on their electoral lists, at electable positions. States are encouraged to devise and implement policies aiming at the full participation of Roma in public life, and at all levels of the administration, as well as the strengthening of democratic Romani constituencies."

Amendment 4:

In paragraph 15, replace the word "six" with the words "the following".

Amendment 5:

Insert sub-paragraph 15.f. after sub-paragraph 15.c.

Amendment 6:

In sub-paragraph 15.f., after the words "to combat racism, xenophobia and intolerance", add the words:

"and to ensure non-discriminatory treatment of Roma".

Amendment 7:

In sub-paragraph 15.f., add a new sub-sub-paragraph 15.f.i. worded as follows:

"to ensure that the full scope of the rights envisaged in the European Convention of Human Rights, as well as the 1951 Geneva Convention relating to the Status of Refugees and its 1967 Protocol, are applied to Roma without discrimination".

Amendment 8:

In sub-paragraph 15.f., after sub-sub-paragraph 15.f.i., add a new sub-sub-paragraph worded as follows:

"to ratify the Protocol No. 12 to the European Convention of Human Rights, if not done so far, as a matter of priority".

Amendment 9:

In sub-paragraph 15.f., after sub-sub-paragraph 15.f.i., add a new sub-sub-paragraph worded as follows:

"to enact and enforce comprehensive anti-discrimination legislation in the member states, in harmony with European Council Directive 2000/43/EC 'implementing the principle of equal treatment between persons irrespective of racial or ethnic origin', as the standard setting guidelines on anti-discrimination law in all European states."

Amendment 10:

In sub-paragraph 15.f., after sub-sub-paragraph 15.f.i., add a new sub-sub-paragraph worded as follows:

"to ensure that the rules applied and policies implemented in the field of migration control are not discriminatory towards Roma migrants".

Amendment 11:

In sub-paragraph 15.f., replace the sub-sub-paragraph 15.f.vi. with the following:

"to set up strong monitoring and enforcement bodies for implementation of the non-discrimination legislation and policies, and to ensure that access to these bodies is guaranteed for all persons under the

jurisdiction of the state, including asylum-seekers and migrants, regardless of their legal status in the state".

Amendment 12:

In paragraph 16, delete sub-paragraph 16.ii.

III. Explanatory memorandum by Mr Cilevičs

1. Introduction

1. The Rapporteur shares the main ideas expressed by Mr Tabajdi concerning the legal situation of the Roma in Europe, in particular relating to their systematic discrimination resulting in disadvantaged economic, political and social situation and marginalisation.

2. Several questions, lying in the field of interest of the Committee on Migration, Refugees and Demography need, in your Rapporteur's opinion, closer examination. They constitute different aspects of Roma migration: increasing number of Roma asylum seekers from Central and Eastern Europe, discrimination of Roma migrants and asylum-seekers, specific case of Roma displacement due to the conflict in Kosovo, and itinerant style of life of numerous Roma communities (so called nomadism).

2. Roma asylum seekers from Central and Eastern Europe

3. In recent years the number of Roma applicants from Central and Eastern European countries seeking asylum in Western Europe and in Canada, USA and Australia has increased considerably. In 1999, nationals from the six Central European countries¹ lodged 21 853 applications. This figure was higher by 16 % as compared to the number of asylum seekers in 1998 (16 697). Since then the figures have been on the rise.

4. Roma asylum claims are usually made on the basis of the lack of state protection with regard to racially motivated acts of violence by non-State actors (e.g. skinheads), and discrimination in access to education, housing and employment.

5. The host countries have reacted to these unexpected influxes in different ways. Some of them have undertaken restrictive measures aiming at preventing potential asylum seekers from gaining access to asylum procedures (visas, pre-screening procedures²). The others have considered the claims as manifestly unfounded, or else have argued that the 1951 Geneva Convention relating to the status of refugees is not applicable to non-State persecution³.

6. One of the most salient examples of these restrictive policies was the case of 74 Roma rejected asylum seekers deported from Belgium to Slovakia in October 1999, despite the explicit request of the European Court of Human Rights to delay deportation made in response to a complaint filed on behalf of the Roma applicants by the Belgian League for Human Rights. On February 5, 2002 the European Court of Human Rights found that in this case Belgium violated a number of provisions of the European Convention of Human Rights, including Article 5 § 1 (right to liberty and security), Article 5 § 4 (right to take proceedings by which lawfulness of detention shall be decided), and Article 13 taken together with Article 4 of Protocol No. 4 (prohibition of the collective expulsion of aliens)⁴.

7. Sometimes discriminatory treatment of Roma is even prescribed by adopted normative acts. Thus, in April 2001, a discriminatory decree was enacted in the United Kingdom, ordering border authorities to subject persons belonging to certain ethnic groups, including Roma, to more stringent examination than others⁵. Since July 2001, British immigration officials implemented pre-screening of passengers in Prague's Ruzyne airport. This procedure has been suspended and reintroduced more than once, and generated reliable reports that it is aimed at preventing of Czech Roma's entry into the UK⁶.

8. In some countries, however, the asylum applications from Roma have been examined individually and in every case it was established if the treatment experienced in their countries of origin amounted to, or created a reasonable fear of persecution in the context of the 1951 Geneva Convention.

9. As a result, few Central European Roma asylum seekers have been granted asylum in Western Europe (15 in 1998, 23 in 1999 which makes up less than 1% of recognition rate). Similarly, very few have been granted humanitarian status (nobody in 1998, 8 in 1999). The recognition rates are much higher in Canada and the United States.

