

NATIONAL LEGAL MEASURES TO COMBAT RACISM AND INTOLERANCE IN THE MEMBER STATES OF THE COUNCIL OF EUROPE

BULGARIA, Situation as of 31 December 2002

General Overview

Preliminary Note: this table is self-sufficient and is not accompanied by an explanatory note

COUNTRY: BULGARIA	Constitutional provisions	Specific Legislation	Criminal Law	Civil and Administrative Law
Norms concerning discrimination in general	Yes. Art. 6.	No.	Yes.	Yes.
Norms concerning racism	No.	No.	Yes. Criminal Code - Art. 162, 163, 416, 417, 418	Yes. The law on political parties. The law on public assemblies. The law on radio and television.
Relevant jurisprudence	No.	No.	No case-law found on this subject.	No case-law found on this subject.

Constitutional law: Bulgaria

Preliminary Note: this table is accompanied by an explanatory note

Constitutional provisions	Scope	Relevant jurisprudence	Remarks
Art. 6 Equality before the law.	All persons are born free and equal in dignity and rights. All		

	citizens shall be equal before the law. There shall be no privileges or restrictions of rights on the grounds of race, nationality, ethnic self-identity, sex, origin, religion, education, opinion, political affiliation, personal or social status or property status.		
Art. 11 (4) No political parties organised on ethnic, racial or religious lines.	There shall be no political parties organised on ethnic, racial or religious lines, nor parties which seek the violent usurpation of state power.	Yes.	The Movement for Rights and Freedoms - the de facto party for the Turkish and Moslem Minorities - was declared constitutional (Case 1/91; published DV 35/92).
Art. 44 (2) Freedom of association.	Organisations whose activities are directed against the country's sovereignty and territorial integrity or the unity of the nation, or that encourage racial, national, ethnic, or religious hatred, or violate the rights and freedoms of citizens, as well as organisations that establish secret or militarised structures or try to achieve their objectives through violent means, are prohibited.		
Art. 54(1) Right to develop one's own culture.	Everyone shall have the right to avail himself of the national and universal human cultural values and to develop his own		

culture in accordance
with his ethnic
appurtenance, which
shall be recognised and
guaranteed by the law.

EXPLANATORY NOTE

BULGARIA / CONSTITUTIONAL LAW

Bulgaria has ratified all relevant principal international instruments. It is a party to the International Covenant for Civil and Political Rights, including the First Optional Protocol; to the International Covenant for Economic, Social and Cultural Rights; the International Convention for the Elimination of All Forms of Racial Discrimination; along with a declaration of acceptance of the competence of the United Nations Committee on the Elimination of Racial Discrimination under Article 14 of the Convention to consider communications from individuals and groups concerning violations of the Convention; the International Convention for the Elimination of All Forms of Discrimination Against Women, as well as the Optional Protocol; the European Convention on Human Rights, including the Additional Protocol and Protocols No. 4, No. 6 and No. 7; the Framework Convention for the Protection of National Minorities; the Revised European Social Charter along with its Additional Protocol providing for a System of Collective Complaints; ILO Convention No. 111 Concerning Discrimination in Respect of Employment and Occupation; the UNESCO Convention against Discrimination in Education; the Convention on the Rights of the Child; the UN Convention on the Status of Refugees, as well as the Protocol on the Status of Refugees of 1967; Convention No. 105 Concerning the Elimination of Compulsory Labour; Convention No. 165 on the Acknowledgement of Qualifications Concerning Higher Education in the European Region; Convention on the Prevention and Punishment of the Crime of Genocide; Convention on the Prevention and Punishment of the Crime of Apartheid; International Convention against Apartheid in Sports; as well as ILO Convention No. 100 on Equality in Payment.

