



BULGARIA

AMNESTY INTERNATIONAL SUBMISSION TO THE UN UNIVERSAL PERIODIC REVIEW 22ND SESSION OF THE UPR WORKING GROUP, APRIL-MAY 2015

FOLLOW UP TO THE PREVIOUS REVIEW

During its first UPR in 2010, Bulgaria accepted recommendations to fight all forms of religious hatred, discrimination, racism, extremism and xenophobia;¹ to implement provisions of the Criminal Code to prevent human rights violations committed against minorities;² to prevent and punish racially motivated crimes;³ and to tackle manifestations of racism and xenophobia and review the relevant law.⁴ While welcoming Bulgaria's acceptance of these important recommendations, Amnesty International is concerned that the government's commitment to prevent, address and remedy hate crimes has not resulted in the adoption of adequate measures to tackle the issue. Both the legal framework and practice fall short of the requirements of international human rights standards on hate crimes, as discussed below.

Bulgaria also accepted a recommendation to adopt domestic legislation in accordance with the 1951 Convention on the Status of Refugees and its Optional Protocol, guaranteeing effective access to procedures for determining refugee status to persons requiring international protection. It argued, however, that this recommendation had already been implemented.⁵ Unfortunately, despite the endorsement of this recommendation, the situation of refugees and asylum-seekers has been affected by systemic inadequacies, especially with regard to reception conditions and illegal push-back from Bulgarian territory.

THE NATIONAL HUMAN RIGHTS FRAMEWORK

INADEQUATE LEGISLATION ON HATE CRIMES

During the 2010 review, the Bulgarian government "took note" of a recommendation to study the possibility of introducing a criminal aggravating factor for racial and religious hatred or hatred against persons with a minority sexual orientation.⁶ The government stated that under the Criminal Code, the courts take into consideration, *inter alia*, the motives for the commission of a particular offence, including possible racist motives. If it is established by the Court that the motivation for the commission of a particular offence is racist, this is considered as an aggravating circumstance in all cases.⁷ However, Amnesty International's research suggests that the criminal justice system continues to fail to thoroughly investigate and prosecute crimes where discrimination is an alleged motive.⁸ Thus, hate as a motive was investigated in only one out of 16 cases of allegedly discriminatory violence researched by Amnesty International in 2013 and 2014. In many of these cases the investigation and prosecution considered the motive to be hooligan rather than racial in nature.⁹

In June 2014, in its fifth report on Bulgaria, the European Commission against Racism and Intolerance (ECRI) welcomed the introduction of enhanced penalties for murder and causing bodily harm when such crimes are committed with hooligan, racist or xenophobic motives. However, ECRI expressed concern that discriminatory violence perpetrated against Roma, Muslim, Jews and non-traditional religious groups and their property, is seldom prosecuted under the criminal law provisions specifically enacted for "hate crimes", rather they are prosecuted under "hooliganism".¹⁰

The Criminal Code does not include disability, real or perceived sexual orientation or gender identity as protected characteristics on the basis of which a hate crime can be perpetrated.¹¹ A process to revise the Criminal Code was initiated in January 2014, and a draft partially addressing these concerns was opened for public consultation.¹² However, since the fall of the government in July 2014, the revision of the Criminal Code has been suspended.

In March 2014, the European Court of Human Rights found in *Abdu v Bulgaria* that the authorities had failed to thoroughly investigate the racist motive associated with the physical assault of a Sudanese national in 2003. The judgement adds to a range of European Court judgements emphasizing the duty of the Bulgarian authorities to investigate any illegal acts induced by hatred, whether committed by members of the public or private officials.¹³

In 2011, the UN Human Rights Committee raised concerns regarding hate crimes against minorities including Muslim and Roma and called on Bulgaria to implement current legislation to tackle such crimes.¹⁴

LACK OF COMPREHENSIVE DATA COLLECTION

During the previous review, Bulgaria rejected a recommendation to gather statistics on the various groups accessing public services in order to obtain an accurate picture of the use of services by different minorities.¹⁵ The government argued that personal data relating to ethnic or religious affiliation could be collected only on a voluntary basis by the National Statistical Institute. However, international human rights law, as well as European data protection legislation, provide for collection of anonymous aggregate data. Under the Convention for Elimination of All Forms of Racial Discrimination, Bulgaria is further obliged to identify forms and causes of ethnic and racial discrimination. In order to do so, it must collect data.¹⁶