10. Diligent and scrupulous individual examination of applications is the

only acceptable in view of the international obligations undertaken by all parties to the Geneva Convention. The Rapporteur wishes to point out that under the 1951 Geneva Convention, there is no requirement that persecution be perpetrated by agents of the State. Rather, the definition requires that the individual having a well-founded fear of persecution is "unable or, owing to such fear, is unwilling to avail himself of the protection" of his or her country of origin.

11. The UNHCR Handbook on Procedures and Criteria for Determining Refugee Status states that "where serious discriminatory or other offensive acts are committed by the local populace, they can be considered as persecution if they are knowingly tolerated by the authorities, or if the authorities refuse, or prove unable, to offer effective protection". To conclude, where non-State agents are concerned, the issues are availability and sufficiency of protection of the country of origin, and this should be examined during the status determination procedure.

12. Council of Europe member states should refrain from applying and legitimising regulations and practices which might hinder fair implementation of the right to asylum in regard to Roma population, and under no circumstances should apply discriminatory measures against Roma asylum-seekers.

3. Roma displacement as a result of the Kosovo conflict

13. The Roma have been one of the prime targets of physical attacks (including beatings, abductions, rapes and murders), arson, looting, ejection from their homes and all kinds of discrimination after the withdrawal of the Yugoslav army from Kosovo as a consequence of the NATO strikes in 1999. Despite the determined efforts of KFOR and the UNMIK police, to this date Kosovo Roma and other non-Albanian groups in Kosovo continue to suffer from violence, harassment and intimidation.

14. In consequence, many Kosovo Roma have been forced to leave the province. A significant number has fled to other parts of the Federal Republic of Yugoslavia, many others have sought asylum in the neighbouring countries (Bosnia and Herzegovina, former Yugoslav Republic of Macedonia) and further afield in Western Europe.

15. Every Roma asylum seeker from Kosovo should be granted effective access to asylum procedures and their cases should be considered and determined in accordance with the criteria for refugee status. If their claims are determined not to meet refugee definition set out in the 1951 Convention, consideration should be given to provide other available protection (e.g. temporary protection on humanitarian grounds).

16. On the other hand, the displaced Roma population in the Federal Republic of Yugoslavia, facing different patterns of discrimination and intolerance, and particularly disadvantaged in comparison to other displaced in this country, should be given special attention in the National Strategy for Resolving the Problems of Refugees, Expellees and Displaced Persons elaborated and implemented by the Yugoslav authorities in cooperation with UNHCR, OCHA, UNDP and international donors⁷. Special projects targeting the improvement of the situation of displaced Roma should be included in the strategy.

4. Migratory movements of Roma population

17. Roma migration has deep historical roots, and it is a natural tradition of numerous Roma communities. Movement and migration is intrinsic for Roma, and the respect for diversity and different cultures cannot abstract from this fact.

18. A number of factors determines Roma's high mobility and their movement across borders. These are economic factors, in particular search for employment, political and social insecurity caused by systematic discrimination and social marginalisation, and the existence family networks.

19. The right to move into any country is not a human right. Any state has the right to impose restrictions and establish procedures regulating the movements in and out of its borders. However, these rules should be applied in a non-discriminatory way and Roma migrants should be treated like all other migrants.

20. Finally, your Rapporteur would like to express his concern that the problem of Roma migration, is discussed, as a rule, in terms of migration control and prevention, and not in the context of full and fair implementation of the 1951 Geneva Convention and the principle of non-discrimination.

21. In your Rapporteur's opinion, migration should not be treated as a negative phenomenon but rather as an inevitable tendency of modern society necessary for economic development, and cultural enrichment of Europe. The right to move is after all a fundamental human right.

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Reporting Committee: Committee on Legal Affairs and Human Rights ([Doc. 9397](#) revised)

Committee for opinion: Committee on Migration, Refugees and Demography

Reference to Committee: [Doc. 8830](#) and Reference No 2539 of 25 September 2000

Opinion approved by the Committee on 22 April 2002

Secretaries to the Committee: Mr Lervik, Mrs Nachilo and Mrs Sirtori

¹ Bulgaria, Czech Republic, Hungary, Poland, Romania and Slovak Republic.

² For example, in 1999, Finland and Norway imposed a visa regime on Slovak citizens in reaction to arrival of several hundreds of Roma fleeing Slovakia.

³ This question, and, more generally, patterns of discrimination of Roma applicants throughout asylum procedure was examined more closely in a report prepared by the Committee on "Restrictions on asylum in the member states of the Council of Europe and the European Union", Rapporteur: Mr Cilevičs, see [Doc 8598](#)

⁴ Press release issued by the Registrar of the European Court of Human Rights: Judgement in the case of Conka v. Belgium, <http://www.echr.coe.int/Eng/PRESS/2002/feb/Conkajudepress.htm>

⁵ The full text is quoted in Roma Rights, No 4, 2001, http://errc.org/rr_nr4_2001/wcar2.shtml

⁶ Roma Rights, No 4, 2001, http://errc.org/rr_nr4_2001/snap1.shtml

⁷ This question is closely examined in a report prepared by the Committee on Migration, Refugees and Demography on the Humanitarian situation in the Federal Republic of Yugoslavia (Rapporteur: Mr Cilevičs, Latvia, SOC).