

Protection of National Minorities in Bulgaria:

The Case of Roma

# Roma Shadow Report

On implementation of the FCNM

*PREPARED BY*

*THE HUMAN RIGHTS PROJECT*

*AND*

*ROMANI BAHT FOUNDATION*

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# **I. Organizations' identifications and statement of missions**

## **I.1 THE HUMAN RIGHTS PROJECT (HRP)**

HRP is a Roma rights advocacy organization, which was founded in 1992. With its activities the Human Rights Project is pursuing the following goals:

- prevention of inhuman and degrading treatment of Roma;
- ensuring equal protection of Roma by law;
- abolition of discriminatory treatment of Roma and ensuring their equal participation in society.

The HRP focuses on: human rights monitoring and reporting of human rights abuse against Roma in Bulgaria; legal representation and legal services on behalf of Roma; human rights education of Roma; advocacy of Roma rights at domestic and international level.

Up to the present day, Bulgarians and Roma from all over Bulgaria are working in the Human Rights Project. Maybe this was the reason why, for the ten years of its existence, the HRP has established itself both in the country and on the international scale as an organization which is a successful intermediary between the Bulgarian institutions and the Roma community.

The HRP has created, and has been still proving in its work, the possibilities and the vitality of the model of full-blooded ethnic mutual understanding. The organization continues to be a center for finding out feasible solutions benefiting to an equal degree and under equal conditions all citizens of Bulgaria, irrespectively of their ethnic origin, their specific religious and cultural distinctions.

During the ten years of its existence, the HRP has established itself as an organization that provides independent and true information on the situation of the rights of the Roma in Bulgaria. This activity of the organization has been evaluated by intergovernmental institutions such as the Council of Europe and the OSCE which have resorted to the cooperation

of the HRP in their investigations on the observance of the rights of the Roma in Bulgaria and have quoted facts documented by the HRP.

The Human Rights Project has been working as a partner of international NGOs such as the International Helsinki Federation of Human Rights (Vienna) and the European Roma Rights Center (Budapest).

The Human Rights Project is working in two main directions, through its main working programs: ‘Monitoring of the situation of human rights in Bulgaria and legal defense for Roma’ Program and ‘Advocacy, education and media’ Program.

## **I.2 ROMANI BAHT FOUNDATION (RBF)**

RBF has been founded in 1995 and legally registered in 1996. Since the very beginning the organization implements legal programs, focused on three main directions: 1. Legal education for the Roma community; 2. Legal consultation for the Roma community and securing legal representation in cases of human rights abuses and discrimination on ethnic base; 3. Advocacy programs aimed to facilitate the relationships between the Roma community and state and local administration as well as for establishing anti-discrimination provisions within the existing legal system and comprehensive antidiscrimination act. At the beginning, the projects provided services for the Roma community in Fakulteta district in Sofia. In 2001 the activities within the framework of the legal programs were extended in the other Roma neighborhoods in Sofia - Philipovtzi and Christo Botev.

The unique characteristic about the Romani Baht Foundation is that the organization develops grass root activities ever since its creation. The most important thing for the team is to develop programs, which respond to the defined needs of the community. This type of work gained a prestige and trust for the organization among the Roma community. Romani Baht established branch offices in two districts in Sofia and maintains its central office in Fakulteta district. The organization has also created Legal Informational Center, to gather the information from the grass root offices and produce newsletter. Romani Baht appointed three young Roma boys and girls to work as coordinators of the Godi e Romenge project for

Fakulteta and the other two offices - in Filipovtzi and Christo Botev. These three Roma assistants undertook a basic legal educational course in Romani Baht.

In most of the cases the state institutions also prefer to work with the foundation as partners, because this model of solving the problems has been proven as a successful one.

Basic goals, which are implemented within the legal project in 2002 are:

Mediation between the Roma community and state and local authorities;

Creation of partnership and tolerance between Roma community and Bulgarian civic organizations;

Creation of equal status of Roma community in its dialogue with the institutions, civic organizations and media;

Providing of legal education for Roma youth;

Providing of legal aid and legal representation in cases of human rights abuses and discrimination on ethnic base.

### **Godi e Romenge project.**

This is a program for securing free legal assistance and administrative help for the Roma community in Sofia. The basic activities under the project are: providing free legal consultations, legal representation in cases of human rights abuse or discrimination on ethnic base, administrative consultations and services and legal education for the community.

Periodically Godi e Romenge organizes legal - educational meetings on concrete and important for the Roma community problems.

The four basic directions to work are as follows:

- monitoring on the human rights situation as regards Roma minority
- legal representation on concrete cases where human rights abuse occurs
- advocacy before the state and local institutions in favor of Roma minority.
- signaling for breaking the law before the bodies responsible

## **II. General information about Roma in Bulgaria in the context of social, economic and political environment after the changes in Bulgarian society in 1989**

Roma are a transnational ethnic community and representatives of this group live in almost all countries of the world. In the Balkan Peninsula, the number of Roma is over four million people. In Bulgaria, the Roma population is about 800 000. The historic development and the specific geographic situation of Bulgaria has lead to the creation of multiethnic states. In the late 20th c., this part of Europe suffered much ethnic conflict and many wars on an ethnic basis. The causes for that were the attempts of undemocratic governments at the forceful liquidation of society's ethnic and religious diversity. Thus, the Roma community in decomposing Yugoslavia became the victim of numerous military conflicts, suffering the simultaneous rejection by all other ethnic groups involved in those conflicts.

Against this background of the last decade, Bulgaria looks like a state excepted from the 'Balkan rule' of ethnic intolerance. One of the largest ethnic minority in the country, the Turks, have a representation in Parliament and have the opportunity to take an equal part in social processes. The smaller minority groups, such as Jews, Karakachans, Pomaks, and Vlachs, are differently integrated but all neutrally accepted into the Bulgarian society. The only 'neuralgic' ethnic groups in the country are the Macedonians and the Pomaks. However, the reasons for the decades-long rejection of these two minorities by the larger society, are totally different.

The Roma are the only minority which, to date, stays both most vulnerable and least accepted by all other ethnocultural groups. Since 1989, the Roma community gradually developed its own mechanisms of self-

organization and addressed to the society its messages for dialog and for suitable integration models. This process peaked in 1999 when the Roma prepared and proposed to the Bulgarian government the Framework Program for Equal Roma Participation in Bulgaria's Public Life. Albeit with difficulty, the main problem before the community was publicly identified: discrimination in all spheres of social life, such as justice, education, health care etc. The transition period of democratization of Bulgaria and its institutions, due to the general socioeconomic crisis, increased the discriminatory attitudes and practices towards Roma. As a result of that, the condition of the community reached its most critical point for the last years. The evaluation of community leaders, independent observers and international institutions confirms this conclusion.

Despite the government's declared intentions to elaborate a strategy for the improvement of the community's condition and for the equalization of its standard of life with that of the rest of the society, the Framework Program did not receive the necessary financial and organizational support. On the other hand, despite the established network of civil organizations developing diverse initiatives in support of the Roma community, the Roma did not obtain the possibility for an equal social representation.

The Roma community in Bulgaria does not have an adequate presence in political life. This is the cause of its isolation from social and public decision taking and the respective social and political responsibility. By the end of 2000, several political Roma organizations were created in Bulgaria, expressing the need for Roma to become actively involved in political life. At the last local elections in October 2003, eight Roma political parties and coalitions managed to propose successful candidates for municipal councilors. The participation of Roma in local parliaments is currently increased by about 40% as compared to the previous local elections in 1999. This is tendency is positive and natural in view of the occurring social changes.

