

NGO information to the United Nations Human Rights Committee

**For consideration when compiling the List of Issues on the Fifth Periodic Report of Bulgaria
under the International Covenant on Civil and Political Rights**

Submitted by:

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AUGUST 2010

1. Introduction

- 1.1 This submission outlines a list of main issues of concern with regard to Bulgaria's compliance with the provisions on International Covenant of on Civil and Political Rights (ICCPR or the Covenant) with a special focus on Roma. The purpose of the submission is to assist the Human Rights Committee with its consideration of Bulgaria's Fifth Periodic Report (the Government Report) in the initial stage of the compilation of the list of issues by the Country Report Task Force.
- 1.2 This submission is presented by the European Roma Rights Centre (ERRC). The ERRC is an international public interest law organisation, based in Budapest, Hungary, which combats anti-Romani racism and provides legal representation in cases of human rights abuse of Roma. The ERRC has consultative status with the Council of Europe as well as with the Economic and Social Council of the United Nations. Since it was founded in 1996, the ERRC has worked extensively in Bulgaria. Additional information about the organisation is available at: <http://www.errc.org>.
- 1.3 Bulgaria ratified the ICCPR on 21 September 1970 and the Optional Protocol to the Covenant on 26 March 1992. Roma form Bulgaria's largest minority and third largest ethnic group (after Bulgarians and Turks). According to the 2001 census, there were 370,908 Roma in Bulgaria, equivalent to 4.7% of the country's total population,¹ making Bulgaria the European country with the highest percentage of Roma. According to unofficial estimates from experts, however, the Roma population is around 8-10% based on the data from sociological polls, labour offices and social assistance services. The estimates of Bulgaria's Ministry of Interior vary between 600,000 and 750,000.²
- 1.4 This submission will highlight the following issues pertaining to the substance of the ICCPR:
- right to equal treatment and right to an effective remedy as guaranteed by Article 2 and Article 26;
 - right to life and prohibition of arbitrary deprivation of life as guaranteed by Article 6;
 - right to be free from torture and other cruel, inhuman or degrading treatment or punishment as guaranteed by Article 7; and
 - in addition, this submission will highlight the issues of discrimination in education and housing. Though not specifically covered by the ICCPR, they are nonetheless critically connected to it through the anti-discrimination provisions and the obligations to provide equal treatment.

2. Articles 2 and 26: Right to equal treatment and right to an effective remedy

- 2.1 The Romani population in Bulgaria faces multiple and wide-spread discrimination. Although party to almost every international treaty guaranteeing the right to equality, Bulgaria still has a long way to go before it achieves any concrete results in this area, particularly in the case of Roma.
- 2.2 To comply with the requirements of European Union anti-discrimination legislation, the Commission for Protection against Discrimination (CPD) was set up in 2005 and became operational in November of the same year. Its mandate is to examine complaints from individuals about violations of their fundamental right to equality, guaranteed by the Constitution, European Union law and a number of international human rights treaties. On 30 April 2010 the Bulgarian Council of Ministers introduced a draft bill to Parliament to amend the Protection against Discrimination Act (PDA). The bill envisages reducing the size of the CPD from nine to five commissioners, citing the need to "reduce the number of members of regulatory bodies and the length of their term of office."³ The bill was subsequently amended

¹ Bulgaria's total population in 2001 was 7,928,901. See <http://www.nsi.bg/Census/Ethnos.htm>.

² http://europeandicis.undp.org/uploads/public/File/rbec_web/vgr/chapter1.1.pdf

³ http://www.equineteurope.org/767945_3.html

and it now provides for a reduction of the CPD from nine to seven commissioners. This raises some concerns as to the capability of the CPD to effectively examine the complaints, as it is already working at full capacity. Considering the increasing number of the complaints being submitted,⁴ this reduction may seriously undermine the Commission's efficiency and quality of protection against discrimination.

