

**Combating Discrimination in Russia**  
Strategies for Lawyers and NGOs

*Report of a workshop held in Moscow, 27-29 January 2003*

## Combating Discrimination in Russia: Strategies for Lawyers and NGOs

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On January 27-29, 2003, the Open Society Justice Initiative convened a workshop in Moscow focused on combating discrimination in Russia. At the meeting, Russian human rights organizations and lawyers explored with experienced human rights advocates from other countries comparative strategies for challenging racial, ethnic and gender discrimination in Europe, South Africa and the United States, and discussed how best to address discriminatory practices in Russia.

Discrimination is a major problem in Russia. Racial profiling by police—described by one participant as “using race as a factor in deciding whom to place under suspicion and/or surveillance”—is frequent; common targets include Roma and those from the Caucasus. Discrimination on grounds of race and ethnicity is widespread in many areas of life, including access to education, health services and public accommodations as well as to local residence registration, identity cards and their benefits, and citizenship. Women have many justiciable rights in theory but few in practice. Domestic violence, a widespread problem, is habitually ignored by law enforcement and the courts.

The result is more pernicious than the perpetuation of an often dismal existence for minority groups. Non-discrimination is a foundational human right, as numerous human rights treaties testify—its absence impacts fundamentally upon the rule of law. When groups and individuals are treated arbitrarily, and when such behavior is not only tolerated but often condoned and/or conducted by state law enforcement, the first victim is the law itself and the credibility of individual rights in the eyes of the public. In Russia today, the fight against discrimination is part of a broader struggle to consolidate the rule of law and the reality of rights for everyone.

What instruments exist to better the situation? The Russian constitution states that “[a]ny restrictions of the rights of citizens on social, racial, national, linguistic or religious grounds shall be forbidden” (Article 19). This and other general constitutional

provisions are reproduced elsewhere in Russian legislation, and supplemented by anti-discrimination provisions in the Labor Code in particular. Yet, participants did not know of any successful cases challenging discrimination on grounds of race or gender in Russia’s courts. The Constitutional Court has not developed a jurisprudence on discrimination issues. Constitutional provisions can be invoked in ordinary courts—and it has been demonstrated in other jurisdictions that judicial practice can be impacted by dedicated lawyers employing proven public interest strategies, such as the compilation of statistical evidence of discrimination.

International law provides another possible resource. Russia is a signatory to most major human rights treaties which outlaw discrimination, including the International Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the European Convention on Human Rights and Fundamental Freedoms (ECHR); and the Framework Convention on the Protection of National Minorities. International treaties duly ratified by the Russian government are directly applicable in domestic courts, yet in practice international legal sources are rarely cited by lawyers or judges in domestic litigation.

Russian lawyers are, however, increasingly turning to the European Court of Human Rights. In the last two years, applications from Russia to the Court have exceeded 10,000, outnumbering those from any other country in the Council of Europe, but during this period only 14 cases from Russia were ruled admissible.<sup>1</sup> Clearly the demand for skilled human rights litigation in Russia is matched only by

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<sup>1</sup> In 2001 and 2002, a total of 10,374 applications to the European Court of Human Rights originated in Russia. Only 14 cases were ruled admissible in 2001/2002, by far the lowest rate of admissibility in the Council of Europe. See European Court of Human Rights, Survey of Activities 2002, pp.32-33. Online at: <http://www.echr.coe.int/Eng/EDocs/2002SURVEY.pdf>.

the need for training and strategic thinking in the use of domestic and regional human rights instruments. Although it has yet to develop a rich body of jurisprudence in the field of discrimination, the Court in Strasbourg has generated caselaw in areas that matter to discrimination's victims, including police brutality. Additionally, the evolution of European Union law—particularly the adoption of Directives prohibiting discrimination on grounds of race and gender and in the field of employment—offers additional tools to anti-discrimination litigators seeking to call upon European norms.

The meeting resulted in three principal outputs:

- (1) The presentation and exploration by Russian human rights lawyers of the extent and nature of discrimination and the domestic legal instruments available to tackle it;
- (2) An overview by European and other human rights lawyers of comparative strategies to address discrimination, and consideration as to how they might be applied in Russia; and
- (3) The preliminary formulation of a number of projects to address discrimination in Russia.

