

European network against racism

ENAR Shadow Report 2006

ENAR SHADOW REPORT 2006

RACISM IN BULGARIA

Svilen Ovcharov
Bulgarian Helsinki Committee

Racism is a reality in the lives of many ethnic and religious minorities in the EU. However, the extent and manifestations of this reality are often unknown and undocumented, especially in official data sources, meaning that it can be difficult to analyse the situation and to establish solutions to it. Even where there is extensive official data, NGOs offer a vital alternative data source that comes directly from experiences of those individuals and communities experiencing racism on a daily basis.

The ENAR Shadow Reports are produced to fill the gaps in the official and academic data, to offer an alternative to that data and to offer an NGO perspective on the realities of racism with the EU and its Member States. NGO reports are, by their nature, based on many sources of data, official, unofficial, academic and experiential. This allows access to information which, while sometimes not backed up by the rigours of academic standards, provides the vital perspective of those that either are or work directly with those affected by the racism that is the subject of the research. It is this that gives NGO reports their added value, complementing academic and official reporting.

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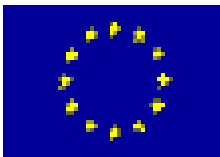


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1. Executive summary

The present report contains facts and conclusions about the situation in Bulgaria with respect to the negative social phenomena of racism and xenophobia, and their implication on the Bulgarian society.

Several vulnerable groups are identified which suffer racially or xenophobic motivated crimes, violence and severe discrimination amounting to harassment. These groups include immigrants of all types, but particularly immigrants of African, Middle Eastern and Asian origin, as well autochthon minorities such as the Roma, Turks, Jews, Slavik-speaking Muslims and Pomaks, etc.

The most flagrant manifestations of racism and xenophobia include violence in the form of physical attacks, destruction or desecration of property, harassment, hate speech, and exclusion and discrimination in various sectors – healthcare, employment, education, access to services in the private sector, access to public services, etc.

A significant portion of the manifestations of racism and xenophobia are perpetrated not only by individuals, but also by state authorities, which is a very disturbing trend. This includes police violence and racial profiling, hate speech in public, harassment, and discrimination in access to public services, including healthcare.

The political situation worsened with the rise in support for the national-socialist party Ataka and its influence on Bulgarian political and social life with its propaganda. Deep-rooted prejudices and hatred against different people were evoked.

The accession to the European Union could not influence the politics in a positive way, since the national administration and the parliament usually mimic reforms to the Commission of the EU. In practice, there were no significant positive developments.

In terms of the law, the only piece of legislation that corresponds to international standards and that is implemented in practice in a rather positive way is the anti-discrimination law. Apart from that, the national legislation and its implementation by the authorities are completely inadequate in the fight against contemporary forms of racism and xenophobia.

2. Introduction

Throughout 2006, Bulgaria was governed by the coalition government of the Bulgarian Socialist Party (BSP), the National Movement of Simeon the Second (NMSS) and the Movement for Rights and Freedoms (MRF). It was formed after the elections on 25 June 2005. On 1 January 2007, the country became an EU member.¹

In the area of the rights of immigrants and people belonging to ethnic minorities, the situation worsened due to the wave of organised nationalism and national-socialism in Bulgarian society. The negative trends increased after October when it became clear that Bulgaria would join the EU as of 1 January 2007, since the authorities found it no longer necessary to mimic any reforms before the European Commission.

In 2006 the European Commission published two assessment reports on the state of preparedness of Bulgaria for EU membership – in May and in September. Both of them outlined some problems with the human rights situation in Bulgaria, including discrimination of Roma. On 5 April 2006, the Advisory Committee on the Framework Convention for the Protection of National Minorities of the Council of Europe published its first comments on the implementation of Bulgaria's commitments under the Convention after it received the first state report of the Bulgarian Government and found several fields with serious problems.

During the year no practical steps were taken in the direction of minority protection and strengthening the ethnic and cultural identity of the people from ethnic minorities in Bulgaria. On the contrary, due to the increases in anti-minority speeches in the public arena and due to the discriminative actions of some of the institutions and private groups, the situation with respect to their rights deteriorated. Cases of institutional discrimination continue to appear.

The present report covers only events that occurred during 2006. Specific emphasis is put on problems related to racially motivated violence and discrimination.

¹ *Comprehensive Monitoring Report on the State of Preparedness for EU membership of Bulgaria*, 19 May 2006 and *Comprehensive Monitoring Report on the State of Preparedness for EU membership of Bulgaria and Romania*, 26 September 2006, both available online at: <http://www.evropa.bg/bg/del/eu-and-bulgaria/documents.html>.

3. Communities vulnerable to racism

The community most vulnerable to racism are African immigrants as well people of Cuban/Caribbean origin. Most of them came in 1970s or 1980s for the purpose of studying and later established themselves in Bulgaria. Another large part of these communities came in recent years as asylum-seekers or migrant workers. Due to severe harassment (described below in the present report), the community is shrinking year by year, as more and more people of such origin decide to leave the country.

Communities of Asian and North Africa (Magreb) origin are also vulnerable to racism and discrimination, as well people of Far East origin, especially the Chinese. This is a much bigger community in Bulgaria and they are also subject to severe discrimination and harassment. In these communities, due to variety of reasons, cases of racism and xenophobia are seldom reported to the authorities.

The next group of vulnerable communities consists of autochthonous ethnic minorities. On 5 April 2006, the Advisory Committee on the Framework Convention for the Protection of National Minorities of the Council of Europe published its opinion after it considered the first state report submitted by Bulgaria.² In it the Committee expressed its concern in several areas of application of the Convention on the part of the Bulgarian authorities:

- With regard to their refusal to extend the protection of the Convention to groups that identify themselves as belonging to ethnic minorities and have expressed their desire to be protected by the Convention, such as the Macedonians and the Bulgarian Muslims;
- With regard to the discrimination and social exclusion of Roma people, particularly in the areas of employment, housing, healthcare and education;
- With regard to the lack of adequate application of the Convention concerning the use of the languages of minorities in their relations with the administration, in the field of the penal administration of justice and in topographic demarcation of locations;
- With regard to the insufficient study of the languages of minorities and lack of any instruction in their mother tongue.

Despite the few official papers on Roma integration that were adopted by the authorities in 2006, no practical steps were taken to overcome these problems.

² *Report on the Implementation of the Framework Convention for the Protection of National Minorities, Bulgaria* (Sofia: ACFCPNM, 1999). Available online at: http://www.coe.int/t/e/human_rights/minorities/2_framework_convention_%28monitoring%29/2_monitoring_mechanism/4_opinions_of_the_advisory_committee/1_country_specific_opinions/1_first_cycle/PDF_1st_OP_Bulgaria_eng.pdf.

The Roma community suffers the most severe discrimination and harsh harassment, including violence. Only the African community could claim a more unfriendly environment in Bulgaria, however the Roma community is far larger in the Country – between four and eight percent of the population.³

The Turkish minority is the biggest minority in Bulgaria. Although violations of their rights are not as harsh as violations against other groups and despite having parliamentary and governmental representation through the MRF, some violations and discrimination continue to occur. For example, in one of many biased decisions, the Plovdiv Regional Court declined the application for registration of the National Turkish Alliance association of Mendes Kungyun, described by the media as an extreme pro-Turkish nationalist. The justification of the court, however, was purely formal, speculative and obviously biased – it ruled that the principles laid down in the association's by-laws are 'political in nature'.

The Jewish minority is the smallest of all⁴ and the best integrated in Bulgarian society, at least for the last two centuries. Nonetheless, it has been subject to severe anti-Semitic propaganda and harassment through public hate speech. The situation has worsened in the last five years, mostly because of the propaganda and activities of the extreme nationalists. Many anti-Jewish conspiracy theories with Russian origin have found publicity in Bulgarian society in recent years. They have been used and multiplied by the national-socialist party Ataka in their propaganda.

Religious minorities also suffer discrimination and harassment. Muslims are subject to hate speech and Islamophobia, though perhaps not so severe as in Western Europe. Victims were not only the Turks, but also immigrants and Slavic-speaking Muslims and Pomaks.

