



## Executive Summary

### Country Report Bulgaria 2009 on measures to combat discrimination

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#### 1. Introduction

Discrimination is pervasive, frequently open and unsanctioned, and includes discrimination, both direct and indirect, provided for by legislation. While all commonly disadvantaged groups suffer it, some communities are particularly gravely affected, including Roma, people with disabilities, especially people with mental difficulties, LGBT (Lesbian, Gay, Bisexual, Transsexual) people who face open hatred when expressing themselves openly, ethnic Macedonians whose existence as such in Bulgaria is simply denied, and racial minority immigrants who are brutalised and shunned.

The Roma in Bulgaria are severely disadvantaged in all sectors. The majority live in ghettos in dire conditions in substandard housing, some of it ramshackle, with very limited access to basic infrastructure, security of tenure or essential services, such as public transportation, emergency medical aid, garbage collection, policing, and, for some, even electricity and water supply. Roma communities are systematically subjected to collective arbitrary forced evictions. Most Roma children study in segregated substandard schools, with a significant share excluded from schooling altogether. Roma are plagued by long-term unemployment, lack of access to vocational training, and direct discrimination barring their access to jobs. They face exclusion and less favourable treatment, incl. harassment, in access to services and goods, as well as in healthcare. The criminal justice system targets them for disproportionate prosecution, and, at the same time, denies them equal protection by the law, incl. from racially motivated crime by both officials and civilians. Prejudice and intolerance against them are widespread. Widespread, often radical, public hate speech and racial slandering portray them as subhuman and inherently criminal. They lack political representation, and have no real access to decision-making at any level.

People with disabilities suffer from serious exclusion and disadvantage in, notably, education, employment, access to services and participation, inter alia. A significant share of children with disabilities is excluded from schooling because of inaccessibility, and the majority are segregated in substandard remedial institutions. People with mental disabilities are segregated in special institutions where they often suffer inhuman treatment, incl. degrading conditions. They undergo involuntary medical treatment and abusive placement in psychiatric facilities, and are denied access to justice. The authorities have systematically failed to adequately investigate violence and deaths in mental hospitals.



The LGBT community are publicly threatened with violence when attempting mobilisation and demonstration, as in holding the first gay pride parade in Sofia in the summer of 2008.

Ethnic Macedonians (according to the 2001 census, ca 5 000 persons; and at least twice as much according to some unofficial observers) are denied their identity, as well as the right to express it by free association and peaceful assemblies.

Migrants and refugees are targets of racist attacks and harassment, incl. by skinheads and police, and disproportionately barred from access to employment and housing. They undergo prolonged illegal administrative detention, and are denied access to court within a reasonable time.

Harassing expression (racist, homophobic, sexist, able-ist, and other) by public personalities, such as journalists and politicians, as well as officials, is common and undeterred. There is no culture of considerateness and understanding, or respect.

Discrimination is a growing subject in public life. People are increasingly interested in protection against it. A rights awareness is evolving. There is in place an institutional and legal framework that has the potential to produce social change. The equality body is active and determined, and growing, notwithstanding a number of deficiencies. NGOs are active in litigation and advocacy against systemic inequality. The government, however, lacks any real will to combat discrimination. An official culture of denial prevails. Positive measures to date have been ineffective. While there are a number of programmes for persons with disabilities, Roma, and other vulnerable groups, those have remained without real implementation or effect on human lives.

## **2. Main legislation**

The Protection Against Discrimination Act 2004 is the main anti-discrimination legislation, which was enacted in order to transpose the EC equality directives. It is a single equality law universally banning discrimination on a range of grounds, explicitly including race/ethnicity, sex, religion/belief, sexual orientation, disability and age, and providing uniform standards of protection and remedies. In parallel, other, pre-existing abstract prohibitions of discrimination are still in place under other laws governing specific fields, as well as the Constitution. A number of international instruments banning discrimination are also in effect, including the European Convention on Human Rights, the European Social Charter Revised, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Elimination of All Forms of Race Discrimination, the Convention on the Rights of the Child, the 111 ILO Convention. The Constitution and binding international law are directly applicable by domestic courts, and supercede any conflicting legislation. They are enforceable against private parties, as well as public bodies.



Apart from the Protection Against Discrimination Act, the other significant law on equality is the Integration of Persons with Disabilities Act, which bans disability discrimination specifically and provides for positive and reasonable accommodation duties with respect to persons with disabilities in a number of key fields. Further, a number of laws governing specific fields, such as education, employment, public procurement, and taxation, provide for positive measures on grounds, such as disability, age, and caring responsibilities. The Criminal Code bans racially motivated violence and incitement to discrimination but these provisions lack any implementation in practice.

