



Written Comments

**of the Bulgarian Helsinki Committee
and the European Roma Rights Centre
Concerning Bulgaria for Consideration
by the United Nations Committee
on the Elimination of Racial Discrimination
at its 74th session**

December 2008

The **Bulgarian Helsinki Committee** (BHC) is an independent non-governmental organisation for the protection of human rights - political, civil, cultural, social. It was established on 14 July 1992. The goal of the BHC is to promote respect and protection for the human rights of every individual, to lobby for legislative change to bring Bulgarian legislation in line with international standards, to encourage public debate on human rights issues, and to popularise and make widely human rights instruments. The BHC is engaged in human rights monitoring, strategic litigation, advocacy, research, and human rights education. In its work the BHC places special emphasis on the rights of ethnic and religious minorities, rights of the child, mental disability rights, conditions in places of detention, refugee rights, freedom of expression, access to information, problems of the criminal justice system. More information about the organisation and its publication are available online at <http://www.bghelsinki.org>.

The **European Roma Rights Centre** (ERRC) is an international public interest law organisation engaging in a range of activities aimed at combating anti-Romani racism and human rights abuse of Roma, in particular strategic litigation, international advocacy, research and policy development, and training of Romani activists. Since its establishment in 1996, the ERRC has established a reputation as the leading international non-governmental organisation engaged in human rights defence of Roma in Europe. The ERRC has undertaken extensive research, policy, law and training work in Bulgaria due to the very serious issues Roma face on a daily basis. ERRC publications concerning Bulgaria, as well as additional information about the organisation, are available on the Internet at <http://www.errc.org>.

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The Bulgarian government reported to the Committee on the Elimination of Racial Discrimination on 14 January 2008 covering legislative, judicial, administrative and other measures in Bulgaria, adopted in order to give effect to the International Convention for the Elimination of All Forms of Racial Discrimination in the period 5 August 1996 – 31 October 2007 (para. 5 of the government report). The last review of several consolidated reports of Bulgaria by the Committee took place at its 50th session on 17-18 March 1997, i.e. more than 11 years ago. This long period of delay was due to the systematic disregard by successive Bulgarian governments of their obligations under Article 9 of the Convention. The present alternative report presents the views of the Bulgarian Helsinki Committee (BHC) and the European Roma Rights Center (ERRC) on the developments, relevant to the implementation of the Convention, in the same period, as well as in the period October 2007 – November 2008. It focuses on positive developments, violations of the substantive provisions of the Convention as well as some of the developments as per the government report.

I. Positive developments

In the period under review, some positive developments in the sphere of minority policies, legislation and implementation took place in Bulgaria. The most important of these can be summarized as follows:

- The adoption, on 22 April 1999, of the Framework Program for Equal Integration of Roma in Bulgarian Society by a decision of the Council of Ministers. The Framework Program recognizes that Roma in Bulgaria are subject to widespread discrimination and envisages adoption of comprehensive measures for protection against discrimination; special measures in the sphere of employment; desegregation of Roma education; improvement of native language education for Roma; legalization of Roma housing, as well as other legislative and policy measures. Although very little of the Framework Program was implemented in practice, for ten years after its adoption it set the discourse on Roma integration in Bulgarian society and was a point of departure for successive governments' policies on the matter.
- The adoption by the Parliament, in September 2003, of the Anti-Discrimination Act (ADA, in force since 1 January 2004). This law establishes a comprehensive framework for protection against discrimination, in line with the Directives 2000/43/EC, 2000/43/EC and 2004/113/EC of the European Council (see para. 85 of the government report).
- The adoption of other documents related to integration of Roma in the period under review, including the Roma Decade Action Plan from April 2005; National Program for Improving Roma Housing Conditions from March 2006; Health Strategy for Disadvantaged People from Ethnic Minorities from September 2005; Strategy for Educational Integration of Students and Children from Ethnic Minorities from June 2004 and other policy documents (see para. 137 of the government report).
- Reduction of the incidence of ill treatment of detainees by police. Although this continues to be a serious problem, according to BHC research complaints of ill treatment by police during and after arrest decreased by almost one half in the period 1999 – 2005.¹
- General reduction of the number of children in state and municipal institutions. These include all types of institutions for children deprived of parental care, as well as the special schools for children with developmental disabilities and special schools for delinquent children. The number of children in these institutions was reduced in the period 1999-2008. As the share of Roma in these institutions has always been and continues to be disproportional, the reduction affected these children's rights to family life and care in the first place.
- Introduction, through the Asylum and Refugee Act from May 2002, of a comprehensive asylum procedure and a framework for the protection of the rights of refugees and asylum

¹ Cf.: БХК, *Правата на човека и дейността на българската полиция* (Bulgarian Helsinki Committee, *Human Rights and the Work of the Bulgarian Police*), Sofia, 2004, p. 36; BHC, Annual reports on human rights in Bulgaria in the period 2004-2007, available at: www.bghelsinki.org.

- seekers through this and other relevant acts.
- Increase of the participation of representatives of the Turkish minority in the central government after 2001. Since August 2001 the Movement for Rights and Freedoms, the political party, which draws its support predominantly from the Turkish minority, has participated as a coalition partner in two successive governments. A number of ethnic Turks served as government ministers, deputy-ministers and officials in these governments.

II. Violations of the Convention provisions, omissions and misrepresentations in the government report

Article 2

In its General Recommendation XXXI from 2005 the Committee on the Elimination of Racial Discrimination encouraged states parties "to incorporate a provision in their criminal legislation to the effect that committing offences for racial reasons generally constitutes an aggravating circumstance".² In a similar way, the European Commission against Racism and Intolerance (ECRI) recommended in 2004 to the governments of the Council of Europe to "ensure that the law provides that, for all criminal offenses, racist motivation constitutes an aggravating circumstance".³ A year earlier, in its Third Report on Bulgaria, ECRI recommended that "the Bulgarian authorities insert a provision in the Criminal Code expressly stating that racist motivation for any ordinary offence constitute an aggravating circumstance."⁴ The government has not complied with these recommendations.

The Criminal Code of Bulgaria offers insufficient opportunities to prosecute hate crimes based on racist motives. This is particularly true for the gravest of crimes. There is no provision in it for making racist motivation an aggravating circumstance for any criminal offence. Unlike other European criminal justice systems, the Bulgarian system views the determination of aggravating or mitigating circumstances in a case as falling entirely in the scope of court's discretion in sentencing. The law therefore does not enlist any aggravating or mitigating circumstances. Thus, under the circumstances, in theory, there are two possibilities to address hate crimes in the Bulgarian system: through qualifying provisions envisaging tougher punishments for offences of a general nature (murder, assault, etc.) when committed for racist motives or through specific provisions defining and criminalizing certain acts committed for racist reasons. Of them the Bulgarian Criminal Code uses the latter option only. This proved to be quite ineffective for two reasons:

- The scope of the specific provisions defining and criminalizing certain acts committed for racist reasons is very narrow. They do not allow for the prosecution of a number of crimes, motivated by racist prejudice, such as murder, serious bodily harm, rape, assaults on civil rights etc.
- The prosecuting authorities were unwilling to apply even those provisions that allow for the prosecution of some hate crimes.⁵

1. Racially motivated hate crimes and the deficiencies of the Bulgarian criminal justice system

Racially motivated hate crimes by both police and private individuals have always been a serious problem in Bulgaria. The government does not provide for any statistics that would allow to assess their incidence and trends. Victims were most often Roma or foreigners with darker skin colour.

² CERD, *General Recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system*, 2005, A/60/18, para. 4.a.

³ ECRI, *General Policy Recommendation No. 9 on the fight against antisemitism*, adopted on 25 June 2004, CRI(2004)37.

⁴ ECRI, *Third Report on Bulgaria*, Adopted on 27 June 2003, made public on 27 January 2004, CRI (2004) 2, para. 15.

⁵ For more details on the deficiencies of the Bulgarian criminal justice system in this regard see below.

Over the past four years human rights groups documented the following cases of police brutality against Roma, the perpetrators of which were not brought to justice:

- On 27 March 2004, a police sergeant in Plovdiv fatally shot in the head a Romani man, Kiril Stoyanov, under very suspicious circumstances. After substantial legal argument on the quality of the investigation, the prosecution office terminated the case. No charges were presented before the criminal court. Instead, Stoyanov's mother filed a civil motion against the police for damages caused as a result of her son's murder. In July 2007, the Plovdiv District Court dismissed the claim and on 5 November 2008 the Plovdiv Appellate Court did the same. Both held that there had been no wrongdoing.
- On 4 August 2004 a police sergeant shot dead Boris Mihaylov, a Romani man, in Samokov. Penal proceedings were initiated in the case but they were terminated by the prosecution office, which argued that the murder was committed in self-defence, despite the fact that the court ruled several times that the criminal investigation must be continued by the prosecution.
- On 21 August 2006 in the village of Elhovo, Stara Zagora region, after having been detained by the police for three days, a Romani man, Marko Bonchev, died. According to eyewitnesses and relatives, on 17 August 2006, police officers handcuffed Bonchev and started kicking him in the stomach and the groin while insulting him with racist comments. On 20 August 2006, Marko Bonchev was released from detention in a very poor state of health. Suffering from severe pains, he repeatedly mentioned to relatives that the pains were a result of blows and kicks by police officers at the police precinct in Gurkovo. Due to these sharp pains, Bonchev was taken to the emergency ward in Kazanlak on that same evening. However the hospital refused to admit him for treatment. He died the next morning. Two investigations were initiated – one for medical mishandling on the part of the medical staff at the hospital, and another one against the police officers for excessive use of force. The prosecution office terminated both investigations and no charges were brought before a court.
- In the end of 2007 the Varna Military Prosecution Office refused to press charges against any policemen from the Balchik police station for the death of Valentin Angelov, a Romani man. On 10 August 2007 he was arrested by the police in a clear case of racial profiling, after a stop and search of his own car, driven by the victim's cousin. The victim was taken to the police station. He was allegedly drunk at the time detention, which is why his cousin was driving the car. According to the official version three police officers, present at the entrance, failed to control the victim and he jumped three times upon a large glass entrance door. He died soon afterwards from blood loss due to his throat having been cut.

