



Bulgarian Legislation against Racism and Xenophobia

As a State Member of the United Nations Organization (since 1955), the Republic of Bulgaria has been taking an active part in its work, particularly in its main human rights bodies, such as the general assembly's Third Committee, ECOSOC and its Social Committee, the Commission on Human Rights, etc.

Bulgaria is equally active in UNESCO, ILO and other specialized institutions within the UN system. Bulgaria has been taking an active part in the Council of Europe (since 1992), and the Organization of Security and Cooperation in Europe (since 1975) and their human rights bodies and fora.

Bulgaria has been an active participant in all international fora on human rights, namely the three World conferences on racism, racial discrimination, xenophobia, and the World Human Rights Conference in Vienna (1993).

The Republic of Bulgaria is a Party to the basic international human rights instruments, drafted and approved by the UN and the Council of Europe, *inter alia*:

- *International Convention on the Elimination of All Forms of Racial Discrimination,*
- *International Covenant on Economic, Social and Cultural Rights,*
- *International Covenant on Civil and Political Rights,*
- *Convention on the Elimination of All Forms of Discrimination against Women,*
- *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,*
- *Convention on the Rights of the Child,*
- *European Convention for the Protection of Human Rights and Fundamental Freedoms,*
- *Framework Convention for the Protection of National Minorities, etc.*

The Republic of Bulgaria adheres strictly to the principles and rights proclaimed by the *Universal Declaration of Human Rights (1948)*, the *UN General Assembly Declaration on the Rights of the People Belonging to National, Ethnic, Religious and Linguistic Minorities (1992)*, the *UN General Assembly Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981)*, the *UNESCO Declaration on Race and Racial Prejudice (1978)*, as well as to the *OSCE human dimension commitments*.

The international commitments assumed by the Republic of Bulgaria are in conformity with the fundamental constitutional principle, which commits the Bulgarian state to contribute to "the promotion of a just world order" (Article 24, paragraph 2 of the Constitution).

The Bulgarian legislation is in compliance with the requirements of the Joint Action adopted by the Council of European Union on 15 July 1996 referring to the activities against racism and xenophobia, as well as with the recommendations of the first and second reports of the European Commission against Racism and Intolerance issued in 1996 and 1999.

It is worth noting the active participation of the Bulgarian representatives in the Experts Committee to the Council of Europe on the elaboration of the additional Protocol to the Convention on Cyber-crime criminalizing racism and xenophobia through the cyber systems. On 28 January 2003, the Additional Protocol was opened for signature by states

which have signed the Convention on Cyber-crime. The signature of Bulgaria is forthcoming, pending the ratification of the Convention by the National assembly.

Specific Constitutional provisions against racism and intolerance:

- Art. 6, para.2: All citizens shall be equal before the law. There shall be no privileges or restrictions on the grounds of race, nationality, ethnic self-identity, sex, origin, religion, education, opinion, political affiliation, personal or social status or property status;

- Art. 11, para.4: There shall be no political parties on ethnic, racial or religious lines, nor parties which seek violent usurpation of state power. On 29 February 2000, the Constitutional Court decreed to forbid political parties that by membership or objectives, are exclusive to persons belonging to a specific ethnic, racial or religious group.

Art. 13: – Freedom of religion and belief; prohibition to use religion for political purposes;

Art. 29, para.1: – No one shall be subjected to torture or cruel, inhuman or degrading treatment, or forcible assimilation;

Art. 44, para.2: – Prohibition of organizations inflaming racial, ethnic, national or religious hatred;

Art. 54, para.1: – Everyone has the right to develop his/her culture in accordance with his/her ethnic self-identity.

Legal enactments prohibiting discrimination on racial, ethnic or religious grounds:

The Law on Protection Against Discrimination (in force since 1 January 2004) forbids all forms of discrimination, *inter alia*, on racial, ethnic or religious grounds.

Similar anti-discriminatory provisions are also included in *the Labour Code* (art. 8, para.3), *the Law on Social Assistance* (art.3), *the Law on Encouraging Employment* (art. 2), *the Code of Professional Ethics* (art. 7) *the Civil Service Law* (art. 7, para.4), *the Law on Child Protection* (art.10, para.1), *the Law on Protection of Consumers and on Rules of Trading* (art.34, para.1), *the Law on Optional Additional Retirement Insurance* (art.78, para.2), *the Code on Taxation Procedure* (art. 9, para.1 and 2), *the Law on National Education* (art.4, para.1), *the Law on Higher Education* (art. 4), *the Law on Protection and Development of Culture* (art. 33, para.1), *the Law on Reading Clubs* (art. 2, para.1), *the Law on Radio and Television* (art.76, para.2), *the Law on Defence and Armed Forces of the Republic of Bulgaria* (art.97, para.1), *the Confessions Act* (art. 3, para.1), *the Law on Physical Education and Sport* (art. 41, para.1), *the Law on Asylum and Refugees* (art.20), etc.

Punitive provisions against racism and xenophobia:

The Penal Code contains particular chapters “Crimes against Peace and Humanity”, “Crimes against National or Racial Equality”, “Crimes against Religion”, and “Crimes against Labour Rights of Citizens”.

