

# HUMAN RIGHTS IN BULGARIA IN 2020



BULGARIAN  
HELSINKI  
COMMITTEE

# Human Rights in Bulgaria in 2020 (Summary)

The Bulgarian Helsinki Committee is an independent non-governmental organization for the protection of human rights. It was founded on 14 July 1992.

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The report can be quoted freely upon acknowledgement of the source.

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# 1. Political Developments in Bulgaria in 2020

Human rights in Bulgaria faced severe challenges in 2020. During the year, the country was ruled by a coalition government of the pro-European centre-right political party Citizens for European Development of Bulgaria (GERB) and the United Patriots formed after the March 2017 elections. The United Patriots were reduced a coalition of only two extreme nationalist neo-totalitarian parties - the Internal Macedonian Revolutionary Organization - Bulgarian National Movement (IMRO - BNM) and the National Front for Salvation of Bulgaria (NFSB), after the third coalition partner, Ataka, was expelled in 2019.

The presence of ultranationalist formations in government had a negative effect on the situation of minorities and on human rights in Bulgaria. Senior politicians periodically engaged in discriminatory incitement targeting Roma, Macedonians, the LGBTI community, people with disabilities and non-governmental organizations advocating for their rights. The Judiciary remained passive. The Prosecutor General, elected to his post in 2019 thanks to his close ties with government, not only failed to engage in any meaningful way to combat the numerous and varied human rights violations that took place in 2020, but actively contributed to them with a number of his own actions and those of the institution he represents. He remained passive in the face of widespread high-level corruption that continued to permeate the government.

The year was marked by the global coronavirus pandemic. The initial reactions of the Bulgarian authorities were marked by panic and in the first months after the outbreak their response was aimed primarily at instilling fear. On March 13, the government declared a state of emergency.<sup>1</sup> The rights of hundreds of thousands of Bulgarians were affected by the adopted measures and by the restrictions imposed in connection with them. These rights included the right to personal liberty and security, the right to privacy and family life, the right to peaceful assembly, freedom of expression, the right to free movement, the right to work and to education, and the right to health. In a number of cases, the authorities used Covid-19 related restrictions to stifle critical political and civil actions against their policies. Anti-epidemic measures lead to dysfunctions in the Judiciary, in particular during the first months after being imposed. As a result, Bulgarian citizens were deprived of effective domestic remedies against violations of their rights.

The anti-epidemic measures disproportionately affected vulnerable groups in Bulgarian society. Visits and other family contacts in prisons were seriously affected. Many health and social care institutions remained permanently closed to the outside world after March 2020. The authorities did not take any measures to alleviate the residents' social isolation. Quite the contrary, in many cases they prevented contacts with clients of such institutions even when they were visibly safe. In the first months after the imposition of the restrictive measures, lockdowns were imposed on many Roma neighbourhoods in the cities of Sofia, Kazanlak, Nova Zagora, Sliven, Yambol, Peshtera, Kyustendil, Perushtitsa, and Brestovitsa. Free movement outside them was either completely or partially restricted. As early as mid-March, MPs from IMRO-BNM stated that urgent measures were needed in

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<sup>1</sup> State of Emergency Act (promulgated, *State Gazette* no. 28 of 24 March 2020).

connection with Roma neighbourhoods and they needed to be placed under lockdown.<sup>2</sup> In some cities, such as Kazanlak, Roma neighbourhoods were blocked for prolonged periods of time without any cases of people testing positive for Covid-19.

After July 9, in the course for several months, hundreds of thousands of people demonstrated against the government and the Prosecutor General in Sofia and across the country. Bulgarians living abroad also organized protests. The protesters raised slogans against government corruption, lawlessness, selective law enforcement and restrictions on freedom of expression. They demanded the resignations of Prime Minister Borisov and Prosecutor General Geshev. The authorities and pro-governmental media organized a series of defamatory campaigns against the protesters that aimed to portray them as being paid by oligarchs, that they protect criminals, and are incited by political parties for political gains. The tone for such attacks was set by a number of statements of representatives of the Prosecution, including Prosecutor General Geshev and his spokesperson. In violation of the law, the Prosecutor's Office disseminated wiretapped conversations between politicians, journalists and businessmen with the sole aim of suggesting that the protests were inspired and paid for by oligarchs.<sup>3</sup> On several occasions, protesters and police clashed with the latter using disproportionate force.<sup>4</sup>

## 2. Cooperation with International and Local Human Rights Organizations

**The cooperation of the Bulgarian authorities with international and local human rights organizations in 2020 deteriorated. Bulgaria's non-implementation of key judgments of the European Court of Human Rights (ECtHR) continued. In connection with this the Committee of Ministers of the Council of Europe adopted four interim resolutions on Bulgarian judgments.**

**During the year, several UN treaty bodies formulated recommendations to Bulgaria, which were not followed up by any measures.**

**In August, the European Committee for the Prevention of Torture visited several psychiatric institutions and subsequently published a report with shocking findings.**

**In October, the European Parliament adopted a resolution on the rule of law and fundamental rights in Bulgaria, which was met with extreme hostility by the government.**

At the beginning of December 2020, the number of outstanding ECtHR judgments against Bulgaria was 165, approximately the same as in December 2019, when it was 169. Judgments concerning serious structural human rights problems remained under enhanced supervision; in not a single case

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<sup>2</sup> Dzhambazki from IMRO: Close the ghettos everywhere, 24 Chassa, 18 March 2020, available at: <https://www.24chasa.bg/novini/article/8320602>; Municipalities block Roma neighbourhoods on coronavirus grounds, mediapool.bg, 19 March 2020, available at: <https://www.mediapool.bg/reditsa-obshtini-postaviha-romski-kvartali-pod-blokada-zaradi-koronavirusa-obnovena-news304842.html> (in Bulgarian).

<sup>3</sup> Prosecutor's Office again publishes information acquired through special surveillance means: Vassil Bozhkov discussing his political party and protests with journalist and politician, svobodnaevropa.bg, 14 July 2020, available at: <https://www.svobodnaevropa.bg/a/30725640.html> (in Bulgarian).

<sup>4</sup> See below **Right to Life, Protection from Torture, Inhuman and Degrading Treatment.**

was enhanced supervision terminated. Moreover, in the period December 2019 - December 2020, the Committee of Ministers of the Council of Europe adopted four interim resolutions in connection with the systematic non-implementation of ECtHR judgments by Bulgaria. This is unprecedented in the period of democratic transition. For the entire 27-year period between 1992 and 2019, the Committee of Ministers adopted only two interim resolutions against Bulgaria for non-compliance with ECtHR judgments.

In February, the Committee on the Elimination of Discrimination against Women (CEDAW) reviewed Bulgaria's eighth periodic report and formulated its recommendations. One of the first recommendations concerned continued harmonization of Bulgarian legislation with the standards of General recommendation no. 35 of the CEDAW and the ratification of the Istanbul Convention. The Committee also called for the recognition at the legislative level of all forms of gender-based<sup>5</sup> violence for crimes of a general nature and the punishment of perpetrators with penalties commensurate with the gravity of the crimes. In 2020, no steps were taken to comply with these recommendations.

In April 2020, the UN Special Rapporteur on the sale and sexual exploitation of children, Maud de Boer-Buquicchio, presented her report on Bulgaria to the UN Human Rights Council. It contained several recommendations related to the protection of vulnerable children from sexual exploitation.<sup>6</sup> By the end of the year, no measures had been taken on the Special Rapporteur's recommendations.

In May 2020, the UN Special Rapporteur on violence against women, its causes, and consequences, Dubravka Šimonović, published her report from her visit to the Bulgaria in October 2019. The report formulated detailed recommendations for bringing Bulgarian legislation and practice regarding of violence against women in line with all previous recommendations to Bulgaria of the UN treaty bodies.

On 2 December 2020, the European Committee for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment (CPT) published its report from its visit to Bulgaria in August 2020. The report focuses on Bulgarian psychiatric and social care institutions and contained shocking revelations about physical abuse, immobilizations and other inhuman treatment of persons accommodated in them.<sup>7</sup> The Ministry of Health and the Ministry of Labour and Social Policy announced that they will investigate the cases. The results were not published by year's end.

On 8 October 2020, after several months of anti-government protests, the European Parliament adopted a resolution on the rule of law and fundamental rights in Bulgaria.<sup>8</sup> It was drafted by the Committee on Civil Liberties, Justice and Home Affairs (LIBE) and followed by an exchange of

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<sup>5</sup> According to General recommendation no. 28 from 2010 of CEDAW, § 5, "[t]he term "gender" refers to socially constructed identities, attributes and roles for women and men and society's social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women". Available at: <https://undocs.org/CEDAW/C/GC/28>.

<sup>6</sup> For more details, see the findings and recommendations of the Special Rapporteur in Chapter 16, **Rights of Children in Institutions**.

<sup>7</sup> For more details, see the findings and recommendations in the CPT report below in Chapter 15, **Rights of People with Mental Disabilities**.

<sup>8</sup> European Parliament, *The rule of law and fundamental rights in Bulgaria*, Resolution from 8 October 2020 regarding the principles of the rule of law and fundamental rights in Bulgaria (2020/2793(RSP)), available at: [https://www.europarl.europa.eu/doceo/document/TA-9-2020-0264\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2020-0264_EN.html).

positions between the Bulgarian government, NGOs and the Democracy, Rule of Law and Fundamental Rights Monitoring Group.