In several cases Roma neighbourhoods were targeted for police raids of punitive character:

- According to witnesses, after midnight on 21 August 2006, a group of police officers from Sofia stormed the Hristo Botev Roma neighbourhood after complaints that inhabitants were making noise. After a brawl with a company of Roma merry-makers, the police officers brutally intervened by threatening and beating all of the present people, most of whom had not participated in the disorder in any way, including women. Offensive words against their Romani origin were used. Some of the Roma were detained by the police, at which point they claim the violence continued. The acts of the police officers were not investigated and nobody was charged.
- On 24 August 2006, a large number of police officers blocked all exits of the Filipovtsi residential area in Sofia. According to witnesses, the police officers stormed many of the homes, kicked around the household belongings and used physical force against the residents, many of whom suffered injuries in the process. The police internal investigation, as well as the prosecution's criminal proceedings against some of the police officers, were both terminated and no charges were brought.

- Another example of excessive use of force was the raid of the police and the gendarmerie on 13 October 2006 in the Iztok Roma residential area in Pazardzhik. It was conducted on occasion of an argument between two Romani families that were neighbours. Police and gendarmerie interfered with excessive use of force. The victims say they were insulted, taken out of their homes and forced to the ground, beaten and kicked. A number of significant material damages were caused to the properties. An estimated 200 Romani families were affected, including people who were not involved in the family argument in any way. About 20 victims of physical abuse have medical certificates. Nevertheless, the investigations carried out by the prosecutor's office and the police in the town did not find any evidence of excessive use of physical force and did not press any charges.

Skinheads and other racist groups assault Roma and foreigners as well.⁶ According to unofficial information, the number of private racist attacks increased over the past several years. Some media sources have reported that the biggest number of cases of racist violence was registered in 2007.⁷ Representatives of the Turkish minority reported that in 2008 reports of hate crimes against members of that minority increased.⁸ Assaults resulted in serious injuries and deaths. In one such case, a vicious murder took place in Samokov in August 2007. Tensions between the local Roma community and nationalistic youngsters in the town had been mounting for years. The police had failed to take any measures. On several occasions it used discriminatory violence and ill-treatment against members of the local Roma community. On the 21st of August three adolescent Romani boys were attacked in the town centre late in the evening on their way home. One of them fled, the second was severely injured, the third, aged 15, was beaten to death. The local police was removed from the investigation as the Sofia District Directorate took over. The perpetrators were identified and arrested soon after. The alleged motive for the crime was racial hatred. However at the hearing before the Sofia District Court it is considered as an ordinary murder case. At the present writing the court has not issued a verdict.

In cases like the above, as well as in cases of racist police brutality, if prosecuted at all, the perpetrators are charged for ordinary crimes (murder, bodily injury, destruction of property, etc). As mentioned above, the Bulgarian criminal justice system fails to address the racist nature of the crimes and thus to offer appropriate protection. This systemic problem of the Bulgarian criminal justice reached the European Court of Human Rights (ECtHR) on several occasions. In the 2004/2005 case of *Nachova and others v. Bulgaria* the Court found a violation of Article 14 in conjunction with Article 2 of the ECHR in a case of a racist murder of two Romani men by military police, which was not investigated as such by the authorities. Both the Chamber and the Grand Chamber affirmed:

"[W]hen investigating violent incidents and, in particular, deaths at the hands of State agents, State authorities have the additional duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events. Failing to do so and treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be to turn a blind eye to the specific nature of acts that are particularly destructive of fundamental rights."⁹

In a similar way, the ECtHR condemned Bulgaria in the 2007 case of *Angelova and Iliev v.*

6 For more details on concrete cases see the annual reports of the Bulgarian Helsinki Committee for 2006 and 2007, available at: www.bghelsinki.org.

7 Николета Попкостадинова, „Толерантност към дискриминацията. През 2007 г. са регистрирани най-много расистки мотивирани случаи на насилие” (Nikoleta Popkostadinova, 'Tolerance to Discrimination'. 2007 Marks Highest Number of Racially Motivated Acts of Violence'), *Capital weekly*, 50 (2007), also available for paid view at: <http://www.capital.bg/show.php?storyid=407656>, accessed 18 July 2008.

8 Information provided to the BHC by Ahmed Husein, Deputy-Chairperson of the Parliamentary Commission of Human Rights, MP from the Movement of Rights and Freedoms, Sofia, 21 November 2008.

9 ECHR, *Nachova and others v. Bulgaria*, Appl. no. 43577/98, 43579/98, Grand Chamber Judgment from 6 July 2005, para. 160.

Bulgaria under Article 14 in conjunction with Article 2 of the Convention for its failure to address the racist nature of a murder of a Romani man by a group of assailants. When going into the roots of the violation of Article 14, the Court reiterated its observation from *Nachova*.¹⁰

A number of other cases of racially motivated crimes against Roma are pending before the ECtHR and several are on their way. No amendments to the Criminal Code however were made so far to allow the appropriate investigation and punishment of racially motivated crimes.

2. Failures to prosecute racially motivated hate crimes within the existing framework

The government report enumerates several articles of the Criminal Code that provide for punishments of some hate crimes.¹¹ These include:

- Article 162 – Propaganda and incitement to national or racial hatred or discrimination; use of violence or damage of property for racist motives and participation in an organization aiming at perpetrating such crimes;
- Article 163 – Participation in a crowd for the purpose to attack persons or properties because of racist reasons;
- Article 164 – Propaganda of religious hatred;
- Article 165 – Use of force or threats in order to obstruct citizens from professing their religion;
- Article 169b – Use of force or threats in order to obstruct anybody from exercising his/her constitutional rights;
- Article 172 (1) – Obstruction of anybody's employment because of his/her nationality, race, religion, social origin, membership in a political party, organization or coalition that has political goals, political or other beliefs (The government is inaccurate in reporting on the substance of Article 172 (1) enumerating just nationality, race and religion).
- Article 108 – Dissemination of fascist or other anti-democratic ideologies.

As mentioned above, this framework offers insufficient protection against racially motivated crimes, as it is very narrow and does not allow taking into account the racist motives of the perpetrators of serious crimes, such as murder, severe bodily harm, robbery, rape etc. But even within this narrow framework the government failed to enforce the above provisions by prosecuting perpetrators of hate crimes that are envisaged by them. According to the official statistics in the period 2000-2007 not one person had been convicted under Articles 162, 163, 164, 165, 169b and 108.¹² Several persons had been convicted under Article 172 (1) but it is unclear for what – for obstruction of one's employment, because of his/her nationality, race or religion or because of the other grounds envisaged by that provision (social origin, political affiliation, political belief etc). The investigations of hate crimes of which the government reports, albeit selectively,¹³ have apparently ended up with no convictions.

10 ECHR, *Angelova and Iliev v. Bulgaria*, Appl. no.55523/00, Judgment from 26 July 2007, para. 115.

11 Paras. 184-193 of the government report.

12 Information from the annual publications of the National Statistical Institute "Crimes and Persons Convicted" for 2000-2007.

13 See paras. 203, 204 and 205 of the government report.

3. Other patterns of institutional racism

In its General Recommendation XXXI CERD directs states parties to pay greatest attention to "the number and percentage of persons belonging to those groups who are held in prison or preventive detention".¹⁴ The government does not provide information on the number or percentage of prisoners from ethnic minorities in the Bulgarian prisons and pre-trial jails. The high share of minority prisoners has traditionally been a very serious problem for the Bulgarian criminal justice system.¹⁵ In the course of its 2007 monitoring visits to Bulgarian prisons, the BHC collected information on the shares of Roma and Turks among the prisoners in the main sections of the Bulgarian prisons. This information is given in Table 1 below.

Table 1

Share of Roma and Turks among the prisoners in the main sections of the Bulgarian prisons¹⁶

Prison	Bulgarians	Roma	Turks
Pazardzhik, September 2007	22-23%	70%	7-8%
Belene, November 2007	40%	35%	25%
Sofia, September 2007	48%	45%	5%
Plovdiv, February 2007	30%	70%	
Lovech, May 2007	30%	60%	10%
Pleven, August 2007	20-30%	70-80%	
Burgas, May 2007	15%	75%	10%
Varna, May 2008	25%	70%	5%
Vratsa, June 2007	10%	80%	10%
Sliven, September 2007 (for women)	50%	40%	10%
Bobovdol, December 2007	25-30%	70-75%	
Stara Zagora, December 2006	40%	45%	15%
Boichinovtsi, February 2007 (the only juvenile prison)	25%	50%	25%

Source: Data collected by the BHC during its periodic visits to the prisons on the basis of estimates provided by prison administration

As the above information indicates, the percentages of the two biggest ethnic minorities, the Roma and the Turks, among the prisoners in Bulgaria are above their total representation in society. The Roma are particularly strongly overrepresented.

In its General Recommendation XXXI CERD requires that the "states parties take necessary steps to prevent questioning, arrests and searches which are in reality based solely on the physical appearance of a person, that person's colour or features or membership of a racial or ethnic group,

¹⁴ CERD, *General Recommendation XXXI*, para. 1e.

¹⁵ See: БХК, *Правата на човека в българските затвори* (BHC, *Human Rights in the Bulgarian Prisons*), Sofia, 2002, pp. 61-65; also: ERRC, *Profession: Prisoner, Roma in Detention in Bulgaria*, Budapest, December 1997.

¹⁶ These do not include the "labor-correctional hostels", i.e. units with lighter regimes, belonging administratively to the same prison. The number of prisoners in these hostels in 2007 was around 1/3 of the general prison population.

or any profiling which exposes him or her to greater suspicion."¹⁷ Reliable research indicates that police in Bulgaria uses extensively racial profiling with regard to Roma. A survey from the end of 2005, commissioned by the OSI Justice Initiative, found that Roma are more likely to be searched and more likely to be treated disrespectfully by police when stopped, compared to ethnic Bulgarians. More specifically, Roma, compared to ethnic Bulgarians, are more than 3.5 times more likely to be searched, seven times more likely to be insulted, three times more likely to be taken to a police station, five times more likely to be threatened and five times more likely to be victims of the use of force when stopped.¹⁸

Article 4

Public speech that incites hatred and discrimination was widespread throughout the period under review. Hate propaganda spread particularly after 2001, when predominantly Turkish Movement for Rights and Freedoms became part of the governing coalition. Since 2000, with the first publication of Hitler's "Mein Kampf", several publishers started publishing other Nazi propaganda on a systematic basis (See Exhibit 1). The prosecutor's office opened an investigation,¹⁹ but it did not result in charges and convictions. This encouraged other publishers and a number of other books and pamphlets propagating hate appeared and spread rapidly (See Exhibit 2 for just a small sample of these publications). None of them was prosecuted and they continue to be on sale widely to this day. A number of groups, organized around dissemination of racist and other hate propaganda, celebrations of Nazi festivities and use of violence against ethnic minorities and foreigners, operate unhampered in Bulgaria. Some of them, such as the political party "Ataka" and the Bulgarian National Union,²⁰ have their own print media or benefit from TV programs offered exclusively for their use.