In general, Bulgarian society is not known for its religious tolerance. Hate speech against different beliefs that is well-known from past public campaigns was renewed in 2006. The focus of such was again the so-called sects: Krishna followers, Jehova Witnesses, and others like Ahmadia⁵. Reports from the Mormons were not established and the situation with regards to their religious rights was not clear. Special attention should be given the case of the Chinese religion and philosophy teachings of the Falun Dafa / Falun Gong. There was a restrictive and discriminatory ban on peaceful assembly in December as the Greater Municipality of Sofia did not allow the Bulgarian Falun Dafa Association a peaceful vigil with candles on the sidewalk against the Chinese Embassy in Sofia in connection with the repressions in China against members of the association. The municipal authorities followed the advice of the Ministry of the Exterior which recommended that the vigil take place elsewhere 'while the necessary measures are taken not to allow any activities that would affect the traditionally friendly

³ Accurate data has not been established neither by the Government, nor by the NGO sector.

⁴ Around 1000-1500 people, according to the Jewish organisations and continues to shrink, due to emigration towards U.S. and especially Israel.

⁵ See below: Religious rights.

relationships between the Republic of Bulgaria and the People's Republic of China'.

There is a clear stigma and prejudice against people with different sexual orientation in Bulgarian society (or the LGBT community), although the situation is not so harsh as in some other more conservative countries in Europe. In 2006 it resulted in numerous cases of discrimination in form of harassment, which are reported only sporadically by the victims. The harassment is perpetrated not only by individuals from the victims' environment, but also by some of the authorities. Some cases of violence also occurred.⁶

⁶ See the Legal Section and the News of the web-site of the Gemini NGO: www.bgogemini.org. See also in www.ilga-europe.bg.

4. Manifestations of racism and religious discrimination

4.1 Employment

Virtually all Roma are subject to severe discrimination in their access to the labour market.⁷ Partly, it is due to a lack of education or training and partly it is due to prejudice. Very few Roma work for governmental institutions and all such cases are from the recent years, mostly due to the accession process to the EU. There are also cases of severe harassment in the workplace like the case of the employee in tax-administration who was the victim of harassment, hate speech and humiliation in the workplace for more than two years and finally was beaten and unlawfully fired.

Slavic-speaking Muslims and Pomaks have access to the labour market, but not on conditions equal with the Bulgarians and Turkish people. They are usually given low-level or manual jobs, even if it is well-paid in some cases. The situation with Turkish minority is similar, although it is not so harsh.

LGBT and people of the Slavic-speaking Macedonian minority usually avoid identifying themselves as such out of fear of discrimination in the workplace.

4.2 Housing

In 2006, the Government or other representatives of the authorities did not try in practice to solve the grave housing problems of the Roma people despite the numerous documents adopted by them in this field. On the contrary, the authorities were active in exacerbating the existing situation.

The European Committee on Social Rights confirmed this, as well as Bulgaria's violation of the revised European Social Charter, in their decision on the merits on the collective complaint lodged by the European Roma Rights Centre (ERRC) against Bulgaria⁸. This is the third consecutive decision of the European Committee on Social Rights on problems related to the housing rights of Roma, after the decision vs. Greece⁹ and vs. Italy.¹⁰

Occupants in the Roma populated area of Batalova Vodenitsa in Sofia have been waiting for more than a year for a reasonable humane solution to be found with regard to their housing problem by the municipal authorities; a situation still pending at the end of 2006. In August 2005, the municipal administration

⁷ *The Glass Box: Exclusion of Roma from Employment* (Budapest: ERRC, 2007). Available online at: <http://www.errc.org/db/02/14/m00000214.pdf>.

⁸ Decision on the merits of 18 October 2007 on collective complaint No.31, case of ERRC v. Bulgaria.

⁹ Collective complaint No.15, case of *ERRC v. Greece*.

¹⁰ Collective complaint No.27, case of *ERRC v. Italy*.

undertook forced eviction of approximately 180 Romani individuals from their homes, including more than 80 children, without any advance or due notice or any discussion of possible alternative options, nor was there any indemnification for their homes. The residents of Batalova Vodenita appealed the eviction order before the Sofia City Court which by virtue of a decision of 12 January 2006 denied the reasons of the applicants as ungrounded. This decision was affirmed by the upper court. Both courts at the two instances refused to find violation of the European Convention on Human Rights, reasoned by the applicants on the basis of the brutality, impudence and inconsistency of the activities of the authorities, along with the disproportionately grave consequences they would suffer as a result of these activities rendering them homeless.

After not being protected by the national courts, in August 2006 the residents of Batalova Vodenitsa filed an application with the European Court of Human Rights alleging infringement of their rights of property over their homes and their rights to personal and family life, and that they were victims of discrimination by the municipal authorities due to their Roma ethnicity. During this time, preparation was underway to demolish their homes, but such demolition was averted at the last minute because of the protest of several Members of European Parliament (MEPs) and after the Strasbourg Court informed the Bulgarian government about the application filed (under article 40 of the Rules of the Court). These actions by the authorities that almost rendered approximately 180 people homeless, were carried out simultaneously with the adoption of a National Programme on the Improvement of the Housing Conditions of Roma which lent cynicism to the promises contained in it.

In June 2006, the Municipality imposed a ban on a small protest rally in front of the Sofia City Hall of Roma people from the Batalova Vodenitsa residential area whose homes were being prepared for destruction. In the meanwhile the municipal management allowed the members of the Ataka party to carry out throughout the summer public demonstrations of xenophobic claims in front of the mosque in downtown Sofia. Similar demonstrations of this extremely nationalistic party were tolerated in other towns throughout the country.

4.3 Education

Ethnic segregation¹¹ in access to education is the basic problem for many minority groups, but especially for Roma people. It further decreases their chances for social inclusion by virtually condemning those communities with respect to their access to the labour market, housing and other participation in society.

¹¹ *Equal Access to Quality Education for Roma, Vol. 1: Bulgaria, Hungary, Romania, Serbia*, Equal Access to Quality Education for Roma, Bulgaria, Monitoring Report (Budapest: EUMAP, 2007) Full volume, incl. acknowledgements, preface, etc. available online at: http://www.eumap.org/topics/minority/reports/roma_education/national/bulgaria/romeduc_bulgaria.pdf.

Educational segregation can take the form of territorial segregation where there are no schools or no good schools in small and remote places where minorities live. This is partly due to prejudice on the part of the authorities, as well as the complete lack of regional policy, especially in the field of education. The Ministry of Education has adopted the practice of closing schools in small and remote villages that have been labelled as 'economically ineffective'. The territorial segregation disproportionately affects not only Roma, but also Turks and Muslims¹². It affects also Bulgarians in these regions, forcing families to move to bigger towns or cities. However, Roma, Turks and Muslims often do not have that choice, since their limited access to the labour market limits their mobility.

There is also territorial segregation in the city neighbourhoods as 'special schools' are situated in Roma neighbourhoods (ghettoes), where the quality of the education and training is poor or at least unequal¹³. This often includes training to cultivate skills for manual or other kinds of low-paid and non-intellectual work.

Another kind of educational segregation is based on the type of the education and the type of the schools. Many Roma children are put in boarding schools for delinquent children or in remedial schools, despite the fact that they clearly do not fit the criteria for such schools. In these institutions, there are often orphaned children or children of very poor parents, who are convinced that such places are better for their children, since they provide a roof and catering for the students. In such cases the children are neither minor criminals nor children with intellectual disabilities, but being placed in such schools they do not receive quality education appropriate to their abilities.¹⁴ In all those four types of schools the quality of education is poor. The Regional Departments for Education Inspection do not apply equal criteria for inspection as in the 'normal' schools.¹⁵

¹² *Five Years Later: The Non-Governmental Projects for Desegregation of Roma Education in Bulgaria* (Sofia: BHC, 2006). Available online at: <http://www.bghelsinki.org/index.php?module=resources&lg=en&id=330>.

¹³ Ibid. Also see: *The Impact of Legislation and Policies on School Segregation of Romani Children* (Budapest: ERRC, 2007). Available online at: <http://www.errc.org/db/02/36/m00000236.pdf>.

