



Ref. No 1146

Geneva, 11th October, 2011

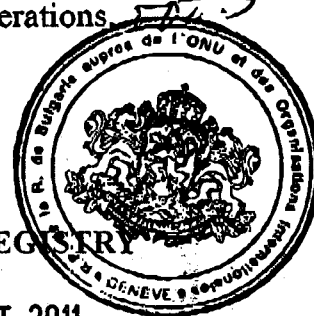
The Permanent Mission of the Republic of Bulgaria to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights, Special Procedures Branch and with regard to a note under the following reference: UA Housing (2000-9), UA Minorities (2005-4), G/SO 214 (78-15), BGR 1/2011 has the honour to submit the Observations by the Government of the Republic of Bulgaria in response to the urgent appeal by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, the Independent Expert on minority issues and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, regarding Dobri Jeliaskov Roma Community in Sofia District and the Communication submitted on its behalf to the Human Rights Committee under No. 2073/2011.

The observations are based on a substantial examination of the case, carried out by the Municipality in Sofia and the city's Civic Council on the realization of the Municipal Strategy Plan for 2007 – 2013 in the context of the Roma Inclusion Decade.

The Permanent Mission of the Republic of Bulgaria to the United Nations Office and other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights, Special Procedures Branch the assurances of its highest considerations.

Annex: according to text – 4 pages.

OHCHR REGISTRY



United Nations

12 OCT 2011

Office of the High Commissioner for Human Rights

Recipients: SPD

Special Procedures of the Human Rights Council

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OBSERVATIONS

**by the Government of the Republic of Bulgaria
regarding the communication dated 30 June 2011,
submitted to the Human Rights Committee for consideration under the International
Covenant on Civil and Political Rights and the Optional protocol to the International
Covenant on Civil and Political Rights on behalf of Liliana Naidenova and others,
registered before the Human Rights Committee as case No. 2073/2011**

The competent Bulgarian authorities have examined the communication dated 30 June 2011, submitted to the Human Rights Committee for consideration under the International Covenant on Civil and Political Rights and the Optional protocol to the International Covenant on Civil and Political Rights on behalf of the Dobri Jeliazkov community, registered before the Human Rights Committee as case No. 2073/2011.

The above communication has been submitted by the Global Initiative for Economic, Social and Cultural Rights, 8 N. 2nd Avenue East Suite 208, Duluth, MN, United States of America and Equal Opportunities Association, 3, 313 str. 1373 Sofia, Bulgaria on behalf of 10 complainants enlisted by their full names in list of the complainants on page 1 of the communication.

I. ON THE ADMISSIBILITY OF THE COMMUNICATION

The Bulgarian authorities would like to state that they consider this communication as **not conforming with the criteria of admissibility contained in Rule 96 (f) of the Rules of Procedure of the Human Rights Committee**, since the claimants have failed to exhaust all available domestic remedies.

In its decision, No. 12668 of 28 October 2009, the Supreme Administrative Court has found that the claimants have failed to produce any evidence establishing their right of ownership of the immovable property, parts of it or the right to erect constructions on said immovable property. According to Article 587 of the Code of Civil Procedure the initiative to prove one's property rights is vested with the claimants. They are given the opportunity to prove ownership over certain immovable property by presenting a proof of continuous ownership of that specific immovable property to a notary public. The full text of Article 587 of the Code of Civil Procedure is as follows:

"Art. 587.

(1) When the owner of a real estate has no document for his right, he may obtain such, after having ascertained his right before the notary public with relevant written evidence.

(2) If the owner does not have such evidence at his disposal or if it is insufficient, the notary public shall make a circumstantial check up on the acquisition of the ownership by prescription through interrogation of three witnesses, determined by the mayor of the municipality, region or city-council or an official determined by him, in whose region the real estate is located. The witnesses shall be determined on instruction of the owner and should, if possible, be neighbors of the estate.

(3) On the base of the evidence under Para 1 and 2, the notary public shall pass a motivated decree. If by it the right of ownership is recognized, the notary public shall execute a notary act of ownership over the estate in favor of the applicant."

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The Bulgarian authorities have not been able to find any proof whether the procedure cited above has even been initiated by the claimants or by their respected representatives. The claimants have initiated an appeal procedure against the eviction notice, which is based on documents of ownership presented by the municipality.

The Bulgarian authorities are not aware whether the claimants have seized any national human rights body with the issue (the Ombudsman and the Commission on Protection against Discrimination).

Furthermore, the Government of Bulgaria would like to draw the attention of the Human Rights Committee to the controversial practices of the authors of this communication to submit similar claims against the Republic of Bulgaria under the Complaint Procedure of the Human Rights Council, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this context, to the Independent Expert on Minority Issues, to the Special Rapporteur on contemporary forms of racism, racial discrimination. The Government of Bulgaria is of the opinion that such practices **do not conform to Rule 96 (c) of the Rules of procedure of the Human Rights Committee and consequently should not be encouraged.**

Following the above, the Bulgarian authorities consider the communication No. 2073/2011 as inadmissible according to Rule 96 (c) and (f) of the Rules of Procedure of the Human Rights Committee. They express, therefore, confidence that the Human Rights Committee shall declare it inadmissible.

II. ON THE MERITS OF THE COMMUNICATION

The immovable property in questions has been expropriated by the municipality in 1974 in accordance with the plans for territorial development of Sofia applicable at that time. Compensation has been provided in the form of right to property over apartments in the newly constructed buildings.