17 CERD, *General Recommendation XXXI*, para. 20.

18 Open Society Justice Initiative, *"I Can Stop and Search Whoever I Want": Police Stops of Ethnic Minorities in Bulgaria, Hungary, and Spain*, New York, 2007, p. 35.

19 See paras. 203-204 of the government report.

20 The Bulgarian National Union is an extremist racist and xenophobic organization that rejects the principles of political democracy and promotes the establishment of a private militia, "National Guard", for the protection of the "Bulgarian nation". In August 2008 its leader Boyan Rasate was convicted for hooliganism during the Gay Pride in Sofia (Cf.: <http://bg.bgns.net/Aktualno/Probatziyata-na-Boyan-Rasate-vleze-v-sila.html>, accessed on 28 November 2008).

Exhibit 1 – "Mein Kampf" of Adolf Hitler (2000) and "Political Speeches" (2001) of Joseph Goebels, both published by "Zhar Ptica" Editorial House

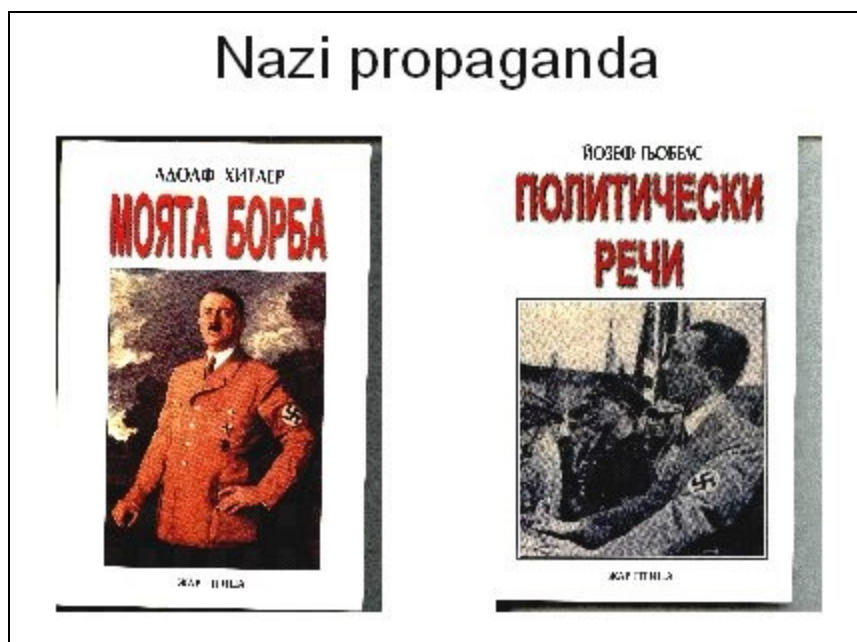


Exhibit 2 – One of the volumes of "The Shadow of Zion" (2005), anti-Semitic pamphlet by the journalist Georgi Ifandiev; "The Truth about the Jews During the Second World War" (2003) by the Holocaust denier Juergen Graf; "Basics of National Socialism" (2004), a handbook of Nazi and anti-Semitic propaganda written by E. Antonov; "Protocols of the Elders of Zion" (2002 and 2005).



The pamphlets of Volen Siderov, a well-known present-day politician, leader of the extremist "Ataka" party, which is represented in both the Bulgarian and the European Parliament, deserve a special mention in this regard. The first one, the "Boomerang of Evil", appeared in 2002 and the second one, "The Power of Mammon" was published in 2004. Both are virulently anti-Semitic (See Exhibits 3 and 4).

Exhibit 3

The Boomerang of Evil, 2002

ВОЛЕН СИДЕРОВ
**БУМЕРАНГЪТ
НА ЗЛОТО**



p.169 - "Then there emerged the embryo of that great swindle called 'the holocaust' – the version that 6,000,000 Jews were murdered with gas and burnt up in the ovens of Hitler's concentration camps."

p.171 - "The legend of the 'holocaust' affords the Jews huge advantages in the world... the 'holocaust' lie is also very profitable. According to *Der Spiegel* magazine's issue 18 of 1992, the FRG had, since 1952, paid out a total of 85.4 billion German marks to Jewish Zionist organizations!"

p.156 (second edition) - "For centuries, the loftiest goal of the Jewish world elite has been the enslavement of all other peoples."

Exhibit 4

The Power of Mammon, 2004



p.58 - "Everywhere on the European continent, the Jews got under the skin of the rulers, pushing them into wars and cataclysms, so that they would fall into dire need of money."

p.135 - "The genocide against the Russian, Bulgarian and other Orthodox Christian peoples was conducted under the direct leadership of Talmudist circles in the West, led by the Rothschild family. This genocide included not only physical destruction via wars, 'revolutions' and terrorism (which has been Judaism's hallmark for centuries). This genocide was also applied via the systematic and successive plunder of the money and resources of these Christian peoples."

p.147 - "Eitism is the basis of the Jewish, Talmudist attitude towards the world. It includes the postulation that robbing the 'other' – non-Judaic people – is a heroic deed, not a sin; that to bring about his ruin is a good deed, and not a sin."

Hate speech has been and continues to be widespread in some media – newspapers, radio and TV stations, as well as in Internet. It received a new impetus after the June 2005 parliamentary elections in Bulgaria. During those elections the newly formed political party "Ataka" entered the Parliament with 8.2% of the vote and with the slogan "Bulgaria for Bulgarians!". The election campaign of "Ataka" was based almost exclusively on incitement of anti-Romani and anti-Turkish hatred. Roma were presented as parasites and criminals, terrorizing the Bulgarians and even committing genocide against them. Turks were presented as a threat to the Bulgarian sovereignty and national security. Siderov, leader of the party, stated at an election rally: "At last the Bulgarians will have their representation in the Parliament. There are not going to be only queers, Gypsies, Turks, foreigners, Jews and others but only and exclusively Bulgarians!"²¹ One of the private TV channels, SKAT TV,

²¹ Speech of Volen Siderov at the election rally in Burgas, 22 June 2005.

became the major media outlet for "Ataka" for the elections, as well as subsequently. A number of broadcasts of this channel spread anti-Romani and anti-Turkish hate and incite discrimination with impunity. Siderov scored second at the October 2006 elections for President with 24% of the vote. At the May 2007 elections for the European Parliament "Ataka" won 14.2% of the vote and sent three MEP to the European Parliament.

Hate speech is widespread in other media too. In addition to SKAT TV there are several other private cable channels, which operate programs that have as their major purpose incitement to hatred and discrimination against ethnic minorities and foreigners. The weekly talk show "National Guard" of the private BBT cable TV, produced and hosted by Boyan Rasate, leader of the extremist Bulgarian National Union, deserves specific mention for its extremely aggressive and abusive language against Roma and other minorities.

Publishers, broadcasters and media organizations condone such practices. They failed to self-monitor in order to avoid racial, discriminatory or biased language.²² In May 2008 the most prestigious national journalistic award "Chernorizets Hrabur" for a young journalist was given to Kalin Rumenov, a journalist from one of the daily newspapers who frequently uses racist slurs against Roma. The award was set up by the Union of Publishers. At the end of August several international organizations protested granting the award to a racist.²³ On 10 September 2008 representatives of the WAZ media group, which owns two of the biggest daily newspapers, joined in the protest. Several days later the Union of Publishers and "Chernorizets Hrabur" Academy, which acts as a jury in the award procedure, revoked the award.

The government failed to recognize the problem with organized incitement of racial hatred and racial discrimination. In the period under review no person and no group has been sentenced for such crimes. The government rejects the existence or organized dissemination of racist propaganda, despite ample evidence to the contrary. This condoning attitude found expression also in the government report: "There are no organized movements or organizations in the Republic of Bulgaria disseminating and spreading racist, anti-Semitic, xenophobic and other discriminatory ideas."²⁴

Article 5

1. Discrimination of Roma in education

International Convention on the Elimination of All forms of Racial Discrimination (ICERD) prohibits discrimination in the exercise of the right to education and training in **article 5, paragraph e (v)**. In its General Recommendation XXVII CERD recommends to states parties "to prevent and avoid as much as possible segregation of Roma students".²⁵ It also instructs them "to act with determination to eliminate any discrimination or racial harassment of Roma students".²⁶

Segregated minority schooling has a long history in Bulgaria, as well as in the other Balkan countries. At present, the school systems, serving the educational needs of the Turkish and the Roma minorities in Bulgaria, are heavily segregated. The segregated schools of the Turkish minority are predominantly located in the villages where most of the ethnic Turks in Bulgaria live and segregation is a result of natural demographic processes affecting this minority since the end of the 19th century. The school system of the Roma minority, on the contrary, was created as segregated by governmental action, for the most part under the communist regime. After the fall of

22 Cf. CERD, *General Recommendation XXVII (Discrimination against Roma)*, 16/08/2000 para. 40.

23 See: "International Journalist Organization Condemns Granting of Award to Bulgarian Racist", at: <http://www.wiesenthal.com/site/apps/s/content.asp?c=lsKWlbpJLnF&b=4442915&ct=6270969>.

24 Para. 196 of the government report.

25 CERD, *General Recommendation XXVII (Discrimination against Roma)*, para. 18.

26 Ibid., para. 20.

communism it continued to carry the legacy of segregation and neglect. At present, the educational system serving the needs of the Roma minority exhibits three patterns of segregation:

- Territorial segregation, consisting of schools that were built with the specific purpose to serve educational needs of Roma children in or near segregated neighborhoods;
- Placement of Roma children in large numbers in remedial schools for children with developmental disabilities;
- Selective targeting by the juvenile justice system and placement of Roma children in schools for children with delinquent behavior.

