Parliamentary Assembly: Texts Calling for Decriminalisation of Defamation

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On 4 October 2007, the Parliamentary Assembly of the Council of Europe (PACE) adopted its Resolution 1577 (2007) and Recommendation 1814 (2007), both entitled, “Towards decriminalisation of defamation”.

In Resolution 1577, the PACE reiterates the importance it has consistently attached to freedom of expression of journalists as an essential feature of democracy (see IRIS 2003-2/2 and IRIS 2007-5/102). The Resolution acknowledges the legitimate aim of anti-defamation laws (i.e., to protect the reputation and rights of others), but urges that they be applied “with the utmost restraint since they can seriously infringe freedom of expression”. It notes that in practice, anti-defamation laws are “misused” in attempts to silence media criticism. The abusive application of anti-defamation laws leads to “a genuine media self-censorship and [...] progressive shrinkage of democratic debate and of the circulation of general information”.

The Resolution welcomes the OSCE Representative on Freedom of the Media’s advocacy of the decriminalisation of defamation (see IRIS 2006-10/2), but “notes with great concern that in many member states the law provides for prison sentences for defamation and that some still impose them in practice - for example, Azerbaijan and Turkey”. It points to the chilling effect that prison sentences and unreasonably large damages and interest in defamation cases can have on journalists.

These and other considerations prompted the PACE to call on Council of Europe member states, *inter alia*, to:

- “abolish prison sentences for defamation without delay”;

- ensure that there is no “misuse” of criminal prosecutions for defamation;

- devise precise legislative definitions of defamation, in order to avoid arbitrary application of the law;

- “ensure that civil law provides effective protection of the dignity of persons affected by defamation”;

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- “make it a criminal offence to publicly incite to violence, hatred or discrimination, or to threaten an individual or group of persons, for reasons of race, colour, language, religion, nationality or national or ethnic origin where those acts are deliberate”, in accordance with General Policy Recommendation No. 7 of the European Commission against Racism and Intolerance;

- “make only incitement to violence, hate speech and promotion of negationism punishable by imprisonment”;

- bring national legislation into line with the case-law of the European Court of Human Rights by: removing legislative provision for increased protection for public figures, and guaranteeing journalists protection of their confidential sources;

- “set reasonable and proportionate maxima for awards for damages and interest in defamation cases so that the viability of a defendant media organ is not placed at risk”.

The Resolution also calls for specific legislative changes in France and Turkey.

In Recommendation 1814, the PACE calls on the Committee of Ministers of the Council of Europe to:

- urge all Council of Europe member states to review their defamation laws and, “where necessary”, amend them in accordance with the case-law of the European Court of Human Rights, “with a view to removing any risk of abuse or unjustified prosecutions”;

- instruct the Steering Committee on the Media and New Communications Services (CDMC) to build on its own work in this area (see IRIS 2006-5/5 and IRIS 2006-10/105) and prepare “a draft recommendation to member states laying down detailed rules on defamation with a view to eradicating abusive recourse to criminal proceedings”;

- instruct the CDMC and the Steering Committee on Human Rights (CDDH) to revise CM Recommendation No. R (97) 20 on “hate speech” (see IRIS 1997-10/4) “or to prepare guidelines taking into account new developments on this subject”, notably in the case-law of the European Court of Human Rights.

“Towards decriminalisation of defamation”, Resolution 1577 (2007), Parliamentary Assembly of the Council of Europe, 4 October 2007

http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta07/ERES1577.htm

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