



COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME



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Mr Nickolay MLADENOV
Minister for Foreign Affairs

Strasbourg, 24 January 2012

Dear Minister Mladenov,

In order to continue the dialogue between my Office and your authorities, I would like to follow up on the issues of the human rights of children in institutions and the human rights of Roma and other minorities which I raised previously in my letter to the Prime Minister of Bulgaria, Mr Boyko Borisov, dated October 2010 and in my report on my November 2009 visit, published on 9 February 2010.

In the appendix to the present letter I have described my current concerns on the issues raised in previous communications.

I intend to publish this letter with its appendix in the second half of February and warmly invite your authorities to submit comments before 15 February 2012 should you like them be published on my website at the same time.

I look forward to continuing a constructive dialogue on human rights with you and your government.

Yours sincerely,

Thomas Hammarberg

Appendix

The human rights situation of children in institutions and of Roma and other minorities in Bulgaria

Human rights of children in institutions

1. In his 2010 report the Commissioner commended the steps taken by Bulgaria to develop an effective national child protection system, including the Child Protection Act of 2000 and the establishment of the State Agency for Child Protection (SACP) in 2001. Given that ten years have passed since their adoption, an in-depth analysis and possible overhaul of the existing system and its mechanisms would be timely. The experience of the authorities to date should feed into a reform process which seeks to better ensure that the human rights of the child are observed and in particular that the principle of the child's best interest is effectively respected in all circumstances. As highlighted in the Commissioner's 2010 report, the roles and responsibilities attributed to the different authorities need to be clearly defined to improve co-ordination and avoid potential conflicts of interest between the different actors involved in the protection of children's rights.
2. In his 2010 report the Commissioner also welcomed the measures taken in Bulgaria towards improving the living conditions of children in institutions through deinstitutionalisation. However, he is deeply concerned at reports indicating that the situation of children living in some institutions remains seriously substandard. In 2010, an NGO active in the field of children's rights together with the Prosecutor's office conducted field research into conditions in institutions for children with mental disabilities, including an investigation into the deaths of 238 children over the previous ten years. The detailed findings of this research were submitted to the UN Committee against Torture in October 2011.¹
3. The findings revealed that children in institutions were subjected to practices of malnourishment, violence, physical restraint and incapacitating drugs. Sick children were sometimes not hospitalised, or were hospitalised too late, and basic needs such as adequate heating, food and vital medication were not provided. Furthermore, overcrowding and the small size of most rooms fostered acts of aggression and self-injury. As of 30 September 2011, 180 investigations have been initiated, 146 of which relate to cases resulting in death. However, the Commissioner understands that no case has reached a court so far.
4. The Commissioner calls upon the Bulgarian authorities to ensure that full and effective investigations into these allegations are carried out and that the perpetrators are brought to justice. Efforts to step up the deinstitutionalisation of children must be intensified as a matter of priority. He hopes that the National Strategy "Vision of Deinstitutionalisation of Children in Bulgaria" launched in February 2010 will be instrumental in providing proper care for children, in particular those with disabilities.
5. Furthermore, the Commissioner is aware of research findings indicating that Roma children are overrepresented among children in institutional care, although no official data appears to be available. A study conducted by a human rights NGO identified the key

¹ See http://www2.ohchr.org/english/bodies/cat/docs/ngos/BHC_Bulgaria47.pdf

- causes for the institutionalisation of Roma children as family poverty, low educational level of parents, migration of parents in search of employment, poor housing conditions, a lack of adequate community services tailored towards Roma families, and a lack of effective family planning programmes which can tackle, not least, the protection of Roma children from abandonment.²
6. The Commissioner believes that the implementation of the new strategies on Roma integration and the deinstitutionalisation of children provides an opportunity to gather data about the representation of Roma children in institutions and the reasons behind any imbalances, and to elaborate alternatives.
 7. The Commissioner also notes that a new education law is currently being prepared. He hopes that this law will remedy the shortcomings highlighted by the European Committee of Social Rights under the collective complaints mechanism in 2008 (decision of 03/06/2008) finding that children with moderate, severe and profound intellectual disabilities living in “Homes for Mentally Disabled Children” in Bulgaria did not have an effective right to education. He calls on the Bulgarian authorities to ensure the right to inclusive education for children with disabilities in an equal manner. The Resolution of the Parliamentary Assembly of the Council of Europe on guaranteeing the right to education for children with illnesses or disabilities provides further guidance on steps that member states should take to this end.³
 8. The Commissioner considers that the position of children with disabilities, including those living in institutions, would be strengthened by the ratification by Bulgaria of the UN Convention on the Rights of Persons with Disabilities. Such a step would be all the more welcome following a recent judgment of the European Court of Human Rights (the Strasbourg Court) in a case against Bulgaria concerning a person placed in a social care home for people with psychiatric disorders, in which the Court, *inter alia*, pronounced itself clearly on the duties of a state to guarantee anyone who has been declared partially incapable direct access to a court to seek restoration of his or her legal capacity.⁴