The resolution of the European Parliament, which was not supported by the EPP parliamentary groups and the far right, was presented as politically biased, partial and "anti-Bulgarian" by representatives of the government and pro-governmental media.

Cooperation between Bulgarian institutions and local human rights organizations continued to deteriorate in 2020. For the first time in the history of the democratic transition, at the request of the prosecution and following a signal from Deputy Prime Minister Karakachanov of the United Patriots, terminated an association of Macedonians in Bulgaria, which advocates for the human rights of Macedonians.<sup>9</sup>

The possibilities of NGOs to monitor closed institutions in Bulgaria was severely limited due to anti-epidemic measures and the reluctance of the authorities to allow them into some facilities. As in previous years, in 2020 the Ministry of Health continued to not respond to the BHC requests to conclude an agreement for monitoring the state psychiatric institutions.

### 3. Right to Life, Protection from Torture and Cruel, Inhuman or Degrading Treatment or Punishment

**The year was again marked by police arbitrariness and violence that were inadequately investigated and the perpetrators not brought to justice. With its inactions, the Prosecutor's Office tacitly supported this police behaviour. In connection with the systematic failure to implement a number of ECtHR judgments related to police violence, in October the Committee of Ministers of the Council of Europe adopted another interim resolution on the *Velikova* group against Bulgaria. However, in 2020 none of recommendations were followed up by legislative and other measures at the national level. During the year, the ECtHR issued several judgments finding violations of the right to life and the prohibition of inhuman treatment.**

In October 2020, in connection with the *Velikova* group against Bulgaria of the European Court of Human Rights concerning non-investigation of cases of murder and ill-treatment of Bulgarian citizens by police officers, the Committee of Ministers of the Council of Europe adopted an **interim resolution**<sup>10</sup> as a final measure in response to the state's systematic refusal to comply with a number of ECtHR judgments. The Committee of Ministers invited the Bulgarian authorities to:

- strengthen **free legal assistance**; to ensure that a lawyer is available in good time to assist every person in police detention who requests it; and to introduce systematic video recording of the interrogations of suspects;

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<sup>9</sup> See below, Chapter 9, **Freedom of Association, and the Right to Peaceful Assembly**.

<sup>10</sup> Committee of Ministers, Council of Europe (2020), *Interim Resolution CM/ResDH(2020)198*, *Velikova* group against Bulgaria (1 October 2020). Available in English at: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016809fc599](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016809fc599).

- improve the promptness, quality and confidentiality of **medical examinations** and recording of injuries in police detention/penitentiary facilities and to introduce an automatic notification to the Prosecutor's Office of complaints of ill-treatment received by the police;
- establish a national system for compiling **statistics on complaints**, prosecutions and disciplinary and criminal penalties related to ill-treatment;
- introduce **judicial review of refusals** to open investigations by the prosecution;
- amend without further delay criminal law in order it to **provide expressly for the offense of torture**;
- entrust the preliminary inquiries and investigations of allegations of ill-treatment to **prosecutors and investigating magistrates who do not have working relationships with the law enforcement agents whose actions have been challenged**;
- amend the law so that it provides for the **suspension of police officers** officially accused in criminal proceedings of ill-treatment.

None of the recommended measures had been put into law or practice by the end of 2020.

From 9 July until the end of October 2020 in different cities across Bulgaria peaceful protests were held calling for the resignations of Prime Minister Boyko Borisov and Prosecutor General Ivan Geshev. The protesters demonstrated against corruption and lawlessness in the country, as well as against restrictions of freedom of speech.

The first spontaneous demonstration that took place on July 9 in front of the presidency in Sofia was accompanied by a counter-protest in support of the government, for which organized protesters were bussed in from different locations in the country.

In the following days the police used disproportionate force against the protesters. On 10 July 2020, one of the protesters, **Evgeniy Marchev**, a second-year law student in The Hague, was detained and then hospitalized at the neurosurgery of the Pirogov Emergency Unit with severe concussions, multiple bruises, abrasions and three seizures. According to the victim's father and according to camera footage, he was lying on the ground in front of the Council of Ministers building while he was beaten by several police officers. Media reports reveal that the internal inspection of the Interior Ministry on the case established only violations of the regulations (but not police violence), as a result of which four police officers were punished, the most severe punishment being a ban on promotion to office for six months. The proceedings instituted by the Sofia District Prosecutor's Office were delayed because Marchev's lawyer had asked the National Security Service for access to the recordings from two security cameras placed on the façade of the Council of Ministers where the beating had taken place, but the request was denied.

Another protester who had been detained and beaten was TV editor **Dimitar Pedev**. His mother reported that she was unable to contact him for two days after his detention. When she finally located him in hospital, he was already charged and under guard. BHC filed a complaint on his behalf to the prosecution, but the Sofia District Prosecutor's Office refused to initiate pre-trial proceedings, citing an inspection carried out by the Sofia Directorate of the Interior, which established that Dimitar Pedev had inflicted the injuries himself.

On 2 September, in connection with the opening of the parliamentary session, the day was announced by the initiators of the protests as the date of the "Great People's Uprising". The protest lasted for 14 hours non-stop escalating at times into aggression against the police. According to Free

Europe, this 56th day of protests resulted in more than 100 arrests, use of tear gas and water cannons on protesters, self-made explosives on the police, swept tents and equipment, broken pavers, and benches.

Journalist **Dimitar Kenarov** was among the 100 or so detained protesters and victims of police violence. He reports that he had repeatedly identified himself as a journalist during his arrest. His camera was taken away, broken, and put back on the ground. Kenarov reports to have been kept handcuffed on the pavement for several hours before being taken to a police station. There, Kenarov was denied access to a lawyer on the pretext that he did not need one. He was not served with an arrest warrant and was not told the reason for his detention. After his release, he underwent a forensic examination, which documented hematomas on his arms, legs and eye, a scalp wound, an injury to his shoulder joint, injuries, and abrasions all over his body.

Other journalists also reported having suffered police violence during the protests.

During the year, the ECtHR handed down eleven judgments against Bulgaria under Article 2 (right to life) and Article 3 (prohibition of torture, inhuman and degrading treatment, or punishment) of the Convention.

## 4. Right to Personal Liberty and Security

**In 2020, no amendments were made in the legislation related to the quarantine of infected persons, as well as other systemic problems connected with the right to personal liberty and security in Bulgaria. These include judicial control over placement of children in certain types of institutions, such as juvenile crisis centres; accommodation in social care institutions for people with mental disorders; the lack of an adequate assessment of the proportionality of detention in pre-trial criminal proceedings and the difficulties in challenging the detention by the prosecution for 72 hours in pre-trial criminal proceedings. During the year, the ECtHR issued several judgments against Bulgaria some of which once again established violations related to these systemic problems.**

Following the declaration of the state of emergency in Bulgaria on 13 March 2020 in connection with the Covid-19 epidemic, parliament suspended its activities for some time except for emergencies and there was virtually no parliamentary control. The courts heard only a small number of cases and although Article 3 of the *Law on Measures and Actions during the State of Emergency* did not suspend the procedural deadlines for proceedings against administrative acts issued during and in connection with the state of emergency, no amendments were made to the legislation so that judicial protection against such acts would be effective. Thus, those who were put under quarantine and therefore in practice deprived of liberty, were left only with the possibility of protection against the acts with which they were quarantined under the general administrative procedure under Article 61, para. 5 of the *Health Act*. This means that the rulings of the administrative courts on their complaints could come months after their quarantine had expired - in gross contradiction with the requirement of Article 5, § 4 of the ECHR, according to which judicial review of the lawfulness of detention must be take place speedily after the issuance of the relevant act and in all cases during the period of detention. This problem with the lack of a procedure for *habeas corpus* in the health legislation of Bulgaria is old, but after 13 March 2020 it affected thousands of people.

During the first two months, those infected were required to be hospitalized in several cases and/or to quarantine at home. Those mandatorily hospitalized were discharged after a negative PCR test but had to undergo self-isolation for a period of a further 28 days and were required to give a second negative test at the end of this period. At the same time, those infected who were not hospitalized, but only in home quarantine, were released from it after just one negative PCR test. Both instances constitute imprisonment for a legitimate purpose - to prevent the spread of an infectious disease. However, the question arises as to what makes those discharged from the hospital more dangerous than those who are released from home quarantine, provided that both are released after a negative PCR test. Subsequently, these harsh and unjustified requirements were significantly eased.

Another problem with isolation and quarantine in this initial period was the inability of persons placed in home isolation to be tested and released from quarantine before its expiry. Isolation was imposed after a positive test without any symptoms. Although it is necessary to protect other people from infection, it is undeniable that many people who test positive stop being contagious and can take a negative PCR test long before the excessively long 28-day period has passed. This period was subsequently shortened several times, but the impossibility of release from isolation or quarantine while it was running remained. Violation of isolation and quarantine could lead to prosecution and harsh penalties, and many were imposed during the year.

