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**Anti-Semitism and Islamofobia in Bulgaria. Actual legal
and sociological aspects ***

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Abstract

The article is aimed at presenting briefly the actual legal regulation of protection of the religious rights of the individuals belonging to the Muslim and the Jewish communities in Bulgaria. The author has tried to combine the legal issues with some recent sociological studies on Anti-Semitism and Islamophobia and the related violence and crimes. The phenomena Anti-Semitism and Islamophobia are based on the presence of Muslim and Jewish communities in Bulgaria. The article gives some recent statistical data on Turks (Muslims) and Jews in the country according to the last census in 2011. The focus of the study is on the domestic legislation, especially the political rights, the protection against discrimination, the notion of “positive discrimination”, the religious rights and freedoms and the relevant Bulgarian criminal law. This legal regulation is analyzed in the light of Art. 5, Para. 4 of the Bulgarian Constitution which stipulates the primacy of the obligations under the International Public Law. Some relevant case-law is quoted. The legal analysis demonstrates the fact that there are no legal definitions of “Anti-Semitism” and “Islamophobia”. A general conclusion is drawn about the compatibility of the Bulgarian system for protection of individuals that belong to minorities with the international obligations.

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1 - Introduction

Anti-Semitism and Islamophobia are specific manifestations of Racism and Xenophobia. The fight against these phenomena is an integral part of the matter of the protection of human rights and fundamental freedoms in Europe and the world.

On the other hand, Anti-Semitism and Islamophobia are closely linked to the rights of the individuals belonging to the minorities, especially the religious minorities. The protection of these categories of people is one of the most complex and controversial issues in International public law, as well in the domestic legislation. This complexity arises from the different ways of constitution of the national states in the world, from the different political concept on citizenship and nationality, and last but not least from the lack of unified and universally accepted terminology of "nation", "nationality", "ethnicity" and "minority". The great differences between the concepts the word denotes evolve from the understanding of "emigration" and "immigration" nations, commuting between the "old" (Europe) and the "new" world (America). In fact, "pure" or absolutely homogenous nations do not exist. In every country there live individuals or groups of individuals with different ethnic, national, linguistic, racial or religious characteristics. They differ from the majority of the national population of the country. At the same time these people or groups of people bring in diversity and contribute to the enrichment of the national character of the majority of the population.

The aim of this article is to present briefly the actual legal regulation of the protection of the religious rights of the individuals that belong to the Muslim and the Jewish communities in the country rather than study the historical development and constitution of these minority groups in Bulgaria. Nevertheless, some historical reminiscences will be quoted in order to clarify some of the present rights of the individuals who belong to the minorities. On the other hand, the author has tried to combine the legal issues with some recent sociological studies on Anti-Semitism and Islamophobia and the related violence and crimes.

It must be noted that in Bulgaria there is no available information on racist incidents and discriminatory practices. This lack significantly constrains the ability of the country to counteract discrimination and inequality.

According to the Fundamental Rights Agency (FRA) Report on Racism and Xenophobia in the Member States of the EU (2007) "In Bulgaria there is no reliable system for data collection on ethnic and



religious minorities and on concrete manifestation of discrimination¹". This statement is only partially correct. In fact, there is reliable data on ethnic and religious minorities according the 13 censuses in the period 1900 - 2011. The main problem is the lack of a unified national court information system, which makes difficult the collection of the complaints and monitoring of the court cases. In addition, the relevant case-law is accessible only with respect to part of the cases, because of the protection of personal data.

2 - Statistical Data

In the period from 1900 till now there were 13 official censuses of the population in Bulgaria. The last 2011 census combined the features "ethnic groups" and "mother tongue", because of the historically grounded realities².

According to the data, by 1st February 2011 the citizens of Bulgarian nationality by mother tongue are in absolute numbers 5,631,759 of the total 6,611,513 nationals. The second ethnic (national) group by mother tongue Turkish are the Turks with 604,246 people, followed by the Roma (Gypsies) with 280,979 people³.

Other smaller ethnic groups by mother tongue are: Armenians (5,567), Jews (141), Wallachians or Vlachs (1,815), Russians (15,211), Tartars (1,367), Arabians (1,321), Greeks (3,182), Macedonians (1,376), Romanians (5,454), Ukrainians (1,691), other (9,946) and ones that are not self-identified (47,458).

The last data of the population census by ethnic groups is the following: Bulgarians 5,604,300; Turks 585,024; Roma (Gypsies) 320,761; Armenians 6,360; Jews 1,130; Vlachs 3,598; Karakachans 2,511; Russians 986; Greeks 1,356; Macedonians 1,609; Romanians 866; Ukrainians 1,763; other 19,260; and ones that are not self-identified 53,107.

¹ FRA 2007 Report on *Racism and Xenophobia in the Member States of the EU*, TK-AK-07-002-EN-C, p. 49

² www.nsi.bg/census2011/index.php. For comparison with the former census, see, otherwise different, **I. ILIEVA**, *Anti-Semitism, islamofobia and other forms of discrimination*, Editor: the Centre for Comparative Studies, pp. 93-95, www.tonioloricerca.it/index.php?...otherwise-different2ricerca.

³ To be compared to the data of the census in 2001: Bulgarian: 6,655,210 of the total 7,928,901 nationals, Turks with 746,664 people, followed by the Roma (Gypsies) with 370,908 people. In 2001 the percentage of the Turks was relatively constant representing 9.4 % of the country's citizens.



The complexity of the picture arises, because the features “mother tongue” and “ethnicity” do not always coincide. For example, the group of Pomaks who are Muslims, speak Bulgarian language. They are the descendants of the Slavic Bulgarians who converted to Islam centuries ago during the Turkish domination. The Gagauz are Turkish speaking, but they are Orthodox Christians. A problem rises also with the definition of the Macedonian language and whether the Macedonians are a linguistic minority. The official Bulgarian position is well-known: the Macedonian language does not exist; it is a dialect of the Bulgarian language.

The picture of the religious minorities presents the same complexity. The ethnicity differs from the religious confessions and beliefs. The pure cases as: Bulgarian nationality and Orthodoxy, or Turkish nationality with Muslim confession are diversified. The Muslim religion is the second largest religion in Bulgaria. There are Bulgarian Roman-Catholics, Bulgarian Muslims, Bulgarian Jews, as well Orthodox Roma, Protestant Roma, Muslim Roma. The only absolutely homogenous religious group is the Armenian minority, where all Armenians are Armeno-Gregorians.

The existing ethnic groups can be classified in two categories on the grounds of their historical arrival on the territory of the state. The first category includes the so called “historical minorities”. They are an integral part of the Bulgarian population on the basis of the historical destiny of the country. The following are listed here: Turks, Roma, Armenians, Jews, Wallachians or Vlachs, Karakachans, Russians, Tartars, Circassians or Cherkess, Gagauz, Albanians, Serbs, Bosnians, Greeks, Romanians, Slovaks, Slovenes, Ukrainians and the Macedonians who require additional clarification⁴. The second category

⁴ Some comments need to be made, in order to be precise in the use of the statistical methods and data on the minorities in Bulgaria. The first is on the existence of a “Macedonian” minority in the country. The official Bulgarian position is that Macedonia is a geographical region, populated by Bulgarians, which region is now divided between Bulgaria, Greece and the Former Yugoslav Republic of Macedonia. Because of the fluctuating political qualifications of the region’s population, there are differences in the census. Till 1943 the Macedonians were not considered an independent nationality. They were included in the censuses as Bulgarians.

The second comment is on the differences between Romanians and Wallachians or Vlachs. From 1900 till 1975 they were included in the censuses as Romanians.

The third comment is on the Cincars (Aromuns, Aromanians or Kutsovlachs). Between 1905 and 1934 they were included in the censuses as Roma.

After 1934 the Bulgarian Muslims (Pomaks) have been listed as Bulgarians.