The state authorities show definite understanding and support to separate plans and initiatives targeting the Roma community. On the external political plane, this governmental policy meets approval and has received a high evaluation. The European Union has the corresponding programs

and funds for the implementation of a consistent Roma policy in Bulgaria. There are mechanisms in which the Bulgarian government, in collaboration with the Roma community, can set up a more long-term package of measures in conformity with the created Framework Program for Roma Integration into Bulgarian Society. The most pressing priorities for the improvement of the status of Bulgarian Roma are the following:

- measures for the effective enforcement of antidiscriminatory law
- desegregation of the Roma schools and increasing the opportunities and quality of the education received by Roma
- measures to guarantee Roma welfare rights
- developing regional Roma program with an actual participation of Roma in the local authorities in the implementation of these programs
- legalization and urbanization of Roma neighborhoods

### **ROMA AND INSTITUTIONS:**

There is one Rom in the National Council for Ethnic and Demographic Issues at the Council of Ministers, created in 1997. There are representatives of the community take part in special sessions of the Council as members of a working group on Roma issues but they do not have the status of civil servants of the Council.

Since the second half of 2000, there have been appointments of Roma as experts in two ministries: the Ministry of Education and Science and the Ministry of Culture. There also is an expert on Roma issues in the Ministry of Labor and Social Care. The presence of Roma experts in these two ministries is almost formal, due to the restricted budgeting and the bureaucratic procedure. Despite these circumstances, the initiative was encouraging of the Roma representative in the Ministry of Culture who succeeded to provide the support and patronage of the Ministry for several Roma cultural forums. The fact is worrying that the other structures of the Council of Ministers have no Roma or no symptoms of Roma appointment.

Maybe the most encouraging event to the Roma community for the last three years was the local practice to appoint experts on Roma issues in the regional and municipal administrations. To date, as from the data of state administration, there are Roma experts in 26 of 28 regional administrations.

There are two problems related to the efficiency of these appointments: first, not everybody occupying the position has been credited with the trust and recommendations of the community, and second, more importantly, these experts do not have clearly defined prerogatives and responsibilities - they are not accountable to anybody, and there is no procedure determining the order in which their proposals submitted on the part of the community should be considered and accepted at the sessions of the regional and municipal councils.

### **III. Comments on the State report (Bulgaria) on the Implementation of the Framework Convention for Protection of National Minorities**

#### **III.1 ON PART I OF THE STATE REPORT**

The very fact that the Bulgarian Government submitted the State Report on the Framework Convention nearly three years after the dead line says enough on the efforts spend on the implementation of the Convention's provisions on behalf of the Government.

In the years of democracy Bulgaria has ratified many international documents, which provides for non-discrimination and equal treatment (but not Protocol 12 to the ECHR however). The Bulgarian Constitution as a Supreme Law provides that ratified international document have supremacy over the national law. However the term national law does not include the Constitution itself. Thus under the Constitution (Art.11, para 4) "There shall be no formation of any political parties on ethnic, racial or religious lines, nor parties, which seek the violent usurpation of state". The para cited here prohibits the formation of political parties on ethnic origin together with violent movements as it is all the same. It seems that under the Bulgarian Constitution, a political party, formed on ethnic base is seems as equal to a violent movement.

Further the Constitution states that the religions shall be free (Art. 13, para 1), but provides that the Eastern Orthodox Christianity shall be considered the traditional religion. This provision results in much more state financial support to the Orthodox church in compared to the other religions. Further the Constitution provides that the freedom of conscience and religion shall not be practiced to the detriment of national security... and having in mind that under the new Classified Information Act almost everything, which is not seemed as personal data is seemed as a matter of

national security, this is quite restrictive provision.

Further then the Constitution provides that the ethnic self-identification shall be recognized and guaranteed by law (Art. 54, para 1). Though the Constitution shall be directly applicable (Art.5, para 2), the court practice shows that the question of the ethnic self-identification may be a subject to be proved by the one who claim it. Thus in many court cases, where victims of discrimination based on ethnic origin (Roma), claim justice, the court rejects the claims, arguing that the plaintiffs failed to prove their ethnic origin. How exactly the court wants this ethnic origin to be proved remains unexplained.

### **III.2 ON PART II OF THE STATE REPORT**

It is stated within the State Report that “conditions for the law guarantees obtaining free of charge legal council.” As regards to the criminal procedures however, a defendant may ask for a lawyer if he/she can not afford one only in a number of cases where the participation of a defense attorney is compulsory. Those cases are: (art. 70 of the Criminal Procedures Code) where the defendant is a minor, or disabled person, where the provisional penalty if proven guilty is non less than 10 years of imprisonment, where the defendant does not speak Bulgarian, where there are several defendants with contradictory interests and one among them has a lawyer, where the defendant does not present, and if the defendant can not afford a lawyer, but with the reservation that the interests of the justice demand so (which means - by the discretion of the court). Further it is stated within the Law on Defense Counsel, that the lawyers provide free legal services to persons in material difficulty and persons entitled to allowances and alimony. However it should be clear, that this is under the discretion of the lawyers whether to provide or not free legal services, and in the common case they do not. As to the civil procedures - the plaintiffs have to take care for the lawyer in any case. We should note here that most of the cases, claiming ethnic discrimination are civil. Further it is stated within the State Report that Art. 5 of the Law on State Fees regulates the exemption from state fees in civil suits for a define category of persons with financial difficulties, and for certain claims regulated by the law. Firstly it should be noted that to wave the fees is within the discretion of the court, and secondly the legal fees exceed the reasonable limits.

Moreover, when a group of people raises a claim, the court ordered them to pay the fees for every person separately. Thus for example, when the Romani Baht Foundation in cooperation with the ERRC, supported 28 Roma school children to bring a case against the Ministry on Education, Sofia Municipality and a Roma only school, claiming that they are victims to segregation, the court ordered every single plaintiff to pay the court fee, as if we had 28 claims and not one claim with 28 plaintiffs. The court did not consider the fact that the plaintiffs are minor to waive the fees.

Further in this part, it is stated that the Law on National Education provides opportunities for the children from minority origin to study their mother tongue in the schools. It should be noted however that in regard to the Roma children, no teachers are provided to serve the need.

Within the comments on Art.4 of the Framework Convention, it is stated in the State Report that Chapter three of the Penal Code provides penalties for crimes against Nation and race equality. It should be noted here that a year ago some leading NGOs (including the Bulgarian Helsinki Committee) sent an inquiry to the Supreme Prosecution Office of Cassation asking how many indictments have been sent to the court under this chapter, and the response given had been - none.

Further then, the State Report says that the Regional Administrations have created regional councils to deal with ethnic and demographic issues and the experts on this issue are appointed. It should be noted however that these experts do not hold any job description, they do not know what their rights and obligations are.

Further then, within the comments on Art. 5 of the Framework Convention, it is stated that as a middle term priority (by the end of 2002) the Government shall establish State Minority Agency. We do not see any sense in including this paragraph since the Report has been submitted in April 2003 and this Agency still does not exist.

Further then, within the comments under Art.8 of the Framework Convention, it is stated within the State Report that alternative military service is possible for the persons whose religion does not allow them to hold guns. These provisions have been challenged in a number of cases and they never worked. The persons who tried to use the law were sent to the army.

## **IV. Bulgarian State Policy Towards Roma After Ratification Of The FCNM in September 1999**

### **IV.1 GENERAL COMMENTS ON THE TENDENCIES IN THE LEGISLATION CONCERNING THE PROTECTION AGAINST DISCRIMINATION .**

By the end of 2001, the state has not become a signatory to or ratified Protocol no. 12 of the European Convention for the Protection of Human Rights and Basic Freedoms. Up to this moment, the government has not either taken the commitment to sign Protocol 12 and submit it to the ratification of the National Assembly. In this way, the Bulgarian legislation is deprived of an effective and relatively accessible mechanism of protection against discrimination.

The Penal Code contains several definitions providing penal responsibility in cases of discriminatory treatment. Art. 162 of the Penal Code defines the penal responsibility of a person who propagates or instigates racial hostility or hatred or racial discrimination as well as of a person who uses violence or damages another's property because of the other's race. Art. 172 of the Penal Code defines the penal responsibility of a person who consciously obstructs someone from being employed or forces him/her to leave a job because of the other's race.