Order No ПД-09-154 dated 24 July 2006 issued by the Metropolitan Municipality, Vuzrajane sub-district, states clearly that unlawful buildings have been constructed on undisputable municipal property, and this is legally established by the district municipal administration with protocols No 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55 and 56 dated from 26 June 2006. The persons found in violation of the law were duly notified for procedures initiated under Article 178 (5) of the Territory law. The full text of Article 178 (5) of the Territory law is as follows:

"Art 178 (5)

At violations of para 1 and 4 the chief of the Directorate for national construction control or an official, authorised by him, shall on the basis of compiled fact finding act prohibit with motivated order the using of the constructions and order their liberation, cutting of the supply with electric and heat energy, with water, gas, telephone etc. The order shall be compulsory for the suppliers and shall be fulfilled immediately."

According to an act dated 24 July 2007 issued by the Municipal Commission, these persons are to leave the property, as noted in invitation letter No. 01-94-00-1/11.07.2006, which has not been done.

The appeal procedure has been concluded and the Supreme Administrative Court (No 12668/28.10.2009) has confirmed the illegality of the claimants' actions.

Currently, the municipal property is still under possession of the persons. No eviction has ever been carried out by the municipal authorities.

One of the fundamental constitutional principles of the Republic of Bulgaria is the principle of equality of all citizens before the law, it is stipulated in **Article 6 (2) of the Constitution of the Republic of Bulgaria**. The basic law does not allow for any limitation of rights nor for any privileges whatsoever on the basis of race, nationality, ethnic identity, sex, origin, religion, education, convictions, political affiliations, personal or social status. In its Interpretative Judgment No. 14 of 1992 on this provision the Constitutional Court of the Republic of Bulgaria ruled that "equality of all citizens before the law" within the meaning given by Art. 6 (2) of the Constitution signifies equality before all legal acts. **The Protection against Discrimination Act** adopted in 2003 also confers equal rights on all citizens, regardless of their ethnic identity, in respect of the possibility of an access to rental accommodation in social housing or construction or, respectively, the purchase of a home.

The victims of alleged discrimination have the alternative whether to submit a complaint before the Commission for Protection against Discrimination or before the court. Since its establishment in 2005, the complaints and signals lodged at the Commission are constantly rising which demonstrates increased confidence in this institution. The procedure before the Commission is also free of charge (*Article 53 of the Law on Protection against Discrimination* provides that all costs of the proceedings are born by the state budget).

The Bulgarian Government's policy regarding the Roma community is based on the **Framework Programme for Equal Integration of Roma in the Bulgarian Society (FPEIRBS)**, adopted by Council of Ministers Decision in 1999, Section IV "Territorial Structure of the Roma Neighborhoods" of the FPEIRBS stipulates that the separated Roma neighborhoods, most of which are outside the respective city plans and do not have adequate infrastructure, are one of the most serious social-economic problems of the community. This Framework Programme was updated in 2010 and its scope was expanded to include also issues of discrimination.

Strategic documents on this basis have set out measures and actions for the equal integration of Roma in the Bulgarian society. One of these documents is the **National Programme for improvement of Roma Housing Condition in the Republic of Bulgaria (2005-2015)**. This programme underscores the responsibilities of the State, of the bodies of local government and self-government, as well as the possibilities for non-governmental organizations to participate in the relevant activities from the conceptual design phase to the monitoring and reporting of the results.

It should also be noted that in the context of the compliance with the criteria for membership of the European Union, a number of projects aimed at improving the situation of members of ethnic groups with a special focus on the Roma have been implemented and are being implemented within the territory of the Republic of Bulgaria. These projects are financed under the PHARE Programme of the European Union, the Council of Europe Development Bank, the national budget through the budget of the Ministry of Regional Development and Public Works, and through the budgets of a number of municipalities.

A large number of projects have been implemented under the PHARE Programme, and they contribute substantially to improving the living conditions in Roma neighborhoods in a number of Bulgarian cities. The crucial role of municipal authorities and municipal administrations in the preparation of the design plans and specifications is especially noteworthy. A strategic or programme document on integration of vulnerable ethnic minority groups, adopted by the competent Municipal Councils, forms a mandatory part of this set of documents, and the Roma are identified as a target group in a large number of these documents.

The activities of Roma integration carried out in the Republic of Bulgaria are subject to constant monitoring. Throughout the period since 1990, these activities have also been monitored under projects implemented by non-governmental organizations and financed by national or external resources (including under the United Nations Development Programme). Particular attention is paid to the implementation of projects and programmes financed through the EU financial instruments: the pre-accession facilities and the Structural Funds.

A Commission on Roma Integration has been established within the national Council for Cooperation on Ethnic and Integration issues, which is an advisory and coordinating body under the Council of ministers. The government institutions and various nongovernmental organizations are represented in the Council and, respectively the Commission and they all pursue activities for the benefit of the Roma community. The government institutions must consult the Council on any proposals they present before the Government at a Cabinet meeting which concern the sphere of ethnic and integration issues, of which the policy of equal integration of Roma in the Bulgarian society forms a substantial part.

In addition to this, there is a Public Council on Roma issues functioning with the municipality, in which there are representatives of the Roma community. The Public Council meets regularly, and one of the most important points on its agenda is the resolution of the housing problems of the Roma community in Sofia.

Under the framework of Operation 1.2 "Housing policy", part of Operative Programme "Regional development" 2007 – 2013, a project plan has been developed and submitted for approval by the Municipal Council. Its aim is to contribute to the social integration through improving the level of the living standard and the general improvement of the housing fund's quality for urban communities of unequal standing including the Roma community. The budget for the project plan is 16 million BGN.

According to the project, the Sofia Municipality would purchase plots for the construction of buildings with developed social and technical infrastructure. The new buildings are to provide modern social housing to socially disadvantaged persons including persons with Roma origin within the territory of the city of Sofia.

In conclusion, the Bulgarian authorities would like to reaffirm their commitment to respect and observance of human rights and assure the Human Rights Committee of their full cooperation and support.

Sofia, 7 September 2011.