From 1934 to 1965 the Tartars, Romanians, Slovaks and Serbs were not examined as independent ethnic groups.



presents the so called “new minorities”, such as Africans, Arabians, Vietnamese, Kurds, Germans, Poles, Hungarians, French etc. Their presence in Bulgaria is the result of migration, mixed marriages or other reasons.

Population by confession by 01.02.2011

Total for the country	5,758,301
Eastern Orthodox	4,374,135
Catholics	48,945
Protestants	64,476
Muslims	
Muslims Sunits	546,004
Muslims Shiits	27,407
Muslims	3,728
Armeno-Gregorians	1,715
Judaism	706
other	9,023
I profess no religion	272,264
not self identified	409,898

The brief statistical review demonstrates the differentiation on the grounds of national and ethnic origin, language and religion. In addition we can add also cultural differences, historical traditions, etc. This complex picture needs to be legally regulated in order to meet the needs of the democratic society, the rule of the law, human rights, international obligations and the domestic social relations.

3 - The Muslim Community

The data of the last census shows that the Muslim community in Bulgaria consists of different “sub-groups”. The traditionally living in Bulgaria ethnic Turks are Muslims Sunits, Muslims Shiits. Other people are self-identified only as “Muslims”. The ethnic Turks, Bulgarian Mohammedans (Pomaks), Roma Muslims are citizens of the Republic of Bulgaria, while most representatives of the Arab countries have a status of permanent or temporary residents or refugees⁵. The comparison of

⁵ For more details, see, Otherwise different, E. CHENGLOVA, R. PETKOVA, V. MINCHEV, *Organization, Social Practices and Problems of Jewish and Muslim*



the data of the censuses in 2001 and 2011 shows a trend of decreasing of the Turkish population in Bulgaria. The number of Turks according to the census in 2001 is 746,664, while in the 2011 census this number is 585,024, which means 161,640 persons less.

Turks as to 01.02.2011

Ethnic groups	Total	Bulgarian	Turkish	Roma	Russian	Tartarian	Arabian	Romanian	Other
Turks	585,024	18,975	564,858	549	15	8	4	4	52

The recent sociological survey of assoc. prof. Emilia Chengelova, assoc. prof. Roska Petkova and assoc. prof. Vesselin Minchev distinguishes three distinctive stages of the image of the Muslim community in Bulgaria since 1944.

“The first stage spans the period until the beginning of 1980s, when in the conditions of a state-organized social and economic regime the Muslims were treated as one of the minorities in the country, with equal rights and opportunities for free will, equal access to medical services, social insurance, education and labour. The main focus, however, was placed on the ethnic Turks. Purposeful care was taken for their integration in the Bulgarian society, and special attention was paid to the so-called regions with mixed population. This stage was characterized with the implementation of a state policy for encouraging the ethnic Turks to acquire higher education and directing them towards professional realization in the construction-engineering and some humanitarian areas.

This stage was considerably calm and the ethnic Turks were considered one of the minorities, which were the part of the Bulgarian state without any problems. The predominating public attitudes among the Bulgarians towards the ethnic Turks are that they are peaceful, hard-working, diligent people, cooperative and neighborly. Difference is made concerning the Bulgarian Mohammedans, who are referred to as a more closed community (compared with the ethnic Turks), following more strictly the norms of the Muslim religion and leading a considerably more capsulated social life”⁶.

The second period in the positioning of the Muslim community in the Bulgarian context encompasses the end of 1970s and the

Communities in Bulgaria, p. 17, www.tonioloricerca.it/index.php?...otherwise-different2ricerca.

⁶ CHENGELOVA, R. PETKOVA, V. MINCHEV, *Organization, Social Practices and Problems*, cit., p. 18.



beginning of 1980s with the carrying out of the so-called regeneration process. The tragic events during the coercive change of the names of the Turks and their replacement with Bulgarian names in 1984 – 1985 gave birth of illegal formations, which gradually crystallized in the form of a movement of the Turks and Muslims for restoration of their rights. “The respondents talk carefully about this period, not hiding their deep disappointment from the violence exercised upon them. They talk about the inevitable changes in the way of thinking of the ethnic Turks, who, in response to their rights being taken away, choose the moving to Turkey”⁷.

The years of the so called regeneration process were a serious ordeal for the Bulgarian society: the existing peaceful inter-ethnic attitudes were destroyed, many challenges to the social peace appeared, and in the regions with mixed population conflicts occurred. In this situation emerged the Movement for Rights and Freedoms (MRF), which set its primary goal to fight for restoring and protecting the rights of the ethnic Turks and Muslims in Bulgaria.

The third stage of the development of the ethnic Turks started after 10th November 1989. The radical changes in the political and socio-economic conditions in the country cleared the way for political pluralism. This new opportunity was perfectly captured by the MRF leaders who participated actively in the pluralistic political life. In its rhetoric MRF actively defended the protection of the rights of the Turks and Muslims in Bulgaria. With time MRF identified itself as a spokesman for the interests and guarantor of the rights of all Muslims living in Bulgaria. The authors of the sociological study pointed out:

“Our intention has been to avoid the political discourse, but during the interviews it became clear that it was impossible. For the other communities predominant are organizations and unions of cultural, religious and social character, but for the ethnic Turks there is a serious political mobilization. They think that maintaining their identity is possible almost only through an active political activity, which would guarantee real mechanisms for protecting the universal rights. That is why the respondents point MRF as the only organization, which expresses their interests. So, de facto, despite their numerousness, the ethnic Turks have no other legitimate for them organizations. The study also shows that the main focus of their activity is protecting their civil and human rights, which concerns implementing certain policies and active involvement in the political life of the country.

⁷ CHENGELOVA, R. PETKOVA, V. MINCHEV, *Organization, Social Practices and Problems*, cit., p. 18.



The interviews show that this thesis is most closely followed by the representatives of the ethnic Turks. They point MRF as the main institutional form of organizing the activities of the Muslim community in Bulgaria⁸.

Another important organization, which supports the Muslim community's identity, is the Head Mufti's Office⁹. According to the respondents, the most correct definition of the Head Mufti's Office is a religious institute of the Muslims in Bulgaria, which organizes their religious life. The Mufti's Office organizes the religious education. These are mainly Qur'an courses, as well as education helping people of all generations to understand the Muslim religion. Special attention is drawn to the involvement of young people in the Qur'an courses and their introduction to the main ethic and moral norms concerning the practice of religion¹⁰.

Despite the high degree of integration, the Muslim community (mostly the ethnic Turks) faces problems and challenges. According to the people interviewed, the main source of these problems is the ethnic and religious confrontation, the attempts for political isolation of the representatives of the ethnic Turks and their non-admission in the managing structures of certain ministries.

The sociological survey proves that the problems of the ethnic Turks are clearly economical. The respondents refer to the poverty and the low incomes as one of the most serious motives for creating negative attitudes among the ethnic Turks and the Bulgarian Mohammedans. Since they cannot find steady income sources, many of them turn to Turkey. And although they feel Bulgaria as their motherland, they prefer to work in Turkey so they can be better provided materially.

According to the respondents, in the last few years there is an increase of the xenophobic acts, and the acts of anti-Islamism become

⁸ CHENGLOVA, R. PETKOVA, V. MINCHEV, *Organization, Social Practices and Problems*, cit., p. 19.

⁹ For more details, see the history of creation of the autonomous statute of the Muslim community in Bulgaria, as well as the analysis of the Statutes from 1945 till now in K.I. PETROVA, *Gli Statuti dell'Islam Bulgaro e il suo inserimento nell'ordinamento giuridico dello Stato*, Tesi di laurea in Diritto Ecclesiastico, Facoltà di Giurisprudenza, Università di Bologna, Anno Accademico 2007/2008, pp. 21-29 and 85-133.

