



European network of legal experts in gender equality and non-discrimination

FLASH REPORT

Country:	Bulgaria
Title:	Anti-Roma hate speech by Deputy Prime Minister sanctioned by Supreme Court
Date:	28 January 2019
Expert:	Margarita Ilieva
<u>Context</u>	
Issue at stake:	Hate speech/ harassment
Ground of discrimination:	Ethnicity/ race, multiple discrimination (including gender)
Source:	National court decision
Field:	Social protection and assistance, employment, other
Applicable law:	Protection Against Discrimination Act, Article 4-5

Content

Case law development: On 15 January 2019, the Supreme Administrative Court (SAC) ruled that Valery Simeonov, former Vice-Prime Minister (2017-2018), was not liable for harassment against the Roma by means of public statements, including “*[Roma] have become brazen, presuming, and brutalized human-like [creatures], demanding a right to salary without doing work, wanting sickness assistance without being sick, child assistance for children who play with pigs in the street, and maternity assistance for women with the instincts of stray bitches*”.

Simeonov made the impugned statements as a Member of Parliament in 2014. A Roma individual brought a complaint against him with the equality body, claiming they amounted to harassment and incitement to discrimination against the Roma community, as well as the individual complainant. The equality body agreed and imposed a fine of BGN 1000 (EUR 500) on Simeonov, as well as an injunction for him to abstain from further such statements. Its ruling was confirmed by the Sofia City Administrative Court.¹

On appeal by Simeonov, SAC repealed the lower court’s ruling on grounds that the impugned statements did not target a particular individual, i.e. the complainant was not a target. SAC held that the law did not intend to ban abstract, generalised statements. In addition, Simeonov had not intended to cause the complainant harm. Furthermore, no negative environment had been created - under the law, a concrete environment, such as workplace or place of study, etc., was required, and such a disparate environment was not there in the complainant’s case. SAC held that the equality body’s reasoning to the effect that negative stereotyping of minorities, including generalised information about criminal incidents, was unlawful, constituted “aggressive moralizing expression”.

According to SAC, the equality body’s reasoning that the negative stereotyping of Roma as criminals, and of Bulgarians – as their victims, constituted unwanted conduct, was

¹ Protection Against Discrimination Commission, Decision No. 119 of 29 March 2017. Sofia City Administrative Court, Decision No. 564 of 23 March 2018.

“bewildering”, and “unacceptably” “set two ethnic groups one against the other”. According to SAC, the equality body’s reasoning amounted to an “imaginary” ban on victims of crime in general informing the public of crimes committed against them by individuals from other ethnic groups.

SAC held that the constitutional limitations on freedom of expression did not apply to the impugned statements, as Simeonov had not targeted a specific individual, i.e. the complainant, and therefore had not infringed his rights or reputation. Simeonov had not aimed at inciting to hatred either. His choice of words was a matter of personal freedom. According to SAC, any opinion was constitutionally protected, and not merely “correct [...], etc.” ones. Otherwise, restrictions would amount to censoring unacceptable in a democratic society. By ruling that the ban on harassment implied that hate speech was outside the scope of constitutionally protected freedom of speech, the equality body had interpreted the law over-broadly. SAC held that “the existing antagonism between equality law and civil freedoms may not be resolved to the detriment of the latter, as that would pervert the aims of [equality] law” and “would turn [the latter] into a means of oppression of civil liberties, in particular, freedom of expression”.

Court decision: Supreme Administrative Court, Decision No. 636 of 15 January 2019 in case No. 7229/ 2018.

Key points of analysis: Causing serious concern, this ruling, an example of institutionalised racism, is a negative precedent on a number of levels. It is an unprecedented explicit attack on equality law and the equality body on the part of the judiciary. The ruling is in breach of EU law, in particular, the “Firma Feryn” principle established by CJEU, as well as the Race Directive’s ban on harassment, which does not require intent.

Internet link source:

<http://www.sac.government.bg/court22.nsf/d6397429a99ee2afc225661e00383a86/211a54167a5a1cb5c225837e0034a472?OpenDocument> (in Bulgarian).