The examination of the practice of courts on penal suits in 2000 and 2001 shows that in these periods too, no sentence has been issued under these offence definitions. In the case of Art 162, this can be partially explained by the formulation itself of the offence definition which makes it inapplicable and partially by the fact that courts in Bulgaria are not willing to view racial hatred as a motive for committing a crime. There is also the fact that the provided penal responsibility for race-based violence or property damaging is lighter as compared to the one provided when this motivation is not in place. On the other hand, the Bulgarian

Penal Code does not contain qualified definitions of crimes against the person committed on a racial basis. As a result of this, for offences like murder, injury etc. committed on a racial basis the penal law does not provide a heavier punishment. Irrespectively of the numerous cases of racially motivated violence in the last 10 years whose victims are mostly Roma, no changed have been discussed in the penal legislation that would introduce the racial motive into qualified offence definitions. In the period of 2000-2001, the Human Rights Project has investigated and documented several tens of cases where Roma were the object of racially motivated violence.

## **IV.2 MEASURES AGAINST DISCRIMINATION IN LABOR LAW**

There were certain positive changes concerning the protection from discrimination in the labor law. The Labor Code, the basic act in labor law, contains an in principle prohibition of discrimination at work (Art. 8 (3)). This norm has a declarative nature and is not geared to a reliable mechanism of protection in cases of discrimination in the sphere of labor. The situation is analogous in the legislation providing protection in unemployment and the one related to welfare insurance and welfare support. As was said above, the penal responsibility under Art. 172 of the Penal Code does not represent a real guarantee for the right to equal treatment without respect to ethnic origin at work. The same holds to the administrative penal responsibility provided in the Labor Code for the employer in cases of violating the prohibition under Art. 8(3) of the Labor Code. The control and monitoring body, the Head Inspectorate for Labor, and its divisions communicate no data on any established violations of the prohibition of discrimination at work. This fact may be explained by analyzing the range of the norm of Art. 8(3). ON the most general place, the provision leaves the impression that the prohibition only concerns the cases of an already existing work contract. The most widespread cases of discriminatory treatment of Roma registered by the Human Rights Project concern violations of the equality of opportunities in the process of employing, i.e. discriminatory attitude in the decision of the employer whether

to employ a particular person.

In issue 25 of the State Gazette of 01 April 2001 the provision of Art. 8(3) of the Labor Code was amended by stating positively that indirect discrimination is forbidden. For the first time in the Bulgarian internal legislation a legal definition of indirect discrimination was provided. Although this is the object of a separate and more detailed analysis, it can be noted that the formulation of indirect discrimination under the Labor Code is more restricted than the one in Directive 2000/43 of the Council of Europe and amounts almost entirely to a prohibition of rights abuse.

The legal provision against indirect discrimination in the internal Bulgarian legislation exist since a very short time ago, and despite the fact that it only concerns discrimination in the sphere of labor relations, it deserves attention. More specifically, here in this report we will discuss the range of the norm prohibiting discrimination in labor and we will comment on the correspondence of the concept of indirect discrimination as provided by the Bulgarian legislator with the concept of Directive 2000/43 of the EU.

With the amendments to the Labor Code (State Gazette, issue 25 of 2001 г.), Art. 8 (3) was enlarged, and a new item 7 was created in the concluding clauses of the Code, containing a legal definition of indirect discrimination.

First, we will dwell on the range of the prohibitive norm of Art. 8(3). The hypothesis of the norm describes the range of relation in the presence of which discrimination, direct or indirect, is prohibited. The text of the provision indicates that discrimination is prohibited ‘in the exercise of labor rights and obligations’. It is not necessary to state it explicitly, but, having in mind the protective function of the Code with regard to the worker/employee, it is evident that the prohibition is established for the employer. However, the question must be answered from which moment on the factual content is present of Art. 8(3) which would entail the obligation to abstain from actions representing discrimination. Depending on the interpretation, several assumptions are possible. The strict interpretation of the phrase ‘in the exercise’ would lead to the conclusion that the prohibition applies in the case of an already existing labor legal relation on some of the following grounds: labor contract, contest, election. This

interpretation, however, leaves outside the norm the multitude of factual relations which take place before the existence of the labor legal relation. It is not a secret to anyone that it is in the procedure of employing that discriminatory treatment is manifested, i. e. at the point when the employer is to decide whether to hire a person or not.

Another interpretation is possible in relation to the Convention 111 of the ILO<sup>1</sup>. Art. 1 (1a) of the convention stipulates that discrimination takes place whenever the respective actions lead to ‘an annulment or violation of the equality of opportunities or in the treatment in the sphere of labor and professions’. The prohibition under Art. 8(3) could have some useful effect despite all just criticisms that one may direct against the absence of a due mechanism, if one assumes that all action is prohibited which annuls or violates on a discriminatory basis the equality in opportunities at the BEGINNING of a job and in the exercise of already existing labor rights.

In the next place, we will consider the definition of direct discrimination according to the Labor code. The conclusion imposes itself that the law speaks of a discrimination by result. For direct discrimination to exist, the person (the employer) has exerted a right of his/her, as a result of which some workers/employees become factually privileged or underprivileged in relation to others, on a discriminatory criterion. In other words, the provision does not contain anything more than the prohibition to exert rights to the damage of others, as contained in Art. 57 (2) of the Constitution. According to the law, the different treatment based on qualification requirements is not discrimination. It seems to us that this is the main weakness of the definition. The basis of indirect discrimination in many cases can be the establishment of qualification requirements which have no grounds and are not based on the actual requirements of the job. In other words, since the law does not state it that the establishment of qualification requirements must be grounded and necessary with regard to the job, and, moreover, since it itself excludes the establishment of such requirements from the range of discriminatory actions, then it makes senseless the prohibition of indirect discrimination and discourages whoever would want a protection against indirect discrimination.

In comparison, we would like to point out that Directive 2000/43 de-

finer as indirect discrimination not only actions representing the abuse of a right ('practice') but the adoption of provisions and criteria, i. e. the prohibition also refers to the norm-creating actions of different state organs and other institutions. It follows from here that the result of indirect discrimination can exist even if against a person there only are the normative prerequisites for him or her to be treated unequally.

The range of the norm is also wider with regard to the criteria of legitimacy of the order, criterion or practice. The introduction and application of a norm or practice leading to different treatment is grounded only if there is an objective necessity for that, the pursued goal is legitimate and the means are suitable and necessary.

Without understating the positive effort of the Bulgarian legislator, at the least because this is the first effort in the sphere, I think that there will be soon the need to reformulate the norms concerning discrimination in the exercise of labor.

### **IV.3 LEGISLATION AGAINST DISCRIMINATION IN THE SPHERE OF EDUCATION**

Although Bulgaria is a signatory to the Convention for the Prohibition of Discrimination in Education and the respective Acts (National Education Act, Higher Education Act) contain norms which in principle forbid discrimination, the internal legislation does not introduce adequate mechanisms either against actual manifestations of discrimination in the sphere of education or of elimination of the negative effects of discrimination in the past. The absence of such mechanisms is illustrated most clearly by the existence in Bulgaria of segregated Roma schools located in neighborhoods with a compact Roma population. The low quality of the education as well as the deplorable material situation of these schools have remained, in 2000/2001 as well, a basic factor of obstructing the equal access of children of Roma ethnicity to education. To date, the Bulgarian government has no strategy of eliminating this widely spread manifestation of institutional discrimination in education<sup>2</sup>.