1.1. Territorial segregation

Segregated "Roma schools", located in or near the segregated Roma neighborhoods are by far the largest system of segregated schooling of Roma children. According to different estimates, it comprises between 44% and 70% of the Roma children in school age, i.e. between 44 000 and 70 000 students.²⁷ This system of segregated schooling was created for the most part under communism with the growth of the large Roma ghettos in the cities. At that time most urban Roma schools were officially called "basic schools with enforced labor education" (BSELE). They had a separate curriculum stressing vocational training and development of manual labor skills from the first grade. This curriculum was abolished in 1991 but the system was preserved. It continued to be maintained by the official policy of attachment of students to school districts, i.e. they were prohibited to enroll in a school outside of their "region". This policy was abolished as late as 2003. Almost all "Roma schools" however continue to operate at the present time. According to a series of field studies undertaken by the Open Society Institute – Sofia the total number of segregated Roma schools increased in the period 2001 – 2005 due to migration and "white flight" from the mixed schools. In 2005 they were 554, out of the total 2,657 schools in Bulgaria, i.e. almost 20% of their total number.²⁸

In 2004 the BHC researched material infrastructure, classroom practices and government oversight of the former BSELE. In almost every one of these segregated schools the BHC researchers found very poor infrastructure and technical equipment, as well as very lenient attitudes of teachers and regional educational inspectors to the absences from schools, quality of teaching, involvement of parents and the local community. No bilingual techniques were used in the classroom and no in-service training for the preparation of teachers to use such techniques was available. Some inspectors themselves admitted that the criteria for the evaluation of the "Roma schools" are lower than in the mainstream schools. They justified this with the need of "compromise" in order to allow the Roma children to graduate.²⁹

Romanes as a mother tongue is taught sporadically in both segregated and mixed schools. The situation in this regard worsened dramatically since the mid-1990ies, which is recognized by the government.³⁰ The government report however understates this dramatic decrease by reporting of a decrease from 4000 (1992) to 500 (1999) Roma students studying their mother tongue. As a matter of fact, according to the latest data from the National Statistical Institute, in 2007/2008 school year only 122 Roma students had studied their mother tongue.³¹

In the EU pre-accession period the government adopted a number of documents pledging desegregation of Roma education.³² These pledges however remained largely on paper and did not

27 For a detailed analysis of the findings of different estimates see: OSI/EUMAP, *Equal Access to Quality Education for Roma*, Vol. 1, Budapest, 2007, p.42-45.

28 OSI/EUMAP, *Equal Access to Quality Education for Roma*, p.45.

29 OSI/EUMAP, *Equal Access to Quality Education for Roma*, p.115-116.

30 See para. 239 of the government report.

31 National Statistical Institute, *Education in Bulgaria – 2008*, p. 122.

32 See para. 137 of the government report.

materialize in serious and consistent effort towards desegregation of Roma education in practice. Moreover, in some cases local educational inspectorates obstruct the work of the non-governmental desegregation projects.³³ The National Program for the Development of School Education and Pre-School Upbringing and Instruction from 2006 is a step back in the government commitments towards desegregation. It fails to deal with transportation of Roma children from segregated to integrated schools inside big cities. There is nothing in it on mother-tongue education, as well as on the other strategic objectives from earlier documents (combating racism in the classroom, adult education etc).³⁴

1.2. Placement of Roma children in remedial schools for children with developmental disabilities

Overrepresentation of Roma in the schools for children with developmental disabilities (“Remedial schools”) is another pattern of segregation in education that seriously affects the chances of the students to find employment upon graduation. These are by law basic schools (grades I-VIII), which do not offer diplomas for a completed educational degree. They have been established under communism to serve the needs of children with intellectual disabilities and are spread throughout the country. There are a number of benefits that parents get, especially from the boarding and semi-boarding remedial schools, such as free textbooks and meals, free accommodation and transport to and from the schools. During their heyday, they used to enroll more than 10 000 students a year. Research from the BHC and other groups revealed serious flaws in diagnosing intellectual disabilities and arbitrary placement for purely social reasons.³⁵ For many years placement procedure did not require even an ordinary IQ test. It was made somewhat more precise and less arbitrary in 2002 but continued to disproportionately enroll Roma children. According to the 2002 comprehensive study of the BHC of the system of remedial schools, more than 50% of the students enrolled in them at that time were Roma and in some schools 80-90% were Roma.³⁶

Since 1999 the European Commission has continued to express concerns at the disproportionate enrollment of Roma children in remedial schools.³⁷ Largely under pressure from the EU, since the 2000/2001 school year the number of students enrolled in remedial schools started to decrease. Graph 1 below shows the trend of decrease between 2000/2001 and 2007/2008 school years.³⁸

33 БХК, *По пътя към зрелостта: Оценка на десегрегационния процес, осъществяван от неправителствени организации в България* (BHC, *On the Road to Maturity: Non-Governmental Desegregation Process in Bulgaria*), Sofia, 2008, pp. 40-41.

34 OSI/EUMAP, *Equal Access to Quality Education for Roma*, p. 54.

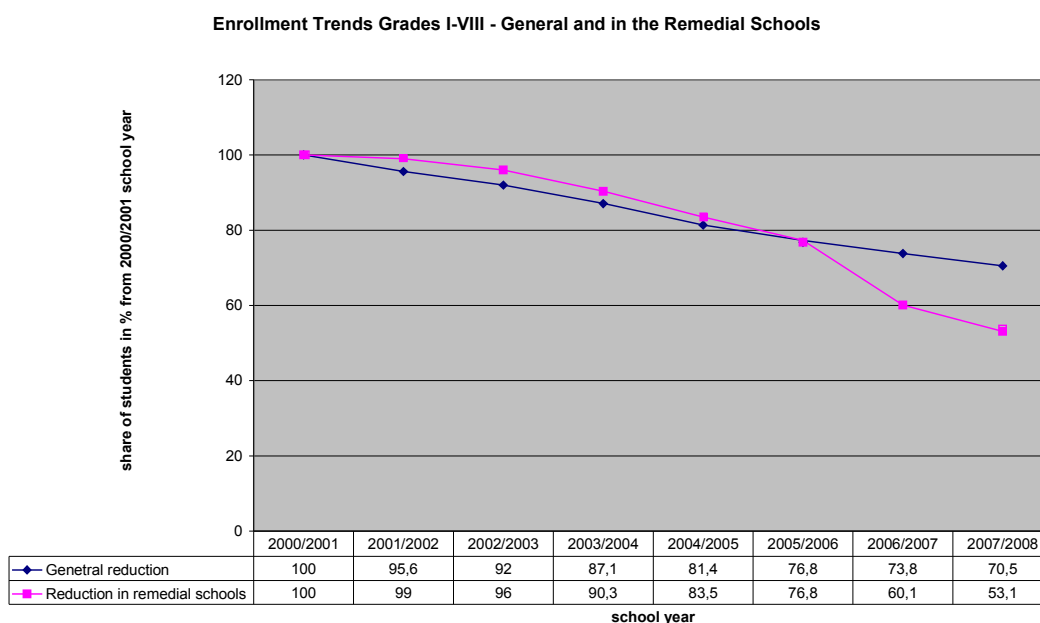
35 See: EUMAP/MHI, *Rights of People with Intellectual Disabilities: Access to Education and Employment – Bulgaria*, Sofia: OSI, 2005.

36 БХК, *Помощните училища в България* (BHC, *Remedial Schools in Bulgaria*), Sofia, 2002, pp. 7, 557-559.

37 See European Commission, *1999 Regular Report from the Commission on Bulgaria's Progress Towards Accession*, Brussels, 10 October 1999, p. 15. See also the subsequent pre-accession reports of the Commission.

38 Calculated from: National Statistical Institute, *Education in Bulgaria*, 2001-2008, annual publications of the NSI.

Chart 1



As it becomes clear from the above data, between 2000/2001 and 2005/2006 school years the decrease in the number of students enrolled in remedial schools followed the general trend of decrease of all students in the basic schools as an aspect of the general population decrease in Bulgaria. Only in 2006/2007 school year the government took serious measures to refer more children with developmental disabilities to the schools of general education where they received additional support from resource teachers. Disproportionate placement of Roma children in remedial schools however continued. In November 2008 the BHC conducted research in three remedial schools for children with developmental disabilities – in Vratsa, Karnobat and Lom. According to the school principals, Roma constituted 80% of the students in Vratsa, 70% of the students in Karnobat and 50-60% of the students in Lom.

1.3. Arbitrary placement of Roma in schools for delinquent children

The third type of segregated schooling for Roma is the placement of Roma children in the schools for delinquent children. They are part of Bulgaria’s juvenile justice system. A delinquent child can be placed there by a decision of a district court through a procedure that is not in conformity with international due process standards.³⁹ The number of students in these establishments decreased as well over the past ten years. However Roma continue to be heavily overrepresented in these institutions.⁴⁰

2. Discrimination of Roma in housing

The prohibition of discrimination in access to adequate housing is explicitly guaranteed in article 5, paragraph e (iii) of the ICERD. In its General Recommendation XXVII CERD recommended to the State parties “to develop and implement policies and projects aimed at avoiding segregation of Roma communities in housing”, as well as “to act firmly against local measures denying residence

³⁹ See: Committee on the Rights of the Child, Forty-eighth session, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, Concluding Observations: Bulgaria, CRC/C/BGR/CO/2, 23 June 2008, para. 68-70.

⁴⁰ Cf. OSI/EUMAP, *Equal Access to Quality Education for Roma*, p. 49.

to and unlawful expulsion of Roma”.⁴¹ Documentation by the ERRC and Bulgarian non-governmental organisations working in partnership with the ERRC as to the housing conditions in which a significant portion of the Romani community find themselves point to the fact that the implementation of housing policies in Bulgaria are to a great degree biased by racial animus. These conditions of residential segregation, substandard housing conditions, lack of legal security of tenure and forced evictions, and other systemic violations of the right to adequate housing affect disproportionately the Roma in Bulgaria, indicating a violation or violations of Bulgaria’s obligations under the Article 5 paragraph e (iii) of the ICERD.

2.1. Residential segregation and substandard housing conditions

A large number of Roma in Bulgaria today live separated from non-Roma and sometimes walled off entirely from them, in settlements which constitute de facto "no services" areas, almost completely removed from the mainstream of Bulgarian social and economic life. Romani neighbourhoods are usually found on the outskirts of cities, towns and villages. As the Bulgarian government, in its Framework Program for Equal Integration of Roma in Bulgarian Society, adopted in 1999, recognises, Roma live in segregated neighborhoods, "most of which are not in the respective city plan and do not have adequate infrastructure".⁴² This situation is identified in the Program as among the most serious problems of the society.

In some instances, the segregation of Roma from the rest of the community has been enforced in urban and/or rural settings by the construction of physical barriers, such as metal or concrete fences, around their neighbourhoods. Two-meter high fences constructed at the expense of the respective municipalities surround the Sheker Mahala Romani urban slum settlement in the central Bulgarian city of Plovdiv, as well as Romani neighbourhoods in Kazanlak and Kiustendil. Regardless of whether they exist in an urban or a rural setting, separated Romani neighbourhoods are overcrowded and have markedly substandard conditions. The increase of family members in households as a rule involves enlargements of existing houses or construction of new ones. This results in random and chaotic building practices, which might be detrimental for the security of neighbourhood residents in terms of potential fire hazards, since unsystematic illegal constructions brings dwellings closer to each other and narrows already inadequately small mud tracks, which frequently constitute the only access roads or paths in a given slum. This makes many buildings virtually inaccessible to fire-fighters and ambulance personnel.

