

OVERVIEW OF THE STATUS OF ANTI-DISCRIMINATION LEGISLATION IN BULGARIA

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1. Protection against Discrimination Act

The Protection against Discrimination Act is the first single most comprehensive piece of antidiscrimination legislation in Bulgaria, although separate provisions against specific instances of discrimination could be found in other Bulgarian laws, including the constitution. -- Consolidates the existing and adds the EU ones. -- The Protection against Discrimination Act entered into force on 1 January 2004, after having been adopted by the Parliament on 16 September 2003 and promulgated in the *State Gazette* on 30 September 2003.¹ The draft was elaborated by the National Council on Ethnic and Demographic Issues, with the input of close to 40 civil rights groups, and within the framework of harmonization of Bulgarian legislation with the EU one.² The EU's close monitoring of the process of transposition into the Bulgarian law of the two major EU anti-discrimination directives - the Racial Equality Directive and the Employment Framework Directive³ – ensured the proper inclusion of their requirements into national law.

Provisions

Among the general provisions of the Act, there are several key articles that are novel for the Bulgarian legislation.⁴ Art. 4/1 prohibited discrimination on the grounds of sex, race, extraction (colour), ethnicity, citizenship, origin, religion or faith, education, beliefs, political affiliation, personal or public status, disability, age, sexual orientation, family status, property status, or any other ground provided for by law or international treaty. Art. 4/2, 3 defined direct and indirect discrimination, direct discrimination being treating a person on grounds provided for under Art. 4/1 less favourably than another person is treated, has been treated, or would be treated in comparable circumstances, while the indirect one - putting a person on the grounds under Art. 4/1, through an apparently neutral provision, criterion or practice, at a disadvantage compared with other persons.

¹ *Durzhaven vestnik*, br. 86, 30 September 2003.

² Human Rights News, September 2003, <http://www.bghelsinki.org/press/2003/09-17ae.htm>, seen on 30 January 2006.

³ For the Racial Equality Directive - Council Directive 2000/43/EC against discrimination on grounds of ethnic origin or race, and the Employment Framework Directive - Council Directive 2000/78/EC against discrimination on the grounds of religion or belief, disability, age or sexual orientation in employment and occupation see http://europa.eu.int/comm/employment_social/fundamental_rights/legis/legln_en.htm, seen on 30 January 2006.

⁴ For the English version of the Bulgarian Protection against Discrimination Act see www.eqviwa.net/download/Bulgaria_antidiscrimination_law.doc, seen on 30 January 2006.

Art. 5 postulated that harassment, sexual harassment, incitement to discrimination, victimisation and racial segregation, as well the construction and maintenance of an architectural environment hindering the access of persons with disabilities constitutes discrimination. Art. 7 introduced the notion of “positive” discrimination, listing exceptions to the prohibitions and enumerating at length instances where differential treatment does not constitute discrimination (for various occupational activities, religious education, age and length of service for the purposes of retirement, pregnant women and mothers, activities under the Employment Promotion Act, army service, etc.). Art. 9 contained provision for shift of the burden of proof: in protection against discrimination proceedings, after the party alleging to be a victim of discrimination establishes facts from which it may be inferred that discrimination is at hand, the respondent party must prove that the right to equal treatment was not breached. Art. 11 declared that state, local and public bodies shall take priority measures in order to equalise opportunities for victims of multiple discrimination (the last notion also being new to the Bulgarian legislation).

Protection against discrimination relates to 3 major fields: the exercise of labour rights, the exercise of the right to education and training, and the exercise of other rights (among them subscription, membership or participation in trade unions, guilds, professional and employers’ organizations; no refusal to provide goods or services, and balanced participation of women and men⁵).

The Act also provided for the establishment of a Protection against Discrimination Commission - an independent specialised state body, financed by the state budget, with the powers to receive and investigate complaints and issue binding rulings, finding discrimination and imposing sanctions and instructions on obstructers.

The Act also permitted two different types of proceedings: before the Commission (through complaint, own motion or signal), or before the district court. The second type of proceedings – the judicial proceedings – could be initiated by any person, by trade unions and NGOs on behalf of persons and by trade unions and NGOs on their own behalf.

2. Reception of the Protection against Discrimination Act

According to Evelina Doseva, expert at the National Council for Ethnic and Demographic Issues, the Bulgarian law is among the best examples of anti-discrimination legislation.⁶ The law has received also a very positive evaluation from the EC.