Human rights of Roma

9. Despite a number of measures already taken, Roma in Bulgaria remain socially excluded and marginalised. Their enjoyment of rights to adequate housing, education and healthcare, continues to be assessed as worryingly limited. On previous visits to Bulgaria in 2008 and 2009, the Commissioner visited Roma settlements and was alarmed at their seriously substandard conditions. He notes that the former UN Independent Expert on Minority Issues, Ms Gay MacDougall, has since expressed similar concerns. The Commissioner regrets that only limited progress has been made in securing enjoyment by Roma of their right to adequate housing.
10. The Commissioner welcomes the new 2012-2020 National Strategy for Roma Integration of the Republic of Bulgaria and the Action Plan for its implementation published in November 2011, which aims to adopt a more comprehensive and systematic approach to Roma integration. He notes that the National Council for Co-operation on Ethnic and Integration Issues will evaluate implementation through a yearly report and stresses the need to ensure that effective monitoring tools are available to closely and continuously scrutinise implementation in all key areas included in the strategy. The involvement and commitment of local authorities will play a crucial role in ensuring successful implementation in particular in the areas of housing and education.

² See <http://issuu.com/bghelsinki/docs/bhk-2-11-eng>

³ PACE Resolution 1761 (2010), Guaranteeing the right to education for children with illnesses or disabilities, adopted on 7 October 2010.

⁴ *Stanev v. Bulgaria*, Grand Chamber judgment of 17 January 2012.

11. The Commissioner notes that the full implementation of certain projects will only be possible in the medium or long term. In the short term, however, he considers that the currently intolerable housing situation of many Roma living in settlements without a regular water supply, electricity, gas and heating should be addressed.
12. The Commissioner is also aware that many Roma families have been subjected to forced evictions, which have resulted in substandard living conditions or homelessness. The Commissioner recalls that forced evictions should be avoided. When this is not possible, they should take place in full compliance with international standards, which include adequate alternative accommodation, due process and legal remedies, compensation and protection from homelessness. Furthermore, legalising and improving already existing accommodation, in close consultation with the people concerned, should be considered as an option.
13. The Commissioner recalls that the substandard housing conditions of many Roma families living in settlements cause certain health problems, such as hepatitis and infectious diseases. Improved housing conditions will enhance the health situation of the population concerned, while also contributing to a reduction in the public expenditure needed to treat these conditions. The Commissioner recommends that the successful Roma Health Mediator programme be continued and intensified.
14. The Commissioner welcomes the commitment of the Bulgarian authorities to providing access to quality education for Roma children and to promoting their integration. He hopes that adequate resources will be allocated to ensure that the goals defined in the new strategy for Roma integration in this area can be achieved. The disproportionately high school drop-out rate must be combated. The Commissioner strongly recommends that the authorities remove all practical obstacles to free school access and provide for concrete individual support for children who require it. School desegregation projects should be promoted.
15. The Commissioner remains concerned about reports of racist attacks on members of Roma communities. In September 2011 in the village of Katounitsa, following a lethal traffic accident involving a driver of Roma origin, a series of violent protests and attacks on Roma was reported. The incident has reportedly created a climate of insecurity within the community. The Commissioner urges the Bulgarian authorities to ensure that all racially motivated offences are duly investigated, in line with Council of Europe standards, and the perpetrators punished in accordance with the law. Negligence resulting in overly lenient punishment could be perceived as a form of impunity and contribute to a further break-down in social cohesion.
16. In line with the commitment expressed by the member states of the Council of Europe in the Strasbourg Declaration on Roma in October 2010, it is essential that Roma inclusion policies be placed and remain as a high priority on the Bulgarian human rights agenda. The Commissioner stresses the importance of public support from the highest political level for Roma inclusion policies – emphasising the need to combat discrimination and anti-Gypsyism as an integral part of these policies – in generating wide-spread support among the general public for the inclusion agenda.
17. The Commissioner welcomes efforts by the Bulgarian authorities to pursue Roma inclusion objectives through strategies and action plans. He encourages the authorities to make full use of the guidance provided by the Council of Europe Committee of Ministers' Recommendation CM/Rec(2008)5 on policies for Roma and/or Travellers in Europe in developing these strategies.