### **Discrimination in Russia**

Accounts of the existing widespread prevalence of discrimination in Russia were numerous and detailed. Specific problems noted included the following:

*Racial profiling by police.* Certain of Russia's numerous minorities are vulnerable to regular police profiling and harassment. This is particularly true for Roma, persons from the Caucasus and, in the region of Krasnodar Krai, Meskhetian Turks. Under the pretext of Russia's war on terrorism, persons who have fled from Chechnya are regularly stopped and searched on the streets, and frequently arrested without stated reason. Roma are targeted in police "drug raids", which have forced entire communities onto the streets, and resulted in numerous arbitrary arrests. It was reported that police commonly stop Roma individuals and extort them by threatening to place drugs in their bags and arrest them, unless a bribe is paid. "Police know that Roma are more likely to pay a bribe than risk imprisonment," one activist noted. One police operation reportedly aimed at gathering fingerprints and other identifying information from many Roma in Moscow—making it easier to track them. Participants noted that judicial procedures often fail to correct the discrimination inherent in racial

profiling. Thus, judges have been reported to make openly racist statements with regard to ethnic minority defendants on trial before them.

*Domestic violence* against women is widespread. But it is difficult to prosecute cases for a variety of reasons. Clients are often unaware of their rights, and don't know where to turn. There is no habit of collecting forensic evidence, particularly in domestic violence cases. Doctors are often unwilling to testify that cuts and bruises amount to evidence of abuse by a husband/partner. Most of all, judges do not recognize culpability on the part of the husband. Rather, it was reported that judges not uncommonly reveal the pervasiveness of gender bias by asking, when confronted with allegations of beating, "what crime is there in education?" or warning the victim, "you will hardly get your joint property if you make him angry." Women are sometimes trapped in abusive relationships because they cannot assert legal control over their share of property. "The problem is that the right to property is considered more important than the right to life," said one participant.

*Discrimination in access to registration and passports.* It was reported that Meskhetian Turks in the Krasnodar Krai region in particular are frequently denied access to basic state services such as healthcare, housing, and education, because they have been refused proof of local residence registration.<sup>2</sup> This form of discrimination also affects persons who have fled Chechnya for Russia.<sup>3</sup> Reportedly, medical care and education are sometimes denied on these grounds even where courts have ruled that registration is not required for these services. Random street searches can end in arrest if the individual lacks the necessary proof of residence. For Meskhetian Turks, as for Chechen refugees, in the words of one participant, "discrimination in access to registration is the seed from which all other forms of discrimination grow."

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<sup>2</sup> On discrimination in registration generally, see *Compliance of the Russian Federation with the Convention on the Elimination of All Forms of Racial Discrimination, An NGO report to the UN Committee on Elimination of Racial Discrimination*, December 2002. Online at the website of the Russian human rights organisation Memorial: <<http://www.memo.ru/eng/hr/dscr0212e/index.htm>>. On Meskhetian Turks, see *ibid.*, Annex 3; "The regional authorities in Krasnodar Krai repeatedly single out the Meskhetian Turks through special regulations citing their ethnicity as a distinct category and subjecting them to special regime of personal registration".

<sup>3</sup> *Ibid.*, Annex 4.

*Differential access to public accommodations.* It was reported that Roma in particular have been turned away from pubs, restaurants, and marketplaces. Sometimes the denial is explicitly motivated by race, such as at a well-known downtown supermarket in Moscow, which as a matter of policy does not allow Roma to enter. Elsewhere licenses to trade have apparently been denied disproportionately to Roma traders in open markets. International law makes clear that discrimination in access to public accommodations on the grounds of race or ethnicity is unlawful, and this important principle can be invoked in the Russian context.

*Discrimination in employment.* The new Russian Labor Code, which entered into force in February 2002, was welcomed by participants as a significant advance in protection against discrimination at all levels of the employment relationship, although it has not yet been put to the test. In practice, however, the protection afforded by the new Labor Code may be undercut by local laws (e.g. in Moscow and Krasnodar Krai) which prohibit the employment of individuals lacking residence registration. Elsewhere, in Tver and Briansk, employees from the Caucasus are allegedly fired or not hired on the basis of their ethnicity. Women in Russia frequently are paid less favorably than men for comparable work. And apparent legal protections—such as mandated employer-paid maternity leave—often work to the disadvantage of women, who are commonly fired or not hired if they are, or become, pregnant.

*Segregation in education.* In Krasnodar Krai, Meskhetian Turks are often segregated in separate schools on the grounds that their Russian language ability is insufficient. However, this practice is applied wholesale, with little regard for those children with some knowledge of Russian. Programs to improve the language abilities of non-native speakers in Russian schools are rare or non-existent.

*Media stereotyping.* Ethnic minorities—and Roma in particular—are often viciously stereotyped in the print and broadcast media as “crooks” and “drug-dealers.” In Moscow the media commonly portray crime-fighting as a problem of “controlling Gypsies.” It was reported that one popular Moscow newspaper recently carried news of police fingerprinting and tracking of all Roma under the headline, “Gypsies of Moscow finally under

control.” It was further reported that, during a recent criminal proceeding against a Roma defendant, the prosecution offered, and the judge accepted, the prevalence of media portrayals of Roma criminals as evidence of the defendant’s guilt.

