

Regional conference „Particular Challenges in Dealing with Complaints of Discrimination on Grounds of Ethnicity – A Regional Practitioners’ Exchange“

Ohrid, 26-27 September 2013

1. Presentation of the Comparative Overview of Anti-discrimination Laws in the Western Balkans

At the regional conference “Particular Challenges Dealing with Complaints of Discrimination on Grounds of Ethnicity”, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) presented a comparative overview of anti-discrimination legislation in the Western Balkans. The overview focused only on Laws on Anti-discrimination, aiming to identify differences within the region and propose recommendations for bringing this legislation fully in line with European and international standards. The main recommendations included:

- *Protected characteristics*: the list of protected characteristics (while not exclusive) should be aligned with those specified in the EU Directives and international human rights standards. Some laws do not specify disability or age as possible grounds for discrimination, while others include vague terms such as “genetic predispositions” which need to be clarified.
- *Discrimination based on assumed characteristics or based on association* should be explicitly prohibited in the anti-discrimination laws.
- *Material scope*: the material scope of anti-discrimination laws should cover at least the conditions for self-employment or occupation, access to all types of training and guidance, employment and working conditions, membership or involvement in workers’ organizations, employers’ organizations and professional organizations (these fields are specified in the EU Equality Directives). Anti-discrimination laws could also cover the fields of social protection, social advantages, education and access to the supply of goods and services that are available to the public, including housing (as specified in the Racial Equality Directive). One could also ensure that these laws relate to all fields, as specified in the 2003 OSCE Action Plan on Improving the Situation of Roma and Sinti. Currently the material scope of anti-discrimination laws in the Western Balkans is fairly mixed and does not cover all of these areas.
- *Definitions of “direct and indirect discrimination”, “harassment”, “victimization”, “reasonable accommodation”, “segregation” and “instruction to discriminate”* could be improved in some jurisdictions by making them clearer or aligning them with international standards (depending on the law).
- *Exceptions to the prohibition of discrimination* refer to cases when a difference in treatment is based on a characteristic that is genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate. In some jurisdictions, articles describing these exceptions could be improved to include all of the described aspects.
- *Equality bodies*: the mandates and independence of these bodies should be clearly defined. The highest level of independence possible should be secured for the equality bodies.
- *Remedies and sanctions* have been well described and provided for in most jurisdictions, including judicial remedies.
- *Burden of proof* has been rightly shifted to the respondent, but some jurisdictions should ensure that plaintiffs are not required to provide proof of discrimination in their claim (their responsibility is just to establish facts from which it may be presumed that there has been discrimination).

Representatives from all jurisdictions provided comments (summarized in Annex 1). Several jurisdictions are preparing amendments to their Anti-discrimination Laws (i.e. Bosnia and Herzegovina, Serbia), so this analysis will be a valuable input. ODIHR offered more in-depth analysis that can be made for each jurisdiction at the official request.

2. Typology of cases of discrimination on grounds of ethnicity

Albania – Emirjon Kacaj, Chief of Co-ordination, International Relations and European Integration, Institution of the People’s Advocate (Ombudsman), and Irma Baraku, Commissioner for Anti-discrimination

The Ombudsman’s Office had 550 complaints from the Roma community since 2010. They have access to regional offices of the Ombudsman, which helps ensure better outreach. 77% of complaints in 2011 were successfully solved and 70% of recommendations to public institutions were implemented. Special challenges occur with persons who are not registered because they do not have rental contracts and do not own any property. The Ombudsman provided recommendations for this issue, as well as social housing, education (school enrolment problems due to lack of documents), social welfare (also problems in access and satisfying application criteria) and employment.

The Commissioner had 36 cases on ethnic grounds in 2012, including a hate speech during the recent election campaign. In addition, the Roma community suffers unequal treatment because of civil registration problems or issues in accessing social and economic assistance. However, Roma are not active in filing complaints, so institutions must go to the local communities and ask about problems. In one case, the municipality refused access to economic support because the applicants owned property. In the field of education, the law stipulates measures for promoting education for vulnerable groups, people with disabilities, women. In 2006, the Ministry of Education instructed all schools to enrol children even if they are not registered or not registered locally. The Commissioner is helping with civil registration of children and provision of benefits for single parents, poor families.