In December, the National Assembly finally adopted amendments to the *Law on Administrative Violations and Penalties*,<sup>11</sup> thus resolving several unresolved issues in the administrative criminal proceedings. After the bill was passed in the first vote in September, significant changes were made between the first and second readings, and MPs from the ultranationalist VMRO-BND party tabled amendments that introduced two new administrative penalties - "unpaid work for the benefit of society" and "detention in the territorial structures of the Interior Ministry" for a period of up to 25 days. The Bulgarian Helsinki Committee was the only organization to submit an opinion to parliament against these proposed amendments, noting that they violate prohibitions on forced labour and inhuman and degrading treatment in international law. However, the BHC position was neither discussed nor even mentioned in the plenary debates, and the proposed amendments were adopted.

In 2020, the ECtHR ruled in five cases against Bulgaria in the area of the right to personal liberty and security:

- ***Dimo Dimov and Others v. Bulgaria***,<sup>12</sup>
- ***Stoyan Krastev v. Bulgaria***,<sup>13</sup>
- ***Marin Yosifov v. Bulgaria***,<sup>14</sup>
- ***Maksim Savov v. Bulgaria***.<sup>15</sup>

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<sup>11</sup> The draft bill and positions are available at: <https://parliament.bg/bg/bills/ID/163283/>.

<sup>12</sup> CEDH (2020). *Dimo Dimov et autres c. Bulgarie*, no. 30044/10, Arrêt du 07.07.2020. Available at: <http://hudoc.echr.coe.int/eng?i=001-203849>.

<sup>13</sup> ECtHR (2020). *Stoyan Krastev v. Bulgaria*, no. 1009/12, Judgment of 06.10.2020. Available at: <http://hudoc.echr.coe.int/eng?i=001-204838>.

<sup>14</sup> CEDH (2020). *Marin Yosifov c. Bulgarie*, no. 5113/11, Arrêt du 13.10.2020. Available at: <http://hudoc.echr.coe.int/eng?i=001-205064>.

<sup>15</sup> CEDH (2020). *Maksim Savov c. Bulgarie*, no. 28143/10, Arrêt du 13.10.2020. Available at: <http://hudoc.echr.coe.int/eng?i=001-205046>.

- *D.K. v. Bulgaria*.<sup>16</sup>

## 5. Independence of the Judiciary

The main events in the sphere of independence of the Judiciary in 2020 are related to the actions and statements of the Prosecutor General of Bulgaria, often going beyond the scope of the judiciary and which emphasize the lack of control and accountability of this position. These actions came against the background of the government's ongoing attempts to circumvent the requirements for the introduction of a mechanism for control and accountability of the Prosecutor General through legislative amendments that cannot achieve this goal.

The actions of the Prosecutor General against the President were at the heart of the civil protests that erupted in the summer of 2020, and which had as their central demand his resignation.

### The Prosecutor General

The relations between the Prosecutor General and the President continued to escalate during the year. On 9 July 2020, representatives of the Specialized Prosecutor's Office, the Sofia Directorate of the Interior and the Witness Protection Bureau entered the building of the presidential institution.<sup>17</sup> The Presidential Security and Defense Adviser Iliya Milushev was detained under the provisions of the Ministry of Interior Act, but his detention was later declared illegal by the Sofia District Court. The Presidential Secretary for Legal Affairs and Anti-Corruption Plamen Uzunov was also detained and later charged with trading in influence, along with businessman Plamen Bobokov.

In a series of public appearances, the Prosecutor General systematically undermined the prestige of the judiciary, attacking the random distribution system and alleging that "[w]e have not had justice in the last five years."

In early 2020 the Prosecutor General launched a fight against the so called "domestic crime" in the country, alongside with checks of "criminally active individuals."<sup>18</sup> An unknown number of actions with abundant media presence and own coverage were carried out in cooperation between the Prosecutor's Office and the Interior Ministry. The terms "domestic crime" and "criminally active individuals" are not part of the current legislative framework, therefore it was impossible to assess which of its powers the Prosecutor's Office was exercising in conducting them. The actions were often carried out in settlements with a predominant Roma population.

In 2020, through amendments in the *Witness Protection Act*, the Bureau for Protection took over the security functions in connection with investigators and prosecutors, as well as the Prosecutor

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<sup>16</sup> CEDH (2020). *D.K. c. Bulgarie*, no. 76336/16, Arrêt du 8.12.2020. Available at: <http://hudoc.echr.coe.int/eng?i=001-206356>.

<sup>17</sup> Prosecutors' Office of the Republic of Bulgaria (2020). Specialized prosecution conducting investigation in the office of the Secretary of the Bulgarian President, published on 09.07.2020 at: <https://prb.bg/bg/news/aktualno/44434-spetsializiranata-prokuratura-izvarshva-deystviya-po-razsledvane-v-kabinetna-na-s>. Announcement of the Sofia Regional Military Prosecution, published on 09.07.2020 at: <https://prb.bg/vopsofia/bg/news/44430-saobshtenie-na-voenno-okrazhna-prokuratura-sofiya>.

<sup>18</sup> Interior Ministry (2020), Wide-scale police actions against domestic crime across the country, published on 01.02.2020, available at: <https://www.mvr.bg/press/начало/преглед/новини/мащабни-полицейски-действия-срещу-битовата-престъпност-на-територията-на-цялата-страна>.

General himself, who did not want to be guarded by employees of the National Security Service, which is subordinate to the President. Through these changes the Prosecutor General has the entire Bureau for Protection under his jurisdiction and can decide which prosecutors and investigators are to be guarded, to make decisions concerning his own security, to provide witnesses and bring them by force, as well as to interact more freely with the Ministry of the Interior and the State Agency for National Security.

At the end of September 2020, the Union of Judges in Bulgaria issued an address to the members of the Supreme Judicial Council calling on it to initiate a procedure for early termination of the term of office of Prosecutor General Ivan Geshev.<sup>19</sup> The Plenum of the Supreme Judicial Council scheduled the discussion, but then adjourned it due to "lack of procedure and legal powers of the Supreme Judicial Council on these documents".<sup>20</sup>

### **Election of new members of the Supreme Judicial Council and its activities**

The composition of the members of the Supreme Judicial Council from the prosecutorial quota took place in September 2020 and prosecutors could vote through electronic remote voting. There was one candidate in the procedure. What was striking was the large number of invalid votes, which however were not duly described in the polling station protocols. The Supreme Judicial Council explained that the only reason for the invalidity was the lack of voting for a particular candidate,<sup>21</sup> thus proving the assumptions about the prosecutors' protest against the sole candidate from the prosecutorial quota that was reminiscent of the pre-determined election of the Prosecutor General.

### **Corruption in the Judiciary**

At the beginning of the year, US Secretary of State Michael Pompeo made an official statement publicly announcing the name of Bulgarian Judge Andon Mitalov for participation in serious corruption.<sup>22</sup> Mitalov is a judge at the Specialized Criminal Court, who became famous in 2019 when he allowed Nikolay Malinov, chairman of the Russophile Association, who had been accused of espionage, to leave the country and go to Moscow to be decorated by President Vladimir Putin. The Prosecutor General used the opportunity to intensify his attacks on the chairman of the Supreme Court of Cassation and directed the media to address their questions to Lozan Panov as chairman of the Supreme Judicial Council's judges' panel.

### **Change of Justice Minister**

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<sup>19</sup> Union of Judges in Bulgaria (2020), *Address to the members of the Supreme Judicial Council for a decision to initiate proceedings under Article 175, para. 5 in conj. with Article 173 of Judiciary Act*, published on 29.09.2020 available at: <http://judgesbg.org/2020/09/30/искане-за-оценка-на-публично-известни/>.

<sup>20</sup> Supreme Judicial Council (2020), Owing to lack of legal procedure after discussion the Plenum of the Supreme Judicial Council suspends the debate on the Address of the Union of Judges in Bulgaria to launch a procedure for early release of the Prosecutor General, published on 22.10.2020 at: <http://www.vss.justice.bg/page/view/105968>.

<sup>21</sup> Supreme Judicial Council, information received under an access to public information request, no. BCC-9853 and 10012 from 7.10.2020.

<sup>22</sup> Embassy of the United States in Bulgaria (2020), Statement by Secretary Michael R. Pompeo, published on 05.02.2020 at: <https://bg.usembassy.gov/bg/statement-by-secretary-michael-r-pompeo-bg/>.

Danail Kirilov, who had been heavily criticized throughout his term as justice minister, resigned at the end of August 2020 without giving reasons for his decision. The resignation came after a post on his Facebook account, in which he ridiculed the leader of a parliamentary unrepresented political party in a mocking tone and in a language inappropriate for a justice minister. As a result, he was banned from posting on social media by the Prime Minister. After speaking in a similar tone after presenting the draft bill for a new Constitution, he resigned and Desislava Akhladova took over as justice minister.