¹⁰ Brief review of the leadership split of the Muslim community in I. ILIEVA, *Legal regulation of the religious rights and freedoms in Bulgaria, Libert  di coscienza e diversit  di appartenenza religiosa nell'Est Europa*, (a cura di G. Cimbal , F. Botti), Bononia University Press, 2008, pp. 95-96.



more daring. The original talks are provided by "Ataka"¹¹, which is the main propagator of anti-Islamic patterns of thinking. The clash between the activists of "Ataka" and the Muslims in front of the Sofia mosque on the 20th May 2011 raises serious concerns about the state of the reality of exercising religious rights in Bulgaria.

A new "contribution" to confirming this rhetoric has the party "Order, Legality, Justice", whose representatives are even more severe opponents of the ethnic peace in the country, according to the respondents.

One of the direct results of such talks is the creation of increasingly stronger attitudes among the Bulgarians against people speaking Turkish in public places. The respondents share that they are subject of rude comments and remarks, even aggression.

The activities of different neo-fascist formations and youth groups (like skinheads, for example), who desecrate the religious symbols of the Jews and Muslims, become possible again for the above-mentioned reasons.

"We have regional units, which report to us different cases of vandalism – drawing on the walls of the mosques, drawn swastikas, offensive words, etc. This shows that these things are not gone." ... "There are many attacks against mosques, arsons included, and not one case has been solved."¹².

According to the report of the chief mufti Mustafa Hadzhi in the period 1991-2009 59 cases of profanation of religious places of the Muslim confession were recorded.

4 - The Jewish Community

The Jewish community in Bulgaria is small.

Jews as to 01.02.2011

Jews	Total	Bulgarian	Jewish	Russian	Arabian	Other
	1130	897	120	61	3	39

¹¹ The political party "Ataka" was created on 17th April 2005 in Sofia and officially registered in the Sofia City Court in July 2005. It is self-identified as nationalist and patriotic. At the parliamentary elections in 2005 the party took 8,93 % of the votes and gained 21 places in Parliament. At the parliamentary elections in 2009 "Ataka" gained 9,36 % and 21 places. See more at www.ataka.bg.

¹² Otherwise different, p. 24.



The same trend is observed as with the Turkish population. The number of Jews according to the census in 2001 was 1,363, according to the census in 2011 – 1,130, which means 233 persons less.

The Jewish community in Bulgaria is represented by some organizations as Shalom, Chabad, the Jewish Religious Council at the Synagogue and representations of international Jewish organizations.

The main organization is Shalom¹³. It was created in 1990 as a successor of the Jew consistory in Bulgaria that existed till the end of 1940¹⁴. Shalom unites 16 regional organizations, registered according to the Bulgarian Civil Law. The governing bodies of the organization are: the General Assembly of 104 representatives elected by the regional units. It is the main governing body. The Consistory is composed by 33 members. The reunions of this body take place 3 – 4 times per year. The Governing Council has 11 members. Its reunions take place once a month. This body is responsible for all current activities and takes care of the problems of the community. Since 2007 President of Shalom has been Mr. Maxim Benvenisti. The President of the Sofia unit since 2008 has been Mr. Alexander Oscar.

The next organization – Chabad is mostly of religious character. It is a branch of an international organization, aiming at uniting the Jews around the world with the Jewish culture and traditions through religion. It has representatives in over 140 countries, including Bulgaria¹⁵.

Manifestation of Anti-Semitism

According to the sociological survey, conducted by assoc. Prof. Emilia Chengelova, assoc. Prof. Roska Petkova and assoc. Prof. Vesselin Minchev concerning the situation in Bulgaria, the opinions of the respondents differ. In the first group the respondents think that there is no ethnic discrimination of the Jews in Bulgaria. Their explanation is the serious presence of Israeli entrepreneurs in Bulgaria, which allows people to understand the Jewish mentality and way of life and to form an opinion about the Jews based on personal contacts and impressions. In the second group there are respondents thinking that in recent years there is an aggravation of the attitude towards the ethnic minorities in Bulgaria. This attitude is due to the political suggestions of parties like "Ataka" and its leader Volen Siderov. The respondents, who think that

¹³ www.shalom.bg.

¹⁴ About the history of the Consistory, for more details, see, **D. KOEHN**, *The Political Golgotha: a nation is not to be separated*, in *Bulgarian and Jews*, Part two, edited by A. Fol, TANGRA Foundation, 2000, pp. 12–20.

¹⁵ For more details, see, otherwise different, **CHENGELOVA, R. PETKOVA, V. MINCHEV**, *Organization, Social Practices and Problems*, cit., pp. 10–13.



there is some forms of discrimination of the Jews in Bulgaria, see its manifestation mostly as a verbal one – using certain classifications, definitions, talks against the Jews. However, they also think that the use of xenophobic rhetoric by some extreme nationalists is rather demonstrative. Although sometimes this rhetoric materializes in drawing swastikas on the synagogue or the Jewish school “Dimcho Debelianov” on the date of Hitler’s birthday. All respondents admit that to a great extent these are demonstrative actions and they themselves have never felt threatened or discriminated in their daily life¹⁶.

5 - General Overview of the relevant Law Provisions in Bulgaria

An important characteristic of the Bulgarian regulation of the matter of equality, non-discrimination and minorities’ relations are the primacy of the obligations under the International Public Law. According to Art. 5, Para. 4 of the Bulgarian Constitution, the international treaties ratified in accordance with the Constitution, promulgated and entered into force for Bulgaria, become an inherent part of the Bulgarian domestic legislation. They prevail over the contradicting dispositions of the internal (domestic) legislation. In addition Bulgaria as a member-state of the European Union is subject of the European Communities Law which is characterized by its direct effect and primacy.

This characteristic explains the lack of some legal definitions in the domestic legislation and the use of the terms generally accepted in international public law. This is the case with the notion of “non-discrimination”, “racial discrimination”, “xenophobia”, etc.

Thus, the relevant law provisions can be classified in the following three big categories:

- A. Obligations under the International Public Law
- B. Obligations under European Unione Law
- C. Obligations under the domestic legislation

GENERAL INTERNATIONAL OBLIGATIONS

- The Charter of the United Nations - Art. 1, Para. 3, Art. 55, Art. 56.
- The Universal Declaration of Human Rights – 1948

¹⁶ For more details, see, otherwise different, **CHENGLOVA, R. PETKOVA, V. MINCHEV**, *Organization, Social Practices and Problems*, cit., pp. 15–17.



SPECIFIC INTERNATIONAL OBLIGATIONS ON THE MINORITIES

- Article 27 of the International Covenant on Civil and Political Rights (ICCPR) – 1966: “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”¹⁷.
- UN Declaration on the Rights of Individuals, belonging to national, ethnic, religious and linguistic minorities - 1992
- Framework Convention for the Protection of the National Minorities - 1995, into force 1998

OTHER RELEVANT INTERNATIONAL OBLIGATIONS

- Convention on the Prevention and Punishment of the Crime of Genocide – 1948
- International Covenant on Economic, Social and Cultural Rights - 1966
- International Convention on the Elimination of All Forms of Racial Discrimination - 1966
- Convention on the Elimination of All Forms of Discrimination against Women - 1979
- International Convention on the Suppression and Punishment of the Crime of Apartheid - 1973
- Convention of the Rights of the Child - 1985

OBLIGATIONS UNDER THE EUROPEAN STANDARD ON HUMAN RIGHTS

- European Convention for the Protection of Human Rights and Fundamental Freedoms - 1950
- Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms – 2000
- Framework convention for the Protection of National Minorities - 1995, into force 1998
- Directive 2000/43/CE implementing the principle of equal treatment between persons irrespective of racial or ethnic origin
- Directive 2000/78/CE establishing a general framework for equal treatment in employment and occupation

RELEVANT DOMESTIC LEGISLATION

¹⁷ For a more detailed analysis of Art. 27 ICCPR, see, I. ILEIVA. *Minorities on the Balkan. The International Protection*, Open Society Foundation, S., 1994, pp. 41–52.