⁵ Art. 39 held that where applicants for an administrative post were equivalent with regard to the requirements for occupying such post, state, public, and local government bodies shall employ the candidate of the underrepresented sex until a 40% representation of that sex is achieved in the administrative unit in question.

⁶ Telephone interview, 4 October 2005.

Perceived advantages of the law

The advantages of such a novel piece of legislation are numerous. It consolidated the Bulgarian anti-discrimination legislation – existing so far in a scattered form – into a single comprehensive act, whereby achieving its harmonization with the EU legislation on equal treatment.⁷ It introduced entirely new criteria for the Bulgarian legal system (such as citizenship, disability, age, and sexual orientation), as well entirely new notions (such as harassment, sexual harassment, incitement to discrimination, victimisation and racial segregation, sexual orientation; direct, indirect, multiple discrimination).⁸ The Protection against Discrimination Act provided a detailed codification of non-discrimination, heightened protection for application and hiring for a job, introduction of promotion measures for the underrepresented sex, protection against harassment and sexual harassment at the workplace. It also elaborated a new legal instrument – the reverse burden of proof.

Perceived shortcomings of the law

This notwithstanding, Bulgarian lawyers have detected a series of shortcomings, that might create potential problems in the future. The Anti-discrimination Act gave no definition of “apparently neutral provision, criterion or practice”, on the basis of which indirect discrimination should be proven.⁹ At places, general phrases were used, without legal meaning (such as “all possible and necessary measures”, “to pursue a policy of promoting balanced participation of men and women”, “public body”, “priority measures”).¹⁰ The Act implied the use of analogy in determining direct discrimination, while the Bulgarian legislation excludes it as an argument for penal, administrative and disciplinary responsibility. “Direct discrimination” has been based on absent behaviour – the treatment of a person less favourably than another person “might have been” in comparable similar circumstances. Those could be potential illegal thoughts or intentions

⁷ Maria Gencheva, “Bulgarskiiat zakon za zashtita sreshtu diskriminatsiata – priblizhavane kum evropeiskite standarti”, v: M. Gencheva, *Diskriminatsiia na osnovanie na pola i tezhestta na dokazvane v zakonodatelstvoto na ES – sravnitelnoopraven pregled i sudebna praktika* (Sofia, 2004), <http://www.antidiscrimination-bg.info>, seen on 30 January 2006.

⁸ Irena Ilieva, “Analiz na Zakona za zashtita sreshtu diskriminatsiata”, <http://www.antidiscrimination-bg.info>, seen on 30 January 2006.

⁹ Ibid.; Iosif Geron, “Zadulzheniia na mestnata vlast, proizchasti ot Zakona za zashtita sreshtu diskriminatsiata /antidiskriminatsionni praktiki/”, manuscript, report prepared for PER in 2004. Geron gives an example: such an “apparently neutral provision” addresses everybody, but in fact targets a particular group of people, or places them in an unequal situation. Such a provision could be “Entrance with dogs in the park is prohibited”. If such a provision doesn’t exempt dogs that guide blind people, it does treat unequally the visually impaired. See pp. 1-2.

¹⁰ Geron, *Zadulzheniia*; Vladimir Petrov, “Niakoi razsuzhdeniia vurhu effektivnostta pri prilaganeto na Zakona za zashtita sreshtu diskriminatsiata”, manuscript, report prepared for PER in 2004. He questioned the requirement that state, local and public bodies take ‘all possible and necessary measures’, without defining what is possible and what is necessary. The norm allows these bodies to subjectively define these two points, thus they are given absolute freedom to be totally passive or extremely active. Professor Petrov asked which these public bodies were, for the law cannot ask all bodies in the Bulgarian society to take priority measures for equal treatment of persons victims of multiple discrimination. “What are the priority measures consisting of?” he asked further and concluded that such a term is meaningless from a legal point of view. See pp. 4-5.

that were not yet objectified in a discriminatory act. Indirect discrimination also posed practical problems – the article defining it was quite complex and it would be extremely difficult to provide good and solid argumentation.¹¹

The Act postulated the establishment of one single body – the Protection against Discrimination Commission – which does everything – from the possibility to initiate an investigation by its own motion and investigate ex officio (including anti-constitutional prerogatives like search and confiscation) to the taking of decision of whether the law had been breached and what sanctions should be imposed. This contradicts the principles of due process. The inclusion of “citizenship” among the grounds for discrimination might turn out to be risky and unnecessary, since the treatment of citizens of different countries is usually governed by the principle of reciprocity. At the same time, both the grounds for discrimination and the list of exceptions /instances of positive discrimination/ might have been left open /with a blanket end/, to allow maximum flexibility and protection at a time of quickly changing social relations.¹²