International treaties to which Bulgaria is a party are directly incorporated into national law following their ratification, promulgation and entry into force for Bulgaria. As an integral part of domestic legislation, international provisions are binding on all private and public persons, and supersede any legislation that contravenes them, except for the Constitution, with which they must be in accordance. Under Constitutional law, international norms are directly applicable by domestic courts insofar as they do not violate the Constitution.¹

The Constitutional Court has declared that equality before the law is the fundamental principle of a democratic society, which is universal for the entire Bulgarian legal system and constitutes the basis for interpreting and implementing the Constitution, as well as for legislation. The Court has said that the right to equality before the law is a fundamental right to which an obligation for equal treatment on the part of the State corresponds².

The Constitutional Court has stated that the right to equality before the law and to equal protection by the law is universal, which is to say that it is guaranteed to every

human being irrespective of nationality³ The Court has declared that the Constitution is in conformity with Article 14 of the European Convention on Human Rights⁴. It has said that, although it is not aware of any domestic jurisprudence under Article 14 ECHR, it sees no obstacles for the domestic implementation of Article 14 since the rights protected against discrimination are personal and universal⁵.

The Constitutional Court has interpreted the principle of equality before the law under Article 6 of the Constitution as guaranteeing equality of all persons before all legislation, primary and secondary alike. It has construed the grounds of constitutionally-prohibited discrimination to be exhaustively listed under Article 6. The Court has said that the Constitution does not prohibit the restriction of rights or privileges granted on any other grounds⁶. Therefore, legislation may introduce restrictions of rights, or privileges, on the grounds that are not expressly stated under Article 6, such as disability, or sexual orientation. Legislation may also prohibit discrimination on grounds different from those listed under Article 6, but such prohibition will not be constitutionally guaranteed; as a result, the level of protection afforded against discrimination on such grounds will be lesser than the protection on the grounds stated under Article 6 of the Constitution.

Article 11 (4) of the Constitution stipulates that no political parties may be formed on an ethnic, racial or religious basis. The Constitutional Court in Ruling No. 4 of 21 April 1992 has interpreted this provision as one which prohibits parties from closing their membership to persons who do not belong to a certain racial or ethnic group. The Court has stated that the objective of Article 11 (4) is not to prohibit persons belonging to a certain racial or ethnic group from forming political parties, as long as such parties are open to all, but instead to guarantee that there be no ethnically or racially exclusive parties. Therefore, according to the Court, Article 11 (4) does not restrict the right of persons belonging to a certain ethnic/racial group to freedom of association. The Constitutional Court has interpreted Article 11 (4) as prohibiting only political parties which, through their membership or aims, are restricted exclusively to persons from a particular ethnic, racial or religious group. The Constitutional Court has stated that “a party is based on ethnicity when its by-law does not allow persons of a different ethnic appurtenance to become its members”⁷. In pursuance of this interpretation of Article 11 (4), the Court has recognised the legitimacy of the Movement for Rights and Freedoms (DPS), a predominantly Turkish minority party, which has gained parliamentary representation⁸.

Criminal law: Bulgaria

Preliminary Note: this table is accompanied by an explanatory note

Offence	Source	Scope	Sanction	Relevant jurisprudence	Remarks
Crimes against national or racial equality	Criminal Code - Art. 162(1)	Propaganda for or instigation of racial or national hostility or	Imprisonment for up to 3 years with public censure		

		hatred or racial discrimination			
Using violence against another or causing damage to the property of another because of his nationality, race, religion or political conviction	Criminal Code - Art. 162(2)	Using force against a person or damaging his property because of his or her nationality, race, religion or political opinion	Imprisonment for up to 3 years with public censure		
Organised crime motivated by nationality, race, religion or political opinion	Criminal Code - Art. 162(3)	Creation or leading of organisations or groups which aim to commit the crimes described in Art. 162(1) and 162(2)	Imprisonment for between 1 and 6 years with public censure		
Membership of an organisation or group motivated by nationality, race, religion or political opinion	Criminal Code - Art. 162(4)	Membership of such an organisation or group	Imprisonment for up to 3 years with public censure		
Gang (crowd) organisation	Criminal Code - Art. 163(1)	Organisation of or participation in a gang intending to attack groups, individuals or their property because of their national or racial	Imprisonment for up to 3 years for the instigators or leaders; imprisonment for up to 1 year or compulsory community service and		