Bosnia and Herzegovina – Hajrija Adzamija, Advisor at the Department for Elimination of All Forms of Discrimination, Institution of the Human Rights Ombudsman

The Law was adopted in 2009 – until that time, most reports of discrimination on the basis of ethnicity were submitted by the returning population (former refugees). From 2010, there is a decrease in complaints from returning population, and we observe a sharp increase in cases reported in the field of employment (if the proportional representation is not respected). In public institutions in Bosnia and Herzegovina, all three constitutive people have to be represented equally and cannot be treated as a national minority (even though in some communities they may represent a minority). In some cases, the Ombudsman gave the recommendation that affirmative measures should have been used to employ members of the constitutive people that is severely under-represented in the local community. Specific challenges exist in these cases because reporting one’s ethnicity is not obligatory (or can even be falsely reported) so it is difficult to obtain accurate data on the structure of the population.

Reported cases of discrimination against Roma are rare and the Ombudsman’s reports always underline that this does not reflect the real situation. Most of the reported cases are in the field of social rights. For the upcoming International Human Rights Day, the Ombudsman institution will publish a Report on the Status of Roma in Bosnia and Herzegovina.

Croatia – Tena Šimonović Einwalter, Deputy Ombudsman

In Croatia, there are two sub-categories for discrimination on the basis of ethnicity, namely racial or ethnic origin and national minority or social origin. This is also agreed with the courts as a means for collecting statistics. This typology is perhaps the most functional and includes sub-categories:

- Discrimination on the basis of racial or ethnic origin – contains cases reported by foreigners and immigrants (in Croatia for at least 1 year, but also asylum seekers whose numbers increased in 2012).
- National minority or social origin – mostly reported by members of the Roma and Serbian national minorities, often related to housing, employment (more than labour relations) or status issues (citizenship, residence).

Another way to establish the typology could be by sector, i.e. housing, social welfare, education and employment. Forms of discrimination could also be a way to divide the cases, i.e. direct and indirect.

The former Yugoslav Republic of Macedonia – Dusko Minovski, President, Anti-discrimination Commission

Over the first two years of the Commission’s work, 202 complaints were received. It is important that citizens are starting to raise complaints. 47 complaints were made on the grounds of ethnicity, over half (33) by Roma. Many relate to civil registration issues and discrimination in the field of employment. Cases are submitted by NGOs and individuals. Recently, cases were submitted because:

- Roma are often singled out at the border by the Ministry of Interior, in order to prevent entrance in the EU.
- All Roma were laid off if one person broke rules (i.e. at the shopping mall in Skopje).

The government and Parliament include high ranking representatives of the Roma minority, but there is still room for improvement as Roma should be included at all levels. The Anti-discrimination Commission also has a Roma focal point, Almira Redzeqi, thanks to support of BPRI project.

Kosovo* – Ibrahim Arslan, Deputy Ombudsman

Over 340 new cases but only approx. 40 from the Roma community, mainly related to civil registration (issuance of personal documents free of charge), property issues (inability to prove ownership) and education. There is a lack of access to information for Roma since they do not have internet and are often isolated. Lack of data on Roma also poses a challenge. There is political representation at the institutional level thanks to four seats that are reserved in the national assembly for the Roma minority.

Serbia – Kosana Bekar, Assistant to the Commissioner for Protection of Equality

No data about discrimination cases brought forward by Roma. A small number of violations is reported by physical persons, while most reports come from NGOs. Several key fields can be observed:

Housing: Recently, the Commissioner gave a recommendation to the City of Belgrade for selection of the locations for social housing because there is a threat of segregation or lack of infrastructure.

Education: children from Roma IDP families were segregated into a separate building in Novi Pazar. Education inspection wrote broadly that there were problems but that segregation has been eliminated. They wrote that children are separated for hygienic and linguistic reasons. This report prompted the Commissioner's Office to visit this school and react. In addition, problems occur in schools which are mainly populated by Roma students (4-5 schools throughout Serbia). Efforts are needed to prevent this and de-segregate the schools. Lastly, Roma children are more likely to be referred to special schools.

Discriminatory language in the public sphere (i.e. in the media or statements by public persons).

There are also complaints in the field of healthcare, social protection, employment and other fields.

Montenegro - Marijana Laković, Deputy Ombudsman for Minority Rights and Gender Equality

Only 10% of violations are reported by Roma, mostly on the grounds of ethnicity. This is not a very large number but there is an increase each year. Like in Serbia, most complaints are submitted by NGOs on behalf of Roma individuals. The complaints on the basis of ethnicity can be divided into two categories: those submitted by the Serbian minority and those submitted by the Roma minority. Main topics included the official use of minority languages and representation of national minorities in public service through employment. Other cases addressed employment, education and political participation. Some recommendations of the Ombudsman were implemented in 2012. The number of Roma and Egyptians registered in university increased and drop out from primary education decreased.

