Approaches to combating racial discrimination in Bulgaria

Presentation before the UN Ad Hoc Committee on Complementary Standards

Geneva, 27 April 2017

Scope of the problem

Roma

- Employment
- Housing – forced evictions
- Education – segregation
- Health care – poor access; segregation
- Criminal justice system – selective targeting, ill treatment and discrimination in sentencing
- Public incitement to hatred, discrimination and violence
- Exclusion from political decision-making

Other ethnic minorities

- Turks and Pomaks: discrimination in the exercise of political rights; non-recognition of identity; discrimination in education; restrictions of freedom of association
- Macedonians: non-recognition; discrimination related to freedom of assembly and of association
- Jews: anti-semitic incidents and occasional public incitement to hatred

Islamophobia

- Attacks on mosques – throwing stones and pig's heads, arsons, threatening and insulting graffiti, pickets and other demonstrations in front of the mosques during prayer
- Negative media coverage of Islam and of the Muslims in general
- Public incitement to hatred, discrimination and violence – marches and rallies in front of mosques
- Unjustified laws prohibiting veils

Migrants

- Public incitement to hatred, discrimination and violence – series of demonstrations against migrants
- Push-backs, physical violence and robberies; "migrant hunters"
- Arbitrary deprivation of liberty
- Lack of integration of recognized refugees – non-execution of Ordinance No. 108
- Refusals to register and expulsion from towns - Elin Pelin and Belene incidents

Examples of public incitement

- An extremist political party activist and TV anchor on Syrian refugees on "Alfa TV", in 2013: "These are cannibals, mass killers, disgusting lowlife primates running from Syrian justice."
- February 2014 rally against a court decision to restore property to a mosque: "Gypsies into soup, Turks under the knife!"
- Valeri Simeonov, leader of an extremist political party on Roma in an official speech in the Parliament on 17 December 2014: "Ferocious apes demanding right to salary without work, sick assistance without being sick, child assistance for children playing with pigs in the streets, and maternal assistance for women with instincts of street bitches"

Remedies

Criminal prosecution

- Legal framework of substantive criminal law
  - Provisions punishing incitement on the basis of ethnicity and religion
  - Separate provisions punishing participation in a crowds gathered to attack national or ethnic groups
  - Provisions punishing desecration and destruction of places of worship
  - Enhanced punishments for some violent crimes motivated by racist or xenophobic bias
  - No provision requiring that racist motive is considered as aggravating circumstance for other crimes
- Non-prosecution even in flagrant cases, especially where public figures are involved – ECtHR, Karaahmed v. Bulgaria
- Major reasons – racist bias among the police and the prosecution; submitting to societal pressures; belief that a criminal sentence is inappropriate for hate speech; structural problems, including political influences and corruption

Civil action

- Protection against Discrimination Act (PADA) – comprehensive legal basis for civil action for discrimination on a variety of grounds, including race, ethnicity and religion
- Legal standing:
  - Victims;
  - Trade unions and NGOs - in support of victims, on behalf of victims and *actio popularis* (in cases of multiple victims)
- Remedies – termination of action; restoration of the s*tatus quo*; monetary compensation
- Gross under litigation with mixed success depending on who are the victims or the perpetrators, the type of legal action and the location
- Cost of litigation – specific deterrent factor

Proceedings before the equality body

- PADC – Equality body established under the PADA
- Accepts to hear complaints by victims, complaints by NGOs; may act on its own motion
- Procedure is adversarial but the PADC collects evidence also on its own motion
- May fine the perpetrator, indicate measures or refer the case to competent authorities; no compensation
- PADC decisions are subject to judicial review by administrative courts
- Successful proceedings against private individuals, businesses and media
- More likely to find discrimination when seized by NGOs
- Mixed record where the perpetrators are politicians

International litigation

- ECtHR, Velikova group of judgments related to Roma
- ECtHR, Nachova v. Bulgaria, 2005
- ECtHR, Yordanova and Others v. Bulgaria, 2012
- HRC, Naidenova et al. v. Bulgaria, 2012
- ECtHR, Karaahmed v. Bulgaria, 2015
- ECtHR, UMO Ilinden group of judgments
- ECtHR, Paraskeva Todorova v. Bulgaria, 2010
- ECtHR, C.G. group of cases – expulsion and arbitrary detention of aliens
- Cases before the European Committee on Social Rights – housing, health care, social assistance + one (maternity payments) pending

What works and what doesn't work

Works (partly)

- Litigation before the equality body – more on "soft" issues and non-Roma
- International litigation on individual cases – mostly on cases of migrants and Macedonians
- Complaints by NGOs to PADC
- Collective complaints before the ECSR

Doesn't work

- Criminal prosecution
- Civil litigation at the domestic level
- *Actio popularis*
- Recommendations by international bodies

Possible useful mechanisms

- Imposing an obligation to allow trade unions and NGOs to act on behalf or in support of victims, as well as to undertake independent proceedings
- Establishing a system of specialized independent adjudicative and preventive mechanisms at the domestic level
- Collective complaints before international bodies
- Conducting inquiries and follow-up visits by an international body

END
THANK YOU!

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