- 2.3** It should be noted that a certain volume of case law is developing in connection with the PDA. Cases of discrimination in respect of access to employment and to commercial establishments such as restaurants, cafeterias and hotels have been heard by courts pursuant to the PDA, often because of discrimination against Roma. Some judges have handed down decisions that show that they are fully familiar with the PDA and the issues arising in connection with the application of anti-discrimination legislation. Civil society organisations have observed, however, that sometimes judges have insufficient knowledge of these issues, particularly when it comes to the shifting of burden of proof. Issues of racism and discrimination and the PDA are unfamiliar to many lawyers.⁵
- 2.4** At the same time, significant outreach is required by bodies such as the CPD to inform Roma about their rights and to encourage reporting of discrimination. A 2009 study from the European Union Agency of Fundamental Rights (FRA) showed that only 25% of Roma surveyed were aware of the anti-discrimination law in Bulgaria and only 10% of respondents were aware of an organisation that can offer support or advice to people who have been discriminated against.⁶
- 2.5** When allegedly racially motivated crimes are reported, there is a general lack of effective remedies in Bulgaria and often little or no action is taken. It is especially troubling considering that racist attacks remain widespread in Bulgaria.⁷ NGOs have observed that there are considerable problems with investigation when it comes to examining attacks on Roma.⁸ Authorities are not always objective when it comes to Roma, although the European Court of Human Rights (ECtHR or the Court) has specifically emphasised in five judgments against Bulgaria⁹ that Bulgarian authorities have the duty to investigate any illegal acts induced by hatred, whether they are committed by members of the public or private officials.¹⁰
- 2.6** The fact that people who commit racist offences are rarely prosecuted (or prosecuted with a minimal offence such as hooliganism) breeds a feeling of insecurity and a lack of confidence in the determination and ability of the authorities to combat such acts. The FRA survey showed that members of the Roma community have little confidence in the police, rarely report crimes against them or press charges.¹¹
- 2.7** *Suggested questions for the Government:*
- How does the Bulgarian Government envisage compensating for the reduction of CPD members, considering the full workload of the CPD and clear need for increased awareness raising efforts?

⁴ Number of complaints according to the CPD – 2005: 194, 2006: 389, 2007: 649, 2008: 738, 2009: 1039, available at: http://kzd-nondiscrimination.com/start/index.php?option=com_content&task=blogsection&id=5&Itemid=9

⁵ ECRI Report on Bulgaria (fourth monitoring cycle), 24 February 2009, available at: <http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/bulgaria/BGR-CbC-IV-2009-002-ENG.pdf>, 16

⁶ European Union Agency for Fundamental Rights, *Data in Focus Report: The Roma*, 2009, available at: http://fra.europa.eu/fraWebsite/attachments/EU-MIDIS_ROMA_EN.pdf, 7.

⁷ ECRI Report on Bulgaria, available at: <http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/bulgaria/BGR-CbC-IV-2009-002-ENG.pdf>, 32

⁸ Ibid.

⁹ *Nachova and Others v Bulgaria*, 26/02/2004, 43577/98, *Assenov et autres v Bulgarie*, 28/10/1998, 24760/94, *Hristov v Bulgaria*, 07/10/2008, 17608/02, *Sashov v Bulgaria*, 10/01/2010, 1414383/03, *Angelova and Iliev v Bulgaria*, 26/07/2007 55523/00

¹⁰ See, e.g., *Nachova and Others v Bulgaria*, 26/02/2004, 43577/98

¹¹ European Union Agency for Fundamental Rights, *Data in Focus Report: The Roma*, 2009, available at: http://fra.europa.eu/fraWebsite/attachments/EU-MIDIS_ROMA_EN.pdf

- If the reduction of the CPD is likely to have a negative impact on the quality and efficiency of anti-discrimination protection, does the Bulgarian Government plan to introduce any other mechanisms to fulfil its obligations under Articles 2 and 26 of the Covenant?
- Are there any specific plans to conduct trainings on anti-discrimination legislation for judges, lawyers and law-enforcement officials, and otherwise inform the general public about the content and scope of the Protection against Discrimination Act with the specific focus on ethnic minorities?
- What do Bulgarian authorities plan to do to have racially motivated attacks investigated properly, efficiently and without any delays? Do they envisage any amendments to existing legislation, such as for example setting strict time-limits in the law for investigation and judicial consideration of the cases allegedly involving racist motives?