3. Examples of cases of discrimination on grounds of ethnicity

Albania – “Forced evictions case in Tirana” presented by the Ombudsman’s Office and the Anti-discrimination Office of the City of Tirana

In July 2013, 191 Roma were evicted from their houses where they have been living for 15-20 years. Without a court decision, a private company that owned the land evicted them. Some Roma moved to nearby cities, including Tirana, and even today 37 families (some 200 people, including 89 children) are homeless, living on the streets of Tirana. The Ombudsman’s Office received complaints from Roma citizens for violence and threats from people who perceived they owned the land. The Ombudsman’s Office was present in the field on a daily basis, organized meetings with the international community and government, and provided the following recommendations:

- To the police, it was recommended to monitor the situation and safety of these families
- To the City of Tirana, it was recommended to provide shelter for the evicted Roma.
- Ministry of Labour and Social Policy and Ministry of Health were informed about the living conditions (no sanitation, make-shift houses) and advised to establish a mobile clinic.
- The Ministry of Education was advised to monitor the school registration of these Roma children.

The Anti-discrimination Commissioner also monitors the situation and provided similar recommendations. Unfortunately, a permanent solution is still pending.

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/99 and the ICJ Opinion on the Kosovo declaration of independence.

Bosnia and Herzegovina – “Housing of Roma” case presented by the Institution of the Human Rights Ombudsman (Office in Brcko)

Brcko District provided land and the Ministry for Human Rights and Refugees provided funding for construction of housing for Roma. Non-Roma citizens submitted a complaint to the Institution of the Ombudsman because they had to pay for land, while Roma received it for free. At the same time, the Roma Association complained because they were unable to implement this housing project even though they won it through open competition. Ombudsman Office staff conducted a field visit and saw that this was community close to a security incident. They conducted a study and concluded that Roma were at the time not more exposed to violence, but the Ombudsman recommended to the police to monitor the situation. The case is still ongoing.

Croatia – “Strategic Litigation Case” presented by the Ombudsman’s Office

The Ombudsman’s Office cannot pursue all the strategic litigation cases, but selects them based on the priority of sending a public awareness message when the case is completed. In Cakovec, an NGO submitted a complaint when Roma girls were not accepted for a work placement in a large store because of their ethnicity. The store claimed they did not have place for new staff, even though they were listed as a possible placement location. They had the impression that this happened because they were Roma, but could not prove it. Afterwards, the Placement Co-ordinator at the school called the store Manager and the Roma girl heard the Manager say “Of course I did not take them, why do you send me gipsy girls”. Ombudsman’s Office filed a court case for direct discrimination on the grounds of ethnicity and harassment. The Placement Co-ordinator decided to testify in court, and the Manager claimed she did not take the girls simply because they did not have place. However, the teacher changed her testimony because she was scared (the store owner was influential in the local community). Nevertheless, the NGO representative who spoke with the teacher and was told about this conversation testified, so the case was won. The Roma girls were awarded pecuniary compensation (reduced on appeal), and the store was convicted of direct discrimination.

The Ombudsman’s Office also examined the management of the placement programme at this school and found that the selection and placement process was not transparent. This created fertile ground for discrimination especially in a multi-ethnic environment. It is recommended that more transparent procedures be used for this type of placement programme in order to prevent discrimination and abuse.

The former Yugoslav Republic of Macedonia:

1. “National minority employee of the Army” case presented by the Ombudsman’s Office

An employee of the army, member of a national minority, filed a complaint that he did not get the usual award (bonus) because of his ethnicity. The Ombudsman’s Office contacted the employee’s immediate superior but did not manage to establish co-operation, so further contacts were made with higher up officials. The Ombudsman’s Office obtained information about how some officers were awarded in the past. After we took some measures, we were informed that over 30 days after the procedure was open, an order was issued to reward the complainant.

2. “Roma Association vs. City Mall” case presented by the Anti-discrimination Commission

In April 2013, around 20 members of the Roma population were laid off by the City Mall in Skopje. Roma Association filed a complaint following this case. All Roma workers were fired after some theft cases in the Mall. An email from the City Mall to their cleaning staff who were Roma was published in many media. The email instructed to “remove all Roma employed in the food court”. The Commissioner published a press release, drawing attention that this type of discrimination is forbidden. The Ombudsman’s Office also drew attention to this case but does not have jurisdiction over cases involving the private sector. Direct discrimination on ethnic grounds was determined in this case and the Commission gave City Mall 30 days to re-employ these workers. This did not happen but the Roma did not want to take the case further.

3. “Education case” presented by the Ombudsman’s Office

There was a complaint of ethnic discrimination in a primary school and the Ombudsman suspected that it revolved around Roma children. However, it turned out that the case revolved around a Roma teacher and non-Roma parents who did not want their children to attend his classes.