		affiliation	education for other offenders		
Armed gang (crowd) organisation	Criminal Code - Art. 163(2)	Participation in an armed gang which attacks groups, individuals or their property because of their national or racial affiliation	Imprisonment for up to 6 years for instigators or leaders; imprisonment for up to 3 years for other offenders.		
Assault by a gang causing grievous bodily harm or death	Criminal Code - Art. 163(3)		Imprisonment for between 3 and 15 years for instigators or leaders; imprisonment for up to 5 years for other offenders, when they are not liable to more severe punishment for other offences		
Genocide	Criminal Code - Art. 416	Actions intended to exterminate totally or in part a certain national, ethnic, racial or religious group	Imprisonment for between 10 and 20 years or deprivation of liberty for life (without possibility of appeal) Amendment of the Criminal Code – SG No. 153/1998.		
Preparation of genocide	Criminal Code - Art. 416(2)		Imprisonment for between 2 and 8 years		
Incitement	Criminal	Public and	Imprisonment		

to genocide	Code - Art. 416(3)	direct incitement to genocide	for between 1 and 8 years		
Establishing or maintaining domination or systematic oppression of one racial group over another racial group	Criminal Code - Art. 417		Imprisonment for between 10 and 20 years or deprivation of liberty for life (without possibility of appeal) Amendment of the Criminal Code – SG No. 153/1998.		
Destruction of Groups of the Population and Apartheid	Criminal Code - Art. 418		Imprisonment for between 5 and 15 years		

EXPLANATORY NOTE

BULGARIA / CRIMINAL LAW

Crimes against national and racial equality are regulated in Chapter Three ("Crimes Against the Rights of the Citizens"), Section 1, Art. 162 of the Criminal Code:

"Art. 162

(1) Whosoever propagates or abets racial or national hostility or hatred or racial discrimination shall be punished with deprivation of liberty for up to three years and with public censure.

(2) Whosoever uses violence against another or damages his property because of his nationality, race or religion or because of his political convictions, shall be punished with deprivation of liberty for up to three years and with public censure.

(3) Whosoever forms or leads an organisation or group which has set itself as a goal the commission of an act under the preceding paragraphs, shall be punished with deprivation of liberty for one to six years and with public censure.

(4) Whosoever affiliates himself to such an organisation or group shall be punished with deprivation of liberty for up to three years and with public censure.

(5) For crimes under the preceding paragraphs, the court may also decree compulsory domicile".

"Art. 163

(1) Persons who take part in a crowd rallied to attack groups of the population, individual citizens or their property in connection with their national or racial appartenance, shall be punished:

1. in the case of the abettors and leaders, with deprivation of liberty for up to five years;
2. in the case of all others, with deprivation of liberty for up to one year or with coercive labour.

(2) If the crowd or some of the participants are armed, the punishments shall be:

1. in the case of the abettors and leaders, deprivation of liberty for one to six years;
2. in the case of all others, deprivation of liberty for up to three years.

(3) If an assault is committed and results in grievous bodily injury or death, the abettors and leaders shall be punished with deprivation of liberty for three to fifteen years, and all others with deprivation of liberty for up to five years, when they are not liable to any more severe punishment".

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

(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 lifetime (without possibility of appeal)⁹".

(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 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 an 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 characterised 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 organisations 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 Procedure, SG, No.89/1974 (with many amendments), ensures the equality of citizens in the criminal procedure by Article 10 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 nationality, origin, religion, sex, race, education, or social or material status. The court and the organs of the preliminary proceedings apply the laws strictly and equally towards all citizens".