¹⁴ *In the Name of the Institution: Juvenile Reformatory Schools in Bulgaria* (Sofia: BHC, July 2005) Available online at: <http://www.bghelsinki.org/index.php?module=resources&lg=en&id=322>.

¹⁵ *Assessment Report On the Conditions and Perspectives of the Institutions for Children in Bulgaria and of the progress made in implementing the government obligations under the UN Convention on the Rights of the Child* (Sofia: BHC, November 2006) Available online at: <http://www.bghelsinki.org/upload/resources/finalReprTTranslatedEN12.01.07.doc>.

Examples of NGO good practice

A strong example of NGO good practice is the **network of projects for de-segregation of the education of Roma**.¹⁶ It includes eight towns where many efforts were made by both NGOs and authorities to overcome educational segregation. The projects are funded by the **Roma Education Fund**, Budapest¹⁷ (which is supported by the World Bank and the Soros Foundation). The projects which have been running for several years¹⁸, address the most serious problem with discrimination and social exclusion of minorities, and could lead to the greatest impact on these groups. Education of children from marginal minority groups, including better vocational training, is necessary for social inclusion as it contributes to better social skills development, improved access to the labour market, and an increase in the overall wealth of the particular community. It could lead also to better acceptance of the particular community in society in general.

With respect to good practices, there are also numerous activities that could be mentioned by small regional organisations working towards overcoming prejudice, especially amongst the youth. These include youth exchanges and training seminars for youth, aiming to overcome the prejudice, and racial and ethnic hatred, as well as the dislike between the different nations from the Balkan Peninsula.

4.4 Health

The health situation of Roma people in Bulgaria is far worse than of any other group, mostly due to the health risks associated with the extreme poverty many of them live in and also because the Bulgarian healthcare system is rather unfriendly to the poor people.¹⁹ The situation with respect to the prevention and treatment of epidemic diseases is especially grave.²⁰ There is clear violation here of article 11 and article 13 of the revised European Social Charter.

In 2005 and 2006, when Bulgaria was at the threshold of EU membership, several governmental political documents on Roma integration were adopted but to a large extent they were not implemented. In September 2005, a Healthcare Strategy for Disadvantaged People from Ethnic Minorities was adopted along

¹⁶ *Equal Access to Quality Education for Roma, Vol. 1: Bulgaria, Hungary, Romania, Serbia*, Equal Access to Quality Education for Roma, Bulgaria, Monitoring Report (Budapest: EUMAP, 2007) Full volume, incl. acknowledgements, preface, Available online at:

http://www.eumap.org/topics/minority/reports/roma_education/national/bulgaria/romeduc_bulgaria.pdf.

¹⁷ <http://www.eumap.org/>.

¹⁸ *Five Years Later: The Non-Governmental Projects for Desegregation of Roma Education in Bulgaria* (Sofia: BHC, 2006). Available online at: <http://www.bghelsinki.org/index.php?module=resources&lg=en&id=330>.

¹⁹ *Corruption in the Bulgarian Healthcare* (Sofia: CSD, 2007). Available online in Bulgarian at: <http://www.csd.bg/artShow.php?id=8766>.

²⁰ *Ambulance Not on the Way: The Disgrace of Health Care for Roma in Europe* (Budapest: ERRC, 2006). Available online at: <http://www.errc.org/db/01/E6/m000001E6.pdf>.

with an Action Plan to implement it. The latter envisioned funds from the 2006 budget earmarked at the amount of BGN 50,000; an amount that is sharply insufficient to meet the needs of the Roma population. In practice what was allotted was a ridiculous BGN 30,000.

Throughout the year the government continued to report as progress small projects part of which were implemented by non-governmental organisations. Serious problems with the health situation of Roma, however, still exist; among them a lack of efficient access to healthcare services; high mortality rate (almost three times higher than that of the rest of the population); low life expectancy (among Roma it is about 10 years less than that of the Bulgarians)²¹; and wide dissemination of chronic diseases and the 'diseases of the poor', such as tuberculosis. In the summer of 2006, in the *Stolipinovo* Roma ghetto in Plovdiv there was an outbreak of Hepatitis A unheard of in its dimensions. Hundreds of children were inflected before approximately 10,000 were vaccinated, while the dirtiest parts of the ghetto were cleaned.

4.5 Policing and racial profiling

Police impunity in excessive use of force

In 2006, the Bulgarian Helsinki Committee (BHC) monitored the investigation of some of the cases of excessive use of force and firearms that caused loss of human lives, which were reported in the organisation's annual Human Rights Reports.²² These investigations revealed a high level of police impunity, especially in the cases where the victims were Roma.²³

Case 1: On 27 March 2006, a police sergeant in Plovdiv fatally shot in the head a Roma man, Kiril Stoyanov, under very suspicious circumstances. After heavy legal argument on the quality of the investigation, the prosecution office terminated the case. No charges were presented before the criminal court. Instead, Stoyanov's mother filed a civil motion against the Police for damages caused as a result of her son's murder. The civil case was pending at the year's end.

Case 2: In 2006, no progress was made in the investigation of the death of Boris Mihaylov, a Romani man who was shot dead in 2004 by a police officer from the town of Smolyan. Penal proceedings were initiated in the case with charges exceeding the limits of inevitable self-defence, but the indictment against the police officer was not brought to court. The criminal case was terminated by the

²¹ According to official governmental statistics, confirmed by independent sources such as NGO and UNDP surveys.

²² *Human Rights in Bulgaria in 2004* (BHC, March 2005); *Human Rights in Bulgaria in 2005* (BHC, March 2006). Both available online at: www.bghelsinki.org.

²³ *Human Rights in Bulgaria in 2006* (BHC, March 2007).

prosecution office, which took it that the murder was committed in self-defence, despite the fact that the court ruled twice that the criminal investigation must be continued by the prosecution. The termination was appealed by the victim's relatives. Until the end of 2006 no indictment was brought to court.

Case 3: On 21 August 2006 in the village of Elhovo, Stara Zagora district, after having been detained by the police for three days, a Romani man, Marko Bonchev, died. According to eyewitnesses and relatives, on 17 August 2006, police officers handcuffed Bonchev and started kicking him in the stomach and the groin while insulting him with racist comments. On 20 August 2006, Marko Bonev was released from detention in a very poor state of health. Suffering from severe pains, he repeatedly mentioned to relatives that the pains were a result of blows and kicks by police officers at the police precinct in Gurkovo. Due to the sharp pains, Bonchev was taken to the emergency ward in Kazanlak on that same evening. However they refused to admit him for treatment at the hospital. He died the next morning. Two investigations were initiated – one for medical mishandling on the part of the medical staff at the hospital, and another against the police officers for excessive use of force. The prosecution office terminated both investigations and no charges were brought before a court.

Case 4: On 26 February 2006, the Court in Strasbourg issued its judgment on the Tsekov v. Bulgaria case with regard to the complaint about unlawful use of firearms by law-enforcement officers. The applicant, who is of Roma origin, was travelling in a cart loaded with corn and did not obey the order of the police patrol to stop. The police officers, after warning the man they would use firearms, fired a few bullets, one of which hit the applicant. The Court found that the use of a lethal weapon in this particular case was not necessary and appropriate and that the investigation into the case was inadequate.

Police raids of Roma residential quarters

In 2006 the practice of massive police raids in Roma residential quarters, that was particularly popular in the 90s, was revived. The raids were characterised by an unscrupulous use of force, including against women and elderly people. Both the management of the Ministry of the Interior and the judicial system reacted inadequately to the complaints filed thereafter.

Case 1: According to witnesses, after midnight on 21 August 2006, a group of police officers from Sofia stormed the Hristo Botev Romani neighbourhood after complaints that inhabitants were making a lot of noise. After a brawl with a company of Roma merry-makers, the police officers brutally intervened by threatening and beating all of the present people, most of whom had not participated in the disorder in any way, including women. Offensive words against their Roma origin were used. Some of the Roma were detained by the

Police, at which point they claim the violence continued. The acts of the police officers were not investigated.