### **Draft for a new Constitution**

On 17 August 2020, GERB submitted a draft for a new Constitution to the National Assembly. The news came amid growing civil protests and round-the-clock blockades of key intersections in the capital demanding the resignation of the government and the Prosecutor General. The aim of the bill was to quell the protests by presenting major changes to the Judiciary, as announced by the Prime Minister himself. The bill received much criticism from both lawyers and opposition politicians and experts. In November 2020, the European Commission for Democracy through Law (the Venice Commission) also issued a strongly critical opinion.<sup>23</sup>

### **Amendments to the Code of Criminal Procedure**

In connection with Bulgaria's commitment to implement the ECtHR judgment *Kolevi v. Bulgaria* by introducing a mechanism for removal from office, control and accountability of the Prosecutor General, the authorities proposed in 2019 the introduction of the figure of the so-called independent prosecutor.<sup>24</sup> The Council of Ministers referred the matter to the Constitutional Court<sup>25</sup> with a request to give an obligatory interpretation of whether the figure of an independent prosecutor proposed in this way complied with the Constitution. The Constitutional Court took the position that when a prosecutor investigates the Prosecutor General, he owes obedience only to the law.<sup>26</sup> The proposal was adopted at first reading with a new job title on 18 December 2020, and the Venice Commission, although not formally referred this time, said that such a figure was not part of any global practice.

### **Rule of Law Report of the European Commission and activities of the European Parliament**

On 30 September 2020, the European Commission presented its first Rule of Law Report covering all EU Member States.<sup>27</sup> Among the topics that the EC defined as worrying are the state of the judiciary and in particular - the lack of control and accountability of the Prosecutor General. Thus, the European Commission determined that the powers of the Prosecutor General and his role in the Supreme Judicial Council remain a cause for concern, and the [impossibility of an effective criminal investigation of the Prosecutor General](#) and his deputies is a long-standing problem. The structure and functioning

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<sup>23</sup> Council of Europe, Venice Commission (2020), *Bulgaria – Urgent Interim Opinion on the draft new Constitution, issued pursuant to article 14a of the Venice Commission's Rules of Procedure*, published on 20.11.2020 at: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2020\)016-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2020)016-e).

<sup>24</sup> [https://government.bg/bg/prestsentar/zasedaniya-na-ms/dneven-red-na-zasedanieto-na-ministerskiya-savet-na-07-12-2019-g?fbclid=IwAR3tDd-k-PH\\_iHiu\\_604ERq4fn5-f2x3LpnLzkMZEuRt6NoHr1Pni4ye\\_D0](https://government.bg/bg/prestsentar/zasedaniya-na-ms/dneven-red-na-zasedanieto-na-ministerskiya-savet-na-07-12-2019-g?fbclid=IwAR3tDd-k-PH_iHiu_604ERq4fn5-f2x3LpnLzkMZEuRt6NoHr1Pni4ye_D0).

<sup>25</sup> Constitutional Court (2019), constitutional case no. 15/2019 decision from 23.07.2020 r., available at: <http://www.constcourt.bg/bg/Cases/Details/570>.

<sup>26</sup> *Ibid.*

<sup>27</sup> European Commission (2020), First Rule of Law Report, The rule of law situation in the European Union, published 30.09.2020 at: [https://ec.europa.eu/bulgaria/news/first-annual-rule-of-law-report-eu\\_bg](https://ec.europa.eu/bulgaria/news/first-annual-rule-of-law-report-eu_bg).

of the Supreme Judicial Council are also a matter of concern, with the Prosecutor General playing a crucial role in the prosecution board and in a number of activities of the Supreme Judicial Council.

The Democracy, Rule of Law and Fundamental Rights Monitoring Group of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE Committee) sent inquiries to the Bulgarian authorities and invited the Prime Minister and the Prosecutor General to a closed meeting. Instead, the meeting was attended by Ekaterina Zaharieva, Minister of Foreign Affairs, Desislava Akhladova, Deputy Minister of Justice at the time, Krassimira Filipova, Deputy Prosecutor General, and others.<sup>28</sup>

Following the assessment of the Monitoring Group, the European Parliament scheduled a debate on the rule of law in Bulgaria in the plenary hall, which is unprecedented in the democratic history of Bulgaria. At the beginning of January 2021, another meeting of the Monitoring Group was held to which Prime Minister Borisov and Prosecutor General Geshev were again invited, but again failed to attend.

## 6. Right to Respect for Private and Family Life, Home, and the Correspondence

**In 2020, no legislative measures were adopted to strengthen control over the use of special surveillance means.**

**Bulgaria failed to undertake any legislative measures to ensure that the principle of proportionality is applied in cases of forced evictions from only homes (including from illegal dwellings) and victims are provided with alternative accommodation. This failure led to the adoption of an interim resolution by the Committee of Ministers of the Council of Europe on the execution of the judgments of the European Court of Human Rights *Yordanova and Others* group against Bulgaria.**

### **Special surveillance means**

According to the annual report of the National Bureau for Control of Special Surveillance Means for 2019, special surveillance means were applied to 3,310 individuals during the year.<sup>29</sup> 6,039 requests for application of SSM were filed, on which the courts issued 5,396 permissions and 643 refusals. The procedures for application of SSM in 2019 mark a 7.3% increase in comparison to 2018. As a result of application of SSM, 1,124 items of evidence were prepared.<sup>30</sup>

In 2019, five civil cases under Article 2, para. 1, item 7 of the *State and Municipal Responsibility for Damages Act* (SMRDA) for illegal application of SSM concluded. The National Bureau for Control of

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<sup>28</sup> Democracy, Rule of Law and Fundamental Rights Monitoring Group, European Parliament (2020), Follow-up questions after the meeting on 28.08.2020, available at: <https://www.europarl.europa.eu/cmsdata/211284/DRFMG%20questions%20to%20Bulgarian%20authorities.pdf>.

<sup>29</sup> National Bureau for Control of Special Surveillance Means (2020). *2019 Activity Report of the National Bureau for Control of Special Surveillance Means*. Available at: <https://www.nbkrsr.bg/прозрачност/доклади/>.

<sup>30</sup> National Bureau for Control of Special Surveillance Means (2020). *2019 Activity Report of the National Bureau for Control of Special Surveillance Means*, p. 9.

Special Surveillance Means reported that the Supreme Court of Cassation is forming a stable case-law. The court rules that even with a properly issued permit for the use of SSM, damages can occur when the accusation is unfounded. In addition, the state is liable for damages even when the permit is issued without the legal prerequisites necessary for this.<sup>31</sup>

### **Forceful evictions from only homes**

On 3 December 2020, the Committee of Ministers of the Council of Europe adopted an **interim resolution**<sup>32</sup> on the execution of the group of judgments of the ECtHR *Yordanova and Others* group against Bulgaria. They concern the actions of the authorities to demolish the only homes of Bulgarian citizens on the sole grounds that they are illegal. The Committee expressed concern that more than eight years after the first of the Court's judgments in this group of cases, the Bulgarian authorities have not adopted legislative amendments to ensure that administrative bodies and courts perform a proportionality review of removal orders in case of illegal constructions.

The Committee called for such measures to ensure that all persons affected by a demolition order can benefit from a proportionality assessment, even if they or their household members have no property rights. This would help people who have lived in illegal property for decades not become homeless in case of demolition. The Committee also called on the Bulgarian authorities to amend the rules for applying for municipal housing. Currently, persons living in illegal housing without a registered address or occupying unlawfully municipal dwellings cannot apply for municipal housing.

In 2020, the BHC Legal Defence Programme filed two applications to the ECtHR on behalf of two groups affected by the expulsion of the entire Roma community from the village of **Voyvodinovo** in early 2019. Despite explicit written requests by the affected persons to the local authorities, they failed to provide alternative accommodation to the families. The two applications were filed in addition to another one from 2019, which concerns the expulsion of Roma families from the village and to which the Court gave priority.

In 2020, the three-year court battle of three families who have been living for decades in dwellings marked for demolition in Sofia's **Orlandovtsi** neighbourhood continued. Since 2017, the district administration has turned down their requests to apply for municipal housing. The resistance of Serdika Municipality, its mayor, and the members of the municipal housing commission to duly file the families has so far cost the Bulgarian taxpayers over EUR 2,500 in court expenses.

In 2020, the practice of demolishing illegal Roma houses continued, mainly in large cities like Stara Zagora and Plovdiv. A Muslim house of prayer was demolished in Plovdiv's Stolipinovo district during one of these demolitions.<sup>33</sup>

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<sup>31</sup> National Bureau for Control of Special Surveillance Means (2020). *2019 Activity Report of the National Bureau for Control of Special Surveillance Means*, p. 22.

<sup>32</sup> Committee of Ministers, Council of Europe (2020), *Interim Resolution CM/ResDH(2020)357, Yordanova and Others* group against Bulgaria (3 December 2020). Available at: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=0900001680a096a8](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a096a8).

<sup>33</sup> *Demolition of house of prayer in Stolipinovo causes tension*, published on 10 December 2020 in [www.plovdiv24.bg](http://www.plovdiv24.bg), available at: <https://www.plovdiv24.bg/novini/plovdiv/Butane-na-molitven-dom-v-Stolipinovo-suzdade-naprezhenie-1030146> (in Bulgarian).

During the year, the ECtHR issued several judgments against Bulgaria related to the right to respect of private and family life, home, and the correspondence. In February, in the case ***X and Y v. Bulgaria***,<sup>34</sup> the Court established that the state had violated the right to respect of family life of a mother and son by failing to ensure the surrender of the child to the mother following a court judgment to exercise custody.

In July, the ECtHR also ruled in the case of ***Y. T. v. Bulgaria***,<sup>35</sup> filed in connection with the complaint of a Bulgarian national whose gender was recorded at birth in the Civil Registry as female together with the corresponding female names. However, the applicant claims that he became conscious of his male individuality in adolescence and that he lived in society as a man with male names.