Civil and Administrative Law: Bulgaria

Preliminary Note: this table is self-sufficient and is not accompanied by an explanatory note

Provision	Scope	Consequences of breach	Relevant jurisprudence	Remarks
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The law on political parties - Art. 3(2) point 3.	Ban incitement of racial, national, ethnic or religious hatred.	Dissolution of the party.	No case-law found on this subject.	
Code of Professional Ethics SG, No. 79/2000 Article 7	Every physician has equal opportunities for the exercise of medical profession, education and specialisation, employment and the right to practice without regard to race, religion, origin, sex, age or political belonging.	Depends on the circumstances of the case (administrative, civil and criminal consequences possible).	No case-law found.	
National Framework Treaty between the National Health Insurance Fund and the Bulgarian Doctors' Union and the Bulgarian Union of Dentists SG, No.42/2000 Amended - SG, No.55/2000 Article 185	Every patient has equal rights and access to the use of a qualitative medical aid without regard to his/her religion, race, sex, political opinion, nationality or citizenship	Depends on the circumstances of the case (administrative, civil and criminal consequences possible).	No case-law found	
Law for Additional Voluntary Pension Insurance SG, No.65/1999, Article 78	The employer shall not be able to refuse insurance to workers and employees on the basis of race, nationality, ethnic origin, origin, sex, age, religious belief, political	Depends on the circumstances of the case (administrative, civil and criminal consequences possible).	No case-law found	

	orientation, membership in trade unions and movements, material and health status.			
Law of Protection in the Event of Unemployment and Encouraging of Employment SG, No.120/1997 with many amendments Article 2	In realisation of the rights and obligations under this law no restrictions or privileges are allowed based on race, nationality, ethnic belonging, origin, sex, age, religious beliefs, political belonging, membership in trade union organizations and movements, social status, material and health status.	Depends on the circumstances of the case (administrative, civil and criminal consequences possible).	No case-law found	
Law for Protection of the Consumers and for the Trade Rules SG, No.30/1999 Article 34	Advertisements which contain elements of discrimination regarding sex, race, religion, nationality, political convictions, age, physical or mental abilities or which offends human dignity are considered fraudulent.	Depends on the circumstances of the case (administrative, civil and criminal consequences possible).	No case-law found	
Tax Procedure Code SG, No.103/1999 Article 9	The authorities of tax procedures and the public executive shall apply the laws strictly and equally regarding	Depends on the circumstances of the case (administrative, civil and criminal consequences possible).	No case-law found	

	<p>all tax subjects. No privileges and restrictions shall be admitted based on nationality, origin, ethnic origin, religion, sex, race, education, belief, official, public, political or material status.</p>		
<p>Labour Code SG, No.26 – 27/1986 with many amendments Article 8</p>	<p>In the exercise of labour rights and duties no discrimination, privileges or restrictions shall be allowed on grounds of ethnicity, origin, sex, race, political and religious convictions, affiliation to trade union and other public organisations and movements, social and property status.</p>	<p>Depends on the circumstances of the case (administrative, civil and criminal consequences possible).</p>	<p>No case-law found</p>
<p>Law on Higher Education SG, No.112/1995 with many amendments Article 4</p>	<p>In higher education no privileges and restrictions are allowed based on age, race, nationality, ethnic belonging, sex, social origin, political opinions and religion with the exception of the cases explicitly mentioned in the Rules of the</p>	<p>Depends on the circumstances of the case (administrative, civil and criminal consequences possible).</p>	<p>No case-law found</p>

	activities of higher educational institution according to the specificity of the education and the future profession.		
National Education Act SG, No. 86/1991 Amended - SG No. 90/1996, 36/1998, 124/1998, 153/1998, 67/1999 and 68/1999 Article 4	Citizens shall have the right to education. They shall constantly be able to improve their education and qualifications. Restrictions or privileges based on race, nationality, sex, ethnic and social origin, religion and social status shall not be tolerated.	Depends on the circumstances of the case (administrative, civil and criminal consequences possible).	No case-law found
Law for the protection of the Child SG, No.48/2000 Article 10	Each child shall have right to protection for normal physical, mental, moral and social development and to protection of his/her rights and interests. No restrictions of the rights or the privileges shall be admitted based on race, nationality, ethnic origin, sex, origin, proprietary status, religion, education and beliefs.	Depends on the circumstances of the case (administrative, civil and criminal consequences possible).	No case-law found