Case 2: Some days later, on 24 August 2006, a large number of police officers blocked all exits of the Filipovtsi residential area in Sofia. According to witnesses, the police officers stormed many of the homes, kicked around the household belongings and used physical force against the residents, many of whom suffered injuries in the process. The Police internal investigation, as well as the prosecution's criminal proceedings against some of the police officers were both terminated without completely investigating the case and without any charges being brought.

Case 3: Another example of excessive use of force was the campaign of the police force and the military police force (the gendarmerie) held on 13 October 2006 in the Iztok Roma residential area in Pazardzhik. It was conducted on occasion of an argument between two Romani families that were neighbours. Witnesses reported that the argument grew into a fight between 15 men and women from the two families and that a crowd of about 50 people gathered to watch. The police patrol that arrived asked for back-up, and much later in the night the gendarmerie arrived. The gendarmerie that arrived, around 150 officers in total, broke into about 200 homes. The victims say they were insulted, taken out of their houses and forced to the ground, beaten and kicked. A number of significant material damages were caused. An estimated 200 Romani families were affected, including people who were not involved in the family argument in any way. About 20 victims of physical violence have medical certificates. Nevertheless, the inspections carried out by the prosecutor's office and the police in the town of Pazardzhik did not find any evidence of excessive use of physical force.

Asylum procedure

The right to asylum in 2006 was conditioned by measures introduced in recent years for border control and access to the territory of the country. This explains the continued decrease in the number of people who sought asylum in the country in the past year. In 2006 asylum applications were filed by 639 people from 36 countries compared to asylum applications filed by 822 people from 38 countries in 2005; a decrease of 22% and compared asylum applications filed by 1,127 people from 42 countries in 2004; a decrease of more than 56%²⁴. Institutional guarantees for access to the territory for refugees and the related protection of refugees from being returned (*non-refoulement*) are still missing.

On 1 January 2007, Bulgaria became an external border of the EU. The last several years were completely devoted to the preparation of state bodies and institutions, and in particular the Border Police, for performing this function. A

²⁴ According to the annual statistical reports of the State Agency of Refugees of Bulgaria – for 2004, 2005 and 2006.

considerable part of the pre-accession funds was earmarked for the implementation of technical and operating tools for monitoring and apprehending perpetrators at the border. On the other hand, the State Refugee Agency continued to not implement the transit registration and accommodation centre for asylum-seekers in the region of Kapitan Andreevo checkpoint – the main entrance point of the country, and completely abandoned the project of building a transit refugee centre near Sofia Airport checkpoint. Therefore in 2006 no summary proceedings were carried out at the border that would guarantee access to the territory for asylum-seekers.

Pursuant to the law, Border Police do not have the right to conduct asylum procedures, but should refer the applications to the specialised body, the State Refugee Agency (SRA), for further registration, consideration and opinion. On many occasions the applications were referred only after intervention by lawyers. The State Refugee Agency continues to not provide for the transportation to refugee reception centres of asylum-seekers at the border. Therefore, the monitoring of refugees conducted at detention centres at the borders, including the places of detention controlled by the border police, found that the lack of a functioning system of the SRA transit centres for summary proceedings poses a serious problem. Until this problem is solved, the rights of the people filing asylum applications and their access to the territory will not be protected.

Furthermore, decisions issued on refugee applications by the SRA continue to be unjustified. There was an increasing number of corruption reports about the officials of the SRA. These reports however were not investigated because the refugees feared retaliation or that their status would be revoked. This cast doubts on the fairness of procedures.

In 2006, SRA refused to record interviews as a safeguard against corruption and an incentive to performance to their obligations. In December 2006, in breach of the law, several applicants during their summary proceedings were held in the 'special home for temporary placement of foreigners' (SHTPF) in Busmantsi, where illegal foreigners are forcefully placed. The level of security in this reception centre is not satisfactory and there is information to suggest that people implicated in human trafficking exploit unrestricted access to the rooms where asylum-seekers and refugees stay. The number of cases of termination of the proceedings was alarming due to the anonymous state of the asylum-seekers and particularly of the unaccompanied children. Despite the sharp decrease of the number of the newly filed asylum applications in 2006 only 95 out of a total of 639 applicants were granted asylum. Of them, only 12 foreigners were granted refugee status, while the remaining 83 people were granted humanitarian status. The share of the recognized refugees remains too small – only 1.8% of the registered asylum applications although the total share of the other forms of protection granted increased from 10.46% to 12.9%²⁵.

²⁵ According to the annual statistical reports of the State Agency of Refugees of Bulgaria – for 2004, 2005 and 2006.

As in previous years, the basic problem in 2006 remained the way the Migration Department with the Ministry of Interior continued to carry out the deportation of illegal immigrants. The average length of forced detention (detention under administrative provisions) in the special homes for temporary placement of foreigners varies from 3 to 6 months. However, in the Busmantsi SHTPF there are foreigners who have been detained by the police under administrative provisions for more than 12 months. This is mainly due to a lack of co-ordination between the units of the Ministry of the Interior and the Ministry of the Exterior, Consular Relations Department, in particular, whose obligations include providing foreigners with documents for their forced deportation from Bulgaria. In the most shocking examples of prolonged detention, there has been blatant inaction on the part of the two state bodies, while the foreigners are kept deprived of their right to freedom and free movement in breach of article 5-f of ECHR.

Once again in 2006, the government was unable to shorten these lengthy detention periods by carrying out the timely deportation of such foreigners. Moreover, despite this it continued to impose involuntary detention rather than the milder measure provided for by law of daily attendance and signing – in which is supposed to be imposed as a general measure in such cases. Also, foreigners detained are not ensured an interpreter upon serving of the writs of involuntary detention, and in a number of cases it was established that the dates affixed were much earlier than the actual dates that the writs were served which makes it impossible to appeal them before the court within the stipulated terms. The court continued to repeal orders for involuntary placement due to the length of the detention on the grounds of which the foreigners were released. There were also cases when the police did not comply with the court decisions and issued new orders to the same effect and refused to release the persons affected. As far as the law provides for free legal aid rendered by the state at the trial stage of the proceedings, the only free legal aid offered to these persons to defend their fundamental right to freedom is provided by the BHC in its capacity as a human rights NGO.

Other instances

In 2006, a public discussion about the effectiveness and usefulness of racial profiling in combating criminality was launched for the first time. It was initiated by legal experts and sociologists and further supported by the media. A thorough victimisation survey of the police stop and search policy towards Roma was given publicity and discussed in 2006.²⁶ It showed a clear discrepancy between the police stops of Roma people compared to the police stops of other people.

Racial profiling of Africans and Caribbeans, amounting to harassment, was continually reported in recent years. In 2006 the number of complaints to NGOs

²⁶ *Police Stops and Ethnic Profiling in Bulgaria* (Sofia: CSD 2006). Available online at: <http://www.csd.bg/fileSrc.php?id=1965>.

decreased, but there were still a great number of cases of police stops and even verbal abuse of black people. The BHC launched testing in the autumn of 2006 to establish it as a fact, but it proved unsuccessful. In any case, the police stop and search policy towards Africans cannot be justified at all with investigation or prevention of crimes, since the crime rate amongst the black community in Bulgaria is extremely low.

There were also cases of police profiling against LGBT in stop and search activities around known LGBT places and clubs. In some cases the profiling amounted to clear harassment, since some police officers besieged some of the clubs on a daily basis.²⁷

4.6 Racist violence and crime

In 2006, cases of racial violence and crime began receiving media attention for the first time. During the year, several racial attacks were reported to authorities or NGOs. Most often, however, attacks are not reported.

Andy, a musician and African immigrant who had been attacked by skinheads twice before, participated in a talk show on one of the most popular TV stations. He explained the phenomena of the racial violence and harassment and openly connected the skinheads' groups with the national-socialist party Ataka. Later, MPs from Ataka asked for his phone number and address from the TV station, but access to this data was fortunately denied to them. After that, they tried to obtain data from the office branch of UNHCR, but one of the most experienced professionals there recognised the security threat and again denied them information.