In October, the ECtHR ruled in the case of ***Koychev v. Bulgaria***.<sup>36</sup> The applicant alleged that he was the biological father of a child born out of wedlock and complained that the actions to recognize his paternity had been rejected on the grounds that the child had been recognized by the mother's new husband.

In December, the ECtHR ruled in the case of ***Dermanski v. Bulgaria***<sup>37</sup> in connection with a police operation, in which the applicants' home, offices and motor vehicles were searched.

## 7. Freedom of Thought, Conscience, Religion, and Belief

**In 2020, no serious violations to the freedom of thought, conscience, religion, and belief were registered in Bulgaria. For the first time in many years, the traditional torchlight procession on the streets of Sofia in memory of the pro-Nazi General Hristo Lukov did not take place. During the year, the Prosecutor's Office submitted a request to cancel the registration of BNS - Edelweiss, the main organizer of the Lukov March.**

### Muslims

In 2020, according to the Chief Mufti's Office, unlike in previous years, the Muslim denomination and the Muslim community in Bulgaria experienced less problems in terms of Islamophobia, intolerance, and discrimination.<sup>38</sup>

The Chief Mufti's Office notes that the murder of a teacher in France, who showed caricatures of the Muslim prophet Mohammed in class, had an impact in Bulgaria. Caricatures that are offensive to Muslims were put up in Plovdiv. On October 19, Christian Shkvarek, a representative of the Group of

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<sup>34</sup> ECtHR (2020). *X and Y v. Bulgaria*, no. 23763/18, Judgment of 06.02.2020. Available at: <http://hudoc.echr.coe.int/eng?i=001-200710>.

<sup>35</sup> CEDH (2020). *Y.T. c. Bulgarie*, no. 41701/16, Arrêt du 09.07.2020. Available at: <http://hudoc.echr.coe.int/eng?i=001-203898>.

<sup>36</sup> CEDH (2020). *Koychev c. Bulgarie*, no. 32495/15, Arrêt du 13.10.2020. Available at: <http://hudoc.echr.coe.int/eng?i=001-204988>.

<sup>37</sup> CEDH (2020). *Dermanski c. Bulgarie*, no. 61322/10, Arrêt du 17.12.2020. Available at: <http://hudoc.echr.coe.int/eng?i=001-206509>.

<sup>38</sup> Chief Mufti's Office letter to the BHC, 5 January 2021.

European Conservatives and Reformists in Bulgaria, published a post on social media that, according to the Chief Mufti, incited to hatred and violence on religious grounds, offended and harmed the religious feelings of Muslims.

### **Jehovah's Witnesses**

The Jehovah's Witnesses also reported fewer incidents in 2020. They attribute this to the online migration of their activities.<sup>39</sup> Some municipalities still have regulations in place that restrict various forms of expression and preaching of "non-traditional religions according to the Constitution of the Republic of Bulgaria and the *Denominations Act*".<sup>40</sup> According to the Jehovah's Witnesses, the Bulgarian courts are increasingly revoking such by-laws as illegal.

In March 2020, the Supreme Court of Cassation sentenced Boris Yachev, MP from the United Patriots, to pay the Jehovah's Witnesses EUR 1,500 non-pecuniary damages for defamatory statements against the denomination and its members that he made in the media.<sup>41</sup>

### **Anti-Semitism**

In 2020, for the first time in many years, the traditional torchlight procession in memory of General Hristo Lukov did not pass through the streets of Sofia. General Lukov was the leader of the anti-Semitic, pro-Nazi and pro-fascist organization Union of the Bulgarian National Legions in the 1940s. This came after the Sofia City Administrative Court revoked the ban on the march, but subsequently left without consideration<sup>42</sup> the appeal against the order of the Sofia Mayor, which changed the nature of the event from a procession to a laying of wreaths ceremony.<sup>43</sup> In November 2019, the court ruling was upheld by the Supreme Administrative Court.<sup>44</sup>

On 10 February 2020, the Sofia City Prosecutor's Office filed a claim with the Sofia City Court to terminate the registration of the non-profit association BNS - Edelweiss - the main organizer of the Lukov March.<sup>45</sup> By the end of 2020, the case was still pending.

On 9 August 2020, the Shalom Organization of the Jews in Bulgaria issued a critical position<sup>46</sup> in connection with a statement of Deputy Prime Minister Krassimir Karakachanov who claimed that "several Sorosoid NGOs and little parties outside parliament" would reportedly destroy the state. The organization pointed out that the name "Soros", a Hungarian Holocaust survivor and

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<sup>39</sup> Jehovah's Witnesses letter to the BHC, 12 January 2021.

<sup>40</sup> Shumen Municipal Council, *Ordinance No. 1 for maintenance of the public order in Shumen municipality*, Article 5, para. 5.

<sup>41</sup> Supreme Court of Cassation, judgment No. 29 from 10 March 2020 on civil case 1690/2019.

<sup>42</sup> *Ibid.*

<sup>43</sup> Sofia City Administrative Court (2019). Ruling No. 6460 from 29 August 2019 on administrative case 9797/2019.

<sup>44</sup> Supreme Administrative Court (2019). Ruling No. 15444 from 13 November 2019 on administrative case 12646/2019.

<sup>45</sup> *Sofia City Prosecutor turns to Sofia City Court to terminate registration of BNS – Edelweiss*, published on 11 February 2020 in [www.prb.bg](http://www.prb.bg). Available in Bulgarian at: <https://prb.bg/sgp/bg/news/39824-sofijska-gradska-prokuratura-poiska-ot-sofijsk-104-2>.

<sup>46</sup> Shalom Organization of the Jews in Bulgaria (2020). *Position of the Organization of the Jews in Bulgaria in connection with the statement of the deputy prime minister of the Republic of Bulgaria Krassimir Karakachanov on 9 August 2020*. Available at: <https://www.facebook.com/ShalomBulgariaOrganization/photos/a.1069567423116516/4202681546471739/>.

philanthropist, and the term “Sorosoid” are used by far-right organizations and political leaders in Europe and the United States as part of conspiracy theories that are strongly anti-Semitic in nature.

In December 2020, the Plovdiv synagogue was vandalized with anti-Semitic inscriptions.<sup>47</sup>

### **Offences against denominations**

In the first half of 2020, 12 pre-trial proceedings were initiated under Article 164 of the Criminal Code, which criminalizes preaching and incitement to discrimination, violence or hatred on religious grounds, as well as the desecration, destruction or damage of religious temples, houses of worship, their symbols or tombstones.<sup>48</sup> During the same period there is one prosecutorial act submitted to the court, one person handed over to a court and one convicted/sanctioned person with an entered into force act for a crime under Article 164 for a broken grave.<sup>49</sup>

The inadequate investigation of crimes against denominations is one of the reasons that led to the ECtHR conviction in the case of *Karahmed v. Bulgaria*, initiated by a victim of the incident in front of the Banya Bashi Mosque in Sofia in 2011.<sup>50</sup> Five years later, the judgment has yet to be implemented.<sup>51</sup>

In November 2020, the ECtHR ruled in the case of *The Religious Denomination of Jehovah's Witnesses in Bulgaria v. Bulgaria*<sup>52</sup> in connection with an application of the Bulgarian chapter of the Jehovah's Witnesses that the national authorities had prevented the building a house of worship in Varna on land owned by the denomination.

## **8. Freedom of Expression**

**2020 was another year of degradation of freedom of expression in Bulgaria. The country retained its 111<sup>th</sup> place in the Reporters Without Borders *World Press Freedom Index*. Critical Bulgarian journalists were mocked, restricted from carrying out their duties and even physically attacked by the government, while the media close to it enjoyed expansion and growing market power. The state used repression to conceal facts and refused to investigate and punish attacks on journalists.**

In 2020, for the third consecutive year, Bulgaria retained in 111<sup>th</sup> place out of 180 countries in the Reporters Without Borders *World Press Freedom Index*.<sup>53</sup>

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<sup>47</sup> *Anti-Semitic inscriptions on the entrance of the Plovdiv synagogue*, published on 23 December 2020 at [www.bnr.bg](http://www.bnr.bg), available at: <https://bnr.bg/plovdiv/post/101394260/antisemitski-nadpisi-na-vhoda-na-sinagogata-v-plovdiv>.

<sup>48</sup> Supreme Cassation Prosecution, information under the Access to Information Act, decision no. 8/18.01.2021.

<sup>49</sup> Byala Slatina District Court (2020). Sentence No. 1 from 24.02.2020 on criminal case No. 4/2020.

<sup>50</sup> ECtHR (2015). *Karahmed v. Bulgaria*, no. 30587/13, Judgement of 24.02.2015. Available at: <http://hudoc.echr.coe.int/eng?i=001-152382>.

<sup>51</sup> Department for the Execution of Judgments of the European Court of Human Rights, case of *Karahmed v. Bulgaria*, available at: <http://hudoc.exec.coe.int/eng?i=004-1936>.

<sup>52</sup> ECtHR (2020). *The Religious Denomination of Jehovah's Witnesses in Bulgaria v. Bulgaria*, no. 5301/11, Judgment of 10.11.2020. Available online at: <http://hudoc.echr.coe.int/eng?i=001-205217>.