The following list of the relevant domestic acts is based on the supremacy of the Bulgarian Constitution. The list of the acts is made on my personal doctrinal appreciation on the importance of the laws for the minorities in the country¹⁸.

- The Constitution of 1991
- Political Parties Act – 2005
- Law on the Bulgarian Citizenship - 1998
- Law on the Foreigners in Bulgaria - 1998
- Law on Protection from Discrimination – 2003 (name amended in 2006)
- Law on the Religions - 2002
- Public Education Act - 1991
- Higher Education Act – 1995
- Law on Radio and Television - 1998
- Law on the Educational Degree, the Educational Minimum and the Learning Plan – 1999
- Law on the Protection and Development of Culture - 1999
- Law on the Civil Registration – 1999
- Law on the Bulgarians Living Outside the Boundaries of Republic of Bulgaria – 2000
- Penal Code – 1968
- Law on the Normative Acts – 1973
- Law on the Judiciary - 2007
- Civil Procedure Code – 2007, in force from 1 March 2008
- Code on Criminal Procedure - 2005
- Code on Administrative Procedures – 2006
- Law on the Civil Servant – 1999
- Law on Defence and the Armed Forces – 2009
- Law on the Legal Non-Profit Bodies – 2000
- Law on the Protection of the Child – 2000
- Law on Social Assistance – 1998

¹⁸ There are other relevant acts such as: Decree No. 86 as of 12th March 1997 on the certification of the state register of specialties according to the educational-qualification degrees, 1997; Regulations on the recognition of education received abroad, 2000; Law on the Protection of Consumers and on the Trade Rules, 1999; Law on Foods, 1999; Ordinance on the Requirements for the Labelling of Non-Food Products, 1999; Ordinance on the Labelling and Marketing of Wines, Alcoholic Drinks and Products of Grapes and Wine, 2000; Law on Community Centres, 1996; National Framework Treaty between the National Health Insurance Fund and the Bulgarian Doctors' Union and the Bulgarian Union of Dentists, 2000, etc.



- Labour Code - 1986
- Commercial Law – 1991
- Regulations for the Organisation and Activity of the Constitutional Court, 1991
 - Rules of the Arbitration Court of the Bulgarian Chamber of Commerce and Industry, 1993
 - Rules and regulations for the implementation of the Public Education Act, 1999
 - Decree for the general educational minimum and the distribution of school hours, 1999.

The Bulgarian system for protection of the rights of the minorities is based on two fundamental levels. The first is the general principle of equality before the law and non-discrimination for all Bulgarian citizens. This principle is established on a large scale in the Bulgarian legislation.

The second level of protection of individuals, belonging to minority groups¹⁹ consists of legal guarantees, establishing specific rights in all spheres of human rights.

Thus, the individuals, belonging to the minorities fully enjoy all rights and freedoms as Bulgarian citizens, and in addition they have a wide list of specific rights in order to preserve and develop their identity. On this criterion, the domestic legislation can be divided into two groups: provisions on the equality and non-discrimination, and special rights, protective measures and norms of the type of “positive” discrimination.

In the first big group of legal provisions concerning minorities the following need to be cited: Art. 6, Para. 2 of the Constitution; Art. 8, Para. 3 of the Labour Code²⁰; Art. 4 of the Law on Protection against Discrimination²¹; Art. 10, Para. 2 of the Law on the Protection of the Child²²; Art. 11, Para. 1 of the Code on Criminal Procedures²³; Art. 7 of

¹⁹ Analysis of the legal term “minority” in **I. ILIEVA**, *Legal regulation of the religious rights and freedoms in Bulgaria*, cit, pp. 8 –82.

²⁰ Promulgated, *State Gazette*, No. 26 as of 1st April 1986, last amend. SG, No. 82 as of 21st October 2011.

²¹ Promulgated, *State Gazette*, No. 86 as of 30th September 2003, last amend., No. 39 as of 20th May 2011.

²² Promulgated, *State Gazette*, No. 48 as of 13th June 2000, last amend., No. 51 as of 5th July 2011.

²³ Promulgated, *State Gazette*, No. 86 as of 28th October 2005, into force as of 29th April 2006, last amend. Nr. 61 as of 9th August 2011.



the Law on the Civil Servant²⁴; Art. 3 of the Law on Social Assistance²⁵; Art. 2 of the Law on Encouraging the Employment²⁶ and other²⁷.

6 - Anti-semitism and Islamophobia and the political Rights according to the domestic Legislation

Irrespective of the lack of legal definitions of “Anti-Semitism” and “Islamophobia” in Bulgarian legislation, their manifestations are mostly related with some of the main political rights of the Bulgarian citizens.

The regulation of the political rights of the individuals belonging to the minorities is based on the principle of equality. They enjoy the same political rights as all Bulgarian citizens. The main provisions are proclaimed in the Constitution of Bulgaria. Pursuant to Art. 11, Para. 1: ‘Politics in the Republic of Bulgaria shall be founded on the principle of political plurality.

(2) No political party or ideology shall be proclaimed or affirmed as a party or ideology of the state.

(3) All parties shall facilitate the formation and expression of the citizens' political will. The procedure applying to the formation and dissolution of political parties and the conditions pertaining to their activity is established by law.

The restriction of the right of creation of political parties is in accordance with the European standard in this field. Article 11, Para. 4 of the Constitution prohibits the political parties on ethnic, racial, or religious basis and of parties which seek the usurpation of state power through violence.

The active and passive electoral rights are also based on the principle of equality. Pursuant to Art. 42, Para. 1 of the Constitution: “Every citizen above the age of 18, with the exception of those placed under judicial interdiction or serving a prison sentence, is free to elect state and local authorities and vote in referendums.”

²⁴ Promulgated, *State Gazette*, No. 67 as of 27th July 1999, last amend., No. 18 as of 1st March 2011.

²⁵ Promulgated, *State Gazette*, No. 56 as of 19th May 1998, last amend., No. 51 as of 5th July 2011.

²⁶ Promulgated, *State Gazette*, No. 112 as of 2001, last amend. SG, No. 43 as of 7th June 2011.

²⁷ For a more detailed analysis of the antidiscrimination provisions, see, **I. ILIEVA**, *Regulation of the principle of equality and non-discrimination*, in **T. KAMENOVA, E. DRUMEVA, I. ILIEVA**. *European and National Antidiscrimination Legal Regulation*, second revised edition, S., 2004, pp. 137–176.



In the category of the political right and freedoms are also the right of peaceful and unarmed assembly for meetings and demonstrations (Art. 43 of the Constitution). Article 44, Para. 1 of the Constitution establishes the freedom of association. The restriction of this freedom is set forth in Art. 44, Para. 2:

“No organization shall act to the detriment of the country’s sovereignty and national integrity, or the unity of the nation, nor shall it incite racial, national, ethnic, or religious enmity or an encroachment on the rights and freedoms of citizens; no organization shall establish clandestine or paramilitary structure or shall seek to attain its aims through violence.”

The Law on the Political Parties currently into force does not specify the above-mentioned restrictions²⁸. Article 4 gives a general framework for the creation and the activities of the political parties in Bulgaria: “The organization and activity of the political parties is realized on the basis of the Constitution, and the laws, as well as in accordance with their party statutes”.

The following exigencies are explicitly formulated: the political parties may use democratic means and methods in achieving their political goals (Art. 2, Para. 3). The political parties cannot use in their symbols the national state emblem or the flag of the Republic of Bulgaria, nor other religious signs, images or symbols (Art. 5). Their symbols shall not harm the universal values or be in contradiction with the good morals (2). The political parties shall conduct their public events, shall compose their appeals and draft their documents in the Bulgarian language (Art. 6).

