



NEWS REPORT

Date: 17 June 2011
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Title: The Romanian national equality body declines a complaint filed against the President on grounds of lack of territorial jurisdiction
Country: Romania
Context
Issue at stake: In a complaint filed against the Romanian President for alleged discriminatory remarks against nomadic Roma made while in Slovenia, the NCCD raised ex officio and accepted a challenge regarding its territorial jurisdiction
Ground of discrimination: Roma, racial/ethnic origin
Source: Decision of the National Council for Combating Discrimination No. 175 from 04.05.2011 in file no. 101/2011
Field: All
Legislative provisions: *Governmental Ordinance 137/2000 for preventing and sanctioning all forms of discrimination*

Content

Legal development: In March 2011, a Roma NGO, Romani CRISS, filed a complaint against President Băsescu before the National Council for Combating Discrimination [Consiliul Național pentru Combaterea Discriminării] claiming that the statements made during his official visit in Slovenia in relation to nomadic Roma “breach their dignity and generate a degrading, humiliating and offensive environment.”¹

¹ For the statements of President Basescu see: <http://www.thediplomat.ro/articol.php?id=1617> (16.06.2011). In the transcripts of the press conference the response of the President is: “at the same time, I support without any hesitation ... that firstly we have to be aware of the real problems Roma are confronted with and that secondly we have to ensure that minimum regarding health, the possibility of studying and the possibility of having a job. Here I have to say an essential thing. A lot of important politicians make a confusion regarding Roma. We cannot speak about all the Roma. Those we see traveling around Europe are nomadic Roma who come from Romania or other countries of the EU. Their customs are to travel from one place to the other. Romania has more than one million Roma who are integrated. There are Roma villages,

The NCCD raised *ex officio* the challenge as to the lack of territorial jurisdiction in the case arguing that the deed was perpetrated on Slovenian territory, in response to a Slovenian journalist. As to its legal reasoning, the NCCD indicated that the Romanian Anti-discrimination Law falls under the general regime of misdemeanors/contraventions which observes the territoriality principle. The NCCD affirmed that it should distinguish the cases filed under the anti-discrimination legislation, which it concluded that in terms of procedure must observe the constraints established by the Civil Procedure Code including the territoriality principle, from the criminal cases which allow for extra-territoriality. The NCCD considered that “the act produced its consequences immediately at the time of the statement”, both the allegedly discriminatory act and its results took place in a different country and the fact that the Romanian media presented the statement “cannot be assimilated with a constitutive element of the act complained against as it is representing an external element of the deed.” The NCCD concluded that “contraventional legislation is not applicable to misdemeanors perpetrated outside the area where the Romanian state is exercising its sovereignty.” Consequently, the NCCD accepted the challenge as to its competence and denied the complaint.

The decision of the NCCD can be appealed before the courts and probably the NGOs will challenge it as the case provides the opportunity for defining the boundaries of Romanian anti-discrimination legislation either as a part of the general contraventional regime, or as a distinct legal regime *sui generis* borrowing procedural elements from contraventional law but also sharing elements with the penal legal framework given the importance of the values protected under anti-discrimination legislation.

Internet link source and additional information: Decision of the National Council for Combating Discrimination available in Romanian.

they are integrated in the big cities. They are a part of the Romanian society. Where we failed is the integration of nomadic Roma and here we have to respond both to a philosophical and a practical question: do we speak about integration or about assimilation? An also honestly we have to respond because prohibiting their movement would be destroying one of the cultural elements of nomadic Roma...But there is another problem which must be stated as well. And which makes integration of nomadic Roma rather difficult. Very few of them want to work, many of them, traditionally, live off from what they steal. And if we do not admit honestly the problems that the ethnic group itself is facing and the problems we have in understanding this ethnic group, we will not find the solution for this problem. ...”