#### **IV.4 CIVIL LEGAL MEASURE OF PROTECTION AGAINST DISCRIMINATION**

The only legal mechanism for the protection of a victim of discrimination whose efficiency may be evaluated as relatively good is provided by the civil laws on the compensation for criminal injury. The principle that everybody must compensate for the guilty damages done to another can be used in cases when the victim declares that one or another of his/her rights has been violated because of his/her ethnic origin. As examples to this effect, one may quote several cases registered in 2000 and 2001 when persons of Roma identity have not been allowed into establishments of public access solely because of their ethnic identity. In two of the cases, through the cooperation of the Human Rights Project, victims of this kind of discrimination brought up suits against the offenders in stating that their non-admittance to a specific public establishment violates their personal honor and dignity because it treats them unequally for their ethnic identity. However, the efficiency of this approach of defense should not be overestimated because the Bulgarian courts have no experience in hearing civil suits based on discrimination claims.

#### **IV.5 DISCRIMINATION EFFECTS IN THE SPHERE OF PENITENTIARY MEASURES AGAINST MINOR AND JUVENILE OFFENDERS**

The main normative act in this sphere (the Struggle Against the Delinquent Actions of Minors and Juveniles Act) has been adopted in the 1950s in conditions incompatible to the requirements of the human rights standards of nowadays. It is necessary to note here that, according to the data of the Bulgarian Helsinki Committee, the children of Roma identity are over-represented in the main educative-penitentiary institutions (named Educational Boarding Schools and Social Pedagogical Schools) for 2000: the total percentage of Roma children for the whole system of such schools in the country is 65%. In order to take steps toward the elimination of this discriminatory effect, the Bulgarian state must introduce legislative as well as organizational and administrative measures.

#### **IV.6 INITIATIVES FOR THE ADOPTION OF AN ETHNIC EQUALITY ACT**

The analysis, done by the Human Rights Project, of the efficiency of the existing legal means of defense against discrimination, has led us to the conclusion that a general Act is needed that would provide a unified and comprehensive mechanism in using which a victim of discrimination could be protected and receive adequate compensation. On the basis of that conclusion, in 2000, the Human Rights Project started an initiative for the production and submitting to the Council of Ministers of an Ethnic Equality Act. In the first half of 2000, the project, produced by a group of specialists, was submitted to the Council of Ministers for discussion and submitting a proposal to the National Assembly. For the consideration of the project and the creation of a final draft law, an inter-office commission was created, consisting of representatives of different state institutions.

Unfortunately, irrespective of the fact that the project proposed by the Human Rights Project contains the most up-to-date legal solutions, as regards the formulation of the concepts of direct and indirect discrimination and provides the creation of a special independent body against discrimination, its consideration in the inter-office commission was unduly slowed down and it came upon a number of bureaucratic obstacles which were the expression of institutional resistance against the conception of such an Act. This resistance was motivated, most generally, by the two following sets of considerations:

A) The Bulgarian legal doctrine still has not decided on the question of the nature and responsibilities of the state organ considering complaints of discrimination. Representatives of the scientific circles express the opinion (which enjoys a wide support) that there is the need to create an institution with a general competence - an ombudsman who would be responsible to consider a wide range of citizen complaints, including complaints of discrimination. This is why the existence of a special institution against ethnic discrimination seems inappropriate.

B) A very extreme and unacceptable opinion was expressed by the Council of Legislation at the Council of Ministers on the occasion of the

Framework Program for an Equal Integration of the Roma in the Bulgarian Society which was proposed to the government. This Council declared that no special legislation should be introduced or any other measures for the protection against discrimination. The general tone of this opinion was that the Bulgarian legislation does not recognize the existence of separate ethnic groups.

#### **IV.7 THE BULGARIAN LEGISLATION AGAINST DISCRIMINATION IN THE CONTEXT OF THE NEGOTIATION OF BULGARIA FOR THE MEMBERSHIP IN THE EUROPEAN UNION**

According to the conditions for an equal membership of Bulgaria in the EU, the country will have to make its legislation coherent with that of the EU, incl. the legislation against discrimination. Having this in mind, the Bulgarian institutions should pay special attention to Directive 2000/43 of the EU. For a presentation of the Directive and making representatives of institutions and the nonprofit sector acquainted with it, in February 2001 the Human Rights Project, with the support of the Council of Europe, carried out an international conference on that theme. The statements made at this forum by representatives of the state authorities and the Bulgarian legal doctrine confirmed our conviction that the process of adopting anti-discrimination legislation in Bulgaria is still in the period of clarifying the question whether such a legislation is needed.

The Human Rights Project established that in 2000 and 2001 the Bulgarian legislation does not demonstrate any considerable progress in the introduction of reliable, efficient and accessible legal guarantees for the protection against discrimination. Up to date, no clear political will has been expressed as to the creation of such guarantees, either by adopting a special law or by amending the existing one. The persons becoming victims of discriminations cannot rely on an accessible law for the protection of their rights. Their defense before a court may only rely on complex judicial combinations and interpretations with unclear chances or success<sup>3</sup>.

## **V. Cases of violations of basic rights of Bulgarian Roma, investigated by the Human Rights Project in the year of 2002**

Only in the previous year, many signals were received from Roma on excessive use of physical force and firearms on the part of law-enforcing organs, as in many cases the purpose was the extraction of confessions.

On 21 August 2002 Stefan Trayanov from Kyustendil was called to the police. There he was put in handcuffs and three policemen with a police car brought him to a deserted area near to the village of Zhilentsi. They took him there out of the car and hit him with wooden sticks, kicked him and tied him with handcuffs at a branch of a tree so as not to touch the ground, after which one of the policemen would pull him down. All the time they insisted that the victim should confess thefts. During the beating, Trayanov several times lost consciousness. Later they left him in a helpless state beside the road out of the town. All traumas are documented and described in detail in a forensic medical certificate.

On the case, the Human Rights Project received answers from the Ministry of internal Affairs, the Regional Directorate of Internal Affairs in Kyustendil, and the Military District Prosecutor's Office of Sofia. The first letter states that on 21 August 2002 Trayanov was present in the police at 11.20 h. and was set free at 11.40 h. and that the claims in the complaint were not confirmed by the check. In the same time, it is stated that the victim was detained under guard by an order of the Regional Court of Kyustendil upon an accusation of theft. The preliminary investigation was started at the same day, 21 August 2002, and the detainment took place a day or two later.

With the situation so described, it becomes easy to explain the circumstances stated in the letter from the Regional Directorate of Internal Affairs in Kyustendil. It claims that in the course of the check 'the complainant withdraws the complaint by his own will, in declaring that the

claims in it do not correspond to reality, due to which the check is interrupted’.

The Military District Prosecutor of Sofia informs that after a preliminary check, an order has been issued to refuse to start a penal procedure on the grounds of Art. 21(1)1 of the Penal Code.

On 7 January 2002 Alyosha Yordanov from the town of Valchedrym, region of Montana, was detained in the police office of the town where police employees gave him a beating in order to make him confess a theft. Despite the explicit insistence of the victim that a doctor should certify his state, he was refused a medical examination.

On 3 April 2002 Krum Mihaylov and Georgi Filkov from the village of Bukovlak, region of Pleven, were stopped on the road by a police jeep with six policemen who demanded from them an explanation about some red Moskvitch car. Evidently dissatisfied by the answers, the policemen tied up the two victims and beat them, after which detained them shortly in the police. The wounds received are certified by forensic medical certificates.

On 8 November 2002 Marin Atanasov from the town of Kotel was attacked for no reason by a policemen from the town. Due to the beating, the victim had his skull broken, which was established by medical documents.

As in other years, the year 2002 was not without mass police raids in Roma neighborhoods accompanied by brutal and degrading attitude on the part of the policemen.