The Protection Against Discrimination Act as a whole complies with the Directives, and goes beyond them in significant aspects, incl. material scope, list of protected grounds, forms of discrimination banned, powers of the equality body, and special judicial redress.

### **3. Main principles and definitions**

The Act prohibits and defines direct and indirect discrimination, including explicitly discrimination by association and by presumption. The Protection Against Discrimination Act defines direct discrimination as treating a person on protected grounds less favourably than another person is treated, has been treated, or would be treated in comparable circumstances. The Act further defines “on grounds of” as the actual, present or past, or assumed possession of one or more protected grounds by the person discriminated against, or by another person who is, in fact or presumably, associated with the person discriminated against, where this association is the cause of the discrimination.

In this way, the law expressly bans discrimination by presumption, as well as by association, incl. by presumed association. A list is provided of illustrative bans on specific directly discriminatory conduct in key fields, such as employment, education, and service provision. The Act does not permit general justification for direct discrimination with respect to any ground. It provides for an exhaustive list of specific exceptions for all protected grounds, including for genuine and determining occupational requirements, for employers with a religious ethos, and for maximum and minimum ages for access to employment and education, requiring objective justification by necessity. The law further excepts different treatment of non-nationals provided for under law, and permits unjustified requirements for age and length of service for purposes of retirement. Positive measures aimed at equalising opportunities for disadvantaged groups are allowed, and expressly mandated.

The Protection Against Discrimination Act defines indirect discrimination as putting a person on protected grounds, through an apparently neutral provision, criterion or practice, at a disadvantage compared with other persons, unless such provision, criterion or practice is objectively justified by a legitimate aim and the means for achieving that aim are appropriate and necessary.



The Protection Against Discrimination Act explicitly provides that harassment, incitement to discrimination, and victimisation constitute forms of discrimination. The Act defines *harassment* as any unwanted conduct related to protected grounds and manifested physically, verbally or in any other manner, that has the purpose or effect of violating the dignity of a person and of creating a hostile, offensive, or intimidating environment. Under the law, the protection is explicitly extended to cover harassment by presumption and by association. *Incitement to discrimination* is defined as direct and intentional encouragement of discrimination where the perpetrator is in a position to influence their audience. The definition expressly includes giving an instruction to discriminate. *Victimisation* is defined as: a.) less favourable treatment of a person who has undertaken, or is presumed to have undertaken, or to undertake in the future any action for protection against discrimination; b.) less favourable treatment of a person where a person associated with them has undertaken, or is presumed to have undertaken, or to undertake in the future any action for protection against discrimination; c.) less favourable treatment of a person who refused to discriminate. Therefore, protection is accorded for victimisation by presumption and by association too.

Action for protection against discrimination may include, but is not limited to, bringing proceedings before the equality body or the court, in either victim or third-party capacity, or testifying in proceedings.

Therefore, any person who assisted any action against discrimination in any way is entitled to protection from victimisation. Further, the Act defines *racial segregation*, explicitly providing that it is a form of discrimination.

These definitions apply to a range of protected grounds, explicitly including race/ethnicity, religion/belief, disability, sexual orientation, age, and sex. Multiple discrimination is defined under the Protection Against Discrimination Act as discrimination on more than one of the protected grounds. The Act places a positive duty on all public bodies, central as well as local, to take as a priority positive measures to equalise opportunities for victims of multiple discrimination. The Act further provides that the specialised equality body, the Protection Against Discrimination Commission, will hear cases of multiple discrimination sitting in extended benches of five rather than three members.

The Protection Against Discrimination Act provides for reasonable accommodation for persons with disabilities in, respectively, employment and education. The limit of this duty is when “the costs are unreasonably big and would seriously hinder” the employer or educator. Under the Integration of Persons with Disabilities Act, the Minister of Education has a duty to provide children with disabilities with a supportive environment for their integrated education. This is an absolute duty, with no disproportionate burden justification. Under this Act, further, the Minister of Education has a duty to create educational opportunities for children with disabilities who are not integrated in a common educational environment. This duty, too, is absolute. Higher education institutions, too, have absolute reasonable accommodation duties under the Integration of Persons with Disabilities Act.



Statutory duties are placed on authorities, employers and educators to mainstream equal treatment and take positive measures on all grounds. Liability is provided for abettors of discrimination, as well as vicarious liability for employers and educators who fail to prevent discrimination by third parties at the work or study place. A shift of the burden of proof is envisaged. A specialised independent body to promote and enforce equal treatment is set up under the law. A special judicial remedy is provided for. Both procedures are exempt from state fees, as well as costs.