THE HUMAN RIGHTS SITUATION ON THE GROUND

RIGHTS OF REFUGEES, ASYLUM-SEEKERS AND MIGRANTS

Since August 2013, Bulgaria has experienced a significant increase in the number of asylum-seekers and migrants entering the country. The number exceeded 11,000 by the end of 2013, compared with about 1,700 in 2012.¹⁷ The authorities have failed to take adequate measures to respond to the situation. Hundreds of people in need of international protection have lived for months in sub-standard reception conditions without access to asylum procedures. When the numbers of asylum-seekers in Bulgaria reached 6,000, in late September 2013, the State Agency for Refugees announced that the reception centres had reached full capacity.¹⁸ In a response to what they called “an influx of migrants”, the authorities opened new four reception centres. Two were located in abandoned schools in Sofia in the districts of Voenna Rampa and Vrazhdebna, one in a former military complex in the town of Harmanli, and one in a former summer camp in Kovatchevtsi. These “new” centres have not been converted into accommodation facilities and offer wholly inadequate living conditions.¹⁹

In a response to this situation, the UNHCR stated in January 2014 that asylum-seekers in Bulgaria face a real risk of inhuman and degrading treatment due to systemic deficiencies.²⁰ It called on EU member states to suspend transfers of asylum-seekers back to Bulgaria.²¹ In April 2014, the UNHCR again reviewed the situation in Bulgaria and found that despite some progress made by the authorities, serious gaps remained in the asylum system. It lifted the call for a general suspension of transfers with the exception of certain groups, especially those with special needs.²²

In November 2013, the government had adopted a “contingency plan” aimed, among other things, to decrease the number of “illegal immigrants” and asylum-seekers in Bulgaria. This was supposed to be achieved through a number of measures, including increased monitoring of the border and cooperation with the Turkish authorities. In 2014, the number of migrants and refugees entering through the border with Turkey dropped drastically, to a total of only 1,801 persons having entered Bulgaria via this route by July 2014.²³ The Bulgarian authorities have described the border control measures implemented since November 2013 as “effective”; for example, in September 2014, the Deputy Minister of Interior stated that it is due to these measures that there is no refugee crisis in Bulgaria.²⁴

Throughout the 2014, NGOs have reported a number of illegal push-backs across the border.²⁵ The government, however, has denied such allegations, and an official investigation was initiated in only one case.

In July 2014, Bulgaria completed the construction of a 30km fence on the border with Turkey. The fence was presented as one of the measures to control the flow of refugees and migrants. The UNCHR expressed concerns that it may prevent people in need of international protection from entering Bulgarian territory.²⁶

Integration of refugees

In the period since the last review, recognized refugees have continued to experience problems in accessing education, housing, health-care and other public services. In July 2014, the government rejected the annual plan for the implementation of the National Strategy for the Integration of Beneficiaries of International Protection in Bulgaria.²⁷ As a result, integration programs for refugees have stalled.

Refugee children regularly face difficulties in accessing primary education. According to the State Agency for Refugees, only 98 out of 520 of refugee children were enrolled in school in September 2014. This is in many cases due to the Schools Act, which requires new pupils to pass an exam in Bulgarian and in other subjects.²⁸ A draft Law on Asylum and Refugees, which was supposed to ensure that refugee children have unhindered access to primary education, has not been adopted due to the fall of the government.

HATE CRIMES

Xenophobic and racist violence

Racism and xenophobia towards ethnic minorities, including refugees, asylum-seekers and migrants, as well as Roma, remain a significant concern in Bulgaria. Between September 2013 and October 2014, Amnesty International undertook research into 17 violent attacks with a possible hate motive, carried out by groups or individuals between 2009 and 2014. This research has revealed serious concerns with regard to the investigation of reports of racially motivated crimes. This in turn has hampered access to effective remedies for victims of racially motivated attacks.

In response to the sharp increase of refugees and migrants entering Bulgaria through Turkey in the summer and autumn of 2013, discussed above, several far-right groups held anti-immigrant protests in November and December 2013.²⁹ Refugees and migrants have also reported attacks by individuals and organized groups, which has spread fear among the migrant communities in Bulgaria.³⁰

Since the last review, non-governmental organizations and media have reported new incidents of violence against Roma. The European Roma Rights Centre has published information on at least 14 violent attacks against Roma in 2011 and 2012.³¹ In three of these incidents, three Romani individuals were killed and 22 others suffered injuries. Some of these attacks took place in the aftermath of anti-Roma protests staged in several towns in September 2011, sparked by an accident in which a Bulgarian youth was killed by a Roma driver in Katunitsa.³²

In November 2013, the Ombudsman expressed concern about the rising racism and xenophobia in Bulgaria.³³ The data shared by Bulgarian authorities with the OSCE Office for Democratic Institutions and Human Rights confirms a worrying increase in the number of hate crimes perpetrated in Bulgaria.³⁴ Almost twenty times more cases were recorded by police in 2013, compared to 2011 and 2010 (data from 2012 is not available).³⁵