Many homes in such neighbourhoods consist of makeshift shacks made of cardboard, metal scraps and mud bricks and are frequently devoid of windows, doors and walls. In many of the neighbourhoods there is a lack of basic infrastructure such as electricity, running water, hot water, central heating and sufficient and adequate sewage removal systems. For instance, the ERRC field research in 2003 demonstrated that the vast majority from the Iztok Romani neighbourhood in Pazardzhik, the Maksuda Romani neighbourhood in the northern Bulgarian city Varna, the Stolipinovo Romani neighbourhood in Plovdiv lacked running water, sewage-removal system and electricity.

Despite scarcity of statistical data based on ethnicity, independent studies reveal dramatic disparities in housing conditions between Romani and non-Romani Bulgarians. For example, according to a 1999 report by the Bulgarian government to the CESCR, the average Romani household consists of 6.9 persons, while the nation-wide average amounts to 2.6 persons per household. Living space per capita for Roma is 7.1 square metres while the figure for the country as a whole is 16.9 square

⁴¹ CERD, *General Recommendation XXVII*, para. 30, 31.

⁴² Framework Program for Equal Integration of Roma in Bulgarian Society. Available on Internet: <http://www.ncedi.government.bg/en/RPRIRBGO-English.htm>.

metres.⁴³ In rural areas, studies indicate that Roma have the most crowded living conditions in Bulgaria, with figures as low as 5.2 square metres per person.⁴⁴ According to a 2001 World Bank survey, 17% of the 200 respondents in the Fakulteta neighbourhood of Sofia lived in highly substandard housing, defined as “primitive houses (cardboard houses, hovels)” by the study and another 59% lived in “flimsy structures (wooden sheds, adobe houses, tumbledown houses, etc.).”⁴⁵

2.2 Lack of legal security of tenure and forced evictions

The majority of persons lacking legal protection for their homes in Bulgaria are Roma. As the predominant inhabitants of illegal settlements, Roma are therefore disproportionately exposed to the profound uncertainty that flows from a lack of security of tenure. The legal limbo caused by the lack of security of tenure exposes many Roma living in illegal settlements to forced evictions by authorities and to the hazards of homelessness. Those Roma not actually forcibly evicted from housing frequently live under more-or-less permanent threat of forced eviction from housing and therefore in a permanent state of existential insecurity. For example, since 2006 around 180 Roma individuals from the Batalova Vodenitsa neighbourhood in the Vazrazhdane district of Sofia had been threatened twice by the Bulgarian authorities that they will be forcibly evicted. The first occasion took place in June 2006, when the forced eviction of Romani families from Batalova Vodenitsa was suspended after the deep concern expressed by Members of the European Parliament and rights groups in Europe. However, pressure by Bulgarian authorities on these families continued and culminated in July 2008 when the authorities for the second time attempted to evict Roma from their houses. The eviction was suspended again only after concerns vocalized by international rights groups, including the ERRC, and the submission of a request for interim measures to the European Court for Human Rights by several Romani individuals from Batalova Vodenitsa. The Court granted interim measures, as well as a priority to the case. In a number of other cases Roma inhabitants were either threatened with eviction or were in fact evicted from their only homes, which were destroyed by municipal authorities. Over the past three years such incidents took place in Sofia, Burgas and Stara Zagora.

On 18 October 2006 the European Committee of Social Rights (the Committee) adopted a decision on the collective complain 31/2005 submitted by the ERRC against Bulgaria. The Committee ruled⁴⁶ that Bulgaria’s policies with respect to the housing and accommodation of Roma infringe Article 16 (right of the family to social, legal and economic protection) and Article E (non-discrimination) of the Revised European Social Charter. In relation to this, the Committee of Ministers of the Council of Europe, on 5 September 2007, adopted the Resolution CM/ResChS(2007)2, in which it concluded that Bulgaria is in violation of the Revised European Social Charter due to the “inadequate housing of Roma families and the lack of proper amenities” and “lack of legal security of tenure and the non-respect of the conditions accompanying eviction of Roma families from dwellings unlawfully occupied by them”.⁴⁷ Moreover, the Committee of Ministers noted that, “[b]y failing to take into account that Roma families run a higher risk of eviction as a consequence of the precariousness of their tenancy, Bulgaria has discriminated against

43 CESCR. Reply to the List of Issues: Bulgaria. July 9, 1999, para. 4(1). Available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/d3ca19895b9f9922802567ac004ecbd6?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/d3ca19895b9f9922802567ac004ecbd6?Opendocument)

44 Ina Zoon, *On the Margins: Roma and Public Services in Romania, Bulgaria and Macedonia*, Mark Norman Templeton (ed.), New York: Open Society Institute, 2001, p.142.

45 See World Bank. *Sociological and Beneficiary Assessment of Potential Low-Income Housing Micro-Projects*. Sofia, May-June 2001, p. 24 and p. 29, at: [http://wbln0018.worldbank.org/ECA/ECSHD.nsf/0/8b9c8e35f0a008d885256b75005fdf36/\\$FILE/rep_main.pdf](http://wbln0018.worldbank.org/ECA/ECSHD.nsf/0/8b9c8e35f0a008d885256b75005fdf36/$FILE/rep_main.pdf).

46 The full text of the European Committee of Social Rights decision in Collective Complaint 31/2005, *ERRC v. Bulgaria*, is available at: http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints_en.asp

47 Council of Europe Committee of Ministers, Resolution CM/ResChS(2007)2 Collective Complaint No. 31/2005 by the European Roma Rights Centre against Bulgaria. Available online at: <https://wcd.coe.int/ViewDoc.jsp?id=1180705&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>

them”⁴⁸.

In response, the Bulgarian government announced its readiness to comply with the ruling. However until this moment it has not undertaken appropriate measures to combat discrimination against Roma in access to adequate housing. In this regard the Decade Watch report (2007, updated) highlights that “[f]unding allocated for social housing in 2007 has been insufficient, and as of this writing, the government has not made any progress in implementing the National Program for Improving the Living Conditions of Roma”⁴⁹. Evictions of Roma in Burgas, Stara Zagora, as well as the second attempt to evict the inhabitants of the Roma neighbourhood of Batalova Vodenitsa in Sofia took place after the ruling and in gross disregard of its findings.

3. Discrimination of Roma in access to health care

The prohibition of the discrimination in access to health care is explicitly guaranteed in the **article 5 paragraph e (iv)** of the ICERD.

High levels of social exclusion have resulted in a steadily deteriorating level of Roma health. The average life expectancy of Roma is more than 10 years lower than the average for the country. Death occurs among Roma much earlier than among the rest of the population. The average mortality rate among them is between 40 and 49 years of age. The infant mortality rate for the period 2001 – 2003 among Roma was 28.0 per 1000 births; among ethnic Bulgarians it was 9.9/1000; and among ethnic Turks it was 17/1000.⁵⁰ According to the summarized data of a survey conducted by the demoscopic agency Fact Marketing on the basis of 1,527 Romani households, in about 80% of the households there was a person with a disease; in half of the households there was a chronically ill person; and in one-fifth of the households there were two or more chronically ill persons.”⁵¹

Bulgarian law guarantees state-provided health insurance for socially vulnerable individuals. Eligibility for state-provided health insurance is conditioned on eligibility for social assistance for the poor or eligibility for unemployment benefits. A large number of socially vulnerable individuals, and a disproportionately large number of Roma among them, do not receive social assistance for the poor and are not registered as unemployed. These persons do not have access to state-provided health insurance. Many of these low income individuals cannot use health services, except for emergency aid, due to the fact that, according to the Bulgarian Health Insurance Act, persons who have no health insurance pay for the medical services they receive. The high level and the chronic nature of unemployment among the Roma result in a high proportion of Romani individuals without health insurance. According to official estimates, around 46% of Roma are not covered by health insurance.⁵² According to information provided to the ERRC by Romani organisations in different towns throughout Bulgaria in 2005, the percentage of Roma without health insurance ranged between 40-90%.

The Bulgarian Health Insurance Act, which guarantees state-provided health insurance to registered unemployed individuals and those receiving social assistance, leaves many Roma without health care services. Roma are often not registered as unemployed and are often long-term unemployed,

48 Ibid.

49 Decade Watch is the first assessment of government action on implementing the commitments expressed under the Decade of Roma Inclusion 2005–2015. Available online at: <http://www.romadecade.org/index.php?content=6>

50 Data from the National Statistics Institute quoted in the government Health Strategy Concerning People in Disadvantaged Position Belonging to Ethnic Minorities.

51 Факт маркетинг, *Осигуряване достъпа на малцинствата до здравеопазване 2002-2003*, (Fact Marketing, *Ensuring Access to Health Care of Minorities 2002-2003*), Sofia, 2004, p. 17.

52 See: *Health Strategy Concerning People in Disadvantaged Position, Belonging to Ethnic Minorities*, p.2. The document is available at: <http://www.ncedi.government.bg/en/HealthStrategyENG.htm>.

which means that they have dropped out of the registers of unemployed individuals; therefore they do not receive unemployment benefits and are not provided with health insurance. Many Roma also lost the right to social assistance with the amendments of the Social Assistance Act in 2006, which made social assistance limited in time. Further reduction of the period for continuous social assistance by the new amendment of the Social Assistance Act subsequently aggravated the situation of Roma even more in terms of getting access to health insurance.