ON 13 November 2002 at about 5.30 A.M., a group of masked and plainclothed policemen started a raid of perquisition in houses of Roma in the village of Bohot, municipality of Pleven. The searched 19 houses of Roma without a due permit from a court under the Penal Procedure Court or without presenting it to the dwellers of the houses. They took and have not returned so far different objects (mobile phones, gold, other household items) which are not objects of crime. The policemen acted brutally, and as a result of their actions there is destroyed or damaged property in the houses. They detained 12 persons without a police order and without informing them on the grounds of the detainment. No explanations were requested from them later. The policemen exerted physical

violence on a large number of persons. There are data that the participants in the raid put their guns against the head of a one-year child and against the breast of the child's mother. They used firearms against one of the victims, Sergey Manolov, and beat him cruelly.

In the answer from the Regional Directorate of Internal Affairs of Pleven, the following explanations were given concerning the detained objects: 'The taken objects started to be returned to their owners several days after their seizing.' (SIC!) In relation to the claim of mistreatment of one of the victims, the police states the following: 'As to the claims of one of the persons that he was treated cruelly, I can declare it categorically to you that he was transported to the Second District Police Office by employees of the police of Sofia in uniform, due to which the claims cannot be proven.' Not less interesting is the explanation of the director of the Regional Directorate of Internal Affairs of Pleven regarding the illegal detainment: 'The stay of those brought to the Second District Police Office is not a detainment; work was done with them, they gave explanations.'

There are numerous complaints about police employees working in police offices in the Roma neighborhoods.

Many such signals were received about the actions of the local policemen in the Nadezhda district of the town of Sliven. On a part of the cases, materials were published in the press. On 9 October 2002 Encho Dzhambazov from the Nadezhda district of Sliven was called to the room of the district policemen. There, he was hit several times in the face and pushed down to the ground by one of the policemen. The pretext was a sum of money that the victim owed to a supplier of the shops in the area.

In 2002, many cases were recorded of illegal use of firearms and auxiliary tools by forest guards.

On 11 September 2002 Stefan Nikolov, Petar Dimitrov and Borislav Ivanov from the town of Botevgrad were stopped by forest guards and gendarmes in the area called Vodenitsata near the town. After they did not show a permit to cut down trees, the victims were put in handcuffs and brought to the police office. During all the time from the arrest to the liberation from the police, the victim Stefan Nikolov was repeatedly and cruelly beaten by kicks and auxiliary tools.

On 27 December 2002 a forest guard beat Asen Dimov from Sliven and broke his leg, when Dimov was collecting dry wood with a permit for the forest of the village of Gavrailovo.

In the same time, there is not a single check in the system of the Ministry of Internal Affairs, done upon a signal of the Human Rights Project, that has finished by a conclusion that a police employee acted illegally. In the enormous majority of cases, the answers of the Ministry and its regional offices laconically state that the check done after the signal has established that the policemen acted in accordance with the Internal Affairs Act. This leaves the impression that such checks are not done at all or that they are only done formally. The conclusion also imposes itself that the Ministry of Internal Affairs is more inclined to investigate violations and impose disciplinary punishments when the victims are Bulgarians than when they are Roma (see the case in Kostinbrod in the report of the Bulgarian Helsinki Committee), which in its turn speaks of an existing institutional discrimination against the Roma in Bulgaria.

In 2002 there were cases when Roma were attacked and mistreated by groups of racist citizens.

On 2 February 2002 in Pazardjik, four Roma (Hristo Asenov, Dimitar Mihaylov, Dimitar Shekerov, Anguel Shekerov) were attacked and beaten by a group of citizens. The Roma were pursued by a car in the streets of the town, and the attackers shoot at them with firearms. Two of the victims were taken to a hospital with fire wounds on them. The preliminary investigation did not finish within the term ordered by the prosecutor.

On 16 April 2002, again in Pazardjik, Anguel Georgiev, Atanas Mihaylov, Metodi Andonov, Asen Asenov and Yosif Asenov, when going home from a finished Christian religious meeting at the town sports stadium, were attacked by a group of people. The attackers went off a jeep and started to address insults to the group of Roma with regard to their ethnicity. Near to the police school the attackers reached the victims and beat them cruelly with knuckle-dusters, baseball bats and steel chains. The Regional Prosecutor of Pazardjik issues an order of refusal to start a police procedure, stating that there were no data of a crime under Art. 162 or Art. 164 of the Penal Code.

In 2002, the practice of many years continued of health care institu-

tions to isolate the Roma in them from other citizens.

Thus in 2001 and 2002 Roza Anguelova, Irina Ilieva, Draga Kirilova and Gergana Hristova went, at different dates, to the St. Sophia birth clinic where they gave birth to their children. All of them were accommodated in room No. 15 at the 5 floor and in the room next to the nurses room at the 2 floor, known to patients and to the medical staff as the 'Gypsy rooms'. All women being in these rooms during the stay of Roza Anguelova, Irina Ilieva, Draga Kirilova and Gergana Hristova were exclusively Roma women. During that period, no Bulgarian woman was accommodated in these rooms. The conditions in the so-called 'Gypsy rooms' where all Roma women are accommodated are different - worse - than the conditions in the other rooms of the birth clinic where only Bulgarian women are accommodated. The HRP defines the separation from the other patients at St. Sophia on the basis of their ethnicity as ethnic segregation and declares that leaving them, so separated on an ethnic basis, under conditions worse than those under which most patients are put, represents racial discrimination.

Some progress has been recorded as regards the anti-discrimination measures at the level of municipalities. In 2001 the Human rights Project initiated the preparation and presentation to the attention of the municipal councils in several Bulgarian towns of proposals for amendments to municipal decrees with the purpose to include provisions forbidding discrimination on an ethnic basis on the territory of the respective municipality and introducing administrative responsibility for violating such provisions.

The need for this initiative arose as a result of the many signals, received by the Human Rights Project, about discriminatory treatment in providing services, as well as of the absence of adequate mechanisms for protection from discrimination.

The proposals prepared by the Human Rights Project planned the introduction of a ban on discrimination in different spheres of public life: services, town transport, advertising, and activities related to the protection of public order on the territory of the municipality. For the violation of these bans, fines were planned to be imposed. These proposals were presented to the attention of municipal councils in Sofia, Kyustendil,

Levski, Petrich, Shoumen etc. In January 2002 the Municipal Council of Lom adopted amendments in its decrees and regulations, incorporating the proposals made by the Human Rights Project.

By Decision No. 592 of 18 June 2002, the Municipal Council of Shoumen adopted amendments to its Decree on Commercial Activity whereby it introduced a ban on the restriction of access to people into commercial establishments on the grounds of their ethnic or racial identity. The same Decree introduced a prohibition on the distribution of advertisements displaying or suggesting difference, exclusion, limitation or preference based on ethnicity or race. Fines are provided for the violation of these provisions.

### **Right to Fair Procedure**

In 2002, no effective legislative measures were taken to improve the access to free legal advice of people who do not have the possibility to pay a lawyer in the cases when their basic rights have been violated or threatened. The Penal Procedure Code provides that a lawyer should be provided by the court to certain categories of defendants and accused; however, this in many cases is ineffective, as the officially assigned attorneys in practice do not exert even basic procedural rights of the legal counsel or the defendant. Thus e.g. in 2002 the Sliven District Court sentenced Tenyo Raychev, a Rom from Sliven, to prison for life. The sentence of the first instance entered into force since it was not appealed within the due term by the officially assigned attorney. A check by the HRP showed that there were grounds for appealing against the sentence and, despite that, the right to appeal was not exerted within the due term, because of the lack of interest in the officially assigned attorney.

### **Hate speech, aggressive nationalism, and xenophobia**

In 2002 again, in the streets of many Bulgarian towns one could see graffiti saying ‘Gypsies, die!’, ‘Gypsies into soap’ and others in the same vein. Like before, these graffiti become more frequent around 20 April, the birthday of Hitler. In the Internet there are many sites with an openly anti-Roma content, as well as discussion clubs and forums. However, as

was mentioned above, hate speech in the printed media became less.