The principal provisions concerning the right of association are stated in Art. 12 of the Constitution:

“(1) The associations of citizens shall serve to meet and safeguard their interests.

(2) Citizens' associations, including the trade unions, shall not pursue any political objectives, nor shall they engage in any political activity which is in the domain of the political parties.”

The Law on Community Centers²⁹ specifies this right for the communities. Pursuant to Art. 2, Para. 1:

²⁸ Promulgated, *State Gazette*, No. 28 as of 1st April 2005, last amended, No. 99 as of 17th December 2010.

²⁹ Promulgated, *State Gazette* (SG), No.89 as of 22nd October 1996, last amend. SG, No. 97 as of 10th December 2010.



“Community centers are traditional self-governing Bulgarian cultural-educational associations in the communities, which also implement national cultural and educational policies. In their activities all physical persons can take part regardless of their age or sex, political and religious views and ethnic self-consciousness.”

THE CASE: MOVEMENT FOR RIGHTS AND FREEDOMS (MRF)

The main problem in the matter of the implementation of the political rights in Bulgaria is related to the Movement for Rights and Freedoms as a political party, the majority of whose members belong to the Turkish minority. The Movement was created at the constituent conference, held in Sofia on 26 – 27 March 1990. During the conference the Statute and Programme were adopted and governing bodies were elected. The Movement was registered in the register for political parties at the Sofia Municipal Court with a Court Decision as of 26th April 1990 (file case No. 2574/90). MRF has been an active participant in the political life in Bulgaria in the period of transition to democracy. In the elections for Grand National Assembly in June 1990, 16 deputies supported by MRF took seats in Parliament. In the elections for National Assembly in 1991 the Movement won 24 seats in 12 electoral regions. On 8 October 1991 a group of 93 deputies brought a claim before the Constitutional Court of Bulgaria demanding decision on the compliance of the MRF with the Constitution. The basic argument in the claim was the contradiction with Art. 11, Para. 4 of the Constitution prohibiting parties on ethnic, racial, or religious basis. In its Decision No. 4 as of 21st April 1992 (constitutional case No. 1/1991)³⁰ the Constitutional Court analyzes Art. 11, as well as a series of facts concerning the founders, members, conditions for membership, the scope and goals, the objectives and the political activities of MRF. Declaring the ethnic and religious character of the movement's basis, its founders respect the legislative conditions and observe the prohibition in Art. 53, Para. 4 of the still operative former Constitution, prohibiting political organizations on religious basis. Among the political principles, goals and objectives in the Programme, there are primarily principles for the protection of the human rights: the right of free choice of name; the right to study and use the mother tongue; the right to develop their own culture in accordance with the ethnic origin, etc. In the Programme were established also statements, impermissible from the point of view of the former and the present Constitution: for

³⁰ *State Gazette*, No. 35 as of 28th April 1992.



example p. 1.2.: "Achievement of national consolidation on the basis of recognition of the heterogeneous religious and ethnic composition of the Bulgarian nation". Notwithstanding, the Constitutional Court established the protective character of the objectives and goals, concerning the groups of Bulgarian citizens with specific ethnic, religious, linguistic and cultural identity. The Court confirmed that the Constitution recognizes and guarantees their right of cultural life of their own, the freedom of religion, the right to study and use their own language for individuals, whose mother tongue is not Bulgarian. In this respect the Constitution of the Republic of Bulgaria does not divert from the general recognized principles and norms of international law for the preservation and protection of the ethnic, religious, linguistic and cultural identity of those individuals who wish to preserve their identity. The Constitution is in compliance with the international treaties, to which Bulgaria is a party³¹.

In the analysis of the MRF's Statute the Court established: a member of the Movement can be every Bulgarian citizen; the rights deriving from the membership are not linked to the belonging to some ethnic and religious community; the loss of Bulgarian citizenship leads to termination of the membership; the membership is free; the acts of national chauvinism, revenge seeking demonstrations, Islam fundamentalism and religious fanaticism are prohibited. The subjects of the rights and freedoms are "all Bulgarian citizens, including the minorities and the cultural-religious communities". The Constitutional Court pointed out that the use of the term "minority", not cited in the Constitution, does not lead to the conclusion for contradiction to the Constitution. Among the political objectives of MRF are the changes of the constitutional provisions in contradiction to the international agreements on the communities' rights in Europe. The Constitutional Court determined that this formulation does not contradict the Constitution, under reservation on the constitutionality of the methods used.

Starting as a party of the Bulgarian Turks, the MRF has substantially evolved in comparison with the period of its creation. This is observed in the scope of its goals, objectives, programme's ideas, political platform and electoral body. In the Central Council, as well in the electoral body, there are members who do not identify themselves as belonging to some ethnic and religious community.

The final decision of the Constitutional Court rejected the claim and thus recognized and further legitimated the MRF.

³¹ Respectively, Art. 27 of ICCPR and Art. 14 of ECHR.



7. The Law on Protection from Discrimination, the Concept of “positive” Discrimination and some new Case-laws

The Law on Protection against Discrimination (LPD) was adopted by the Bulgarian parliament on 16th September 2003³² and presents the common grounds for the equality and the non-discrimination principle in the internal affairs legislation of Bulgaria. The law is a major step in the process of approximation of the Bulgarian legislation with the European Union Law, transposing partially the European standards on equal opportunities and equal treatment. This is manifested both in the terminology and in its essence – in the principles laid down and the legislative decisions offered. It thus becomes possible to equalize the terminology of the national legal instruments with the European standards related to equal treatment and equal opportunities³³.

Article 2 explicitly states that the law is targeted at the equality before the law; equality of treatment and equal opportunities for participation in the public life; as well as effective anti-discrimination protection. The anti-discrimination protection encompasses three big spheres: protection in the exercise of the right to work; protection of the right of education and protection of other rights.

The act of adopting the law practically realized the codification process of the matter in the discrimination protection field. It permeates the laws and the bylaws.

The common anti-discrimination clause also meets the highest European standard applicable in the matter: “Any direct or indirect discrimination on the grounds of gender, race, colour, nationality, ethnicity, human genom, citizenship, origin, religion or belief, education, political or other opinion, personal or social position, disability, age, sexual orientation, marital or proprietary status, or any other characteristics established by law or an international treaty to which Bulgaria is a part, shall be forbidden (Art. 4, Para. 1).

In comparison to Art. 6, Para. 2 of the Constitution this shows that discrimination generated characteristics have been substantially broadened through the introduction of the features “human genom”,

³² *State Gazette*, Nr. 86 as of 30th September 2003, last amend. SG Nr. 39 as of 20th May 2011.

³³ For analysis of the Law on protection against discrimination, see, otherwise different, in I. ILIEVA, *Anti-Semitism, islamofobia and other forms of discrimination*, cit., pp. 104–108.



“citizenship”, “disability”, “age” and “sexual orientation”. Furthermore, the list of the characteristics given in the text is not a conclusive one and may be supplemented by other texts found in international legal instruments to which Bulgaria is a party.

The Law explicitly proclaims as discriminatory practices any harassment on the grounds of the characteristics listed in Art. 4, Para. 1, sexual harassment, behavior instigating discrimination, pursuit and racial segregation alongside with the construction and maintenance of the architectural environment that impedes the access of disabled persons to public places (Art. 5).

In § 1 of the Additional Provisions the Law gives legal definitions of concepts that are entirely new for the Bulgarian judicial system: “harassment”, “sexual harassment”, “pursuit”, “discrimination protective activities”, “instigating discrimination”, “unfavorable treatment”, “sexual orientation” and “multiple discrimination”.

Cases that do not represent discriminatory practice are explicitly indicated. The most impressive new development along these lines is the establishment in the law of the so-called “positive discrimination” the way it is determined by both the general international public law standards and the European standards. “Positive discrimination” encompasses the adoption by the state of temporary special measures aimed at accelerating *de facto* equality between majority and minority. Those measures shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of treatment have been achieved.