A number of Roma interviewed by the ERRC in the course of research in 2005 declared that they had not used any medical services for one year or more due to lack of health insurance and lack of means to pay for such services. The Bulgarian government's response to this problem and the result of their response has been minimal, despite the fact that the gravity of the issue is recognized. The Health Strategy Concerning People in Disadvantaged Position Belonging to Ethnic Minorities and the Action Plan of the Health Strategy 2006-2007 aim to settle the issue of non-contributory health insurance for poor and socially weak people. However, there have been only two government decrees in this regard and these do not provide a long-term solution to the problem and do not ensure adequate access to health care for persons who do not have health insurance. Each of the decrees has been issued for a term of one year only and they have a limited scope covering expenses for persons with no income and for hospital treatment only. Other expenses, including but not limited to, primary outpatient medical and dental care and specialized outpatient medical and dental care, are not covered according to the decrees. Often Roma cannot afford to pay the General Practitioner who could direct them to a specialist and to pay the specialist, who in turns could direct them to hospital. In many cases Roma do not even know about the option of being exempted from payment for hospital treatment and the complicated bureaucratic procedure for reimbursement of hospital treatment costs has made the decrees' measures ineffective. According to Dr. Panayotov, a General Practitioner serving Roma from the Romani neighbourhood Nadezhda in the town of Sliven, not more than 25 people from the neighbourhood succeeded in taking advantage of this assistance in 2006, while about 50% of all Roma from the neighbourhood, or approximately 4,000-5,000 individuals, did not have health insurance.⁵³

Besides the problems outlined above, Roma's access to health care is aggravated by discriminatory treatment by medical practitioners. Despite the fact that government-commissioned studies indicated high levels of perceived discrimination against Roma in the provision of medical services, the issue of discriminatory treatment of Roma by health care providers is systematically downplayed and omitted in the evaluation of the problems facing Roma in access to health care. Consequently, no measures have been designed to monitor, document and reverse discriminatory practices against Roma in the provision of health care.

Racial discrimination against Roma in the provision of health care occurs at many levels within the health care system and ranges from overt denial of medical services to more complex forms of discrimination resulting in the provision of inferior medical services. Discriminatory practices include egregious forms of negligent and/or inappropriate medical treatment leading to the death of the patient or to deleterious effects on the patient's health; denial of medical services and segregation of Roma in hospital facilities. According to the 2003 Fact Marketing survey on the basis of a national representative sample of Romani individuals, every third Romani person described an occasion of denial of medical services.⁵⁴ In most cases at issue was refusal of General Practitioners to refer the patient to specialized care. According to the same survey, 56.2% of the interviewed Roma believed that they receive medical services of inferior quality compared to ethnic Bulgarians.

In some instances Romani patients have been victims of reported negligent medical care and

53 ERRC/BHC interview with Dr Stefan Panayotov, October 25, 2006.

54 Fact Marketing, *Ensuring Access to Health Care of Minorities 2002-2003*, Appendix 4, p. 142.

treatment, which resulted in the death of the patient or in irreparable damage to his/her health. In a number of cases of extreme human rights abuse of Romani patients by medical professionals, Romani patients or their relatives reported humiliating remarks referring to the patient's ethnicity made by health care providers. ERRC and BHC has reasons to believe that Roma have been victims of inferior treatment precisely because of their ethnicity. For instance, one of the cases registered by the BHC is the case of 22-year old Mr. Mihail Tsvetanov in which the racially offensive language, used by a medical doctor, indicates that the treatment of the patient may have been influenced by racial prejudice. Namely, on 1 May 2004, Mr. Tsvetanov, a Romani man from the north-eastern Bulgarian town of Isperih, died in his home only one day after he being released from hospital. According to the information provided by the medical personnel to his parents, he was in good condition. Mr. Tsvetanov was admitted to the hospital with stomach pains on 16 April 2004. He was held for several days without a diagnosis. In the morning of 21 April Mr. Tsvetanov complained of an acute stomach ache to his father Mihail Todorov, who was visiting him at the time. Despite repeated requests by the father that his son should be examined by a doctor, only at 6:30 PM did a doctor examine Mr. Tsvetanov. The examining doctor established that Mr. Tsvetanov had a perforated ulcer and required an emergency operation. After the operation, Mr. Tsvetanov was released on 30 April. Ms Anguelina Todorova, mother of Mihail Tsvetanov, testified to the BHC lawyer that Dr K. informed her that her son was in good condition. At around 3:00 AM on May 1, Mr. Tsvetanov's condition deteriorated. His parents called an ambulance, which arrived only one hour later and after a second phone call, although the family live less than one kilometer from the emergency aid service. When the ambulance arrived, the medical team established Mihail Tsvetanov's death. On 3 May Mr. Todorov met Dr K. at the hospital to ask for his son's medical file. Mr. Todorov demanded that Dr K. explain why, after he stated Mr. Tsvetanov was in good health, his son had died shortly after release from hospital. Dr K. then allegedly stated, "It is not a big thing – one Gypsy less." In the following days, Mr. Todorov went to the hospital several times to obtain the medical file but each time was denied access by Dr K. who claimed that the father did not need the document.

Exclusion from the health care system has a disproportionate impact on Romani women's health, especially where reproductive and maternal health is concerned. Romani women who do not have health insurance cannot avail themselves of pre- and postnatal medical services. In this regards the ERRC and BHC have registered a number of cases, which clearly indicate exclusion of Romani women from the health care system. In addition, segregation of Romani women in hospital facilities is reported to be a persistent practice in several places throughout Bulgaria. In a number of hospitals in the country, Romani women are reportedly placed in separate rooms – "Gypsy rooms", as they are known to patients and hospital staff. The "Gypsy rooms" are reported to be in worse sanitary conditions and the Romani women attended to less by medical professionals. For example, in the town of Pazardjik, Romani activists reported that the practice of segregating Romani women in maternity wards existed in the past twenty years. Evidence of segregation is also reported from the town of Sliven.⁵⁵

There are numerous reports from different parts of Bulgaria that emergency aid ambulances do not go to Romani neighbourhoods or arrive with considerable delay. In a number of instances such practice have caused death or serious injury to Romani patients. The number of such reports, as well as the fact that in most cases personnel at the emergency aid service can immediately recognize that the call comes from a Romani neighbourhood by the address of the patient, indicate the discriminatory nature of this practice. On 3 August 2007, Ms. Anka Vesselinova, 50, died after a stroke in the Third City Hospital of Sofia. According to the testimony of Mr. Slavcho Petrov, nephew to the diseased woman, to the Sofia-based Romani Baht Foundation, Ms. Vesselinova was suffering from a heart condition. She was offered hospitalization a month earlier but refused to stay in hospital. At around 5:00 PM on August 3, Mr. Petrov and other relatives found the woman lying

55 ERRC and BHC interviews in 2005 and 2006.

unconscious in the yard of her house in the Romani neighbourhood Fakulteta in Sofia. The relatives called the emergency aid immediately, at around 5:10 PM, and were told to wait. When no car arrived ten minutes later, the relatives called again; and then made several more calls. The ambulance reportedly arrived only around 7:00 PM. Anka Vesselinova was taken to hospital where she died one hour later.

4. Discrimination against Roma in access to social assistance

4.1. Amendments of the Social Assistance Act (SAA)

The right to social security in Bulgaria is provided by Article 51, paragraph 1 of the Constitution which stipulates that “[c]itizens shall have right to social security and social assistance”. In more details the right to social assistance is regulated by the Social Assistance Act (SAA)⁵⁶, the Rules and Regulations for the Implementation of the Social Assistance Act (RRISAA) and some other regulations. According to the SAA the aims of social assistance is to support persons who are not able to meet their basic needs in life by their own efforts and without external support; to encourage their employment and social reintegration and to advance social solidarity.⁵⁷ The law envisages three types of social assistance: monthly, targeted and one-off.⁵⁸ All types of social assistance are granted in cash or in kind to individuals or families after an individual assessment by a social worker of the family income, personal property, marital and health status employment situation, age and other circumstances.⁵⁹ The right to social assistance applies to Bulgarian nationals, permanently residing foreigners, refugees and persons with humanitarian status, as well as to other foreigners entitled to it by an international treaty to which Bulgaria is a party.⁶⁰

On 16 February 2006 the Bulgarian Council of Ministers introduced a draft Law on Amendments and Supplements of the Social Assistance Act. The official reasons that accompanied the draft law cited the commitments in the framework of the process of Bulgaria’s accession to the EU. Indeed, many amendments and supplements aimed at adapting the SAA with some provisions of the Treaty Establishing the European Community, such as the right to establishment (Articles 43-48) and the prohibition on the restrictions on the freedom to provide services to nationals of Member States (Article 49). In addition to this the new amendments also introduced a new article 12B that limits the monthly social assistance to 18 months, which before its adoption used to be unlimited in time and conditioned only upon the needs of the beneficiaries. According to the official justification for introduction of this provision the limitation of the monthly social assistance to 18 months should “stimulate and activate personal initiative and responsibility of persons in working age for their realization on the labour market, respectively, ensuring income for themselves through work and not allowing lasting loss of work habits and isolation from society”. The amendments entered into force on 1 June 2006 and the 18 months period expired on 1 January 2008

In addition to being deprived of essential contributions to their own or their families’ budgets, persons in need, whose social assistance benefits was discontinued after 1 January 2008, they lost some other rights guaranteed by a number of Bulgarian laws that link the right to monthly social assistance with other rights. The latter include but are not limited to:

- *The right to medical insurance through the state budget.* Article 40, paragraph 3, pt. 5 of the Medical Insurance Act provides that persons who receive monthly social assistance are paid

⁵⁶ Social Assistance Act, *Official Gazette*, No. 56 from 19 May 1998, with many amendments, the latest one from November 5, 2008.

⁵⁷ SAA, Article 1, paragraph 2.

⁵⁸ SAA, Article 12, paragraph 1.

⁵⁹ SAA, Article 12, paragraph 2.

⁶⁰ SAA, Article 2, paragraph 3 and 4.

medical insurance through the state budget. According to Article 37, paragraph 3 of the same act they are also exempted from paying the initial check tax.

- *The right to legal aid.* Article 22, paragraph 1 of the Legal Aid Act provides that only persons who are entitled to monthly social assistance can get free legal consultation and preparation of their civil cases for free.
- *The right to get agricultural land for cultivation with priority.* This right is provided for to persons entitled to monthly social assistance by Article 21, paragraph 1 of the ownership and Use of Agricultural Land Act.
- *The right to be exempted from paying taxes for kindergartens.* These taxes are regulated in Bulgaria at the municipal level. Many municipalities either exempt altogether or substantially reduce taxes for kindergartens for families receiving monthly social assistance.

As a result of cuts in social assistance the average number of beneficiaries of social assistance during the first six months of 2008 was 49 056, down from 124 635 for 2005,⁶¹ which is more than a 60% decrease. According to the estimates of that Ministry of Labour and Social Policy from June 2007,⁶² some 40 906 unemployed persons in working age were supposed to lose their right to social assistance after 1 January 2008. The Government explains this difference between the initial estimate and the actual number with its active policy of promoting employment and vocational training for those who were to be excluded. As a matter of fact, these developments very much undermine the Government's arguments that the cut of social assistance is the most adequate way to stimulate "personal initiative and...realization on the labour market" of the very poor. They show that it is possible to promote employment among them without relying on this draconic measure.