Other Bulgarian legal experts disapproved the inconsistency in defining persons belonging to a minority throughout the law (notions of ethnic minority, and of ethnic, religious and linguistic minorities were used interchangeably). Lawmakers were also criticized for not differentiating enough between discrimination on the grounds of sex from other types of discrimination. Provisions for antidiscrimination at the workplace often blended women and ethnic minorities, which is at odds with EU practice stipulating there should be separate provisions for the different categories of victims. The law was also blamed for not providing enough for protection against harassment and sexual harassment at the workplace when the perpetrator is the employer (that is the most frequent case).¹³

Some lawyers feared there would be no sufficient financial motivation for the court to be proactive in cases of judicial proceedings for no taxes are due for them and the expenses need to be covered by the court’s budget. Financial deprivation as a motive for non-action could be exacerbated by the very novelty and complexity of the law, which could become an obstacle in its implementation. Another barrier in the law’s implementation could be also the long tradition of regarding some grounds for discrimination as specifics of interpersonal relations in Bulgaria.¹⁴

The Bulgarian expert community has been split on the problem of whether to change the law and eliminate the potential shortcomings or leave it as it is for the moment and consider changes after the accumulation of some practice. Proponents of revision could be found among some members of the Protection against Discrimination Commission, while representatives of NGOs already using the law tend to approve of the status quo

¹¹ Ibid.

¹² Mihail Ekimdzhiev, “Zakonoproektut za predotvrativane na diskriminatsiata: prakticheski aspekti i problemi”, http://www.eurorights-bg.org/bg/categories/legal_doctrine/m_ekimdjiev/discrimination-aspects_and_rpblems.htm seen on 30 January 2006.

¹³ Ilieva, Analiz.

¹⁴ Petrov, Niakoi razsuzhdeniia.

and appeal for applying the law in its present variant. Lawyer Daniela Mihailova, representative of Romani Baht Foundation, thinks the law is good enough, it does work, and potential changes should be postponed until sufficient case law has been gathered. In her opinion, considering revisions might lead to attacking the law in the Constitutional Court while some indications exist that the Court might pronounce it unconstitutional, for it enumerates more grounds for discrimination than envisaged by the Constitution.¹⁵

3. Implementation of the Protection against Discrimination Act

Antidiscrimination Commission

Crucial in the implementation of the Bulgarian anti-discrimination law is the constitution of the Protection against Discrimination Commission, an independent specialized state body for the prevention and protection against discrimination, with the powers to receive and investigate complaints, issue rulings, and impose sanctions. The law stipulates that it should consist of 9 members – 5 elected by the parliament (including chairman and vice-chairman) and 4 appointed by the president. Their mandate is for 5 years, while at least 4 out of the 9 members must be lawyers. The chairman's remuneration is fixed at 3 average monthly civil servant salaries pursuant to National Statistics Institute data. The Commission has 3 permanent panels – on racial and ethnic discrimination; on sex discrimination; and on discrimination on other grounds under Art. 4/1. According to the Guidelines for the Structure and Activities of the Protection against Discrimination Commission, its personnel should consist of a total of 42 persons, together with the administration.¹⁶

Although the law's proper implementation requires the establishment of the Commission, the Commission was formed as late as the summer of 2005. Its chairman is Kemal Eiup, member of the political party of the ethnic Turks in Bulgaria, Movement for Rights and Freedom. However, the Commission has not yet begun its routine operation, since it has no proper office and is affected by the concomitant technical problems (no possibility to receive written complaints, hire administrative staff, set procedures, meet interested people and have sessions).¹⁷ It cannot start gathering statistics on the case law and communicate meaningfully with interested parties.

In addition to the technical problems with the establishment of the Commission, there are structural problems, identified by lawyers. One of them is the insurance of objectivity and independence of the Commission, especially in cases of discrimination done by parliament or president, since these are the two bodies that select the members of the

¹⁵ Interview with Daniela Mihailova, 4 October 2005.

¹⁶ *Durzhaven vestnik*, br. 57, 12 July 2005, <http://lex.bg/laws/ldoc.php?IDNA=2135506845>, seen on 30 January 2006.