At the end of the 2006, skinheads from a football fan-club attacked the football player Djayeoba who is a Nigerian national of the Levski football club. In inevitable self-defence, the player injured some of his attackers. The authorities reacted inadequately and did not charge the perpetrators effectively. Meanwhile, one of the skinheads placed charges against Djayeoba for his injuries.

In a similar case in December 2006, skinheads attacked and severely wounded a Nigerian national who was also football player, in the Svoge team. The perpetrators wore nazi-symbols and used racially offensive language. The victim was hospitalised and in a coma for several days. The police collected evidence and pressed charges. The case is still pending.

In June 2006, bottles of inflammable liquid were thrown at the home of the leader of the National Turkish Alliance Menderes Kukyun. This happened days after the Plovdiv Regional Court declined registration of the association.

²⁷ <http://www.bqogemini.org/eng/>.

From 2002 to 2004, organised pogroms against LGBT places and clubs were not rare to see in Bulgaria. In 2006 such mass attacks were not prevalent as before, but there were several cases of organised violence against single victims. In many cases, the perpetrators use the Internet to identify the victim as LGBT and to organise themselves. The reaction of the authorities is inadequate and victims themselves are often unwilling to file complaints due to the societal stigmas they face.

4.7 Access to goods and services in the public and private sector

One negative development in 2006 was the adoption in April of the amendments to the *Social Assistance Act*. With these amendments, a limitation of 18 months was introduced for the period in which the unemployed can receive social allowances. This provision applies even when the person meets the social assistance criteria, and despite its neutrality, it disproportionately affects the Roma. It is expected that effect of this will be felt at the beginning of 2008.

Access to services in the private sector is very often denied to Roma people, especially in some towns where it is done in a very systematic way. Since 2004, the victims with the support of legal NGOs lodged many civil suits for compensation. It had some effect, since in 2006 fewer cases of such were reported. However, some curious cases occurred. A public pool denied access to Bulgarians with obviously good financial and social status, due to their skin colour. It was actually a suntan, acquired after a long holiday at the Bulgarian Black Sea resorts. The guards explained to the customers that their boss forbade them to allow 'gypsies' into the pool, even if they had been rich.

4.8 Media, including the internet

There were gross violations of the Radio and Television Act on the part of radio and television broadcasting companies, including breaches related to racist and anti-minority propaganda. The national media regulatory body, the Council of the Electronic Media (CEM), failed to address these issues in any way. During the year, the CEM was pre-occupied with supporting the biggest commercial media and in their efforts to monopolise the market, they may have been in violating the media and anti-monopoly legislation.

In 2006 the leader of the extremely nationalistic party Ataka that won parliamentary seats after the elections in 2005, along with many of its followers, continued to incite hostility and discrimination against ethnic and religious minorities, as well as against the LGBT community. To do this, Ataka primarily used primarily SKAT cable television. Neither CEM nor any other institution undertook any efficient measures against the obvious violations of the provisions

of the *Radio and Television Act*. Many other extremist racist and xenophobic organisations in Bulgaria promoted hatred and discrimination undisturbed throughout the year. Also, the Code of Ethics of the Journalist failed to operate effectively throughout the year, despite self-regulatory bodies having been established by the branch organisations of the media.

Internet continued to be used in a organised way to spread national-socialist, fascist, racist, xenophobic and Islamophobic propaganda. The Bulgarian authorities failed to take any measures against. Their inaction cannot be attributed to a lack of resources and experience, since during the year the police successfully collected evidence and pressed charges against child pornography websites as well as against infringements of the copyright law in the internet.²⁸ Nonetheless, the police did not find the capacity to pursue websites with completely illegal Nazi and racist content,²⁹ which were in abundance during 2006.

Racist speech was used on many occasions by popular media, as well as by officials. In October 2006, the Minister of Health Prof. Radoslav Gaydarski publicly requested a ban by virtue of law for people from minority groups who have not come of age, to give birth. In November 2006, the mayor of the Ovcha Kupel district in Sofia, on the occasion of the plans of the municipality to provide housing to Roma population, stated:

The cows in Ovcha Kupel will be far less disturbing than a Roma residential district there... A Roma district like this is ten times more dangerous to be close to residential areas than a dumping ground'. None of the authorities did anything on occasion of this statement of the mayor.

In 2006 there were several grave violations of the religious rights of Bulgarian Muslims and several demonstrations of hostility and hatred towards them instigated by the extremist nationalist political forces such as the Ataka party. The most typical of this hatred and hostility was the campaign organized in June and July by the Ataka party against the prayers of the people in the Banya Bashi mosque in Sofia being announced over the loudspeakers installed at the top of the mosque's minaret. The party gathered signatures of citizens passing by the mosque, released numerous publications in its newspaper and broadcast many shows on the SKAT TV station, all of them criticising *'the barking noise produced by the mosque'*. The campaign was based on the premise that the volume of the prayers hurts the feelings of the Orthodox Christians and disturbs the peace, although in 2006 the volume had not increased in any way.

In July a rally of Ataka followers was organized to campaign for the removal of the loudspeakers from the mosque. Unfortunately, this anti-religious and

²⁸ What is more, in 2007 the police harassed webmasters and bloggers who maintained websites with completely harmless and law-abiding environmentalist content.

²⁹ Such propaganda is criminalised in the national Penal Code.

xenophobic campaign involved some politicians as well. The mayor of Sofia Boiko Borisov requested in an express letter that the volume of the loudspeakers be turned down, and the DSB party MP Dr. Nikolay Mihailov argued that since '*there is not a dense Muslim population around the mosque*' the volume of the loudspeakers should be at least turned down. In Sofia, however, there has not been a 'dense Muslim population' for more than a century now. The leader of nationalist IMRO (Internal Macedonian Revolutionary Organisation) party Krasimir Karakachanov was also actively involved in the campaign, stating that the sound coming from the mosque disturbs him. In the meantime, in several other towns local nationalist followers followed suit and organized campaigns for collecting citizens' signatures against local mosques.

4.9 Religious rights

The past year saw no amendments to the legislation governing the relations between the religious denominations and the state in Bulgaria. These relations are still regulated by the *Religious Denominations Act* (RDA) passed on 20 December 2002, with all its shortcomings identified both by Bulgarian and international human rights observers. In 2006, again no steps were made to make changes to this act or to pass a new one that addresses the criticism expressed or implements the recommendations of the Parliamentary Assembly of the Council of Europe in Resolution 1390 of 9 September 2004.³⁰

Throughout the year on several occasions, extremist nationalist followers attacked Muslim prayer houses as well as the property of other religious minority groups. Swastikas and notices such as 'Turks go away' appeared in March on the mosque in Pleven. In September, there were further attacks and the windows were broken. Swastikas were drawn on the walls of the mosque in Kazanlak and it was lit on fire in late July and early August. The authorities not only failed to address these attacks, but in some cases also targeted these groups.

As in 2005, public attitude in 2006 to the so-called 'non-traditional religions' was negative. This attitude was voiced at the three-day national conference held on 10-12 November 2006, titled 'New religious movements – problems and perspectives at the threshold of the EU'. The conference was organised by an NGO calling itself the New Religious Movements Research Centre and by the problematic group the Religion and National Security of the Philosophic Research Institute, all in collaboration with the Bulgarian Academy of Science (BAS). At the event hatred on religious grounds was instigated with a focus on 'the dangers of the new religious movements', many of which have 'not only religious, but also political and demographic purposes'.³¹

³⁰ For more details see: *Religious Freedom in Bulgaria in 2004*: Special Report of the Tolerance Foundation and the Bulgarian Helsinki Committee (Sofia: BHC, June 2005), available online at: www.bghelsinki.org.

³¹ For more details please see: Genov, Asen, 'How does Bulgaria Perceive the New Religious Movements in 2006', *Obektiv*, 137 (November 2006).