<sup>53</sup> Reporters without Borders (2020). *World Press Freedom Index 2020*. Available at: <https://rsf.org/en/ranking/2020>.

In October, Reporters Without Borders criticized the **government's indifference** and that of Prime Minister Boyko Borisov to the problems of the Bulgarian media environment and announced their proposals to overcome them, which they sent to him personally in March 2020.<sup>54</sup> By early 2021, none of the proposed measures had been implemented.

### **Market dependencies**

A special report by the Ethical Journalism Network (EJN) on the state of journalism in Bulgaria<sup>55</sup> published in the summer revealed that the current state of play of the media continues to be not only bad, but there are numerous preconditions for it **to continue to deteriorate**.

In February, the Commission for the Protection of Competition (CPC) approved without any opposition the deal of brothers Kiril and Georgi Domuschievi to gain full control over the Net Info Media Group irrespective that in this way the NBG gained a market advantage.<sup>56</sup> In October, the media conglomerate expanded even more, acquiring a new package of television and radio media part of the informal media holdings of the Movement for Rights and Freedoms' MP Delyan Peevski, including Channel 3,<sup>57</sup> again with the expeditious approval of the Commission for the Protection of Competition.<sup>58</sup>

In the last week of the year, a new change in the group ownership was announced.<sup>59</sup> The potential new owner - United Group - also owns the Bulgarian Telephone Company. Acquiring NBG, the group will have control over the media content from its creation to its distribution by cable, satellite and air, on the Internet and radio frequencies. And even in the print network, because in parallel a deal is being negotiated for the acquisition of part of the large print media from Peevski's arsenal.<sup>60</sup> In January 2021, both transactions were approved by the regulatory commission.

### **Pressure on journalists**

The highest level of government repeatedly showed its contempt for the media and its unwillingness to answer questions.<sup>61</sup>

At the end of the summer, accredited parliamentary journalists were moved to a ground-floor room equipped with a screen where they could watch the debates in plenary live, but without actual

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<sup>54</sup> *Bulgaria: RSF unveils proposal for press freedom to be at the centre of Bulgaria's next election*, published on 14.10.2020 by RSF, available at: <https://rsf.org/en/news/bulgaria-rsf-unveils-proposal-press-freedom-be-centre-bulgarias-next-election>.

<sup>55</sup> Ethical Journalism Network (EJN) (2020). *Building Trust in Journalism – Bulgaria*. Available at: <https://cdn.ethicaljournalismnetwork.org/wp-content/uploads/2020/10/Building-Trust-BG.pdf>.

<sup>56</sup> *Domuschievi acquire Net Info*, published on 03.02.2020 by mediapool.bg: <https://www.mediapool.bg/domuschievi-privobivat-iztsyalo-net-info-news303039.html>.

<sup>57</sup> *Nova Broadcasting Group official owns Channel 3 and six other media*, published on 13.10.2020 by [www.dnevnik.bg](http://www.dnevnik.bg), available at: <https://www.dnevnik.bg/4126315>.

<sup>58</sup> *CPC sees no problems in Nova acquiring Channel 3 and other media connected with Peevski*, published on 19.9.2020 by capital.bg, available at: <https://www.capital.bg/4116196>.

<sup>59</sup> *Advance Media Group and United Group reach deal for NOVA sale*, published on 24.12.2020 by nova.bg at: <https://nova.bg/news/view/2020/12/24/309443/>.

<sup>60</sup> *Biggest media conglomerate*, published at 21.01.2021 by capital.bg at: <https://www.capital.bg/4165861>.

<sup>61</sup> *Borisov calls journalists 'gobbling turkeys', then apologizes*, published on 04.02.2020 by [www.dnevnik.bg](http://www.dnevnik.bg) at: <https://www.dnevnik.bg/4025221>.

access to MPs themselves. After almost a month of dissatisfaction,<sup>62</sup> they were provided with access to the so-called MPs Club.<sup>63</sup>

During the national conference of the ruling GERB party on 5 August, Free Europe journalists Polina Paunova and Genka Shikerova were barred from covering the event. Both were **physically attacked and insulted by party supporters**.<sup>64</sup>

During an anti-government protest on 2 September, more than 10 journalists were injured by police, some of them were reportedly targeted by the police.

A lot of attention was focused on the beating of freelance journalist Dimitar Kenarov and his arrest **without a detention order and no access to a lawyer**. According to him, during the incident he had repeatedly identified himself as a journalist.<sup>65</sup>

The case provoked reactions from the New York-based Committee to Protect Journalists, the Council of Europe Commissioner for Human Rights, Dunja Mijatović, Reporters Without Borders and others. MEPs from the Working Group for the Media also sharply criticized Bulgaria and demanded an investigation.<sup>66</sup>

### Quality during the pandemic

In the first half of the year, nearly half of the media content was devoted to the topic of the coronavirus pandemic. In this context, the Bulgarian audiences were served with sensational headlines, contradictory messages and conspiracy theories presented as pluralism of information.

The government's attempts to **silence and conceal facts by declaring them "dissemination of panic" were alarming**. Prof. Asena Serbezova, chairwoman of the Bulgarian Pharmaceutical Union, was accused of causing panic over interviews urging people not to stock up on drugs as it could lead to shortages. Parallel with the court disputes Prof. Serbezova was subjected to two inspections by the National Revenue Agency and one by the State Financial Inspection Agency although she has not held a government post in over two years.

### Legislation

In 2020, several attempts were made to use the health crisis to restrict freedom of expression. In March, the fines for the dissemination of "misleading signs of help, accident or alarm" were increased from between EUR 250 to 1,000 to between EUR 5,000 and 25,000. IMRO-BND wanted to introduce legislative amendments for control of Internet content, but the draft was rejected.

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<sup>62</sup> Association of European Journalists – Bulgaria (2020). *A parliament without journalists is not a parliament, but a Party Headquarters*, position from 02.09.2020. Available at: [https://aej-bulgaria.org/parliament\\_access/](https://aej-bulgaria.org/parliament_access/).

<sup>63</sup> *Speaker Karayancheva gives partial media access to MPs (PHOTOS)*, published on 30.09.2020 by dariknews.bg at: <https://dariknews.bg/novini/bylgariia/karaiancheva-dade-chastichen-dostyp-na-mediite-do-deputatite-snimki-2242352>.

<sup>64</sup> *Clashes and aggression against journalists during the GERB National Conference*, published on 05.08.2020 by svobodnaevropa.bg at: <https://www.svobodnaevropa.bg/a/30767484.html>.

<sup>65</sup> *Beaten journalist Dimitar Kenarov: Of all the places I've been, I suffered most in Bulgaria*, published on 04.09.2020 by www.dnevnik.bg at: <https://www.dnevnik.bg/4109965>. For a more detailed account, see **Right to Life, Protection from Torture, Inhuman and Degrading Treatment and Punishment**.

<sup>66</sup> *EuroMPs: Bulgaria should investigate police violence over journalists at the protests*, published on 16.09.2020 by www.dnevnik.bg at: <https://www.dnevnik.bg/4114710>.

At the end of the year, over 60 European organizations, including the BHC, united behind the call for a new European directive against the widespread practice known as **Strategic Lawsuits Against Public Participation (SLAPP)**,<sup>67</sup> in which groundless, but numerous cases are filed against critically-minded journalists to exercise psychological and financial pressure over them.

In March 2020, the ECtHR ruled on the case of *Pendov v. Bulgaria*.<sup>68</sup>

## 9. Freedom of Association and Right to Peaceful Assembly

**Freedom of association and the right to peaceful assembly were put to a severe test during the year. For the first time since the start of the democratic changes, an association of Macedonians was dissolved following a report by the leader of a party in cabinet in gross violation of international freedom of association and anti-discrimination standards.**

**The authorities used the Covid-19 epidemic to impose arbitrary restrictions on the right to peaceful assembly in a number of cases. Mass anti-government protests were tainted by police violence.**

**In October 2020, the Committee of Ministers of the Council of Europe adopted an interim resolution with regard to the non-implementation of the *UMO Ilinden and Others* group against Bulgaria.**

### **Freedom of association**

On 20 June 2020, the Blagoevgrad District Court issued a decision terminating the registration of the Civil Association for the Protection of Fundamental Human Rights - the only association currently registered in Bulgaria that declares in its goals protection of the rights of the country's Macedonian minority. The request for termination was sent to the court by the Blagoevgrad District Prosecutor's Office on the instructions of the Supreme Cassation Prosecutor's Office. The Prosecutor General had been alerted about the association's registration by the leader of the IMRO-BND party and Deputy Prime Minister Krassimir Karakachanov in November 2019. The decision is a clear signal that the Bulgarian state will not tolerate the right of Macedonians to association, not only by refusing to register their associations, but also by dissolving them after their registration.

In 2020, Macedonian associations were denied registration on several occasions. As in previous years, some refusals were arbitrary and discriminatory and in gross disregard of the standards

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<sup>67</sup> 64 domestic and international organizations support a draft of a European directive against court harassment of journalists, published on 02.12.2020 at: <https://www.bghelsinki.org/bg/news/20201201-press-liberties-model-eu-anti-slapp-directive>.