<p>Law of Defence and Armed Forces of the Republic of Bulgaria SG, No. 112/1995 with many amendments Article 97</p>	<p>All men, citizens of the Republic of Bulgaria, fit for military service, without difference of race, nationality, religion, social descent and family position, who are 18 years of age, shall be liable to military service.</p>	<p>Depends on the circumstances of the case (administrative, civil and criminal consequences possible).</p>	<p>No case-law found</p>
<p>Law for the Civil Servant SG, No.67/1999 Amended - SG, No.1/2000 Article 7</p>	<p>Upon entering the civil service, there shall be no discrimination, privileges or restrictions based on race, nationality, ethnic origin, sex, origin, religion, membership in political, professional and other public organisations and movements, personal, public and property status.</p>	<p>Depends on the circumstances of the case (administrative, civil and criminal consequences possible).</p>	<p>No case-law found</p>
<p>Social Assistance Act SG, No. 56/1998 Article 3.</p>	<p>No discrimination, privileges or restrictions, based on race, national origin, political or ethnic appurtenance, origin, sex, age, religious beliefs or social status shall be allowed in implementing social assistance.</p>	<p>Depends on the circumstances of the case (administrative, civil and criminal consequences possible).</p>	<p>No case-law found</p>

<p>The Electing a Great National Assembly Act SG, No.28/1990 with amendments Article 3.</p>	<p>All Bulgarian citizens irrespective of race, sex, national origin, social origin, property status, education, and faith shall be entitled to vote and be elected.</p>	<p>Depends on the circumstances of the case (administrative, civil and criminal consequences possible).</p>	<p>No case-law found</p>
<p>The Radio and Television Act SG, No. 138/1998 with amendments Article 10., 17. and 76.</p>	<p>According to Article 10 in carrying out their activities, radio and television operators must ensure that there shall be no broadcasts which contradict morals especially such inciting to hatred on the basis of race, sex, religion, or national origin According to Article 17. of this Law radio and television operators shall be under an obligation not to allow the production or provision for distribution of broadcasts violating the principles of Article 10, and of broadcasts instigating to national, political, ethnic, religious or racial intolerance.</p>	<p>Depends on the circumstances of the case (administrative, civil and criminal consequences possible).</p>	<p>No case-law found</p>

According to
Article 76 no
advertisements
based on
national,
political, ethnic,
religious, racial,
gender or other
discrimination
shall be
broadcast.

Note

¹ For a comparison of the EU Racial Equality Directive & Protocol No. 12 with anti-discrimination legislation in Bulgaria see, Ilieva M., Legal analysis of national and European antidiscrimination legislation, European Roma Rights Center Budapest, Interights London, Migration Policy Group Brussels, September 2001

Note

² Constitutional Court Ruling No. 14 of 10 November 1992

Note

³ Constitutional Court Ruling No. 2 of 18 February 1992.

Note

⁴ Constitutional Court Ruling No. 2 of 18 February 1998

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⁵ Constitutional Court Ruling No. 4 of 21 April 1992

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⁶ Constitutional Court Ruling No. 14 of 10 November 1992

Note

⁷ Constitutional Court Ruling No. 1 of 29 February 2000

Note

⁸ Constitutional Court Ruling No. 4 of 21 April 1992

Note

⁹ Amendment of the Criminal Code SG No. 153/1998