In 2006 there were also several grave violations of the religious rights of Bulgarian followers of the Muslim religion. On 27 June 2006, the Anti-discrimination Commission (ADC) issued a decision on the case of two Muslim girls from Smolyan who wish to wear headscarves at school. The case was initiated based on a motion filed by the Union for Islam Development and Culture (MIDC), an NGO from Smolyan, against the decision of the management of Karl Marx vocational school of economics in the same town to forbid the Muslim students F.K. and M.V. to wear the headscarves that their religion requires to cover their hair. The management's excuse was that there is a school uniform. The Committee decided that the management of the school did not discriminate against the girls, but rather against the rest of the several hundred pupils who do not wear headscarves. It imposed fines on the Regional Department of Inspection for Education and on the Ministry of the Education for allowing for this discrimination. The most absurd part of this decision, however, was the fine of BGN 250 imposed on the petitioners for 'instigating discrimination'.

In September 2006 the Prosecutor's Office requested that the court cancel the juridical person status of Ahmadiya, a non-profit organisation, because it was *'performing activities contradicting the law, activities that disturb the peace and quiet of the public and contradict the moral'*. According to the prosecutor's office Ahmadi's not-profit organisation performs activities that promote the Ahmad religious school that differs significantly from the popular Islam belief (i.e. the prosecutors persecuted them for *heresy*). The prosecution also claimed the activities of the non-profit organisation mimic such of a registered religious denomination, which it was not. Indeed, Ahmadi's had requested to be registered as a religious denomination, but Sofia City Court turned this down and it was affirmed by the upper court. The police searched their place and confiscated some books with religious content.

5. Political and legal context

Political developments

Throughout 2006 Bulgaria was governed by the triad coalition government of the Bulgarian Socialist Party (BSP), the National Movement of Simeon the Second (NMSS) and the Movement for Rights and Freedoms (MRF). The nationalists perceive the MRF as 'the Turkish party', while in practice it does not protect the minority rights of neither its Turkish voters, nor of any other minority group. The coalition was formed after the elections on 25 June 2005. On 1 January 2007 the country became an EU member.³²

In the spring of 2005, as an outcome of the extreme nationalist and racist propaganda of SKAT TV and some newspapers, the 'Ataka' party was founded. Its political platform and public statements are based on the above-mentioned propaganda and anti-minority, racist and xenophobic rhetoric. In 2005, the Ataka party won 8.44% of the votes in the parliamentary elections and 8.93% of the seats in the parliament (21 of the 240 MPs). Throughout 2006, the Ataka party organised several public xenophobic events. The leader of party, Volen Siderov, came out second in the presidential elections held in October 2006 winning 24% of the votes.

Sociological surveys and political analysts have tried to research the roots of the Ataka phenomena. Supporters of the party live mostly in small towns and villages. Among the party's supporters are the middle-aged or retired from both the poorly educated as well as the well-educated backgrounds. Most analysts believe Ataka voters are from the former left electorate who are nostalgic for the totalitarian regime³³. Reasons for the success of the Ataka party may include: the integration of the left BSP (former communist party) into European political structures; its European orientation and acceptance of NATO membership; and the coalition of the BSP with MRF (the so-called Turkish party). Indeed, the Ataka political platform includes mostly extreme-left and authoritarian propaganda.

Legal developments

There were no new legislative amendments in the monitored field, apart from in immigration legislation. Racial violence is still not criminalised in Bulgaria. In 2006, the legislation guaranteeing protection from torture, inhuman and

³² *Comprehensive Monitoring Report on the State of Preparedness for EU membership of Bulgaria*, 19 May 2006 and *Comprehensive Monitoring Report on the State of Preparedness for EU membership of Bulgaria and Romania*, 26 September 2006, both available online at: <http://www.evropa.bg/bg/del/eu-and-bulgaria/documents.html>.

³³ Kanev, Krassy, 'How Should We Think of Attack?' *Obective* 123 (2005); Also in Media Times Review: <http://www.mediatimesreview.com/september05/ataka.php>.

degrading treatment and punishment in Bulgaria remained unreformed. Necessary amendments to the *Penal Code* were not introduced to criminalize torture as the UN Committee against Torture has recommended in June 2004.³⁴ The conditions in many of the places of detention continued to be inhuman. In 2006, the jurisprudence of national courts under the anti-discrimination law continued to develop.³⁵

In the field of asylum and migration legislation there were some contradictory amendments by the State Refugee Agency with the Council of Ministers, which is the specialized body responsible for amendments and modifications to the *Asylum and Refugees Act* and for ensuring transposition of the European directives on asylum³⁶ into national legislation. Some of the proposed amendments and modifications were explicitly restrictive in nature and followed the European asylum rules rather than including the universal standards of the United Nations High Commissioner for Refugees.

For example, there was a proposal for narrowing the refugee definition provided in article 1A of the *Geneva Convention* through the introduction of additional definitions. There were also proposals to expand in the field of application for the cancellation of protection from being returned (the *non-refoulement* principle), and to further restrict the right to family reunion as well as to expand the cease-to-apply clause of article 1C of the *Geneva Convention*.

Particularly alarming is the proposed amendment to article 92 of the law, which aims to introduce fees for court experts' reports paid by asylum applicants. The amendment would mean that protection of fundamental human rights for potential refugees would be dependant on the availability of funds for the tools of court proceedings. In other words, the amendment aims to introduce property criteria on asylum applications. The act was not passed by Parliament by the end of 2006.

The only liberalisation that took place in the Bulgarian residency framework was made with regard to EU citizens and members of their families. This *European Union Citizens and Members of Their Families Entry and Residence in and Departure from the Republic of Bulgaria Act* was adopted in October 2006, and entered into force on 1 January 2007. EU citizens are now allowed to stay under milder conditions and for extended terms.

For other third country nationals, however, entry and residence regulations continue under the current framework and include a number of conditions and prohibitions. The application of provisions in the *Foreigners in the Republic of*

³⁴ *Human Rights in Bulgaria in 2004: Annual Report* (Sofia: BHC, March 2005).

³⁵ Please refer to the section below on 'Anti-discrimination' under 'Political and legal context' for more information.

³⁶ Namely, Dublin II (EU Council Regulations 343/2003/EC and 1560/2003/EC), Eurodak (EU Council Regulation 304/2002/EC) the directives on the procedures for granting status (EU Council Regulation 2005/85/EC), assessing of the refugees' applications (EU Council Regulation 2004/83/EC), reception of asylum seekers and refugees (2003/9/EC), family reunion (2006/83/EC) and giving temporary protection (2001/55/EC).

Bulgaria Act (FRBA) demonstrates an explicitly discriminatory approach with regard to foreigners who married Bulgarian citizens. The general provisions of article 27, paragraph 1 of FRBA allowing for residence of such foreigners without long-term 'D' type visas were applied only with regard to citizens of the European Union, the EEC and the countries of Northern America. All other foreigners, especially Africans or people of Arabic origin were denied permission to stay on the grounds that there is no 'D' type visa. This is direct violence of article 6, paragraph 2 of the Constitution as well as article 4, paragraph 1 of the *Anti-Discrimination Act*, and possibly of article 14 of ECHR.

After the initial good practice to repeal such refusals on the grounds of article 8 of ECHR in defence of the right to personal and family life, the courts in 2006 issued controversial decisions which raise concerns about their independence and impartiality. For example:

- The lack of any suppressive effect³⁷ on the enforcement of coercive administrative measures of a decision, with a view to guaranteeing the right of migrants to an effective legal defence³⁸ when they have a court case pending which appeals that decision;
- The lack of legal assistance for foreigners under administrative detention for deportation³⁹, and the lack of waiver of court fees in such cases, in order to prevent the possible denial of justice;
- The failure to recognise as family members all foreigners in factual cohabitation, rather than only those foreigners accredited to foreign diplomatic, consular, or commercial missions or the missions of intergovernmental organisations;
- The lack of a right to an active or passive vote in local elections or participation in local governance;
- The requirements⁴⁰ for hiring foreigners under the legal conditions of labour or civil contracts, with regards to the non-changeability, inadmissibility, qualifications, vacancy and fixed terms;
- The requirement⁴¹ of opening 10 vacancies for Bulgarian citizens as a condition for granting residency permission for foreigners on the basis of commercial activity and entrepreneurship.

³⁷ Pursuant to article 46, paragraph 4 of the FRBA.