### **Freedom of peaceful gathering**

In 2002, the authorities actively obstructed the protests of Roma in Plovdiv, Rousse and elsewhere. On 9 January a meeting at which Roma from Rousse protested against the unpayment of welfare money, was broken up by the police. When the Pope came in Plovdiv in May, the Roma neighborhoods were blocked by the police to prevent the Roma from getting out of there, so as not to disturb the visit by demonstrations. Such demonstrations could have happened in case of stopping the electricity. The Roma in this city and more especially in the Stolipinovo ghetto have protested ever since the winter by meetings against the power supply regime which was imposed on them.

### **Protection of cultural identity and originality**

In 2002, some steps were made toward the protection of the Roma cultural identity.

For the first time, the Ministry of Culture and some municipalities (Shoumen, Lom) included the traditional Roma holidays Vassilitsa and the International Roma Day (8 April) in their official cultural calendars. The National Council of Ethnic and Demographic Issues granted funds for the celebration of the International Roma Day. This was also done by some municipalities.

Some theaters (the Dramatic Theatre of Montana) staged plays in Romany. The actors are mostly Roma children.

The publication of Romany press (18) stayed almost entirely in the sphere of financing by NGOs or foreign governmental organizations. The same is valid for the translations of books on Roma themes and in Romany.

Some culture clubs (Bulg. chitalishte) located in Roma neighborhoods received subsidies from the state budget. On this account, however, it was found out that culture clubs located on Roma neighborhoods receive less financing than culture clubs located elsewhere, irrespective of the fact that in the area of the former ones live more people than in that of the

latter ones.

In 2002, the Ministry of Culture supported financially and organizationally the participation of the Sayme Roma music band at the works Roma festival in Moscow.

The Bulgarian National Television broadcast a series of shows concerning the Roma themes and implemented by a Roma team - the Spaces monthly show within the Together program. The Hristo Botev program of the Bulgarian National Radio broadcast the Ethnoses show. In 2002, however, no public media included into its program shows in Romany.

Providing social support on the part of the state

In 2002, the most numerous complaints against actions of administration remained the ones concerning the payment of social welfare money. Along with the most trivial cause for that - the absence of respective funds in budgets - the HRP registered some more alarming signals. There are numerous complaints from the practical inaccessibility of the information about the conditions and requirements with which those needing welfare money must comply. These are most often cases of heartlessness and hostile attitude in the administration in the services of social support towards the Roma applying for welfare money. The problem is also aggravated by the dynamic changes in the legislation concerning the sphere of social support.

In 2002 again, in cases when Roma succeeded to provide themselves a living in working within a work contract, they remained the most vulnerable and unprivileged victim of the voluntarism of the employers.

Along with the numerous cases when ethnically motivated reasons stand behind the dismissal of Roma, many cases were registered when Roma have been subjected by their employer to degrading and inhuman conditions of work. The Roma of the municipal street-cleaning company of Sofia even conducted a strike on this occasion and also with the demand for an increase of wages. Signals were received on refusals of companies to pay to their Roma workers the due compensations on the state public insurance.

Especially striking was the case when Veneta Ribarova, president of the Life and Justice Foundation, domed to hunger the families of nearly 200 Roma workers in the village of Dolni Tsibar, region of Montana, by

refusing to pay them the reward for the work they had done during several months on a seasonal employment project implemented by the foundation of Ribarova. In an ill-intended and ungrounded manner Ribarova dismissed 43 workers 'for breach of discipline', and only the interference of the Human Rights Project, by legal assistance, helped those people to be liberated from their contract relations with the foundation of Ribarova and to receive social welfare from the Labor Bureau.

In the late autumn of 2002, there was a pilot start, and in 2003 will be the large deployment, of a program of the Ministry of Labor and Social Support entitled 'From Social Care to Providing Employment'. There are still no generalized data on how the program develops, moreover that, as it was mentioned above, no statistics are taken of employment and unemployment on an ethnic criterion, and the data on this issue are based on research and estimations. In the press, however, there were many publications demonstrating that in a number of places this program is not well administered, projects are made formally and often the work activity is not provided with elementary hygiene, heating, and other conditions.

### *The case of The Roma People on Evropa Boulevard in Sofia*

In March 2001 the HRP received information about plan devised by the Luilin municipality to expel from their homes the Roma residents of the Moderno Predgradie, Assanova Mahala. On March 5 the HRP set up and sent the Mayor of Sofia, Mr. Stefan Sofianski a letter, expressing the concern of the organization about the legal appropriateness of the actions of the municipality and our intention to closely follow the forthcoming actions.

On February 21, 2002, a HRP team visited the Roma families that were expelled from their homes in Assanova Mahala on March 2001. Part of them was accommodated in 25 wagons, situated on 175, Evropa Blvd. The wagons had no sanitation. There were 26 families, 61 children, 8 babies, 107 people overall.

We had a talk with Margarita Todorova, 15 years old, 6 months pregnant and her mother Svobodka Todorova, 34. They told us that on February 19, 2002, three police Jeeps arrived from which some masked policemen came out. The policemen broke into the wagon. In the wagon there were the two

women, Margarita's three brothers - Trayan, Marian and Borislav, their sister Vassilka, Svobodka's second husband Mehmed and her son-in-law Kiro. The police officers overturned the bed saying they were looking for Plamen, Margarita's husband, who escaped from court on February 11, 2002, where he appeared as defendant. The whole family was threatened that if they do not inform where Plamen is, they will be beaten. Mehmed was slapped in the left ear area, he was kicked and beaten with a truncheon on the head and hands. The neighbours of the family were threatened too by the police on their leaving.

On February 20, 2002, about 6 a.m. masked policemen came again. They took Margarita, the brothers Marian and Trayan and the son-in-law Kiro Sofkin in the fields behind their dwelling. Near to the cement blocks around the four Roma were severely beaten. Margarita's hair was plucked, she was kicked and hit in the stomach with a truncheon. Three times the policemen put a piece of wire round her neck and threatened to strangle her. All this time the police were trying to wring information about Plamen. None of the victims has applied for legal defence of fear of repression and aggravating Plamen's situation. On February 2002, about 0.30 a.m. three police Jeeps arrived in the block 021, entrance A, in the Luilin residential area. In the Jeeps there were masked policemen. In this entrance there lived 27 Roma families, in 15 flats. The families have been accommodated there by the Sofia municipality, after they were expelled from their homes in the Assanova Mahala neighbourhood in Sofia. First the policemen broke down the entrance door and then started breaking down all doors in the flat looking for Plamen Milkov Slavchev. Among the victims was Snejina Atanassova, Atanassova with an ill 5-month baby, Anya Angelova Mitova, 26, who after telling the police "Quiet, you will wake the children", was replied by one policeman, "shut up, bloody gypsy", Nikola Borissov Assenov, 67, whose door was broken and later asked by the police for his papers. He replied positively and the police left. Metodi Valentinov Spasov, 26, was visiting his mother Sevda together with his whole family. His mother lived in another part of the city so that he was not at home at the time of the raid. When he came home the next day, his neighbours told him about what happened the previous night.

The victims in block 021 have applied for legal defence. The residents of entrance A, block 021 have moved in from the Assanova Mahala neighbor-

hood. They were accommodated by the Sofia Municipality but unlike the residents of the other entrance, who are ethnic Bulgarians, the Roma have no decree for accommodation.

Legal Defence: A signal was sent by HRP to the Military Prosecutors Office in Sofia. The victim Mehmed holds a medical certificate enclosed to the signal. The Sofia Military Prosecutors Office refused to open preliminary investigation with a decree dated May 31, 2002.

### **Discrimination in getting access to public places.**

#### *The Samokov Testing*

On January 26, 2002 HRP representatives visited the town of Samokov to meet three local people. Our hosts were Bisser Assenov, Angel Pashov and Dimiter Vassilev - the three of them of Roma origin.