3. Articles 6 and 7 – Right to life and right to freedom from cruel, inhuman and degrading treatment or punishment

3.1 The Bulgarian Penal Code has not explicitly criminalised torture and other forms of ill treatment as defined in international law. Reports from various sources show that Roma continue to face cruel, inhuman and degrading treatment, especially at the hands of law-enforcement officials.¹² On 10 January 2010 in a case of *Sashov v Bulgaria*, the ECtHR found that Bulgarian police had engaged in inhuman and degrading treatment of three Bulgarian nationals of Romani origin during their arrest and detention in police custody. In its ruling, the Court found that the use of force by the police against the applicants was extensive and disproportionate, and the nature and intensity of the suffering amounted to inhuman and degrading treatment. The Court also noted that the Bulgarian authorities failed to conduct an effective and thorough investigation in order to establish the circumstances of the ill-treatment of the applicants.¹³

3.2 In two other cases (*Nachova and Others v Bulgaria*¹⁴ and *Stefan Iliev v Bulgaria*¹⁵) the European Court of Human Rights concluded that the use of firearms by police authorities was not absolutely necessary under the circumstances of the case and the legislative framework regulating the use of firearms and its implementation (namely, regulations in the Bulgarian National Police Act) fell short of adequately protecting the right to life. The legal framework is fundamentally deficient and can and does lead to an excessive use of firearms and thus to an arbitrary deprivation of life, as evidenced by several above-mentioned cases adjudicated by the European Court of Human Rights and specifically involving Roma. There have been no legislative changes introduced by the Bulgarian Government to comply with the judgments of the European Court.

3.3 Furthermore, the Bulgarian authorities failed to fulfil their obligations to investigate whether or not racist motives may have played a role in such events. In its third and fourth reports on Bulgaria in 2009, the European Commission against Racism and Intolerance (ECRI) urged the Bulgarian Government to insert a provision in the Criminal Code explicitly stating that racist motivation for any ordinary offence constitutes an aggravating circumstance.¹⁶ To date, the Bulgarian Criminal Code only instructs courts while adjudicating the case to take into

¹² 2008 Human Rights Reports: Bulgaria, US Department of State; 2009 Human Rights Reports: Bulgaria, US Department of State

¹³ European Court of Human Rights (ECtHR), *Sashov and Others v Bulgaria*, Application no. 14383/03, 7 January 2010, available at: <http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionSimilar=58108437&skin=hudoc-en&action=similar&portal=hbkm&Item=1&similar=frenchjudgement>
<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=860566&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

¹⁴ ECtHR, *Nachova and Others v Bulgaria*, Application no. 43577/98 and 43579/98, 15 May 1998, available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=778855&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

¹⁵ ECtHR, *Stefan Iliev v Bulgaria*, Application no. 53121/99, 10 May 2007, available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=816624&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649> <http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/bulgaria/BGR-CbC-IV-2009-002-ENG.pdf>

¹⁶ ECRI, Report on Bulgaria (fourth monitoring cycle), Strasbourg 24 February, 2009, para. 22-25, p. 15

account “the degree of public danger of the offense and offender, the incentives to commit and offence and other mitigating and aggravating circumstances.”¹⁷ The situation will remain the same, absent specific and explicit direction in the Criminal Code to treat racist motive as an aggravating circumstance.