¹⁷ In fact, the Commission was given an office in a basement at 35 Dragan Tsankov str. in Sofia. However, there are concerns that this building is located at a considerable distance from the centre, will not be easily accessed, thus is inappropriate for the Commission.

Commission. For the same reasons, fears have also been raised as to the potential interference of political parties with the work of the Commission.

Case law

Only judicial proceedings against discrimination have been initiated so far. The reason why the second mechanism – proceedings before the Commission – has not been used yet might well be the lack of appropriate premises and procedures so as to ensure the full implementation of the law. For the judicial proceedings, the majority of the cases have been brought by NGOs, using widely the collective clause in the public interest. Among the most active NGOs which had brought cases to the court are the Romani Baht Foundation (discrimination on ethnic ground), the Bulgarian Helsinki Committee (discrimination on ethnic ground), the Budapest-based European Roma Rights Centre (discrimination on ethnic ground), the Human Rights Project (discrimination on ethnic ground), the Centre for Independent Life (discrimination on disability ground), and the Association for European Integration and Human Rights (Eurorights) (on a variety of grounds).

There are no reliable statistics on how many cases were brought under the Protection against Discrimination Act so far. The Protection against Discrimination Commission does not have such statistical data.¹⁸ The National Council on Ethnic and Demographic Issues uses the statistics of the Ministry of Justice, but acknowledges that they are incomplete. As of July 2005, the Ministry of Justice reported 16 cases, of them 10 for ethnic discrimination (5 pending, 4 partly granted, 1 dismissed), the rest for sex, sexual orientation, and harassment. No decision had entered into force by October 2005.¹⁹ The courts themselves do not possess such statistics and often ask the NGOs what kind of cases they had brought. A single NGO, though one of the most active in this field - the Romani Baht Foundation, had 24 cases by October 2005, all of them on ethnic ground. Of them 7-8 were for refusal for hiring for a job, 7-8 were for access to education, and the rest – for access to public services.²⁰

The first ruling by a Bulgarian court based on the Protection against Discrimination Act is of 23 July 2004, in a case brought by local counsel acting on behalf of the European Roma Rights Center and the Romani Baht Foundation. The Sofia District Court ruled against a company named VALI EOOD, and awarded compensation of 300 EUR to Sevda Nanova, after the court established that Ms Nanova - a Romani woman - was discriminated against in access to services in a shop, on the basis of her race.²¹

¹⁸ Interview with Lalo Kamenov, vice-chairman of the Protection against Discrimination Commission, 28 September 2005.

¹⁹ Telephone interview with Evelina Doseva, National Council on Ethnic and Demographic Issues, 4 October 2005.

²⁰ Interview with Daniela Mihailova, Romani Baht Foundation, 4 October 2005.

²¹ Public Interest Law Initiative, <http://www.pili.org/lists/piln/archives/msg01150.html>, seen on 30 January 2006.

Three private food-producing companies in Sofia were taken to court for denying Roma access to employment on explicit racist grounds. In replying to testers, inquiring about advertisements for vacant positions, their employees explicitly stated either that Roma would not be hired, or listed “not being a Romani” as a job qualification, along with sex and age requirements. A restaurant in Blagoevgrad was brought to court for denying entry to Roma who had made a telephone reservation beforehand.²² The court delivered 3 verdicts against the monopoly Sofia Electricity Distribution Company for providing its services to bill-paying Roma customers under less favorable conditions than to bill-paying non-Roma customers.²³

In April 2005, a positive court ruling appeared in the first case for discrimination on the ground of sexual orientation. 4 members of the “Dolphin” Sports Club were ordered to receive 500 BGN from Sofia University on account of not being let in the university sauna because they were gay. The case was taken to court by Queer Bulgaria Foundation in the public interest. In October 2005 in another landmark case, a positive court ruling appeared in a landmark case against the school segregation of Roma children. The case was taken to court by the European Roma Rights Centre against the Bulgarian Ministry of Education, Sofia Municipality and Primary School # 103 in Sofia for not taking measures to prevent the segregation of Roma children in the respective school.²⁴

4. Some examples for institutional fighting of discrimination

Paralleling the litigation efforts, there are the attempts of Bulgarian institutions to prevent discrimination of one of the most disadvantaged groups. Not all of them can be listed, yet a brief outline would delineate their scope and major targets.

For combating discrimination in the field of employment, the Bulgarian government supports National Employment Programmes aimed (mainly) at Roma, such as “From Social Care to Providing Employment”, “Job Opportunities through Business Support”, “Beautiful Bulgaria”.