The occasion of the visit were the numerous signals received by the organisation for cafes and restaurants owners who do not allow Roma on their premises. The aim of the visit was to check the signals by visiting some such places in the town centre.

Unfortunately in three places our Roma hosts were denied access by using various explanations. In the Perla bar, situated near the bus station, they were told that the cafe was closing for a lunch break. Later in the Luciano cafe in the Ivan Vazov str. they were expelled with the explanation that it was an exclusive club. In the last place - bar Nichi in the Targovska str. They were told that the table was reserved.

In all three places our representatives witnessed the fabrication of these explanations with the clear purpose to deny Roma access to the premises. Having been asked to explain their actions the staff told us that their employers had instructed them to do that.

The HRP team found out that the actions described are examples of discriminative attitude on an ethnic basis and are significant violations of a number of national and international Acts. The discriminative actions described above humiliated the self-esteem and honour of the three Roma and made them feel embarrassed in the presence of all visitors in the three places.

Legal Defense: HRP has signaled the Regional Prosecution Office in Samokov, the Ministry of Interior, the police station in Samokov, the Samokov Mayor, the Chair of the Town Council and the Regional Mayor of Sofia.

## **VI. Cases of violations of basic rights of Bulgarian Roma, investigated by the Romani Baht Foundation in the year of 2002**

### *The case of R.M. and others /Filipovtzi and Fakulteta joined work/*

R.M. and two of his friends /two of them minors/ has been arrested on suspicion for committing a theft. They were detained in the Police station in Sofia, then transferred a Police station in a town near to Sofia, then transferred to third place. Their parents however were not informed that the children have been arrested, not were they informed of where the children were detained. Romani Baht's monitoring on the police detentions shows that there is a negative practice in the police stations to transfer the detained people from one station to another without informing their relatives. The detained persons are also not allowed to make a phone calls or to invite a lawyer. The legal team found after a research the place where the children were detained in this case and informed the parents. Already there, the parents witnessed a police misconduct towards their children. The legal program initiated with a signal a preliminary checking of the Sofia Military Prosecution Office. Regrettably it ended with a rejection to open preliminary investigation due to lack of sufficient evidences for the police misconduct. The Prosecutor stated in his act that the bruises of the three alleged victims are one and the same and according to the Prosecutor it means that the bruises were not caused by the police. The Prosecutor's act has been appealed before the Military Prosecution Office of Appeal.

### *The case of S.A. /Fakulteta district/*

S.A. is two years old girl. Due to a high temperature her medical condition went critical. The parents called emergency ambulance but it did not appear. Later the emergency service responded that they can not send ambulances to the gypsy settlement because the roads are very bad and

the car can not pass through. After that the parents went with the child to the III City Hospital and asked for emergency help of a pediatrician. They were told however that there is no such doctor in service at the moment and were not allowed to stay. Already in panic, the parents went to the V City Hospital, where Romani Baht foundation used to run its “Life saving Vouchers” Project. The child was immediately accepted due to her very critical condition. She spent a week in the hospital and was then released for home treatment. The team has prepared a court claim against the III City Hospital. It states that the doctor’s behavior was discriminatory and the child was not accepted there due to her ethnic origin.

***The case of A.M. /Filipovtzi district/***

A.M. was detained in Sofia Central Prison. The Sofia District Court ruled for change of his detention measure with a bail. The bail was paid on 27th of June 2002. A fax was sent to the Sofia central Prison to inform the authorities that the bail has been paid and A.M. should be released immediately. However he spent in detention 65 more hours, because it was Friday, when the fax has been sent and the Prison administration left his release for Monday. The team initiated a claim under the Act of State’s Responsibility for Damages, Caused to Citizens.

***The case of S.M. /Fakulteta district/***

S.M., a minor, was arrested and detained for 24 hours in the VI Police station in Sofia. He was questioned as a witness for a case of drugs possession, where one friend of his was accused. It is unlawful under the Bulgarian law to 1/ detain a witness and 2/ question a minor in the absence of his parents/lawyer/and pedagogue. The policemen however questioned him, and during the questioning he was heavily beaten by the policemen, sexually abused by the policemen and nastily abused for his ethnic origin. Being already released he was assisted by legal team to obtain medical certificates to prove his injuries and was also checked by a psychiatrist because of being in shock condition. The psychiatrist defined that in result of the assaults he has suffered, S.M. has now suffers from suicide inclination. The legal team secured a lawyer to accompany S.M. for every questioning in the police, the lawyer produce all medical evi-

dences and signaled Sofia Military Prosecution Office.

***The case of S.S. /Christo botev district/***

S.S. was going to a hospital with his wife and his minor daughter. At the entrance of the hospital they have been attacked by three men. S.S. enter the hospital for a help. At that time some people call the police. The police came and arrested S.S. instead of the men who attacked him and his family. In the police he was heavily beaten and tortured. He was forced to sign documents, without having any information of what these documents content. Later it turned out that those are confessions for committing a theft. After 24 hours he was released and obtained medical certificate to prove his injuries. Five days later he was summoned in the police. The legal team secured a lawyer to accompany him. The lawyer presented the medical certificates and insisted on proceeding with new questioning. During the new questioning S.S. stated that he has given the previous statement because of being beaten and he does not know the exact content of the statement, because he was forced to sign it without having a chance to read it. The legal team has also prepared a signal to the Sofia Military Prosecution Office about the police misconduct in this case.

***The case of K.K. (Fakulteta district)***

K.K. is young Roma activist who was engaged with organization of Roma educational seminar. The seminar was to be organized in Sofia, while most of the anticipated participants were from other cities and towns in Bulgaria. Because of that K.K. made a phone reservation in a Sofia hotel - to host the participants for two nights and the event itself. K.K. was invited to confirm the reservation personally. When he went to the hotel, which is owned by the Bulgarian Academy of Science, K.K. and his colleague were invited to speak with the Executive person. The Executive person asked them fore more details about the event and particularly whether the participants will be from Roma origin. When the two activists confirmed so, the Executive person told them that unfortunately he will be unable to provide space for this event, because the hotel has very high standards and can not risk its reputation hosting Roma persons. Thus he cancelled the initial reservation and refused to accept the Roma

people as guests of the hotel. Jointly with colleagues from the Human Rights Project and the Bulgarian Helsinki Committee, the legal team initiated a court case, seeking damages for discriminatory attitude, shown towards the Roma people. The case is currently pending before the Sofia District Court.

## **VII. HRP/RBF Joint Work on the Group of School Students' Cases**

### **VII.1 DESCRIPTION:**

With the support and in cooperation with the European Roma Rights Center the Legal team decided to challenge the problem with Roma children's education. The idea to challenge the issue of "Roma children's education" before the court authorities in Bulgaria arose out of the problems faced by Romani Baht Foundation during the "desegregation process". During the summer 2002 the Operational team of the Romani Baht's desegregation project worked with Roma families from Fakulteta district in Sofia, guiding Roma parents to enlist their children in integrated schools. At the beginning of September 2002 however the team met the first problem connected with this process. The Operational team had a list with 60 children who were still not enlisted in any school. The Head teachers in Krasna Poliana sub-municipality (Fakulteta Roma district is within this sub-municipality in Sofia) began to refuse to accept Roma children in their schools with the arguments that the first classes groups are already full or saying that the children do not live in the region, covered by the school. The Operational team signalized the Educational experts team of the desegregation project for the problem. The head of Directorate of education within the Sofia Municipality (Ms. Popova) connected two schools placed out of Krasna Poliana sub-municipality (136th and 66th schools), which responded positively and accepted the Roma children in their schools.

Romani Baht Foundation also signalized the Regional Inspectorate of Education for the problem in Krasna Poliana. Romani Baht organized a meeting with the Head of the Regional Inspectorate (Ms. Zvezdova) and the Head teachers. On that meeting Romani Baht stated the problems, which the team met. The representatives from Romani Baht stated that according to Art. 9 of the Law on Education every parent has the right to

choose any school for his/her child. The Head teachers denied that they have refused to accept Roma children. They also insisted on the fact that they already have enough Roma children in their schools and they have to think about Bulgarian children's rights too.