<sup>68</sup> ECtHR (2020). *Pendov v. Bulgaria*, no. 44229/11, Judgment of 06.03.2020. Available at: <http://hudoc.echr.coe.int/eng?i=001-201890>.

established in previous ECtHR judgments against Bulgaria. The Registry Agency turned down the registration of the UMO Ilinden Association twice on purely formalistic and absurd grounds.

The Society of Repressed Macedonians Victims of Communist Terror in Bulgaria made another unsuccessful attempt at registration during the year. In the motives to the decision the registration official substantiated the refusal with the reportedly illegal, in his interpretation, goals and activities of the organization.

Another newly-formed Macedonian organization, the Civic Initiative for Recognition of the Macedonian National Minority in Bulgaria and Protection of the Rights of Citizens with Macedonian Self-Consciousness ('Civic Initiative'), also had two unsuccessful attempts to register in 2020.

The Macedonian Club for Ethnic Tolerance in the Republic of Bulgaria was also denied registration.<sup>69</sup>

Against this background, on 1 October 2020 the Committee of Ministers of the Council of Europe adopted an interim resolution on the group of cases *UMO Ilinden and Others v. Bulgaria*. With it, the Committee of Ministers expressed deep regret that in the last registration proceedings of 2019 and 2020, UMO Ilinden and other similar organizations continue to face problems related to inconsistent and formalistic application of the legal requirements of the Registry Agency. The resolution formulates recommendations aimed at respecting the ECHR with respect to the right to association.<sup>70</sup>

### **Right to peaceful assembly**

The Covid-19 epidemic permitted restrictions to the right to freedom of peaceful assembly in 2020 in Bulgaria on a number of occasions. Some restrictions had the legitimate aim to curb the spread of the disease. Others, however, were used by the authorities to carry out unjustifiable and arbitrary limitations and discriminatory crackdowns on anti-government demonstrations.

On March 17, the health minister issued an order that banned the gathering of more than two adults in open or closed public places.<sup>71</sup> It was later replaced by less restrictive measures.

In April, 166 fines were issued in the Roma neighbourhood in Samokov and pre-trial proceedings instituted in connection with Palm Sunday celebrations in front of the Church of God. On April 17, Roma from the Fakulteta and Filipovtsi neighbourhoods in Sofia held a demonstration against the police blockade of the Roma neighbourhoods and the beating by police of several people who tried to break through one of them. Several days earlier, about 50 people had attended an Orthodox religious service at the Alexander Nevsky Cathedral without any obstructions from the authorities.

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<sup>69</sup> Registry Agency (2020). Refusal No.20201116160243/17.11.2020.

<sup>70</sup> Committee of Ministers, *Interim Resolution CM/ResDH(2020)197: Execution of the judgments of the European Court of Human Rights United Macedonian Organisation Ilinden and Others group against Bulgaria*, 1 October 2020, available at: <https://rm.coe.int/native/09000016809fc587>.

<sup>71</sup> Minister of Healthcare, Order РД-01-131 from 17.03.2020, available at: [https://www.mh.government.bg/media/filer\\_public/2020/03/17/rd-01-131\\_doplva\\_zapoved\\_rd-01-124.pdf](https://www.mh.government.bg/media/filer_public/2020/03/17/rd-01-131_doplva_zapoved_rd-01-124.pdf).

On 14 May, the police dispersed an anti-government rally of the Vazrazhdane Party citing epidemic restrictions on public gatherings.<sup>72</sup>

In the summer of 2020, anti-government protests erupted in Sofia and several other cities across Bulgaria demanding the resignation of Prime Minister Borisov and Prosecutor General Ivan Geshev. Disproportionate force was used against the protesters on several occasions.<sup>73</sup>

The right of UMO Ilinden to hold the traditional commemoration of the anniversary of the blinding of the warriors of Tsar Samuil and the Ilinden Uprising was also restricted on arbitrary grounds.<sup>74</sup>

In 2020, the ECtHR delivered judgments in three applications against Bulgaria in connection with the right to freedom of association. In the case of the ***Macedonian Club for Ethnic Tolerance in Bulgaria and Radonov v. Bulgaria***,<sup>75</sup> the Court found that the refusal to register the association amounted to a restriction of both the non-profit legal entity and its members' right to freedom of association citing previous judgments.<sup>76</sup>

In the case of ***Vasilev and Society of Repressed Macedonians in Bulgaria Victims of the Communist Terror v. Bulgaria***,<sup>77</sup> the ECtHR found a breach of Article 11. The Court did not find grounds to examine the complaints under Article 14 of the Convention.

In September, the ECtHR delivered its judgment in ***Yordanovi v. Bulgaria***.<sup>78</sup> The Court held that the applicants' conviction for attempting to form a party on a religious basis, a Muslim Democratic Union (a crime under Article 166 of the Bulgarian Criminal Code), was a breach of their freedom of association under by Article 11 of the Convention.

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<sup>72</sup> *Anti-government protesters detained by police*, *Sega* daily, 14 May 2020, available at:

<https://www.segabg.com/hot/category-bulgaria/policyata-zadurzha-protetirashti-sreshtu-pravitelstvoto>.

<sup>73</sup> See above in **Right to Life, Protection from Torture, Inhuman and Degrading Treatment or Punishment**.

<sup>74</sup> Blagoevgrad Administrative Court (2020). Ruling no. 1210 from 31.07.2020 on administrative case no. 20207030700692.

<sup>75</sup> ECtHR (2020). *Macedonian Club for Ethnic Tolerance in Bulgaria and Radonov v. Bulgaria*, no. 67197/13, Judgment of 28.05.2020. Available at: <http://hudoc.echr.coe.int/eng?i=001-202559>.

<sup>76</sup> ECtHR (2006). *United Macedonian Organisation Ilinden and Others v. Bulgaria*, no. 59491/00. Judgment of 19.01.2006. Available at: <http://hudoc.echr.coe.int/eng?i=001-72093>; ECtHR (2011). *United Macedonian Organisation Ilinden and Others v. Bulgaria (no. 2)*, no. 34960/04. Judgment of 18.10.2011. Available at:

<http://hudoc.echr.coe.int/eng?i=001-107014>; ECtHR (2018). *Yordan Ivanov and Others v. Bulgaria*, no. 70502/13. Judgment of 11.1.2018. Available at: <http://hudoc.echr.coe.int/eng?i=001-180160>; ECtHR (2018). *United Macedonian Organisation Ilinden and Others v. Bulgaria (no. 3)*, no. 29496/16. Judgment of 11.1.2018. Available at: <http://hudoc.echr.coe.int/eng?i=001-179869>.

<sup>77</sup> ECtHR (2020). *Vasilev and Society of the Repressed Macedonians in Bulgaria Victims of the Communist Terror v. Bulgaria*, no. 23702/15, Judgment of 28.05.2020. Available at: <http://hudoc.echr.coe.int/eng?i=001-202528>.

<sup>78</sup> CEDH (2020). *Yordanovi c. Bulgarie*, no. 11157/11, Arrêt du 03.09.2020. Available at: <http://hudoc.echr.coe.int/eng?i=001-204272>.

# 10. Conditions in Places of Detention

**For the first time in five years, the number of prisoners in Bulgaria marked an increase. Many prisoners were placed in open-type prison hostels. Renovations started in previous years were completed and this, coupled with the more even distribution of prisoners across the prison system, resulted in improved material conditions. The conditions in some institutions, in particular in some pre-trial detention facilities, however, remained inhuman and degrading. The number of early releases decreased. Healthcare and the use of the preventive and compensatory remedy remained a serious problem.**

## **Prisons and prison hostels**

In 2020, for the first time in five years the number of prisoners marked a slight increase. According to the Directorate General for the Execution of Sentences, the average number of prisoners during the year was 6,448, including 216 women and 20 juveniles.

Prisoners are placed in 12 prisons, seven closed-type prison hostels, 18 open-type prison hostels, and two correctional facilities for juveniles at the prisons in Vratsa and Sliven. In early 2020, following a recommendation from the Ombudsman, the Keramichna Fabrika Open-Type Prison Hostel at the prison in Vratsa was closed down. As at 31 December 2020, a total of 3,071 prisoners were serving their sentences in the main prison buildings across the country. Closed-type hostels housed 613 prisoners and another 1,873 prisoners were placed in open-type prison hostels. The growing number of prisoners in open-type prison hostels and the significant decrease of placements in closed-type hostels is a positive trend that needs to be supported with the respective increase in the capacity of open-type hostels.

Noting the old and depreciated buildings of the Sofia Prison and the Kremikovtsi Prison Hostel, the Ombudsman again put forward the recommendation to construct a new prison in Sofia and close the existing prison and hostel.

Renovations in all prison buildings were completed. However, problems with sanitary and hygienic conditions and the presence of bedbugs and cockroaches in some cells persisted.

Early releases dwindled in 2020 on account of the reluctance of the courts and of the prison administrations to support them. This downward trend continued throughout the year.

As at 31 December 2020, 124 prisoners were serving life sentences and 59 – life sentences without parole. The European Court of Human Rights (ECtHR) has ruled on a number of occasions that the existence of life sentences without the possibility for parole in the Bulgarian penal system is a violation of Article 3 of the European Convention on Human Rights.