According to these provisions, the offences punishable by imprisonment, include:

- preaching fascist or another anti-democratic ideology or forceful change of the social and state order as established by the Constitution of the Republic of Bulgaria (art. 108, para.1),

- propaganda or incitement of racial or national hostility, hatred or racial discrimination (art. 162, para.1),

- use of violence against another person or damaging his/her property because of his/her nationality, race, religion or his/her political convictions (art. 162, para.2),

- creating, leading or participating in an organisation or group which has set itself the objective of committing acts under the preceding paragraphs (art. 162, para.3 and 4),

- taking part in a crowd rallied to attack groups of the population, individual citizens or their property in connection with their national or racial affiliation, or grounds of their religion (art. 163 and 165, para.3, para.1),

- propaganda of hatred on religious basis by speech, through the press, by action or in any other way (art. 164),

- preventing by force, or by threat to use force, citizens from freely practising their faith or performing their religious rituals and services, which do not violate the laws of the country, the public order and morality (art. 165, para.1),

- coercion of another person to take part in religious rituals and services (art. 165, para.2),

- incitement to commit crimes, including the above mentioned, through preaching to crowds of people, spreading printed material or in other similar way (art. 320).

All xenophobic or racist materials, designed, intended for or used to commit such crimes, are to be seized and confiscated (art. 53).

Specific severe sanctions are also envisaged for crimes against humanity, like genocide and apartheid (art. 416 - 418).

The Penal Code stipulates criminal liability for crimes against the labour rights of the citizens, too – for deliberate obstructions of a person to occupy a position or for compelling him/ her to leave the job because of his/ her race (art. 172, para.1).

In addition, *The Law on Execution of Penalties* imposes prohibition on all persons serving sentences in places of deprivation of liberty to receive, or own printed or other materials propagating nationalistic, ethnic, racial or religious hatred (art. 40).

Mechanisms to exercise anti-discriminatory provisions:

- *The Civil Justice system*, respectively civil courts, applies the greater part of anti-discrimination legislation. This system is initiated through claims or complaints filed with courts by victims of discrimination, following the usual civil, labour or administrative procedures. The claimant or petitioner may ask the Court to revoke a decision, to award compensation, or other remedies provided for by the law.

- *The Administrative – Penal Procedure*, respectively the administrative bodies - When approached, or on its own initiative, the administrative organ may, having established an infringement of one or several legal provisions, impose the sanctions provided for by the law. An example is the Council of Electronic Media set up under the Law on Radio and Television, which can impose fines on radio and television operators for infringing legal provisions, and in case of systematic infringement, cancel the operator's permit. Another similar body is the State Agency for Insurance Supervision with the Council of Ministers which can impose fines on individuals and legal entities for infringing on the Law on Optional Additional Retirement Insurance. Sanctions are subject to appeal under the procedure of the Law on Administrative Offences and Sanctions.

The Law on Protection against Discrimination envisages the setting up of *a Commission for Protection against Discrimination* as an independent specialised body in charge of the law enforcement and imposing of sanctions in all cases of discrimination. It consists of 9 members, 5 elected by Parliament and 4 appointed by the President. It has a specialised subcommittee for racial discrimination, as well as one for sex discrimination. The Commission has the powers to receive and investigate complaints and signals, as well as act *ex officio*, make a binding finding of discrimination, and impose a monetary sanction and/or a

compulsory administrative measure, including binding instruction on a perpetrator to eliminate discrimination, or a stay on an employer's discriminatory decision. It provides independent assistance to victims of discrimination in making their complaints, publishes independent reports and conducts independent surveys. In the exercise of its powers to investigate cases, the Commission is entitled to access to any information, or documents, as well as to any premises. All persons, public or private, are under a duty to assist it, and it has the power to summon and question witnesses.

According to the Law on the Ombudsman (in force since 1 January 2004), *the institution of the ombudsman* is an additional mechanism in the promotion and protection of the citizens' rights and freedoms. It complements the existing infrastructure, e.g. the parliamentary control, constitutional jurisdiction, judicial and administrative control, control through the media and non-governmental organizations, etc. The law stipulates independence of the ombudsman from the executive and prohibits that he/she occupy administrative functions, undertake business activities, etc. The ombudsman can receive and act upon complaints by individuals, regardless of their citizenship, sex, political or religious affiliations, and come out with specific suggestions and recommendations.

- *Penal Law Procedure*, respectively the penal courts - The provisions of the criminal law, which provide for criminal responsibility in grave forms of discrimination, are applied under this procedure. In the cases quoted above, the criminal prosecution is effected in the general order, the prosecutor's office, which can be approached by means of a complaint or a signal. The prosecutor's office can also start criminal prosecution on its own initiative, whenever it becomes aware about the crime committed.

- *In the procedure of the overall supervision of legality, respectively of the prosecutor's office* – In accordance with the Constitution of the Republic of Bulgaria (art. 127) and the Law on Judiciary (art. 118), the prosecutor's office takes action to repeal unlawful acts, and in urgent and pressing cases to redress violations of rights.

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