3.4 A study published in 2007 provided evidence that Roma are more often stopped and searched by police than ethnic Bulgarians and are more often treated disrespectfully and unprofessionally on such occasions.¹⁸ Racial profiling constitutes a specific form of inhuman and degrading treatment as confirmed by a decision of UN Human Rights Committee.¹⁹ This situation will not change absent real responsibility of law-enforcement authorities for their actions. It is quite obvious that the problem of racial profiling should be addressed using complex set of measures, including setting strict prohibition on profiling, sensitization of law enforcement authorities to the problem and training them accordingly.

3.5 *Suggested questions for the Government:*

- Does the Bulgarian Government plan to amend the Criminal Code of Bulgaria to explicitly provide for the criminalisation of the acts of torture and other forms of inhuman and degrading treatment as defined under the ICCPR?
- What does the Bulgarian Government intend to do to make the necessary amendments to the Bulgarian National Police Act in order to ensure that the use of firearms by police is appropriate to the circumstances and to limit it to the situations in which it is considered to be absolutely necessary to use it (as required by the European Court of Human Rights)? Does the Bulgarian Government envisage specific trainings for police authorities for this purpose?
- What concrete measures will the Bulgarian Government take to address racial profiling by law enforcement authorities?

4. Article 26: Discrimination against Roma in access to education, employment and housing

4.1 Many Romani children encounter serious schooling problems, such as a high drop-out rate and insufficient reading and writing skills, which partly result from discrimination.²⁰ Children continue to receive their schooling in a de facto segregated environment, where there is less in the way of human and financial resources than other schools and education provided is of poorer quality.²¹ In 2008 the government made a financial commitment for school desegregation in its Operational Programme Human Resources Development, co-funded by EU Structural Funds and a government budget for the period 2007–2013. Yet this does not match the level of support needed or that provided in the past by private donors: in 2008, four school desegregation projects received financial support from this programme, totaling only 167,000 EUR.

4.2 The situation is worsened by the fact that there are no statistics on the situation of children belonging to minorities, in particular of Romani pupils, in the field of education. This void hinders the implementation and assessment of the various programmes set up by the Bulgarian Government. Furthermore, another serious concern is that Romani children with no specific disability continue to be placed in special schools for those with mental disabilities, whether because they have an insufficient knowledge of Bulgarian or simply because the schools provides free meals and this attracts certain disadvantaged Romani parents. Various

¹⁷ See article 54(1) of the Criminal Code of Bulgaria

¹⁸ Open Society Justice Initiative, “I Can Stop and Search whoever I want”, Police Stops of Ethnic Minorities in Bulgaria, Hungary and Spain, 2007.

¹⁹ *Rosalind Williams v Spain*, UN Human Rights Committee, 30 July 2009, available at: http://www.soros.org/initiatives/justice/focus/equality_citizenship/news/williams_20090910

²⁰ ECRI Report on Bulgaria, 19

²¹ Equal Access to Quality Education for Roma, Volume2, Monitoring Reports, 2007, OSI, EU Monitoring and Advocacy Program, Education Support Program, Roma Participation Program.

NGOs and international organisations have urged Bulgarian authorities to take steps without delay to give Romani children equal opportunities in the field of education.²²