The Government's thinking in 2008, however, went in the opposite direction. In June 2008 it proposed and the National Assembly adopted an amendment to the SAA, which provided that the period for continuous social assistance for unemployed persons in working age, shall be decreased from 18 to 12 months. The law became effective on 1 July 2008. Soon after, on 5 November 2008 the National Assembly voted on the first reading a draft law, which further reduced this period to six months as of 1 January 2009.

4.2. The disparate impact of the amendments on Roma

The lower socio-economic status of Roma, compared to that of the rest of Bulgaria's population, leads to a greater reliance on social assistance. There is no exact and systematic official data on the share of Roma among the beneficiaries of social assistance. However a number of surveys, as well as some estimates made by Bulgarian officials, suggest that Roma are heavily overrepresented among both the beneficiaries of the social assistance in general and among the persons who are likely to be affected by the February 2006 amendments to the SAA. Thus, according to the data from the 2002 UNDP survey "Avoiding the Dependency Trap – a Human Development Report on the Roma Minority in Central and Eastern Europe" 44.4% of the Roma in Bulgaria indicated social assistance as the usual source from which the household received money during the past six months and 20.2% indicated social assistance as the source that provides most money for the household.⁶³ In a May 2006 survey on Roma integration and economic reform, researchers from the Open Society Institute – Bulgaria made the following estimates of the amount and the share from the total

61 See „МТСП, *Постигнатото в областта на труда и социалната политика за трите години от управлението 2005 г. – 2008 г.*” (MLSP, *Achievements in the sphere of labour and social policy for the three years in government 2005 – 2008*), Sofia, September 2008 г. at: http://www.mlsp.government.bg/bg/news/Social_Policy.doc.

62 A letter to the BHC from 26 June 2007 Ms. Gergana Dryanska, Executive Director of the Agency of Social Assistance, supplied such information on the basis of the estimates of the directors of the Regional Directorates of Social Assistance.

63 UNDP, *Avoiding the Dependency Trap – a Human Development Report on the Roma Minority in Central and Eastern Europe*, p.94.

amount of money paid through different social assistance and related programs that go to Roma (Table 2).⁶⁴

Table 2
Social Assistance Program Spending for Roma in Bulgaria

Millions of BGN	Total by program	On the basis of the low* estimate of the number of Roma		On the basis of high* estimate of the number of Roma	
Maternity and child care payments	140	12%	17	19%	26
Social assistance and active measures on the labour market	294	62%	184	98%	287
Targeted payments for heating	115	25%	29	39%	45
Social assistance for child care	278	17%	47	27%	74
Total	827	33%	276	52%	432

* The authors base their calculations on two estimates of the number of Roma in Bulgaria – low (370,000) and high (580,000).

Bulgarian Government officials were conscious of the fact that Roma were heavily overrepresented among the beneficiaries of social assistance at the time of the adoption of the February 2006 amendments to the SAA. When on 30 June 2007 the Minister of Labour and Social Policy Ms. Emilia Maslarova reaffirmed her and her staff's determination to implement the new provision in the interview for Darik Radio,⁶⁵ she explicitly addressed Roma leaders "who stir up people to revolt", apparently understanding that Roma will be heavily affected by the new measures. In fact, already in May 2006 she stated before the Sofia-based daily Duma⁶⁶ that from around 200 000 persons receiving all types of social assistance monthly around 55-60% are "from the Roma community".

5. *Discrimination against Macedonians in the exercise of their right to freedom of assembly and of association, as well as the official denials of their identity and harassment*

The Bulgarian government denies the identity of those Bulgarian citizens who self-identify as Macedonians. Not only they, but also the Macedonians in the Republic of Macedonia are officially considered as Bulgarians. On this basis, central and local authorities often suppress any expression of a Macedonian identity, but especially peaceful assemblies, citizen's associations and political parties of ethnic Macedonians. So far, the European Court of Human Rights ruled on five cases

64 Лъчезар Богданов, Георги Ангелов, *Интеграцията на ромите в България: необходими реформи и икономически ефекти* (Luchezar Bogdanov, Georgi Anguelov, *Integration of Roma in Bulgaria: Necessary Reforms and Economic Effects*) May 2006, available at: <http://www.osf.bg/?cy=10&lang=1&program=5&action=5>.

65 "Масларова: Спираме кранчето за социални помощи" ("Maslarova: We stop the cock for social assistance"), interview on *Darik Radio* with Kiril Vulchev on 30 June 2007, see transcript of the entire interview at: http://www.darik.net/view_article.php?article_id=158529.

66 „Възможно е някои заплати да скочат с 6 на сто" ("It is possible that some salaries will rise by 6%"), *Duma* from 15 May 2006.

involving violations of freedom of assembly and freedom of association of ethnic Macedonians.⁶⁷ Several others are pending for decision. The Court expressed itself quite clearly that the suppression of the freedom of assembly and of association of the Macedonian groups is a violation of fundamental human rights. This however did not have a serious effect on the subsequent practice in that regard in Bulgaria.

Between 1998 and 2008 (after the events described in the last Ilinden decision of the ECHR on freedom of assembly, including after the Court's judgment) mayors of Blagoevgrad had routinely denied peaceful celebrations of anniversaries of the death of Gotse Delchev and other events by members of the Macedonian group "Ilinden". Such bans took place in September 1998, April 1999, September 2000, May 2001, September 2002, September 2003, April 2004, August 2004, April 2005, August 2005, April 2006, September 2006, April 2007 and August 2007. The District Court of Blagoevgrad routinely confirmed the bans using different unlawful pretexts. In the same period a number of other clearly illegal prohibitions or time, place and manner restrictions on peaceful events of the same group took place in Sandanski and Petrich. Mayors' banning orders were, again, routinely upheld by the district courts. In December 2006 the police and the District prosecutor in Sandanski failed to protect members of "Ilinden" by refusing to prosecute a gang of extremists, who attacked the Macedonian activists while they were collecting signatures in the center of the town. The violations of the right to peaceful assembly of ethnic Macedonians between 1998 and 2003 were considered by the ECHR in its judgment in the Case of the United Macedonian Organization Ilinden and Ivanov v. Bulgaria.⁶⁸ The Court found violation of Article 11 of the European Convention of Human Rights. Violations between 2004 and 2008 are a subject of another case pending before the ECHR.⁶⁹

OMO Ilinden association and OMO Ilinden-PIRIN political party were arbitrarily denied registration on several occasions, including after the judgments of the ECHR of the previous cases of denial. At present both organizations have pending cases before the ECHR with complaints of violations of freedom of association.⁷⁰ No organization of the Macedonian minority has been recognized by the courts or in other ways in Bulgaria so far.

Article 6

Bulgaria adopted a relatively progressive framework for the protection against discrimination. The capacity of the bodies vested with its implementation however at present is poor.

1. The jurisprudence of the Anti-Discrimination Commission

The Anti-Discrimination Commission (ADC), the specialized body adjudicating in the field of inequality, which has been established in 2004 by virtue of the Protection Against Discrimination Act (PADA) but started to create its jurisprudence only in 2006, has already accumulated significant experience. Statistically, the complaints of discrimination based on ethnic origin for both 2006 and 2007 occupy the first place of all the complaints submitted to it.

67 See: ECHR, *Stankov and the United Macedonian Organization Ilinden v. Bulgaria*, Appl. nos. 29221/95 and 29225/95, Judgment from 2 October 2001; ECHR, *United Macedonian Organization Ilinden and Ivanov v. Bulgaria*, Appl. no. 44079/98, Judgment from 20 October 2005; ECHR, *United Macedonian Organization Ilinden – PIRIN and others v. Bulgaria*, Appl. no. 59489/00, Judgment from 20 October 2005; ECHR, *Ivanov and others v. Bulgaria*, Appl. no. 46336/99, Judgment from 24 November 2005; ECHR, *United Macedonian Organization Ilinden and others v. Bulgaria*, Appl. no. 59491/00, Judgment from 19 January 2006.

68 *Case of the United Macedonian Organization Ilinden and Ivanov v. Bulgaria*, Appl. No.44079/98, Judgment from 20 October 2005.

69 *Case of the United Macedonian Organization Ilinden and Ivanov v. Bulgaria*, Appl. No.44079/98, Judgment from 20 October 2005.

70 These include applications nos.: 41561/07, 20972/08, 37586/04, 48284/07, 34960/04.

ADC's overall case law, including that on the ground of race and ethnicity, demonstrates positive trends along with negative aspects. ADC issued a number of fair decisions in which it demonstrated its involvement in strengthening the right to equality and protection from discrimination, and applied progressive standards in this field. The ADC approach to collecting and assessing evidence could be characterized as flexible and informal; the Commission was liberally-minded towards the involvement of the interested parties in the proceedings by actively attracting them on its own motion.

On the other hand, a number of negative characteristic features occurred in the practice of ADC that made it contradictory and ambivalent. The expert analysis of ADC on the interpretation and the application of the concepts of the anti-discrimination law show that they are not always accurate. The Commission did not always demonstrate clear understanding of the concept of indirect discrimination and applied incorrectly the law in this part by confounding instances of direct discrimination through interpreting them as indirect discrimination. ADC demonstrated certain irrationality in dealing with protected characteristics, for example determining as a characteristic "the right to employment" along with race, ethnicity, gender, etc. Another weakness of a number of ADC decisions is the lack of reasoning or ungrounded and superficial conclusions. Some of its decisions were clearly arbitrary and controversial where the Commission demonstrated prejudice and narrow-mindedness. For example, the decision by virtue of which ADC announced that by wearing headscarves in school, the applicant, a Muslim girl, discriminated against the other pupils, and imposed a fine on her.⁷¹

The ADC practice is still in many instances controversial and inconsistent, and thus not sufficiently professional. The shortcomings in its decisions make it vulnerable before the Supreme Administrative Court that controls its rulings.

In addition to the shortcomings in its decisions, ADC lacks an overall proactive policy toward the existing inequality in various spheres of life as it is reluctant to launch proceedings on its own motion with regard to the most serious problems of discrimination, such as the segregated education of Roma children, rampant hate speech against minorities and other vulnerable groups, as well as with regard to other prejudices and social inequalities.

2. The Supreme Administrative Court's judicial review on anti-discrimination

The Supreme Administrative Court (SAC) is the court which has a mandate under PADA to exercise judicial control over the ADC decisions. Similarly to the ADC case-law, the SAC jurisprudence is marked by both deficiencies and adequate decisions. In the field of provision of reasonable accommodation for people with disabilities and application of the principle of equal pay for equal work, SAC has a progressive case law that is in line with the EU and international standards.

