



NEWS REPORT

Update of flash report nr:	1724-RO-117-NCCD sanction Basescu Slovenia and 1191-RO-59-Flash Report NCCD decision in RC v Basescu Slovenia
Date:	18 November 2014
Expert:	Romanița Iordache
Title:	Court of Appeal București maintains decision of the Romanian national equality body fining the Romanian President for discriminatory statements against nomadic Roma
Country:	Romania
Context	
Issue at stake:	Court confirms NCCD decision to fine the Romanian President for discriminatory statements against nomadic Roma
Ground of discrimination:	race/ ethnic origin – Roma
Source:	Decision of the Court of Appeal București, Secția a VIII-a Contencios Administrativ și Fiscal, civil sentence 2051 from 27.06.2014
Field:	Other
Legislative provisions:	Governmental Ordinance 137/2000, Art. 2 and 15, Art. 20(9)

Content

Case development: In 2011, Romani CRISS, a Roma NGO filed a complaint with the National Council for Combating Discrimination (NCCD) claiming that statements made by President Băsescu in November 2010 while in Slovenia “breach their dignity (of the Roma community) and generate a degrading, humiliating and offensive environment.” Long proceedings followed as the NCCD raised *ex officio* the challenge as to the lack of territorial jurisdiction and declined its competence in Decision No. 175 from 04.05.2011 in file no. 101/2011. The NCCD decision was challenged by Romani CRISS before the Court of Appeal Bucharest which in June 2012 issued the civil decision 4364/2012 stating that “the NCCD should have observed the principle of ubiquity which is applicable in contraventional matters” given that the results of the deed were produced on the Romanian territory. The Court of Appeal decided to accept the action filed by the plaintiff and to annul the decision of the NCCD, obliging the NCCD to assess the substance of the complaint of Romani Criss. The Court of Appeal decision was maintained by the High Court of Cassation and Justice on 21 January 2014.

Subsequently, the NCCD issued decision No 117 from 10 February 2014 reassessing the petition and decided to fine the Romanian President with RON 600



(approx. €134). The NCCD decision was challenged before the Court of Appeal by the President.

Decision of the court: In the civil decision No 2051 from 27 June 2014, the Court of Appeal București had the opportunity to discuss the application of the new term of statutory limitations following the 2013 amendments and the scope of immunity and of what a political declaration might mean as this were the two main lines of argumentation for the defence of the President.

On procedural issues, as the President claimed that no administrative sanction can be applied as more than six months had passed from the deed (this being the general term of prescription), the Court referred to the statements of the Court of Justice in C-81/12 and noted the special status of the provisions of the Anti-discrimination Law regarding statutory limitations. The delay in applying the fine was not caused by undue delays in solving the petition but by the legal exercise of the right to challenge the NCCD and court decisions in what proved to be a long process.

On substantive matters, the Court of Appeal endorsed the reasoning of the NCCD in finding that the statements of President Băsescu infringed Arts 2 and 15 of the GO 137/2000. The court took note of the defence of the President that he did not intend to discriminate or to create a degrading and humiliating environment for nomadic Roma but emphasized that Art. 15 of GO 137/2000 in sanctioning discrimination perpetrated as a violation of the right to dignity “does not entail that the author intended to generate the consequences and the statement in itself is enough to be susceptible to trigger such a result.” The Court emphasized that the offence provided by Art.15 (violation of the right to dignity) is not one of outcome but one of “danger”, so in order to be sanctioned it is not necessary that the perpetrator effectively violates the claimant’s right to dignity, given the preventive nature of the anti-discrimination legislation. The Court of Appeal applied the ECHR test to see if the statements of the President fell under the exercise of freedom of expression and concluded that the limitation of freedom of expression was both legitimate and proportionate as well as necessary in a democratic society. As for the defence of immunity invoked by the President, the Court of Appeal decided that even if the statement was a part of a general interest discussion and a part of the political discourse, this does not mean that “any statement, no matter the content or the outcome enjoys the protection recognized to political opinions in the field of freedom of expression.” Consequently, the Court of Appeal rejected the appeal of the President and maintained the decision of the NCCD.

Internet link source and additional information: Decision available upon request.