Attacks on LGBTI people

Since the last review, both ECRI and NGOs have continued to report cases of violence and attacks against LGBTI persons or those who are perceived as having a different sexual orientation or gender identity.³⁶

At the time of this writing, the trial was ongoing of the suspects for the murder of Mihail Stoyanov, a 25 year old medical student who was killed in 2008 in Borisova Garden (Sofia) by a group who claimed to be cleansing the park of gays. Although established during the investigation, the alleged homophobic motive of the crime was ignored by the

prosecutor in the indictment because of the gaps in the Criminal Code, which, as mentioned above, does not include sexual orientation as grounds for hate crimes. Instead, the perpetrators were indicted for "homicide with a hooligan motive".³⁷

The problems faced by authorities in effectively tackling hate crimes are exacerbated by the lack of comprehensive data, which hampers the identification of trends and adequate policy responses.³⁸

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Bulgaria to:

National human rights framework

- Ensure that the Criminal Code prohibits all crimes perpetrated against individuals or their property due to their real or perceived association with a group defined by a protected characteristic, and that real or perceived sexual orientation, gender identity and disability are included in the list of protected characteristics of hate crimes.

Hate crimes

- Ensure the investigation of all cases with an alleged hate motive, or where there is reason to believe that such a motive may have played a part, even if the victim has not made an allegation of that nature;
- Ensure that victims of hate crimes receive prompt and thorough information about developments in their cases, that they are able to be heard in the legal proceedings and that they are provided with legal and psychological support as appropriate;
- Provide general training on discrimination and hate crimes for police, judicial authorities and health professionals;
- Strengthen the data collection on hate crimes in a manner that respects human rights and that enables the data to be used to identify sources of discrimination and trends in hate crimes.

Refugees and migrants

- Halt the unlawful push-back of migrants and refugees across the border with Turkey and conduct prompt, effective, independent and impartial investigations into all allegations of such push-backs with a view to eradicating these practices;
- Guarantee the release of persons who make an application for international protection, including those detained on the grounds of irregular entry or failure to produce identity documents in accordance with Bulgarian law;
- Take measures to ensure that reception centres for refugees and migrants provide an adequate standard of living to guarantee their subsistence and to protect their dignity, and physical and mental health;
- Guarantee access to education for asylum-seeking children and refugee children without delay;
- Adopt the implementation plan for the National Strategy for the Integration and ensure that beneficiaries of international protection have access to education, housing, healthcare and livelihood opportunities.

END NOTES

¹ *Report of the Working Group on the Universal Periodic Review – Bulgaria*, 4 January 2011, A/HRC/16/9, recommendation 80.39 (Algeria).

² A/HRC/16/9, recommendation 80.40 (Mexico).

³ A/HRC/16/9, recommendation 80.41 (Malaysia).

⁴ A/HRC/16/9, recommendation 80.42 (Czech Republic).

⁵ A/HRC/16/9, recommendation 80.10 (Argentina). See also the Addendum to this report, *Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under Review*, 8 March 2011, A/HRC/16/9.Add.1, page 2.

⁶ A/HRC/16/9, recommendation 80.9 (Spain) and A/HRC/16/9.Add.1, page 2.

⁷ A/HRC/16/9/Add.1, Response to Recommendation no. 9.

⁸ *Because of who I am: Homophobia, Transphobia and Hate Crimes in Europe* (EUR 01/014/2013).

⁹ Interviews were carried out during Amnesty International's field visit in July 2014 in Sofia, Pleven and Plovdiv.

¹⁰ ECRI. Report on Bulgaria. Fifth monitoring cycle. Adopted on 19 June 2014. Para 57; ILGA Europe. Violence against lesbian, gay, bisexual, transgender and intersex people in the OSCE region. 2013, para. 58 and 59.

Article 325 of the Bulgarian Criminal Code states that "A person who performs indecent acts, grossly violating the public order and expressing open disrespect for society, shall be punished for hooliganism by deprivation of liberty for up to two years or by probation, as well as by public censure".

¹¹ See Amnesty International report "*Changing Laws, Changing Minds: Challenging Homophobic and Transphobic Hate Crimes in Bulgaria*" (AI Index: 15/001/2012) and "*Because of who I am: Homophobia, Transphobia and Hate Crimes in Europe*" (AI Index: 01/014/2013).

¹² The proposal includes sexual orientation among the protected characteristics, but fails to mention other protected characteristics under international human rights law, including gender identity and disability. This remains an issue of concern especially because the article includes a finite list of grounds.

¹³ *Nachova and Others v Bulgaria*, 26/02/2004, 43577/98; *Assenov et autres v Bulgarie*, 28/10/1998, 24760/94, *Hristov v Bulgaria*, 07/10/2008, 17608/02; *Sashov v Bulgaria*, 10/01/2010, 1414383/03; *Angelova and Iliev v Bulgaria*, 26/07/2007, 55523/00.