At the same time, the SAC jurisprudence suffers very often from the rigid and formalistic approach which this court adopts in many instances within the context of discrimination. Because of its formalism SAC often suppresses progressive ADC decisions, either by bluntly finding that the Commission was not competent to rule on the matter;⁷² or by remitting the case to the Commission for full establishment of the facts (various details) surrounding the discriminatory event despite that the already established facts were more than sufficient for a prima facie case of discrimination (concerning a refusal to provide services to Roma clients in a restaurant, the relevant facts had already been well established by a good number of witness statements);⁷³ or, even when affirming

⁷¹ Decision of 27 July 2006, case No. 65/2006.

⁷² See below.

⁷³ Judgment No. 7855 of 20 July 2007, adm. case No. 6632/2006.

the ADC conclusion about discrimination, reduces significantly the imposed fines despite the gravity of the act (e.g. refusal to send an emergency car for a Roma patient in a Roma neighbourhood)⁷⁴ and thus undermining the deterrent effect of the sanction. Thus, out of 26 ADC decisions which the government had indicated in their report as relevant to the Convention,⁷⁵ on 9 of them SAC had delivered judgments after their judicial review. In 4 of these cases SAC confirmed the ADC refusals to find discrimination;⁷⁶ in 3 of them SAC quashed the progressive ADC decision in which it had found discrimination;⁷⁷ in 1 of the cases SAC affirmed the ADC conclusion for discrimination but reduced significantly the imposed fine on the perpetrator;⁷⁸ and in one case the court proceedings were terminated because the applicant withdrew his appeal against the ADC decision.⁷⁹

One of the most serious deficiencies of the SAC case law is that it often denies the application of PADA as *lex specialis* and the competence of the Commission in reviewing discriminatory practices in various fields thus justifying discriminatory practices through the application of other laws. For example, in a case of unfair treatment by the electricity supplier toward the entire Roma settlement, regardless whether the clients were regular payers or not, on the sole ground that some Roma in that neighbourhood did not pay their bills, SAC held that such practice could not be viewed as discrimination but only as a breach of contractual obligations between the parties. SAC quashed the Commission's decision, which had found the practice in issue discriminatory, ruling that ADC was not competent to review such violations.⁸⁰ This approach derogates the universal scope of PADA and seriously contradicts the legislator's aim to give uniform regulation of protection against all forms of discrimination. Moreover, such case law has a potential to seriously undermine the quality of the anti-discrimination protection and thus make it controversial and uneven.

Another serious weakness of the SAC case law is that the court gives very wide margin of appreciation to various entities, such as employers, suppliers of services, etc., when assessing their actions. SAC often affirms the legitimacy of discrimination practices on the sole ground that they have their legal basis in administrative acts (administrative orders, or other), thus refusing to subject to critical analysis such practices. For example, SAC refused to recognize as discriminatory the measure adopted by the electricity supplier making the electricity measurement devices visually inaccessible in Roma settlements. The court held that the possibility for adoption of such measure had been regulated in an administrative act and had been applied by the supplier accordingly, hence no discrimination was established.⁸¹ SAC bluntly accepted that the measure is adopted accordingly; despite the fact that the legislation allows such measures generally, the court refused to review it from the point of view of the less favourable treatment that it had created, i.e. whether it had been applied only to Roma clients and not to clients of non-Roma origin.

Another problematic aspect is the tendency of the court to avoid subjecting to critical analysis the reasons claimed by the perpetrators of the alleged discrimination thus easily justifying their actions. For example, SAC gave full credit to the employer's explanation for the sudden refusal to hire a driver, of Roma origin, after the initial approval of his candidacy, on the ground that the candidate lacked sufficient education. The court was reluctant to verify the real reason under that decision

74 Judgment No. 12457 of 12 December 2006, adm. case No. 9168/2006.

75 See para. 125 of the government report.

76 Judgments No. 3114 of 26 March 2007, adm. case No. 5372/2006; No. 5153 of 23 May 2007, adm. case No. 11563/2006; No. 11044 of 11 December 2007, adm. case No. 7778/2007; No. 12961 of 21 December 2006, adm. case No. 5371/2006.

77 Judgments No. 7914 of 24 July 2007, adm. case No. 1219/2007; No. 6238 of 28 May 2008, adm. case No. 280/2008; No. 7855 of 20 July 2007, adm. case No. 6632/2006.

78 Judgment No. 12457 of 12 December 2006, adm. case No. 9168/2006.

79 Decision No. 8885 of 13 September 2006, adm. case No. 4531/2006.

80 Judgment No. 7811 of 19 July 2007, adm. case No. 1048/2007.

81 Judgment No. 10899 of 7 November 2007, adm. case No. 5/2007. Similarly, Judgment No. 6238 of 28 May 2008, adm. case No. 280/2008.

despite the fact that a person with less professional driving qualifications was hired for the position and that other drivers in the same establishment had the same education as the rejected candidate. In another instance, SAC uncritically accepted that the eviction of a tenant of a Roma origin from a building was based on a decision of the residents and not on her ethnicity, without analyzing the reasons behind that residents' decisions.⁸² These holdings demonstrate SAC's readiness to allow full discretion to the private parties with the effect of excluding their actions from any judicial supervision. Such approach shows the incorrect understanding of the court about its powers under PADA and makes the anti-discrimination protection illusory and ineffective.

A very significant weakness which, again, demonstrates the court's insufficient understanding of the concepts of discrimination is that the court requires a discriminatory *intent* from the perpetrators (for example, in justifying the impugned measure, SAC emphasized the lack of discriminatory purpose toward Roma citizens on the part of the municipality in adopting a ban on driving carts on the city roads).⁸³ Such approach is in direct contradiction with the law and the European and international anti-discrimination standards, which view discrimination as an objective fact regardless of the subjective attitude of the perpetrator.

This incoherence in the SAC case law and the serious deficiencies in its approach toward the protection against discrimination hinder the adequate application of the anti-discrimination legislation. The described shortcomings leave without any judicial supervision various potentially dangerous practices; they affirm ADC ungrounded conclusions or suppress its progressive decisions thus forcing ADC to self-restrict and self-censure its proactive approach; last but not the least, these shortcomings inevitably lead to undermining of the effectiveness of the anti-discrimination protection. There is still a long way to go before an optimal application of PADA is achieved.

Article 7

Negative prejudices and social distances towards ethnic minorities in Bulgaria are high and there haven't been any positive developments over the past 15 years. They are particularly high towards the Roma. Table 3 below presents the results of four surveys of inter-ethnic attitudes conducted on representative samples of ethnic Bulgarians between 1992 and 2005.⁸⁴

Table 3
Attitudes to Social Distance of Bulgarians towards Roma (1992-2005)

“Would you agree or disagree to”:	Proportion of respondents disagreeing (per cent)			
	1992	1994	1997	2005
Maintain friendship with Roma	64	70	72	67
Live in the same neighborhood with Roma	63	60	69	63
Work with the same workplace with Roma	39	49	36	52
Live in one country with Roma	34	28	38	27

Source: Representative surveys of inter-ethnic attitudes conducted by different agencies in Bulgaria in 1992, 1994, 1997 and 2005.

The government ignores these alarming high rates and the lack of positive developments over time.

⁸² Judgment No. 5153 of 23 May 2007, adm. case No. 11563/2006.

⁸³ Judgment No. 6407 of 30 May 2008, adm. case No. 2564/2007. The case concerns a municipal ban on driving carts on the city roads, which measure disproportionately affects the Roma as the main users of carts in the city.

⁸⁴ See more on the methodology and additional results in: Krassimir Kanev, “Changing attitudes towards the ethnic minorities in Bulgaria and the Balkans 1992-97”, in: Thanasis Sfikas and Christopher Williams (eds.), *Ethnicity and Nationalism in East Central Europe and the Balkans*, Ashgate, Aldershot etc., 1999; БХК, *Пет години по-късно: неправителствените проекти за десеграция на ромското образование в България* (ВНС, *Five Years Later: Non-governmental Projects for Desegregation of Roma Education in Bulgaria*), Sofia, 2005.

Instead, it talks of the “traditional tolerance of Bulgarian society towards minority groups”.⁸⁵ NGOs and some media try to promote understanding, tolerance and intercultural dialogue among ethnic groups. Many initiatives described under Article 7 of the government report are private non-governmental projects, which do not always benefit from the support of governmental institutions. The legal framework prohibiting broadcasting of national, racist, religious and other intolerance⁸⁶ remained by and large a dead letter and could not stop the widespread propaganda of hate by some media.

III. Recommendations

In the light of the above findings, the BHC and ERRC recommend that the Bulgarian government:

- Undertake legislative measures to ensure that for all criminal offenses racist motivation constitutes an aggravating circumstance;
- Adopt measures to prevent, identify, and where occurring, punish manifestation of racial bias among law enforcement officials;
- Investigate promptly and impartially incidents of violence and abuse of Roma, other ethnic minorities and foreigners by law enforcement officials and prosecute the perpetrators of such crimes to the fullest extent of the law;
- Take adequate measures to investigate and prosecute those responsible for incitement of hatred and discrimination through the print and audiovisual media;
- Speak out against racial discrimination and promote tolerance toward ethnic minorities;
- Abolish all other practices of institutional racism;
- Conduct human rights and anti-racism trainings for the public administration, medical practitioners, members of the police force and the judiciary;
- Implement measures to order to increase the capacity of the equality body and the National Human Rights Institutions to deal with cases of racial discrimination;
- Abolish the practice of race-based segregation of Romani children in Roma-only schools and classes, including remedial schools for children with developmental disabilities and other forms of racial segregation in the school system;
- Implement a comprehensive school desegregation plan, such that all Romani children may enjoy equal access to quality education;
- Adopt legal and policy measures without delay to protect Roma from forced and arbitrary evictions; without further delay undertake positive measures on the housing of Roma;
- Adopt legal and policy measures to ensure that evictions, when carried out, satisfy respect for the dignity of the persons concerned, even when they are illegal occupants, and that alternative accommodation or other compensatory measures are available in order to ensure that the persons evicted are not made homeless;
- Adopt policy measures ensuring that Roma are able effectively to realize rights to employment, health care, and access to social assistance and to public goods and services;
- Remove all time limits on social assistance and ensure that the right to social assistance is exercised on a non-discriminatory basis;
- Ensure that members of the Macedonia minority in Bulgaria are not discriminated in the exercise of their human rights;
- Undertake measures in the spheres of education and culture to combat prejudices towards minorities.

85 Para. 206 of the government report.

86 See para. 314 of the government report.