³⁸ In accordance with article 13 of the ECHR.

³⁹ In accordance with guarantees provided for in Article 5 of the ECHR.

⁴⁰ In article 71 of the *Employment Stimulation Act*.

⁴¹ In article 24, paragraph 1, item 2 of the FRBA.

The NGO assessment

In 2006, not all NGOs reacted adequately to political and legal developments in 2006. Much more activity and advocacy work could be expected from civil society in Bulgaria. Many projects were successfully implemented towards the social inclusion of disadvantaged communities, but the civil society response to the racist propaganda of the Ataka party was insufficient. Efforts aimed at working with youth as well as at combating wide-spread racism in football fan-clubs and the media were also insufficient. Some examples of NGO good practice have been mentioned above. Also worth mentioning is the successful work of many NGOs in using the anti-discrimination law, as well lobbying against negative legislation amendments drafted in 2006.

5.1 Anti discrimination

Bulgaria is one of the few countries in Europe that adopted anti-discrimination law which not only satisfy the standards in the EU Equality Directives, but even exceeds them. Nonetheless, the implementation of this legislation in practice has proven to be problematic in various ways. Key problems areas regarding inequality in Bulgarian society remained unresolved in 2006. While some problem areas were left altogether untouched and others even underwent a marked regression, some positive development did take place.

Positive developments

On 21 July 2006, the first instance court in Sofia convicted Ataka party MP Volen Siderov for his extreme anti-minority propaganda. In this decision, a significant first step in the rule of law was taken towards drawing a line between freedom of speech on the one hand, and protection from terror and incitement in public on the other. The court ruled unambiguously that the hate speech of Siderov violated the rights of all people of ethnic origin, as well as the public interest. In the process of appealing this decision before the upper instances, the judicial system has the challenge applying the rule of law in distinguishing between legitimate free speech from terror and public incitement.

On January 5, 2006 the Sofia District Court convicted the Bulgarian Prosecutor's for discriminatory official statements against Roma people made by one of its prosecutors, thus demonstrating its ability to protect the dignity and equal opportunities of each and every individual.

The court continued to apply comparatively and effectively the *Anti-Discrimination Act*, issuing several other significant decisions. On 18 May 2006, the second instance court affirmed the judgment against the Bulgarian Academy of Sciences (BAS) for racial discrimination against a Roma person by a BAS

employee who refused to provide to the applicant the services of the academy's hotel, openly justifying his refusal with anti-Roma prejudices. Throughout the year there were decisions issued both by first instance and second instance courts convicting litigants for other refusals to Roma people for public services or employment. Once the cases are referred to the Supreme Court of Cassation, the capability of the law to effectively protect equality will be tested.

The Anti-discrimination Commission

Having started with considerable delay since its establishment in 2004, the Anti-discrimination Commission (ADC)⁴² began working more actively in 2006. According to ADC statistics as of 31 December 2006, the total number of complaints filed with was 424 and proceedings were instigated on 273 of them while the rest were deemed either inadmissible or irregular.⁴³ Of the proceedings instigated, 48 were for discrimination on the basis of ethnicity, six for religion, eight for citizenship, seven for sexual orientation, and 32 for multiple discrimination. The ADC issued a total of 54 decisions; in 26 of them it ruled out discrimination. The ADC established seven cases of ethnic discrimination, one of religious discrimination, three of discrimination on the basis of citizenship, one on the basis of sexual orientation, and one of multiple discrimination. The ADC also established one case of harassment on the basis of religion, and one on the basis of sexual orientation, as well as one case of instigation to discrimination on basis of sexual orientation and one on the basis of ethnicity.

Despite some weaknesses in the institution (detailed below), overall ADC practice demonstrated certain positive trends. The ADC issued a number of fair decisions demonstrating its involvement in the protection of rights and in the active application of progressive standards. It also demonstrated an understanding of the vulnerability of particular groups (for example, disabled persons, women, etc) as well as of current mechanisms for oppression and social exclusion.

In its conclusions, the ADC consistently referred to international law and jurisprudence, constitutional rights, and the general principles of law. It attempted to interpret the law systematically. The ADC approach to collecting and assessing evidence could be characterised by its dynamic, teleological involvement, and lack of formalism, as well as by its attempts to comply with the real dimensions of public life outside the narrow boundaries of specific cases.

The ADC was also active in encouraging litigants to take cases, as well as in communicating with them and supporting them. The ADC provided assistance to applicants with compliance to procedural requirements, facilitating access for

⁴² The ADC was established by provisions of the *Anti-Discrimination Act* that came into effect on 1 January 2004, with the purpose of applying the act in its capacity as a specialised body. It is tasked with investigating appeals and reports, making conclusions as to whether discrimination occurred, imposing sanctions and issuing mandatory instructions.

⁴³ The data has been submitted officially by ADC, letter to BHC outgoing ref. No 408/02.02.2007.

socially excluded persons. It aimed for an active, rather than formal application of the authorities provided for by law and was brave in granting responsibilities and in issuing instructions and guidelines, including to ministers and other authorities. Additionally, the language, structure, content and the legal approach of ADC decisions improved considerably towards the end of the year.

On the other hand, a number of negative features in ADC practice demonstrated some ambivalence. The ADC expert analysis of the interpretation and application of the anti-discrimination law is not exhaustive. ADC does not effectively distinguish between discrimination in its different manifestations from other forms of right-infringement or unfair treatment and this has the effect of blurring the concept of discrimination, especially in the ADC's earlier decisions. The ADC is limited in its analysis of discrimination beyond individual legally defined forms. For example, in a number of decisions there is no analysis of the comparison of the specific treatment with other events which occurred under the same circumstances, along with an analysis in isolation with the correct benchmark.

In decisions about indirect discrimination, there is no analysis of the justification of the difference in results (for example, no analysis of the validity of the purpose and the necessity of the means). The ADC fails to correctly apply the concept of indirect discrimination as in a number of its decisions it finds there is a seemingly neutral action, concluding that there was indirect discrimination, when in fact there was direct discrimination. These decisions demonstrate confusion between a seemingly neutral provision and inexplicit reasoning of a difference in attitudes.

The ADC demonstrated its failure to interpret the concepts of 'shift in the burden of proof' and of 'genuine and determining occupational requirements' (as an exception to the ban on different treatment), as its decisions do not represent instances where these concepts were applied adequately. Furthermore, ADC assessments and conclusions have at times appeared ungrounded or arbitrary. For example, the conclusion that the requirement of a public place not to have its customers dressed in leisure clothes is a considerable and definite professional requirement.⁴⁴

In some decisions the ADC has arguably demonstrated certain bias and prejudice. For example in a number of ADC decisions it concluded that there is no discrimination against foreign inmates although they are not entitled to any leave for good conduct or to any transfer to a milder regime which are conditions provided to Bulgarian inmates. Other ADC decisions were arguably restrictive and arbitrary. Another example was the decision in which the ADC concluded that wearing headscarves in school is discriminatory to other students and imposed a fine on the applicant who had claimed discrimination due to a ban on headscarves, along with all the other parties to the dispute, except the school management.

⁴⁴ Decision of ADC No 008 of 11 April 2006.

In summary, since a significant number of the ADC decisions in 2006 demonstrated a will for effective application of the law for equality, it is clear that the ADC has the potential to grow into an efficient human rights institution. In addition, the ADC initiative to establish its own regional structures so that it can be accessible to as many people as possible is very praiseworthy. On ADC initiative, the *Anti-Discrimination Act* was amended in 2006 to provide for such local structures.

However, for the ADC to grow into an efficient human rights institution, several issues remain to be addressed. ADC practice is at times inconsistent and controversial. Its legal expert analysis and approach with respect to form and content, demonstrate shortages which make it vulnerable before the Supreme Administrative Court that controls it, thus decreasing its sustainability. It is necessary to develop and strengthen institutionally this body through professional trainings.