## **Comparative Strategies**

Speakers from outside Russia offered a range of experience from Europe, the United States and South Africa in addressing problems of discrimination through law. Most were cautionary, noting that educating judges and lawyers, encouraging plaintiffs, identifying appropriate cases, and taking them through the system, require time and persistence in the face of numerous likely setbacks.

*Reginald Shuford, American Civil Liberties Union,* outlined the history of struggle in the United States that led eventually to court decisions vindicating the principle of non-discrimination, and to the adoption of civil rights legislation. Shuford highlighted the recent accomplishments of activists in achieving general recognition of the pervasiveness of racial profiling by police in the United States, which he characterized as “driving, shopping, walking, while black or brown”. He focused in particular on how lawyers can gather the kind of evidence that will convince a court of patterns of discrimination where it exists, and gave practical guidelines on compiling basic statistics. Thus, in order to show that certain groups are targeted more than others for speeding by police, the American Civil Liberties Union and other groups have posted persons on highways to note down from a sample of passing cars, the numbers of African-Americans vis-à-vis whites who are stopped, and the numbers of both actually infringing the speed limit. Having a qualified statistician compile or at least examine and approve the results is often necessary to convince courts of the validity of the findings.

*Luke Clements, English barrister,* drew on his significant experience litigating in the European Court of Human Rights on behalf of Roma claimants, in observing that, while victory is desirable, an unsuccessful court ruling is not necessarily a failure. The dissenting opinions of sympathetic judges can over time lay the foundation for changes in jurisprudence. This was the experience of civil rights activists arguing before the U.S. Supreme Court during the first half of the 20<sup>th</sup> century. Today, although the European Court

of Human Rights has not yet made a finding of racial discrimination in violation of Article 14 of the European Convention, a critical mass of dissenting opinions appears to be growing. He noted in particular that some basic elements for a “rights revolution” (as defined by Charles Epp)<sup>4</sup> are present in Russia today. Public interest lawyers like those present at the workshop are themselves the most important. Clements identified five areas of activity where lawyers could focus to make a difference: educating themselves about international law and comparative experience, finding the courage to make arguments that had yet to be tried in Russia, “creating a rights consciousness” by using a human rights vocabulary, being willing to lose if necessary, and taking adequate care of clients, who inevitably assume the brunt of responsibility for, and suffer the consequences of, any case brought in their name.

*Yonko Grozev, Bulgarian Helsinki Committee*, furnished a concrete example of the importance, and potential power, of dissenting opinions. In a recent decision of the European Court of Human Rights, in the case of *Anguelova v. Bulgaria*,<sup>5</sup> before the European Court of Human Rights, Judge Bonello dissented from the Court’s finding that there had been no discrimination, calling into question the Court’s requirement that applicants seeking to demonstrate discrimination under Article 14 must offer proof “beyond a reasonable doubt.” In Judge Bonello’s words: “No more effective tool could be devised to ensure that the protection against racial discrimination becomes illusory and inoperative than requiring from the victim a standard of proof that, in other civil-law disputes, is required of no one else.”<sup>6</sup> This dissent offers European litigators the seeds of an argument challenging the high standard of proof traditionally employed by the Strasbourg court in discrimination cases. Grozev further described the creative use of prior doctrine to extend protections afforded under European human rights law. As one example, the 1998 decision of the European Court of Human Rights in *Assenov v. Bulgaria*<sup>7</sup> relied upon, among other foundations, United Nations committee jurisprudence in establishing a duty for authorities

to conduct an effective, thorough investigation in cases of alleged police abuse arising under Article 3 of the European Convention. Grozev emphasized the fluidity of the Strasbourg court’s rulings, and advised Russian lawyers to bring cases that would challenge the court’s judges to revisit their own notions of racism and unacceptable state behavior, through the provision of documented evidence of discriminatory patterns.

*James Goldston, Open Society Justice Initiative*, described some of the important features of the groundbreaking European Union Race Directive, adopted in 2000, and enforceable in all EU member states by mid-2003, and in new member states upon accession. Although the Directive is not immediately applicable in Russia, it reflects the development of Europe’s evolving anti-discrimination norms, and hence may well be of importance as Russian lawyers and judges give shape to arguments challenging discriminatory practices. Goldston explained that the EU Race Directive incorporates, and has built directly upon, a broad foundation of EU law prohibiting gender discrimination which extends back more than two decades. Among other reflections of this historical legacy, the Race Directive expressly outlaws both “direct” and “indirect” discrimination; it places the burden on alleged discriminators to rebut a presumption of discrimination once claimants make out a prima facie case; and it provides for the possibility of “positive action” to compensate for past discrimination. However, the Race Directive does not cover “nationality” as a ground of discrimination and is not applicable in the field of immigration.