The Law on Protection on Discrimination stipulates in Art. 7 a wide range of categories of measures of the “positive discrimination” type. The author cites here only the measures concerning the individuals, belonging to minorities. There is no discrimination in the cases of:

- different treatment of persons on the basis of religion, belief or gender related to an occupation carried out in religious institutions or organizations when, by reason of the nature of the occupation or of the conditions in which it is carried out the religion, faith or gender constitutes a genuine and determining professional requirement in view of the character of the institution or organization, provided the objective is legitimate and the requirement does not exceed what is necessary for its achievement (Art. 7, Para. 1, item 3)
- “different treatment of persons on the basis of religion, belief or gender in religious education or training, including training or



education for the purpose of performing an occupation referred to in item 3". (Art. 7, Para. 1, item 4)

- measures and programmes within the meaning of the Encouragement of Employment Act (EOEA) (Art. 7, Para. 1, item 9). (What is meant here is Art. 23 of Chapter III of the EOEA: "When publicizing vacant positions employers do not have the right to establish requirements based on gender, age, nationality, ethnic origin or health status. Exceptions are only accepted with respect to gender, age or reduced capacity for work where, by reason of the nature of the particular occupation or job done, gender, respectively age or health status constitutes a genuine and determining professional requirement.")

- special measures in favour of persons or groups of persons who are disadvantaged on the grounds of the characteristics referred to in Art. 4, Para. 1 intended to provide them with equal opportunities, so far and as long as these measures are deemed necessary (Art. 7, Para. 1, item 14 – former item 13)

- measures protecting the identity of persons belonging to ethnic, religious or linguistic minorities, and their right of sustaining and developing, individually or jointly with the rest of the group, their culture, of professing and practicing their religion, or of using their own language (Art. 7, Para. 1, item 16 – former item 15)

- measures in the fields of training and education for providing participation of persons belonging to ethnic minorities, so far and as long as these measures are deemed necessary (Art. 7, Para. 1, item 17 – former item 16).

The author ought to emphasize again that terms referring to individuals from the ethnic minorities are used inconsistently in the law. While Art. 7, item 16 treats "individuals belonging to ethnic, religious or linguistic minorities", it is inexplicable why measures aimed at positive discrimination in the educational field that are listed in item 17 shall only refer to people belonging to ethnic minorities. Such type of inconsistency is inexplicable, considering the fact that Bulgarian legislation comprises measures of the "positive discrimination" type in the Public Education Act and other by-laws especially with regards to minority related individuals.

The Commission for Protection from Discrimination was set up in 2005 as a specialized body according to the Law on Protection from Discrimination. It provides for two administrative procedures (a general procedure and a conciliation procedure) before the Commission, as well as a procedure before the civil courts in Bulgaria. The Commission has the power to issue mandatory directions for



prevention and discontinuation of violations and for restoration of the original situation and can impose administrative penal sanctions.

The sanctions are:

- for persons, who commit discrimination – penalty of 250 up to 2000 leva, if they are not liable to more severe punishment (Art. 78, Para. 1)
- persons, who do not comply with the obligations under laws are liable to penalty of 250 up to 2000 leva (Art. 80, Para. 1)
- The same violation, committed by juridical person is liable to penalty of 250 up to 25000 leva (Art. 80, Para. 2)

Without going into the details of the Commission's relevant practice I will point out 2 cases: the so-called case of the Islamic headscarves and the Christian Orthodox services case.

The headscarves case: Two girls from a secondary School of Economics in the town of Smolian refused to wear the obligatory pupil's uniforms and insisted on wearing Islamic headscarves in school. With the intermediation of an NGO they submitted a complaint with the school director. The two students asked for permission to wear headscarves in school. In its decision the Commission for Protection from Discrimination rejected the complaint stating that the ban of wearing headscarves in those schools that have officially introduced obligatory uniforms for all pupils does not constitute a case of discrimination. Furthermore, the Commission found that wearing headscarves is a violation of the rules of such a school and therefore allowing individual pupils to wear headscarves is indeed a case of direct discrimination towards the majority of pupils who comply with the obligatory uniform³⁴.

In the motivation of the decision, the specialized permanent panel provides as an argument the analysis of the internal legal regulations as well as of the international legal obligations of Bulgaria. It interprets the right of education in relation with the rights of the child and Art. 7, Para. 1 of the Law on Religions.

The right of education is guaranteed by the Constitution of the Republic of Bulgaria. Education in Bulgaria is secular and this is legally regulated in Art. 5 of the Public Education Act and Art. 4 of its Implementing Regulations, which do not allow for imposing ideological and religious doctrines. The provision of Art. 11, Para. 1 of the Law on Child Protection decrees that every child has the right of protection against involvement into activities that are unfavorable to

³⁴ Decision № 37 as of 27.07.2006 on case file № 65/2006 of the Third specialized permanent panel of the Commission for Protection from Discrimination



his/her physical, mental, moral and educational development, while Para. 4 of the same article specifies that every child has the right of protection against involvement into political, religious and trade union activities. Pursuant to Art. 7, Para. 1 of the Law on Religions, the religious freedom cannot be directed against the national security, the public peace, the health of the nation and ethics or against the rights and freedoms of anybody else. The provisions of Art. 18, Para. 3 of the International Covenant on Civil and Political Rights (ICCPR) and of Art. 9, Para. 2 of the European Convention on Human Rights allow for the restriction of the religious freedom under certain preconditions. The Human Rights Committee has accepted General Comments on Art. 18 of the ICCPR, which have been reproduced in a document of the United Nations HR1/1/Rev.5. They explicitly comment on the limits for exercising the freedom of religion or religious beliefs only if the limitation is allowed by law and if it is necessary with a view to the protection of national security, public peace, health and ethics or the basic rights and freedoms of others.

In Art. 47, Para. 2, item 5 of the Internal rules of schools it is explicitly said that “the student has no right to incite antagonism on the basis of political, ethnic or religious grounds through different forms (speech, clothing, distinguishing marks or rituals)”.

A well-grounded conclusion can be made that this decision is in line with the provisions of the Constitution, the relevant legislation and the international obligations of our country.

Case Nr. 6577/3.06.2008 of the Supreme Administrative Court

The so-called “Christian Orthodox services case”. In Decision № 6577 as of 03.06.2008 on administrative case № 4872/2008, the Supreme Administrative Court accepts that the forced participation of a non-Christian student in Christian Orthodox services within the framework of his education in the faculty of theology is not discrimination because *inter alia* these classes were planned as part of the curriculum, i.e. by the defendant (the faculty) itself. Therefore the Supreme Administrative Court accepts that if the litigious measure was planned as part of the curriculum of the defendant (the faculty), this makes it legitimate, thus erecting the curriculum, which is nothing more but an act of the respective university, to the rank of something more and providing it with the possibility to compete on an equal footing with the fundamental Law on Protection against Discrimination, which regulates the right of equal treatment irrespective of religion or belief. The Supreme Administrative Court refused to accept that these litigious classes could be discriminative against the non-orthodox students,



including the atheists, for whom this was coercion and spiritual interference.

This case was justly criticized in the doctrine as an example of the lack of understanding of the regulated by law concept of “direct discrimination” and lack of sensitivity of the Supreme Administrative Court towards the issues of discrimination based on religion³⁵.

8 - Religious Rights and Freedoms

The religious rights and freedoms are proclaimed in the basic law: the Constitution of the Republic of Bulgaria. The main principles in the regulation of this matter are the following:

- Practicing any religion is free (Art. 13, Para.1 of the Constitution)
- The religious institutions shall be separate from the state (Art. 13, Para. 2). Prof. G. Cimbalo pointed out that the secularization is a very important feature of the constitutions of the East European states, nevertheless the relationship between the state and the confessions is realized by different instruments³⁶.
- The Eastern Orthodox Christianity is considered the traditional religion in Bulgaria (Art. 13, Para. 3)
- Religious institutions and communities as well as religious faith shall not be used to political ends (Art. 13, Para. 4 of the Constitution).