In addition to these shortages in jurisprudence, the ADC lacks an overall proactive and focused policy to overcome existing inequality. Its lack of involvement should be self-corrected with regard to the most serious problems of discrimination in Bulgaria; for example the segregated education of Roma children and children with mental disorders, along with the rampant hate speech against minorities and other vulnerable groups. Additionally, the ADC should be more proactive in promoting its decisions and encouraging public sympathy and understanding towards them. It abstained from taking a firm public position of condemnation of the racism, sexism, homophobia and other prejudices that are rampant in Bulgaria. Finally, the ADC does not cooperate sufficiently with other bodies and NGOs, for example, it refused to participate along with other institutions and NGOs in the development of a national action plan to fight discrimination in 2007 initiated by the Government.

National action plan to fight discrimination

At the initiative of the Government, with the involvement of NGO experts, a national action plan to fight discrimination was developed in 2007.⁴⁵ The working group came up with a number of worthwhile suggestions. The final version of the plan, however, adopted by the Government, is relatively poor in quality. It envisages primarily promotional and training measures, as well as statistical research. However, it does not envisage any actual measures for desegregation of the Roma education and the education of children with mental disorders, or any measures for improvement of the grave housing conditions of Roma communities. The plan does not provide for the ratification of *Protocol 12* to ECHR which is gross mistake.

⁴⁵ See the plan at: <http://www.ncedi.government.bg/AP2007%20finalEVA.pdf>.

5.2 Migration and integration

There is a lack of policy initiatives, or awareness on the part of authorities, concerning the integration and social inclusion of migrant communities. Furthermore, the police being one of the few authorities with an interest in migration matters, policing operations themselves are arguably discriminatory and present barriers to the integration and social inclusion of migrants⁴⁶.

In 2006, the EU accession process had an impact on policies in the field of asylum. Problems in this respect are directly related to the observed tendency for enhanced state control over trans-border migration of people and for limiting of the access of immigrants to the labour market. The observations in this area have shown a strong violation of the balance between the need of such a control and the boundaries of its practical application and exercise which limits not only the access of refugees to necessary protection, but imposes in general terms restrictions on the right of free movement and choice of residence for each individual. There exists the tendency to turn these measures into national policy and practice to the detriment of the human rights of migrants – both immigrants and emigrants.

Similar to those issues identified in the area of Asylum, Bulgarian immigration legislation and policy followed suit in 2006. The lack of an individual domestic policy regarding migration led to the introduction in the regulatory structure and practice of a number of restrictive administrative mechanisms overseeing and controlling the right of foreign immigrants to enter into and reside in the country and the right of Bulgarian citizens who are economic emigrants and have committed a violation of the administrative regime of residency in EU states to leave the country freely.

5.3 Criminal justice

5.3.1 Racism as a crime

The failure to achieve the criminalisation of racism and higher sanctions for crimes with racial motivation continued in 2006. The only relevant text in the Penal Code which relates to this criminalises Nazi propaganda and instigation of racial hate. Although there is a great social necessity, as racial violence is common in some cities and there is clear racial motivation behind many crimes, the Parliament did not amend the Penal Code so as to criminalise racism and apply higher sanctions to crimes committed with racial motivation. In 2006, while NGOs put efforts into developing case law on the penal code, they had limited success. Additionally, investigation authorities are not willing to use the already

⁴⁶ Please refer to the section above on 'Policing and racial profiling' under 'Manifestations of racism' for specific manifestations of this.

existing texts in the Penal Code against perpetrators of racially motivated crimes, for example, against the Nazi and fascist propaganda in Bulgaria (which has been criminalised).

5.3.2 Counter terrorism and racial profiling

The authorities in Bulgaria applied no significant counter terrorism measures. What is visible is that the migration authorities put more pressure on immigrant communities in order to demonstrate some activity before the media and public opinion. In reality, this did not lead to any success in combating terrorism, but rather to an increase in problems in the migration field⁴⁷.

5.4 Social inclusion

There is no consistent strategy for social inclusion of the most discriminated minorities, including the Roma minority. The authorities applied several measures in 2006, but they were sporadic, with the obvious purpose of mimicking reforms for reports to the European Commission.

In late June 2006, the Government adopted an Action Plan on the Implementation of the Framework Programme for Equal Integration of Roma in Bulgarian Society; by the end of 2006 this remained unimplemented and on paper only. On 7 June 2006, the Parliament adopted a National Program for the Development of School Education and Pre-school Upbringing and Preparation for 2006–2015. This programme is a step back from the commitments undertaken with the 1999 Framework Programme for Equal Integration of Roma in Bulgarian Society. Unlike the Framework Programme, the National Programme does not mention at all the desegregation of Roma schools, or the integration of the children from the special schools for children with intellectual disabilities (many of them Roma) into mainstream schools.

Despite the few official papers on Roma integration that were adopted by the authorities in 2006, no practical steps were taken to overcome these problems. With respect to the inclusion of migrants, it must be mentioned that there is a lack of policy initiatives, or awareness on the part of authorities, concerning the integration and social inclusion of migrant communities.

⁴⁷ Please refer to the section above on 'Policing and racial profiling' under 'Manifestations of racism' for specific manifestations of this.

6. National recommendations

6.1 General

- The Government and NGOs should take measures to overcome the prejudices and hatred against minorities and immigrants in Bulgarian society. In particular, more initiatives are needed which aim at working with youth.

6.2 Anti discrimination

- NGOs should bring more cases of discrimination before the courts and the ADC so that better and more developed jurisprudence can be achieved.

6.3 Migration and integration

- Bulgaria desperately needs to adopt a national migration policy, or at least some focused strategy towards immigration. The asylum procedure needs to be made fair and justified.

6.4 Criminal justice

6.4.1 Racism as a crime

- Amendments to the Penal Code must be adopted by the Parliament to criminalise racism and the denial of the Holocaust, as well to introduce higher sanctions for cases when crime is racially motivated.

6.4.2 Counter terrorism

- Government authorities should aim to combat the real threats of terrorism and stop the harassment of innocent and poor immigrants.

6.4.3 Racial profiling

- Debates on racial profiling should continue. In particular, debates and general dialogue on this issue should be open and transparent and should reflect on whether the racial profiling is actually effective in practice as well as the concerns it raises regarding the protection of fundamental rights.

6.5 Social inclusion

- Access to qualitative education and training must be ensured for minority groups, the Roma minority in particular. At present, this remains a key issue in overcoming the social exclusion of minorities.

7. Conclusion

The most positive development in 2006 was the implementation of the anti-discrimination law in Bulgaria. Court jurisprudence continued to develop and public discussion on many of the issues followed. In 2006, the ADC also began working more actively, and though some of the issues it decided on were inconsistent and controversial, many others demonstrated positive patterns and a potential for the ADC to grow into an efficient human rights institution.

No development was observed in the field of the criminal law. No criminal proceeding ended in convictions against perpetrators of racially motivated crimes. The penal code remains inadequate in addressing racism as a crime and racist motivation and no amendments were made, nor proposed in 2006.

More efforts are necessary by both the Government and the NGOs in addressing the barriers to education of disadvantaged groups, in particular of the Roma community. Policy development in this area is necessary, as well as in the areas of immigration, asylum, social inclusion and integration.

The NGO response in the face of the racial and xenophobic propaganda was weak. More efforts and specific initiatives are necessary especially aimed at working with youth.

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9. Annex 1: List of abbreviations and terminology

ACFCPNM	Advisory Committee on the Framework Convention for the Protection of National Minorities of the Council of Europe
ADC	Anti-Discrimination Commission
BHC	Bulgarian Helsinki Committee
BSP	Bulgarian Socialist Party
CEM	Council of the Electronic Media
CSD	Centre for Study of Democracy
ECHR	European Convention for Protection of Human Rights and Fundamental Freedoms
ERRC	European Roma Rights Centre
EU	European Union
EUMAP	EU Monitoring of Accession Project
IMRO	Internal Macedonian Revolutionary Organisation
LGBT	lesbian, gay, bi- and transsexual
MRF	Movement for Rights and Freedoms
NGO	Non-governmental organisation
NMSS	National Movement of Simeon the Second
RDA	Religious Denominations Act
SHTPF	Special Home for Temporary Placement of Foreigners in Busmantsi
SRA	State Refugee Agency



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