Following that meeting, Romani Baht created Legal experts team (Daniela Mihaylova /Romani Baht/, Diliiana Giteva /Human Rights Project/, Alexander Kashumov /Access to Information Program/, Ivailo Gantchev /Human Rights Project/) to challenge before the Court authorities the refusal of the school directors to accept Roma children.

The activities undertook by the three teams received very broad media attention. Press Agency Balkan invited Romani Baht to held a press-conference on the issue. It was organized on 30<sup>th</sup> of September and broadly reflected in national newspapers and TV stations. Following the press-conference the Director of the Regional Inspectorate on Education invited the Legal team to jointly work with Inspectorate's legal officers and elaborate an agreement between Romani Baht and the Regional Inspectorate. The agreement set up a procedure for accepting children in the schools and the both sides agreed on a joint program for work with teachers, directors, parents and children both from Bulgarian and Roma origin.

The Legal team created a strategy to challenge the problems before the court authorities in Bulgaria.

## **VII. 2 ADMINISTRATIVE PROCEDURE CONCERNING THE CASES ALREADY COLLECTED**

- Head teachers' refusal to accept Roma children into integrated schools. The team decided to firstly address the Administrative Court and to claim the Court to find the directors' act of refusal unlawful. The team prepared three complaints, which were signed by the parents of the Roma children.

The complaints were mailed to the schools - respondents (17th "Damian Gruev"/5 plaintiffs/ ; 123rd "Stefan Stambolov" /9 plaintiffs/ and 28th "Aleko Konstantinov"/ 1 plaintiff/), which are obliged under the Bulgarian law to forward them to the Sofia City Court, Administrative Division in three days term.

The procedure before the Administrative Court is “two instances” procedure under the Bulgarian law. The ruling of the Sofia City Court, Administrative Division can be appealed before the Administrative Supreme Court of the Republic of Bulgaria. The Legal team found that is a very good opportunity to challenge the Supreme Administrative Court to issue a decision on the matter, as far as the Law on Education was very poor in terms of procedural provisions.

Any ruling on the matter will be suitable for our aims - if the Administrative Court decides that the directors’ refusal acts are not subjects to the administrative procedure we will have a clear procedure under the Law for responsibility of the state for damages caused to citizens (before the civil division of the Sofia District Court as a first instance) as well as to apply before international authorities. If the Administrative Court decides that the acts of refusal are administrative acts, it will repeal the acts and will instruct the school authorities to follow the provisions of the Law.

The Legal team also decides to engage field researchers to collect statements from the Roma parents and from the witnesses of the refusals. Such statements will be presented as evidences within the court procedure - both before the administrative or the civil division.

So far the three cases before the administrative court have different development. Two out of the three have been sent to the court by the respective schools, which received them and will be scheduled for a court hearing after 20th of January when the court will be back to work. The third one however was not sent, which appears to violate the administrative procedure. The Legal team will send the third claim directly to the court, asking the court authorities to oblige the respective school to send the files to the court.

### **VII.3 CIVIL PROCEDURE UNDER THE LAW FOR RESPONSIBILITY OF THE STATE FOR DAMAGES CAUSED TO CITIZENS**

- After the administrative procedure is over, the cases will be presented before the Civil Division of the Sofia District Court under the

above stated law. The Legal team will claim on behalf of the Roma children (represented by their parents) that the refusal of the Head teachers to accept them into integrated schools was based on discriminatory prejudice and caused them non-pecuniary damages. Basically the Head teachers refused to accept Roma children on two official grounds: 1. The classes within the respective school have been already full, before the sending of the applications of the Roma children; or 2. The Roma children who apply do not live within the region covered by the respective school. There are arguments, however, which can prove that the reasoning for refusing Roma children's applications was false: On the first place it should be noticed that the Legal team has the information that in the time when those applications were presented to the respective schools, the classes in those schools contained between 16 and 23 children, when the maximum number under the Law is 26. There are also evidences showing that the number of the classes into the integrated schools in Krasna Poliana sub-municipality is between 2 and 4 for the different schools (the information concerns 1st grade classes), when the number of classes in 75th school (the Roma school in Fakulteta district) is 9. It should be noted also, that during the application process Romani Baht's Educational team contacted with the Head teachers of the schools in Krasna Poliana sub-municipality with the proposal to jointly apply before the Sofia Municipality Directorate on Education for additional classes to be opened. The Educational team had the preliminary agreement of this Directorate for opening new classes if such were requested by the Head teachers. However all of them refused. On the second place - there is no provision within the Law on Education to state that the children educated in certain school should live within the "region, covered by the school". On the contrary - Art. 9 of the Law on Education states that every one can choose a school regardless of where this person lives. There is however a provision within the Rules on Imposing the Law on Education, namely Art. 36, which states that if certain school has more applications than its capacity can cover, the children who live within the "region, covered by the school should be accepted first". This "region" shall be determined by the respective municipality. The Human Rights Project sent a request to the Sofia Municipality under the Access to Public Information Act asking to know what are the regions

of the Sofia schools. Sofia Municipality has answered with an official letter that there is no such division. On the other side the Bulgarian Helsinki Committee and the Romani Baht Foundation sent a joint claim to the Supreme Administrative Court asking the Court to pronounce the provision of Art. 36 of the Rules for Imposing the Law on Education unlawful. This case is now pending.

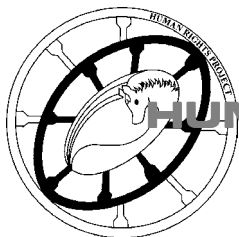
## Notes

- <sup>1</sup> The abbreviation ILO means International Labor Organization
- <sup>2</sup> The desegregation of Roma schools is one of the priorities of the Framework Program for an Equal Integration of the Roma in the Bulgarian Society adopted by a decision of the Council of Ministers as of 22 April 1999. The commitment with the implementation of that Program was reconfirmed by the government of the National Movement 'Simeon the Second' and the Movement for Rights and Freedoms in the program entitled 'The People are the Wealth of Bulgaria'. The only positive step concerning equal accesses to education is from September 2002 when the Minister of Education and Science issued a special 'Directive for integration of the children from minorities'. For first time in the educational history of the country the desegregation of the Roma schools was indicated as a main way for decisively improvement of the situation with the education of the Roma children. Without any doubt it is a big step forward. Unfortunately the term which this 'Directive...' point as a final point of the process of desegregation is too long - twelve years have to pass for ending of the process. Beside this it is not provided for any funding for the carrying out of the desegregation. Human Rights Project carefully will observe the development of the process and will call on the government to speed up it.
- <sup>3</sup> In the middle of September 2002 the Council of Ministers adopted Draft Anti-Discrimination Law. Now this Draft is under discussion in the Commissions of the National Assembly and most probably in the closest future will be passed through the Parliament. Bulgarian government has not agreed with the proposal of HRP and RBF to prepare and to offer to the National Assembly a special Act against the ethnic discrimination and by that way a general Anti-Discrimination Act

has been prepared.

Generally spoken the draft is in accordance with the requirements of Directives 43/2000 and 78/2000. According to it a special body that will receive and will review complaints will be established. That body (Commission for Prevention of Discrimination) will count 15 members as 9 of them will be elected by the Parliament and the President will appoint 6 of the members. The Government has not adopted an offer of the NGOs the appointees of the President to be appointed after consultation with the leading HR NGOs. Also our proposal the members of the Commission to be changed in accordance with the principle of the rotation has not be adopted. Substantial shortcoming of the draft is the provision that the Commission will not have local branches. The lack of such branches will aggravate extremely the access of the people to the Commission and thus the effect of the existence of the Law would be decreased.

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