¹⁴ CCPR/C/BGR/CO/3, 19 August 2011, paragraph 9.

¹⁵ A/HRC/16/9, 80.24 (United Kingdom).

¹⁶ CERD, General Recommendation no. 4, Demographic composition of the population, 25/8/1973.

¹⁷ Bulgarian Ministry of Interior, *Daily Report of the National Operational Headquarters for Addressing the Increased Migratory Pressure Crisis Situation*, 2 January 2014.

¹⁸ See: <http://www.novinite.com/articles/154489/Another+93+Asylum-Seekers+Enter+Bulgaria+in+24+H>

¹⁹ Amnesty International: *Refugees in Bulgaria trapped in sub-standard conditions*, Index: EUR 15/001/2014, 13 December 2013.

²⁰ UNHCR, *Bulgaria as a country of asylum: UNCHR observations on the current situation on asylum in Bulgaria*, 2 January 2014 (available at: <http://www.refworld.org/pdfid/52c598354.pdf>)

²¹ Amnesty International, *Bulgaria: Refugees continue to endure bad conditions* (Index: EUR 15/001/2014), 6 January 2014.

²² UNHCR, *Bulgaria as a country of asylum: UNCHR observations on the current situation on asylum in Bulgaria*, April 2014 (available at: <http://www.refworld.org/docid/534cd85b4.html>).

²³ Bulgarian Ministry of Interior, *Daily Report of the National Operational Headquarters for Addressing the Increased Migratory Pressure Crisis Situation*, 11 July 2014.

²⁴ Novinite: "*Influx of Immigrants to Bulgaria via Greece Increases 10 Times*", 5 September 2014. Available at: <http://www.novinite.com/articles/163160/Influx+of+Immigrants+to+Bulgaria+via+Greece+Increases+10+Times>

²⁵ See summary of the NGO reports in: *Amnesty International: "Push-backs across the border? – The 'dirty work' of keeping refugees out of Bulgaria"*, 17 July 2014.

²⁶ See for example: Reuters: "*Bulgaria's fence to stop migrants on Turkey border nears completion*", 17 July 2014 (available at: <http://www.reuters.com/article/2014/07/17/us-bulgaria-refugees-fence-idUSKBN0FM1ZF20140717>).

²⁷ Sega online: "The government blocked plan for refugees", 31 July 2014.

²⁸ Email communication between Amnesty International and Bulgarian State Agency for Refugees, 19 September 2014.

²⁹ Amnesty International wrote to the Bulgarian authorities (Minister of Interior, Chief of Bulgaria National Police, Chief of Sofia Police and Chief Prosecutor) on 11 December 2013 raising concerns and seeking clarifications on the attacks and reports of vigilante groups.

³⁰ See AI news story "*Bulgaria must rein in xenophobic and racist violence after seven attacks in a month*" (2 December 2013), and AI news story "*Bulgaria: Migrants living in fear after xenophobic attacks*" (12 November 2013).

³¹ See ERRC "*Attacks against Roma in Bulgaria: September 2011 – July 2012*", Available at <http://www.errc.org/cms/upload/file/attacks-list-in-bulgaria.pdf>

³² See Amnesty International Public Statement "*Bulgaria: authorities must urgently act to stop the escalation of violence targeting the Roma community*".

³³ See the statement published on 6 November 2013 (in Bulgarian): <http://www.ombudsman.bg/public-positions/2845>

³⁴ According to the official country information recorded by OSCE/ODIHR for 2013, 651 hate crimes have been recorded in 2013 by the police in Bulgaria, out of which 300 have been prosecuted and in 239 cases sentences have been issued. However, the data reported to ODIHR do not present cases of hate crime, incitement to hatred and discrimination separately. Data available at <http://hatecrime.osce.org/bulgaria>

³⁵ OSCE/ODIHR Hate Crime Reporting. Country Information. Available at: <http://hatecrime.osce.org/bulgaria>

³⁶ ECRI. *Report on Bulgaria*. Fifth monitoring cycle. p.21.

³⁷ Copy of the indictment (in Bulgarian) issued by the Sofia city Prosecutor on 2 August 2013 is on files of Amnesty International.

³⁸ Officials statistics on crimes against equality (self-standing articles 162-165) are collected at the level of investigation, prosecution and sentence, and data on murders and bodily injuries (article 116.1.11 and 131.1.12) perpetrated with a hooligan, racist and xenophobic motive are equally collected. However, all the authorities interviewed by Amnesty International in July 2014 pointed out that such data are not desegregated by each motive, therefore the official statistics do not provide specific information on crimes perpetrated with either a racist and xenophobic motive (which qualify as "hate crimes").