Since 2004, the Act has been actively enforced in practice, generating a growing body of case law. The courts, as well as the equality body, have adjudicated a number of cases in positive ways, with some quite progressive and strong decisions, incl. against institutional discrimination. Still, the authorities have to overcome a number of deficiencies in the way they handle the concepts of discrimination law.

#### **4. Material scope**

The Protection Against Discrimination Act has a universal material scope, similar to that of Protocol 12 to the European Convention on Human Rights.

The ban on discrimination is explicitly said to apply to any field, implicitly including all fields under the Race Directive, as well as any field beyond. This universal ban applies to all protected grounds, including race/ethnicity, religion/belief, disability, sexual orientation, age, and sex. It applies to the private, as well as the public sector.

#### **5. Enforcing the law**

The Protection Against Discrimination Act provides for two alternative procedures for enforcement of anti-discrimination rights: judicial proceedings before the general civil courts and specialised quasi-judicial proceedings before the independent equality body, the Protection Against Discrimination Commission. A victim can choose between the two.

The courts can make a declaration of discrimination and award compensation for damages, as well as order respondent to take remedial action, or to abstain from, or to terminate particular action or inaction found to be in breach of the law. The equality body, too, can make a finding of discrimination, and order preventive or remedial action. It can also impose financial sanctions. However, it can award no compensation to a victim. Both procedures are universally applicable to both the public and private sectors. They are legally binding. The principle of the shifting burden of proof applies to both.

There have been few cases where judges have found discrimination based solely on respondents' failure to rebut inferences of discrimination. However, they have consistently taken account of this special evidentiary rule, and some have issued sound dicta on its implications for fact finding. Both procedures are exempt from costs. Complainants use both procedures, with growing intensity.

Under the law, the equality body assists victims of discrimination. In practice, complainants are provided with procedural advice on filing their complaints before the body. In addition, the body has standing to take court proceedings, as well as to join proceedings taken by others. In practice, however, it has not used these possibilities. There are NGOs that actively litigate discrimination cases. Under the law, they have standing to represent complainants in court, as well as to intervene in proceedings in their support. Significantly, NGOs have standing to take public interest court action on their own behalf where the rights of many persons are infringed without authorisation from any particular victim. They also have unconditional standing to initiate proceedings before the equality body without a particular victim. NGOs have taken a number of such public interest lawsuits and equality body proceedings. The result has been enhanced public attention on the issues and some quite strong judicial and equality body decisions. Discrimination litigation, especially when brought by NGOs, often receives coverage by the media. NGOs have used situational testing to uncover and document instances of direct discrimination, and have established such cases in court with the help of testing testimony. They have also used statistics in a few cases. Under civil procedural law, which does not limit the types of evidence, both statistics and testing evidence are implicitly admissible at the discretion of judges. There has been no discussion on the admissibility of statistics or testing. Testing testimony has been admitted as a matter of course as ordinary witness testimony without reference being made to testing's specific public interest aim. Statistical data, too, has been considered as regular proof by both the equality body and judges. The equality body has even looked at statistical data of its own motion.

Sanctions for discrimination imposed by the equality body include monetary penalties, with maximum amount the equivalent of EURO 1250, and binding instructions for respondents to take particular preventive or remedial action. The equality body actively uses its sanctioning powers, often imposing close to maximum fines, and ordering remedies, such as reinstatement, amendment of regulations etc.

It is unclear, however, to what extent these sanctions are complied with in practice, and how effective the authorities' response is in cases where they are not. Court-ordered redress includes compensation with no maximum limit, and orders on respondents to take, or to abstain from specific action. The average amounts of compensation for non-pecuniary damages have been moderate, around the equivalent of EURO 300, with exceptional awards of EURO 1250 to 2500.

## 6. Equality bodies

The Protection Against Discrimination Commission is the national specialised equality body. It was set up under the Protection Against Discrimination Act as an independent collegiate authority with adjudicating powers. It started operating in 2005 even though the law required it do so as of the start of 2004; a year's delay. The Protection Against Discrimination Commission deals with discrimination on all protected grounds.





It has mandate to: hear and investigate complaints by victims and communications by third parties; initiate its own proceedings; find discrimination by legally binding decisions; impose financial sanctions; issue mandatory instructions for remedial or preventative redress; review and give opinions on draft legislation; make recommendations to public authorities, incl. for legislative change; assist victims of discrimination; carry out independent research and publish independent reports.

The Protection Against Discrimination Commission is rapidly growing a vast body of case law, some of it good. However, the rate of implementation of its decisions by both public and private actors is unsatisfactory.

The government, quite contrary to what the Protection Against Discrimination Commission's overwhelming case load dictates, decided to reduce the number of its members from 9 to 5. They are said to be currently drafting legislative amendments to that effect.