Protection against discrimination, racism and intolerance towards minorities

18. In his 2010 report the Commissioner commended the work of the Commission for Protection against Discrimination (CPD), which was established in 2005 as an equality body and complaints mechanism for cases of alleged discrimination. The Commissioner notes that since this date the number of complaints has continued to increase, notably on aspects relating to labour discrimination and the rights of persons with disabilities. He furthermore notes that the position of the CPD is currently weakened by the fact that a draft law reducing the number of members of the CPD is pending before parliament.
19. While he notes the need for administrative and budgetary reforms, the Commissioner recalls the importance of human rights bodies in providing protection for each individual and especially for the most vulnerable. He stresses that the weakening of such bodies through budget cuts may lead to undesired results for individuals as well as society at large. The Commissioner strongly recommends that the Bulgarian authorities ensure a sufficient allocation of resources to national human rights protection bodies, in particular the CPD and the Ombudsman, in order to enable them to carry out their work effectively. Furthermore, the Commissioner reiterates his recommendation for the establishment of an independent police complaints mechanism in Bulgaria for the impartial investigation of alleged police misconduct.
20. In his 2010 report, the Commissioner also welcomed the work of the National Council for Cooperation on Ethnic and Demographic Issues (NCCEDI). The Council, which is the body responsible for consultation on and co-ordination of national policies regarding persons belonging to ethnic, religious or linguistic minorities, was renamed in April 2011 as National Council for Cooperation on Ethnic and Integration Issues (NCCEII), in order to better reflect its focus. However, the Commissioner notes that Bulgarians of Macedonian origin and Bulgarian-speaking Muslims (Pomaks) are still not represented in this body and calls upon the Bulgarian authorities to fill this gap in close co-operation with the representatives of these communities.
21. The Commissioner has continued to receive reports concerning racist attacks against members of minority groups. In 2011, verbal and physical assaults were perpetrated against the Jewish and Muslim communities including the vandalising of their places of worship, and an attack on Jehovah Witnesses recurred in 2011. The Commissioner calls upon the authorities to fully and effectively investigate all such attacks and bring identified perpetrators to justice without delay.
22. The Commissioner appreciates the progress made since his 2010 report on freedom of assembly as organisations of persons within the Macedonian community have been able to exercise this right by holding commemorative meetings and organising numerous other events. Consequently, the Committee of Ministers closed the supervision of the respective cases with a final resolution in June 2011.⁵
23. However, the Commissioner remains concerned about the difficulties associations of Macedonians continue to face when trying to register. He notes that the supervision of the execution of the respective case is still pending at the Committee of Ministers since 2006 and that the Strasbourg Court found another violation in the same matter.⁶ The Commissioner is further aware that numerous attempts for (re)-registration of the once dissolved political party UMO Ilinden – PIRIN have been unsuccessful. He notes that in 2011 the Strasbourg Court did not find a violation in this regard as the party could still

⁵ CM/ResDH(2011)46 *UMO Ilinden and Ivanov and Ivanov and others v. Bulgaria* (judgments of 20 October and of 24 November 2005).

⁶ *UMO Ilinden and others v. Bulgaria (no. 2)*, judgment of 18 October 2011.

- apply for registration in compliance with the respective legal requirements.⁷ In this regard, the Commissioner reiterates the importance of domestic laws on freedom of assembly being precise and their application proportionate. He recommends that a solution be found through an open and sincere dialogue in line with Council of Europe standards.
24. Regarding the enjoyment of freedom of religion of the Muslim community, in his 2010 report and letter the Commissioner drew the attention of the Bulgarian authorities to the judgments of the Strasbourg Court where the latter found that there had been an unjustified interference between 1995 and 1997 in the internal organisation of the divided Bulgarian Muslim community, in connection with the replacement of its recognised leadership and the manner in which the executive participated in the organisation of a conference aimed at unifying the community.⁸
 25. The Commissioner welcomes the progress made in the context of the 2002 Religious Denominations Act, recognising religious freedom as a fundamental right. He notes that this Act provided the basis for the closure by the Council of Europe Committee of Ministers of its supervision of the aforementioned judgments in December 2011. The Commissioner observes that the decisions of the Muslim community taken by their national conference in February 2011 have been duly registered by the responsible Sofia Appellate Court in April 2011, and that consequently the elected leader Chief Mufti Dr Mustafa Alish Hadzhi has been reinstated.
 26. As to outstanding issues relating to the past practice of forced, ethnic assimilation of Bulgarian citizens of Turkish origin, the Commissioner welcomes the declaration adopted by the Bulgarian Parliament on 11 January 2012 condemning the assimilation process against the Muslim minority, including the so called 'Revival Process' and urging the country's chief prosecutor and judicial authorities to make sure that the lawsuits against the alleged masterminds of the campaign be brought to a conclusion. The Commissioner hopes that this will facilitate progress on issues concerning the victims of these practices. Members of this minority who were arbitrarily placed in the Belene island camp are still seeking compensation in lengthy judicial proceedings. Furthermore, the issue of the pension rights of ethnic Turks now living in Turkey as a result of the "Revival Process" remains unresolved in a number of cases, with the premiums paid and time spent in Bulgaria not being accounted for.
 27. In view of the fact that the remaining victims of the so-called "Revival Process" are elderly and have borne considerable suffering, the Commissioner urges the Bulgarian authorities to engage in reconciliation and find solutions which are speedy and satisfactory for all.

⁷ *UMO Ilinden – PIRIN and others v. Bulgaria* (no. 2), judgment of 18 October 2011.

⁸ *Hasan and Chaush v. Bulgaria* (judgment of 26 October 2000) and *Supreme Holy Council of the Muslim Community v. Bulgaria* (judgment of 16 December 2004).