4. “Gender based discrimination” case presented by the Ombudsman’s Office

Roma women approached the Ombudsman claiming that their registration into highschool was declined on ethnic grounds. The Ombudsman’s Office had extensive communication with the highschool director but did not receive documents. The director explained that, according to the applicants’ blood tests, their sedimentation was over 20 and had a medical condition (preventing them to attend this particular

highschool). However, the Ombudsman's Office examined the blood results of all applicants and found that male candidates with worse blood results were admitted, while the two girls were rejected. The fault was recognised but the Ombudsman could not initiate a court case because he does not have the mandate for this.

Kosovo – “Cadastre Case” presented by the Ombudsman's Office

A Roma individual complained about his application for documents from the Land Cadastre Office, who claimed that documentation could not be found. The Ombudsman's Office made an inquiry, the documentation was found and the individual was able to reinstate his property rights.

Serbia:

1. “Evictions case” presented by the Ombudsman's Office

In Belgrade, 1,000 Roma were resettled from a downtown settlement. The Ombudsman's Office and Commissioner for Protection of Equality monitored this process and during the resettlement process itself there was not discrimination. However, discrimination happened when some of these Roma returned to their home municipalities. Several recommendations were given but mostly not applied by the local self-governments.

2. “Minority language” case presented by the Ombudsman's Office

In municipalities where there is 15% of minority population, the minority language should be introduced in public administration. In Priboj, however, this did not take place even though the conditions were met, because the city refused to vote on the statute which would introduce this practice. The Ombudsman and Commissioner gave recommendations but they were not followed. In the 2012 census, the minority population in Priboj decreased so the legal obligation no longer exists, but irreparable damage was done to the trust of the community in the rule of law/local government.

Montenegro:

1. “Official use of (minority) language and alphabet” case presented by the Ombudsman's Office

The Serbian National Minority Council submitted a complaint about the official use of minority language and alphabet. There is no law that regulates the use of official use of languages. The Ombudsman's Office proposed to the Parliament of Montenegro to adopt a specific law distinguishing between the official language (Montenegrin) and other languages that are used officially (i.e. minority languages in some municipalities).

2. “Roma complaint against the police” case presented by the Ombudsman's Office

In November 2010, an individual of Roma ethnicity was collecting recyclables and took some batteries from construction equipment. According to the complaint filed by a Roma NGO, they were thrown into the river by the police (called by neighbours who saw them taking equipment). When the Ombudsman researched the case, they were actually thrown into a large hole filled with water. The Ombudsman contacted the Internal Control Office which could not obtain statements from the Roma individuals because they refused to co-operate. They said they were no longer interested in the case and were mainly upset with the people who called the police and not so much with the police officers. No police wrong doing could be established, it seemed that the Roma were indeed wet but possibly from the rain that was falling.

In addition, the Ombudsman proposed to the Parliament that the Roma minority should have one reserved seat in the Parliament because in the last census their population surpassed 1% on the last census (and a similar arrangement exists for the Croatian minority). This proposal is currently under consideration.

BPRI will translate into English one opinion or decision on a Roma-related case given by the Ombudsman or Commissioner per jurisdiction.

Tena Simonovic Einwalter presented the **Equinet association** and explained that members do not have to be EU member states but should be close to accession because the association is EU funded. On the Equinet website (<http://www.equineteurope.org/-Equinet-publications->), there are two publications about combatting discrimination against Roma. Through the Equinet, members can provide advice on cases that took place across the region, and learn how different types of cases were resolved. Training events provided by the Equinet are also useful for strengthening capacities and gaining new knowledge.

The participants recommended that **anti-discrimination mechanisms need to be strengthened in order to improve access for Roma and their awareness about discrimination**. In particular:

- Relatively new institutions, especially those with mandate covering both the private and public sectors and with ability to file criminal charges, need to have stronger capacities (sufficient staffing, access to expertise). This will benefit *all* minorities and marginalized groups.
- Stronger attention should be paid to the implementation of legislation. For this purpose, resources and funding should be increased, especially for promotion of anti-discrimination mechanisms and prevention of discrimination which are often neglected. In addition to these issues, awareness raising of Roma inclusion issues needs to include not only the public, but also court and public service representatives.
- Equality institutions should employ Roma where possible to give a positive example.
- Regional co-operation between anti-discrimination bodies should continue in order to exchange information and send a joint message throughout the Western Balkans that discrimination against Roma will not be tolerated.
- Affirmative measures should be used to improve the position of Roma and we should examine what measures are the most effective.
- The position of domicile Roma should not be neglected while most of the attention is paid to the vulnerable situation of Roma IDPs and refugees.

Annex 1 – List of participants

Annex 2 – Summary of Comments on the Regional comparative overview of anti-discrimination laws