*Michelle O’Sullivan, South African Women’s Legal Center*, gave a detailed account of her experience litigating women’s rights issues in South Africa. South Africa’s 1996 constitution provided a number of important footholds for public interest law, by giving limited legal recognition of social and economic interests, and providing for reference to the jurisprudence of international courts. O’Sullivan explained that litigation is more likely to succeed if courts can see that other efforts—such as lobbying—have been tried and failed. Legal ingenuity, and a capable and interested judiciary, are perhaps more vital where legislation is weak or lacking. The South African judiciary has developed a rich notion of “cumulative discrimination”, to take account of the reality that racial, gender and other forms of discrimination often intersect. Although public interest litigators may at times pursue goals

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<sup>4</sup> Epp, C., *The Rights Revolution*, University of Chicago Press, 1998.

<sup>5</sup> *Anguelova v. Bulgaria*, Judgment of 13 June 2002, 38361/97

<sup>6</sup> *Ibid.*, Partly Dissenting Opinion of Judge Bonello, para. 9.

<sup>7</sup> *Assenov v. Bulgaria*, Judgment of 28 October 1998, 24760/94.

which extend beyond those of their clients, they must not lose sight of their clients' best interests. Clients are frequently living in difficult circumstances, they are often poor and/or traumatized, and lawyers must be conscious of this. O'Sullivan described the phenomenon of "class action", which allows a few individual named plaintiffs to bring suit seeking remedies on behalf of a class of similarly situated persons, and which permits a case to be continued even if some individual claimants choose to settle for less than others.

*David Strupek, Czech attorney*, gave a graphic illustration of creative litigation in action, describing a successful attack on discrimination against Roma using general civil code provisions which protected "human dignity", even in the absence of more specific legal provisions barring discrimination. Strupek explained that, while more explicit anti-discrimination provisions are needed in many European countries, it may be possible for lawyers now to pursue anti-discrimination litigation by giving broader meaning to heretofore unused and general provisions of the civil code.

*Branimir Plese, European Roma Rights Center*, detailed the basic provisions of the International Covenant on the Elimination of All Forms of Racial Discrimination (ICERD). Russia is a party to the ICERD and has accepted the individual complaints mechanism under Article 14. The ICERD explicit outlaws, *inter alia*, discrimination in access to public accommodations (ICERD, Art. 5(f)). Plese noted that, even though the UN Committee on the Elimination of Racial Discrimination (CERD) lacks the power to issue binding judgments, the prospect of a reprimand by a UN body may, in some circumstances, prompt governments to remedy egregious forms of discrimination. Thus, in a recent case pursued by the ERRC on behalf of a Romani man denied service in a restaurant in Slovakia, the authorities commenced a criminal prosecution of the offender only after the ICERD application had been filed and UN Committee review was ongoing.<sup>8</sup>

### **Possible Projects**

In the course of discussion, meeting participants identified a number of possible projects that might be initiated to address different aspects of discrimination in Russia. These included the following:

- 1) Document/challenge racial profiling by law enforcement, including identification of a practice, compilation of basic data, preparation of a report, which could then be used for public education and to bring the strongest cases to domestic courts and, should they fail, eventually to the ECHR/CERD.
- 2) Document/challenge discrimination against and segregation of Meskhetian Turks and children in schools in the Krasnodar region. The project would identify potential cases for litigation in Krasnodar, including in educational segregation and access to residence permits. A component could be to provide an internship for Russian lawyers with a European NGO as a foundation for pursuing litigation subsequently in Russia.
- 3) Document/challenge discrimination against Roma, including with respect to access to public accommodations. The project would focus on specific problems in Roma settlements and identify potential cases for litigation. It could further include an internship component for Russian lawyers with a European NGO with a view to later litigation in Russia.
- 4) Document/challenge discrimination against Chechens and others from the Caucasus in public services including, *inter alia*, provision of residence permits, access to local residences, and access to healthcare.
- 5) Document/challenge domestic violence: a test case could be brought to challenge state inaction concerning domestic violence and discriminatory allocation of state resources in relation to domestic violence criminal cases, favoring the perpetrators rather than the victims.

The workshop concluded with the expressed intention that participants would discuss how best to pursue these or similar projects, aiming to generate in Russia enhanced awareness among judges, lawyers and non-legal advocates of the contours and scope of the right of non-discrimination.

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<sup>8</sup> CERD/C/59/D/11/1998, *Miro Lacko v. Slovakia* (Communication No. 11/1998), 9 August 2001.

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