8.1.1 - Freedom of Religion and Faith

The freedom of conscience, the freedom of thought and the choice of religion or religious or atheistic views are proclaimed and guaranteed as fundamental individual rights of the Bulgarian citizens.

The freedom of conscience, the freedom of thought and the choice of religion and religious or atheistic views are inviolable. The state shall assist the maintenance of tolerance and respect among the believers of different denominations, and among believers and non-believers (Art. 37, Para. 1).

³⁵ M. ILIEVA, *Case-law of the Supreme Administrative Court and the Administrative Court–Sofia on the Law on protection against discrimination*, Sibi, S., 2009, p. 48.

³⁶ G. CIMBALO, *Tutela individuale e collettiva della libertà di coscienza e modelli di relazione tra Stato e confessioni religiose nei paesi dell’Est Europa*, in *Libertà di coscienza e diversità di appartenenza religiosa nell’Est Europa*, cit., p. 16.



The constitutionally proclaimed freedoms may be subject to restrictions. The grounds for that are national security, public order, public health and ethics and the rights of others. The listed grounds are compatible with the internationally accepted restrictions, especially with the provision of Art. 9, Para. 2 of the European Convention of Fundamental Rights and Freedoms.

The freedom of conscience and religion shall not be practiced to the detriment of national security, public order, public health and ethics, or the rights and freedoms of others (Art. 37, Para. 2 of the Constitution).

8.1.2 - Law on Religions

The Law on Religions is relatively new, it was adopted by the National Assembly of the Republic of Bulgaria on 20 December 2002³⁷ and abrogates the Law on Religions of 1949.

The provisions of the Law specify the constitutional rights of religion and faith and provide the legal status for the religious communities and institutions and their relations with the state (Art. 1). The main principles proclaimed in the Constitution are specified in detailed by the Law:

The right of religion and faith has an absolute character, including the right of free choice of religion and free practicing of religion. It is fundamental, absolute, subjective, personal and inviolable.

The obligations, established by the Constitution and the Law shall not be defaulted upon on grounds of religion or other convictions.

The principle of secularization means that the religious institutions shall be separated from the state. "No state interference in the internal organization of the self-administered religious institutions shall be allowed" (Art. 4, Para. 2).

Discrimination on the grounds of religion and faith is prohibited. "Nobody shall be persecuted or restricted in their rights because of their religious faith. No restrictions or privileges based on affiliation or rejection of affiliation to a religion are allowed" (Art. 3, Para. 1).

The religions are free and equal in rights (Art. 4). The Law on Religions reaffirms the historically established position of the Eastern Orthodox Christianity as the traditional religion in Bulgaria.

The registration of the religious communities is not compulsory. The right of religion and faith can be practiced through associations without registration³⁸.

³⁷ *State Gazette*, No. 120 as of 2002, last amend. SG No. 74 as of 15th September 2009.



9 - Criminal Law

The Bulgarian Penal Code³⁹ contains a series of legal guarantees for the protection of the rights of the minorities. The main crimes are outlined in Chapter Three: crimes against the rights and freedoms of the Bulgarian citizens. The title of the first part is “Crimes Against the National and Racial Equality”.

Article 162 (amended – SG, Nr. 27 of 2009) incriminates the propaganda of racial, national or ethnic hostility. By the last amendment the text was made stronger, including the feature “ethnic hostility” and increasing the punishment. In the amended text there was a punishment by deprivation of liberty for up to three years and public censure. The new text envisages punishment by deprivation of liberty up to four years, penalty of 5000 up to 10000 leva and public censure: (1) A person who propagates or abets to racial, national or ethnic hostility or hatred, or to racial discrimination, by speech, printing materials or other means of mass information, through the electronic information systems or through other means shall be punished by deprivation of liberty for up to four years and penalty of 5000 up to 10000 leva and public censure;

Paragraph (2) incriminates the use of violence, based on nationality, race, religion or political convictions and by the last amendment also increases the punishment from three to four years deprivation of liberty: a person who uses violence against another or damages his/her property because of his/her nationality, race, religion, or because of his/her political convictions, shall be punished by imprisonment for up to four years, penalty of 5000 up to 10000 leva and public censure.

Paragraph (3) deals with the crime of organizing a group aimed at committing the precedent acts or the tolerance of the mentioned crimes: a person who forms or leads an organization or a group which has set itself the objective of committing acts under the preceding paragraphs or systematically tolerates the commitment of such acts, shall be punished by imprisonment for one to six years, penalty of 10000 up to 30000 leva and public censure.

³⁸ For a detailed analysis of the Law on Religion, see, **I. ILIEVA**, *Legal regulation of the religious rights and freedoms in Bulgaria*, cit., p. 84 – 92.

³⁹ Promulgated - State Gazette (SG) No. 26 as of 2nd April 1968 with many amendments, the last one in SG No. 60 as of 5th August 2011.



Article 163 was also amended in 2009 (SG, Nr. 27/2009) (1) The persons who participates in a mob rallied to attack groups of the population, individual citizens or their property in connection with their national, ethnic or racial affiliation, shall be punished:

1. the abettors and leaders - imprisonment for up to five years
2. all others - imprisonment for up to one year, or probation.

(2) If the mob or some of the participants are armed, the punishment shall be:

1. for the abettors and leaders - imprisonment for one to six years
2. for all others - imprisonment for up to three years.

(3) If an assault has been performed resulting in severe physical injury or death, the abettors and leaders shall be punished by imprisonment for three to fifteen years, and all the others - by imprisonment for up to five years, if they are not liable to more severe punishment.

The crimes against the religious denominations are as follows:

Article 164, paragraph 1: A person who propagates hatred on religious basis by speech, through the press, or other means for mass information, through electronic information systems or in some other way by his/her actions, shall be punished by imprisonment for up to four years or by probation, as well as by penalty of 5000 up to 10000 leva.

Paragraph 2 incriminates the profanation of religious places: A person who profanates or damages a religious temple (church), prayer place, sanctuary or contiguous building, their symbols or funeral monuments, shall be punished by deprivation of liberty for up to three years or probation, as well as by penalty of 3000 up to 10000 leva.

Article 165 (1) A person who, by force or threat hinders the citizens from freely practicing their faith or from performing their religious rituals and services, which do not violate the laws of the country, the public order and morals, shall be punished by imprisonment for up to one year.

(2) The same punishment shall also be imposed upon a person who in the same way compels another to take part in religious rituals and services.

(3) For the acts under Article 163, committed against groups of the population, individual citizens or their property, in connection with their religious affiliation, the punishment provided therein shall be applied.

Article 166: A person who forms a political organization on religious basis or who by speech, through the press, by his/her actions or in some other way, uses the church or religion for propaganda



against the rule of the state or its undertakings, shall be punished by imprisonment for up to three years, if he/she is not subject to more severe punishment.

The crime against the labour rights, relevant to the persons, belonging to minorities is Art. 172, Para. 1: A person who intentionally impedes another to take a job, or compels him/her to leave a job because of his/her nationality, race, religion, social origin, membership in a political party, organization, movement or coalition with political objective, or because of his/her next-of-kin political convictions, shall be punished by imprisonment for up to three years or shall be fined with up to 5000 Bulgarian leva.

On November 5th, 2005, the Pazardhik District Court passed a 3-year suspended sentence on Ahmed Ahmed Musa for preaching radical Islam and instigating public hatred on religious grounds. He was also found guilty for disgracing the national flag. During the trial Musa made a full confession and pledged guilty of the charges brought against him. Five physicians confirmed that he suffered from paranoid schizophrenia and as such was extremely susceptible to outside influence. Musa chose not to appeal the sentence.