To fight discrimination in the provision of education, an official campaign for desegregation of school has been initiated. In June 2004, the Ministry of Education and Science adopted a strategy focusing on the education of school children of minorities. Prior to that, in 2002 and 2003, it issued instructions for desegregation of Roma in schools. In September 2002, the National Education Law was amended, envisaging mandatory free of charge pre-school preparation for the school year 2002/3. Assistant teachers were introduced as mediators between children from minorities and their

²² The four cases are described in the Bulgarian Helsinki Committee journal *Obektiv*, <http://www.bghelsinki.org/obektiv/107-00.html>, seen on 30 January 2006.

²³ *Human Rights in Bulgaria in 2004*, Annual Report of the Bulgarian Helsinki Committee, April 2005. By the end of 2004, 8 of the lawsuits filed had been resolved: in 6 of them the court ruled that discrimination against the Roma claimants had occurred. Ibid.

²⁴ For both cases see the news rubric on the Bulgarian Helsinki Committee website, <http://www.bghelsinki.org>, seen on 30 January 2006.

teachers in integrated pre-school classes at kindergartens, preparatory and first classes of elementary schools too.

Steps are also taken to prevent the discrimination of a social group that could easily be subjected to discrimination on several grounds, the immigrants. Although so far no case was brought to court with a migrant claimant, the chairman of the Protection against Discrimination Commission Kemal Eiup declared in an interview that he had received letters through his MP mail of foreign citizens (from Romania and Moldova) held in Bulgarian prisons, who complained they were discriminated on the ground of their nationality.²⁵ An institutional answer to possible discrimination of migrants, the Programme for Legal Defense of Refugees and Migrants (a branch of the Bulgarian Helsinki Committee) gives around 4000 legal consultations to refugees and migrants per year fighting discrimination in establishing of small businesses, the denial of equal rights to migrants at the workplace, in the administration, and at schools. Another official document - the *Draft National Programme for Integration of Refugees of Republic of Bulgaria, 2005-2007* (of 14 April 2005) envisages close cooperation between the State Agency for Refugees and the Protection against Discrimination Commission. It aims at ensuring the participation of migrants in public life, creating a media policy favourable to migrants, and establishing the institution of ombudsman for refugees and migrants.

5. Public knowledge of the law

Two opinion polls made in 2004 give us impression of the extent to which the Bulgarian society is familiar with the anti-discrimination problems and legislation, and the need for further dissemination.

The first poll was made in the town of Silistra (North-eastern Bulgaria). It revealed that 35.9% of the respondents have not heard of the law. People were most discriminated on the grounds of age, sex and property status, while 26% have never felt discriminated. 58% of the respondents said hiring for a job was the most discriminatory situation they could think of, 23% found most discrimination practices at the workplace, and 16% at public places. Only 11% found discrimination in public administration.²⁶

The second poll was made in the city of Varna (third biggest city in Bulgaria). It discovered that 49% of the respondents have been victims of discrimination on the grounds of age, sex, property status and education. 53% of the respondents found most discrimination practices with hiring for a job, 23% - at the workplace, and 21% - at public places. Over 92% of all people questioned were not aware of any programme of the local authority for combating discrimination.²⁷

²⁵ Kemal Eiup, "Na bulgarina kato mu se kazhe diskriminatsiia, apriori razbira etnicheska i rasova", interview of B. Hristov in: *Obektiv*, 121, May 2005.

²⁶ <http://antidis.women-bg.org/docs/Vhodna%20anketa%20-%20Silistra%20BG.pdf>, seen on 30 January 2006.

²⁷ <http://antidis.women-bg.org/docs/Vhodna%20anketa%20-%20Varna%20BG.pdf>, seen on 30 January 2006.

If we think of the field where most public litigation efforts have been concentrated, namely fighting discrimination on ethnic and racial ground, we will surely notice that public opinion seems to put a stronger accent elsewhere – on the grounds of age, sex, property status and education. Particularly interesting is the group of people who felt discriminated on the ground of their property status. Researching such public perceptions of discrimination is all the more important, for such a study could signal where the majority of future complaints could come from (once the Commission is established and the individual complaint instrument made much easier). It could also made us reflect on why some strong public concerns fail to end in the courtroom, if not backed by an institution/organization, and what should be done so as to make this public voice more effective and efficient in the prevention of and protection from discrimination.