- 4.3** The Bulgarian government does not provide statistics on employment and unemployment broken down by ethnicity. However, studies carried out by NGOs suggest that the unemployment rate among Bulgarian's Romani community ranges between 70 and 80%, with the situation of women and young people giving rise to particular concern.²³ Roma remain largely excluded from the job market both because of their lack of qualifications and because of discrimination, particularly when it comes to recruitment. Of the Romani respondents to the FRA's statistical survey in Bulgaria who reported experiencing discrimination, 32% reported discrimination in access to the labour market.²⁴ The Protection against Discrimination Act contains several provisions prohibiting discrimination on grounds of race, national or ethnic origin, religion and nationality in respect of recruitment. It seems however that the authorities have done little to raise awareness of the PDA among employers and that more could be done in this regard as concerns Roma in particular.
- 4.4** The situation with housing became especially troubling in the last year. Most Roma continue to live in de facto segregated housing in very sub-standard conditions without water, gas, electricity and heating.²⁵ This accommodation is physically separate and public services such as health care institutions and schools, fire brigades and rubbish collectors are not readily accessible. In November 2006, the European Committee of Social Rights issued a decision finding that the lack of amenities constituted a violation of Article 16 of the Revised European Social Charter (right of the family to social, legal and economic protection) taken together with its non-discrimination provision.²⁶ In the same decision, the Committee held that the situation in Bulgaria constitutes a violation of Article 16 of the Revised European Charter in combination with the non-discrimination clause because Romani families were disproportionately affected by legislation limiting the possibility of legalising illegal dwellings. Moreover, evictions carried out with the assistance of Bulgarian authorities did not satisfy the conditions required by the Charter, in particular that of ensuring persons evicted are not rendered homeless.²⁷ In recent years and since the decision, evictions have continued to be carried out and the threat of evictions is increasingly imminent and real.²⁸
- 4.5** In January 2010 in shadow reports to the UN Committee on the Elimination of all forms of Racial Discrimination, several domestic and international NGOs highlighted frequent forced evictions of Roma.²⁹ In September, 2009, almost 50 Romani homes were demolished and the families were forcibly evicted in the town of Burgas; as a consequence almost 200 people were left without accommodation. Despite the claims of the Mayor of Burgas that the families would be provided with alternative low rent council accommodation, no alternative housing was provided.³⁰
- 4.6** *Suggested questions for the Government:*
- What concrete plans does the Bulgarian Government have for eliminating segregation in education? Absent reliable statistics on the number of Romani children in schools, the

²² ECRI Report (fourth cycle) para 42, p.18, available at: <http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/bulgaria/BGR-CbC-IV-2009-002-ENG.pdf>

²³ Analytical Report on: The Roma Population in Bulgaria: The New Challenges (Summary)-Sofia Regional Bureau, Fact Sheet, OSI, 2007.

²⁴ European Union Agency for Fundamental Rights, *Data in Focus Report: The Roma*, 2009, available at: http://fra.europa.eu/fraWebsite/attachments/EU-MIDIS_ROMA_EN.pdf, 5.

²⁵ The Centre on Housing Rights and Evictions Report to UN Human Rights Council, 23 April 2010, available at: http://www.cohre.org/view_page.php?page_id=422, ECRI Report, p. 24, para. 66

²⁶ European Committee for Social Rights, *No. 31/2005 European Roma Rights Centre (ERRC) v Bulgaria*, 30 November 2006, available at: http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints_en.asp

²⁷ <http://hudoc.esc.coe.int/esc2doc/esce/doc/200714/cc-31-2005-en-2.doc>, para. 57

²⁸ The Centre on Housing Rights and Evictions Report to UN Human Rights Council, 23 April 2010, available at: http://www.cohre.org/view_page.php?page_id=422

²⁹ Amnesty International, *Amnesty International Report 2010 - Bulgaria*, 28 May 2010, available at: <http://www.unhcr.org/refworld/docid/4c03a83bc.html>

³⁰ ERRC, "ERRC Urges Bulgarian Authorities to Act against Forced Evictions", 28 September 2009, press release, available at: <http://errc.org/cikk.php?cikk=3054>

number of drop-outs and the highly disproportionate number of Roma in schools for children with disabilities, how does the Bulgarian Government plan to assess the efficacy of its actions?

- Does the Bulgarian Government plan to familiarise teachers and other school staff with the PDA?
- How does the Bulgarian Government plan to assess the situation with the number of Romani children in schools for children with mental disabilities to avoid the unjustified placement of Romani children in these schools? How does the Bulgarian Government plan to cooperate with Roma NGOs to address this problem?
- How does the Bulgarian Government plan to combat discrimination in the labour market and integrate Roma into the job market? Are there any specific vocational training programmes available for Roma and if yes, what are the rates of their success?
- How does the Bulgarian Government plan to ensure it's compliance with international human rights law on housing? (particularly as concerns the provision of alternative accommodation and due process)?