The Destruction of groups of the population (Genocide) and Apartheid are regulated in Chapter Fourteen ("Crimes against the Peace and Mankind"), Section III, Articles 416 - 419 of the Criminal Code:

"Art. 416, Para.1: Whosoever, for the purpose of destroying, totally or in part, a certain national, ethnic, racial or religious group:

a) causes death, grave bodily injury or permanent derangement of the consciousness of a person belonging to such a group;

b) places the group in living conditions that lead to its full or partial physical destruction,

c) takes measures aimed at limiting the birth rate in such a group; or

d) forcefully transfers children from one group to another, shall be punished for genocide with deprivation of liberty for ten to twenty years or deprivation of liberty for life (without the possibility of appeal)".

(2) He who commits acts preparatory to genocide shall be punished with deprivation of liberty for between two and eight years.

(3) He who openly and directly incites to genocide shall be punished with deprivation of liberty for between one and eight years".

Art. 417: Whosoever, with the aim of establishing or maintaining domination or systematic oppression of one racial group of people over another racial group of people:



a) causes death or grave bodily injury to one or more persons of such a group of people, or

b) imposes living conditions of such a nature as to cause full or partial physical annihilation of a racial group of people,

shall be punished for apartheid with deprivation of liberty for ten to twenty years or deprivation of liberty for life (without the possibility of appeal).".

Art. 418: Whosoever, for the purpose mentioned in the preceding article:

a) unlawfully deprives of liberty members of a racial group of people or subjects them to compulsory labour;

b) puts into operation measures aimed at hindering the participation of a racial group of people in the political, social, economic and cultural life of the country and aimed at the intentional creation of conditions hampering the full development of such a group of people, in particular by depriving its members of the basic liberties and rights of citizens;

c) puts into operation measures for depriving of their basic rights and liberties a population characterized by racial features through the setting up of reservations and ghettos, through the prohibition of mixed marriages between members of different racial groups or through expropriation of land owned by them; or

d) deprives organizations and persons of basic rights and liberties because they are opposed to apartheid;

shall be punished with deprivation of liberty for five to fifteen years".

The Code of Criminal Procedure⁴⁰ ensures the equality of citizens in the criminal procedure by Art. 11, Para. 1 of the Code according to which

"all citizens who take part in the criminal procedure are equal before the law. No privileges and restrictions are allowed based on race, nationality, ethnic origin, gender, origin, religion, education, beliefs, political affiliation, personal or social or material status".

Para. 2: The court and the organs of the preliminary proceedings apply the laws strictly and equally towards all citizens".

10 - Some Conclusions

⁴⁰ SG, No.86 as of 28th October 2005, last amend. SG, No. 61 as of 9th August 2011



Our national legislation lacks both a clear conception on the protection of individuals, belonging to minorities, and a legal definition for them. The Constitution uses the qualification “citizens whose mother tongue is not Bulgarian” (Art. 36, Para. 2), but mention is also made of the “ethnic self-identification” characteristics (Art. 54, Para. 1).

It is considered that the general anti-discrimination provisions that list characteristics such as nationality, race, colour, ethnic origin, etc. present a general guarantee for the protection of these persons against discrimination. The equality principle conditions, therefore, the lack of any special provisions concerning the demographic problems of minority related persons.

As I have already pointed out, there are no legal definitions of “Anti-Semitism” and “Islamophobia”. The historical roots of such a lack of definitions can be traced to the traditional tolerance of the Bulgarian people and its determined resistance to the fascist Law for Protection of the Nation in the period 1940 – 1941. As the influential Bulgarian lawyer Prof. P. Stynov points out, the bill was anti-constitutional and it set the beginning of the violation of basic human rights on the basis of a kind of Bulgarian racism, something that contradicts the Bulgarian history, the culture and the dignity of the tolerant Bulgarian people⁴¹. The saving of the Bulgarian Jews from the concentration camps during World War II is one of the most worthy acts of humanism of our people⁴². In the interview of Mr. Sami Rafael, lieutenant-colonel, parachuter and hero of Israel, as of 13th April 1998 in the “Literary front” newspaper the gratitude of the Bulgarian Jews transpires:

“More than half a century has passed after that dark time. The Bulgarian people managed to overcome it and leave this time with clean hands, not soiled in Jewish blood. There are no other people in the world that, like the Bulgarian people, marked their road ahead with the just self-evaluation – we saved the entire Bulgarian Jewish minority in the Kingdom of Bulgaria from the death camps. And this was done by the King’s dynasty, by King Boris III and the people as a whole. This includes also the Holy Synod and Exarch Stefan ...”⁴³.

⁴¹ D. KOEHN, *The Political Golgotha*, cit., p. 47.

⁴² With respect to the 3 attempts of deporting the Bulgarian Jews and the role of Bulgarian society, the vice-chairperson of the National Assembly – Dimitar Peshev, and the Bulgarian Orthodox Church, for details see, D. KOEHN, *The Political Golgotha*, cit., pp. 55–90.

⁴³ *Bulgarians and Jews*. Part one, sub redaction of A. Fol, Tangra Foundation, S., 2000, p. 10.



These deep historical realities and traditions find proof also in the briefly presented sociological studies implemented on the international project "Otherwise different" and quoted in the sociological part of the present study.

At the same time we cannot refrain from expressing concern about the documented acts of anti-Semitism and islamophobia. The lack of a reliable system for collecting relevant information on these problems does not allow for drawing definite conclusions with respect to the presence of such acts and the tendencies in our society. The collection and analysis of case-law is difficult.

The brief presentation of the relevant legislation shows that for all Bulgarian citizens the principle of equality and non-discrimination has been broadly arranged.

The study the legislation in force demonstrates that the Bulgarian system for the protection of individuals, belonging to minorities, can be defined on two levels: the first is the principle of equality and non-discrimination; the second represents a large range of specific rights for the preservation and protection of the minorities' identity.

The Law on Protection from Discrimination substantially contributes to the formulation of the Bulgarian legislator's conception on the protection of individuals belonging to minority groups. This progress is established at two levels – terminological and normative. Attempts have been made by the legislator to level the terminology of the law with the general internationally-applied legal arrangement of the rights for minority related individuals. The expression "persons belonging to ethnic, religious or language minorities" has come into use, and it corresponds to the terminology in Art. 27 of the International Covenant on Civil and Political Rights. This provision is the only norm in a universal international legislative contract dedicated to the protection of persons from minority groups. Along these lines, I believe the law materializes harmonization of the national jurisdictional legislation and the international jurisdictional standards in the field of protection of minority-belonging individuals. Unfortunately, this terminology was not consistently used in the law, which, in a *strictu sensu* interpretation would disadvantage the protection of these individuals against discrimination in the future.

An important contribution of the Law on Protection from Discrimination is the expressed confirmation of the "positive discrimination" regarding the individuals belonging to minority groups. There are explicitly stated provisions of the "positive discrimination" type for minority related individuals in Art. 7, Para. 1: measures in the field of religious rights and freedoms, religious



education, in employment and working conditions, in preserving the identity and culture, in education and training.

A modern legal regulation of the religious rights and freedoms is at hand. The development of the recent events in our society, though, brings up the issue of the reality of exercising these religious rights and of the balance between the different groups of rights and freedoms.

The lack of legal definition of “minority” in Bulgaria does not impede all Bulgarian citizens to enjoy the fundamental rights and freedoms. The individuals, belonging to minorities, have a large range of rights and freedoms: political rights, the right to identity, the right to learn and use their own language, the right to use and develop their culture, the freedom to practice their own religion, and other specific rights.

The Bulgarian legal system embraces the concept of ethnicity as broadly as the concept of nationality, thus granting wider protection to the individuals, belonging to minorities.

Thus a general conclusion can be drawn about the compatibility of the Bulgarian system for protection of individuals that belong to minorities with the international obligations.