The anti-epidemic measures lead to a significant drop in the number of working prisoners in 2020. The quality of prison healthcare remained concerning and this was illustrated in the acute shortage of qualified medical staff, lack for possibilities for carrying out medical examinations, lack for medicines and failure to carry out screenings. The interactions between the prison medical centres

and external medical facilities were extremely restricted during the epidemic. The Ombudsman established that the Sofia Prison hospital was "operating outside medical standards and left to perish without any supervision" and in a poor material state.

The preventive and compensatory remedy against inhuman and degrading treatment that was introduced in 2017 was poorly utilized by prisoners. It provided effective protection only in isolated cases.

### **Investigation detention facilities**

As of the end of 2020, 19 independent pre-trial detention facilities for accused persons were in operation across the country. Another eight operated at prisons, one facility functioned on the territory of Smolyan prison hostel. The pre-trial detention facility in the town of Yambol was closed during the year. The gradual reduction of the number of independent facilities is in line with the 2014 Committee for the Prevention of Torture recommendations.

According to information from the Directorate General for the Execution of Sentences, the total number of detainees in pre-trial detention facilities in 2020 was 10,683, including 962 foreign nationals, 378 women and 205 juveniles. The average number of people accommodated in detention facilities on a daily basis was 1,040; as of 31 December 2020 it was 781.<sup>79</sup> The duration of detention in the facilities was as follows: up to 72 hours – 1,395 persons; up to two months – 8,160 people; between two and six months – 1,790 people; between six and 12 months and over a year - 781 people.

In 2020, seven detention facilities – those in the cities of Blagoevgrad, Kyustendil, Sofia, Kardzhali, Vidin, Sandanski, and Svilengrad – were overcrowded.

Unlike the regime of prisoners in prisons, that in pre-trial detention facilities is much more restrictive. With the exception of one hour outdoor stay a day, detainees are kept locked in their cells for 23 hours each day with no access to work, education, training, sports or other meaningful activities. BHC monitoring in pre-trial detention facilities in recent years gives reason to claim that refurbishments in facilities that are not annexed to prison buildings will not significantly improve the living conditions in them.

Healthcare in pre-trial detention facilities, the same as in prisons, is separated from the national health care system in terms of standards, quality and volume of medical activities.

In order to prevent further violations of the rights of detainees it is necessary to close down the detention facility in the town of Gabrovo as a matter of urgency. Ten pre-trial detention facilities that do not have individual sanitary facilities in the cells also need to be gradually taken out of operation. It is also necessary to provide outdoor stay to detainees and to close down all pre-trial detention facilities without access to natural light. The regime of remand prisoners needs to be aligned with that of convicted prisoners.

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<sup>79</sup> Directorate General for the Execution of Sentences (2021), letter no. Л-120 from 12 January 2021.

The main challenge before the prison administrations in Bulgaria in 2020 was to ensure a protected environment and compliance with anti-epidemic measures in the prisons and detention facilities. From the moment the state of emergency was put in place on 13 March 2020 until 13 May 2020 there was a ban on visits, work on outdoor sites, receiving food parcels and going on leave. According to the Ministry of Justice and the Directorate General for the Execution of Sentences, the restrictive measures kept the spread of the disease in prisons and detention facilities under control.

## 11. Protection from Discrimination

**In 2020, the court's case-law under the *Protection against Discrimination Act (PADA)* exhibited both positive and negative developments. The case-law in relation to cases for accessible architectural environment is positive. Negative trends were evident in the interpretation and application of the institutes of anti-discrimination law, most often the distinction of the factual compositions of the different types of discrimination, the issue of shifting the burden of proof and the issue of exemption from state fees in anti-discrimination proceedings.**

### General issues

In January, the Supreme Court of Cassation allowed a cassation appeal<sup>80</sup> on the issue: Is the plaintiff in an anti-discrimination claim required to indicate the grounds of discrimination or is it sufficient to allege a case of direct discrimination? The Court ruled that it suffices for the plaintiff to state the facts that indicate the existence of discrimination on particular grounds for a claim to be considered regular.

In May, a three-member panel of the Supreme Administrative Court (SAC) issued an alarming ruling<sup>81</sup> on an issue related to the payment of state fees in proceedings under the PADA. The three-member panel found that according to the provision of Article 227a, para. 1 of the *Code of Administrative Procedure (CAP)*, a cassation appellant is required to pay in advance a state fee and that the above CAP provision repeals the **provision of Article 75, para. 2 of PADA** in the part for the cassation proceedings by the order of Article 208 et seq. of the *Code for Administrative Procedure*, which explicitly provides for the preliminary payment of state fees.

The ruling under discussion was signed with a dissenting opinion by a judge in the panel who did not agree with the majority. She was on the opinion that pursuant to Article 75, para. 2 of PADA, no state fees are owed for the cassation appeal. The provision of Article 227a, para. 1 of the *Code of Administrative Procedure* is contained in a general procedural law. According to the general principles of law, the new general law does not repeal the provisions of an existing special law, such

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<sup>80</sup> Supreme Court of Cassation (2020). Ruling no. 43 from 22.01.2020 on civil case no. 4850/2019, civil college, IIIrd Civil Division.

<sup>81</sup> Supreme Administrative Court (2020). Ruling no. 5268 from 04.05.2020 on administrative case no. 1834/2020, Fifth Division.

as the PADA. Therefore, the instructions for paying a state fee are not in line with the law, and the return of a regular cassation appeal is illegal.

### Disability

The court's case-law in 2020 on cases related to establishment of maintaining an inaccessible architectural environment, which hinders the access of people with special needs and constitutes discrimination within the meaning of Article 5 of PADA, remained constant.

### Gender/Age

In December, the Sofia City Administrative Court revoked<sup>82</sup> the Commission for Protection from Discrimination's decision that the Bulgarian Football Union and the Minister of Youth and Sports had not discriminated against a girl who could not play football in any team in the city of Vidin because there was no girls' youth team and the Bulgarian Football Union and the Minister of Sports did not allow her to participate in any of the boys' youth teams. The court noted that the complaint to the equality body had alleged "direct discrimination", while the contested decision put forward motives for the lack of "harassment" against the plaintiff.

### Ethnicity/race/origin

In February, the Supreme Court of Cassation prevented a cassation appeal<sup>83</sup> against the decision of the Pazardzhik Regional Court, which confirmed the rejection by the first instance court of a lawsuit filed on behalf of the Bulgarian Helsinki Committee and the European Roma Rights Centre against the Pazardzhik Hospital regarding the established practice of separation of Roma mothers from Bulgarian mothers in the obstetrics and gynaecology department.

In March, the Blagoevgrad Administrative Court upheld<sup>84</sup> a decision of the Commission for Protection from Discrimination (CPD) establishing discrimination in a case in which the BHC provided legal assistance to a Romani person in connection with a Facebook post on the profile of 9th Blagoevgrad Primary School. The post stated that Roma students would not be enrolled in the new school year. The court found that the post constituted "racial segregation". The Sofia City Administrative Court also found that a message with the text "We do not enrol children from the Roma ethnicity" constitutes "harassment", as the term "Roma ethnicity" is used to emphasize the ethnic origin of children and thus creates preconditions for a hostile environment and the formation of a negative image of the whole Roma community.

In April, the Supreme Administrative Court upheld<sup>85</sup> a decision of the Sofia City Administrative Court dismissing an appeal against a CPD decision in the case of former Deputy Defence Minister Orhan

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<sup>82</sup> Sofia City Administrative Court (2020). Judgment no. 7299 from 15.12.2020 on administrative case no. 3258/2020, Second Division, 33 court formation.

<sup>83</sup> Supreme Court of Cassation (2020). Ruling no. 80 from 14.02.2020 on civil case no. 3932/2019, fourth civil composition.

<sup>84</sup> Blagoevgrad Administrative Court (2020). Judgment no. 405 from 02.03.2020 on administrative case no. 934/2019.

<sup>85</sup> Supreme Administrative Court (2020). Judgment no. 4454 from 15.04.2020 on administrative case no. 9708/2019, V Division.

Ismailov against Valery Simeonov, leader of an ultranationalist party in the government coalition. The case is based on Simeonov's statements, in which he publicly disputes Ismailov's appointment because Ismailov is a "Turkish agent", a member of a "pro-Turkish party" and writes in Turkish on social media. The CPD rejected the appeal, and the decision was upheld by the Sofia City Administrative Court. In its ruling, the Supreme Administrative Court expressed solidarity with the reasoning of the first instance court that in order for speech harassment to be carried out, it is necessary for it to be general, impersonal and to incite hostility. This ruling of the SAC is not only illegal, but also in direct contradiction with the case-law of the civil courts in many cases for protection against discrimination. Harassment can be carried out with both personalized speech and general statements. Harassment can be any unwanted behaviour, including speech, regardless of whether the initiator of the proceedings is individually the addressee of the speech or not.

In July, the Sofia City Administrative Court upheld<sup>86</sup> a CPD decision that the statements of Deputy Prime Minister Krassimir Karakachanov in the village of Voyvodinovo on 8 January 2019, did not constitute discrimination on the grounds of "ethnicity": "Gypsies in Bulgaria have become extremely impudent. A police officer was beaten a few days ago. Two days ago they beat a soldier. This cannot go on any longer. And the tolerance of the Bulgarian society has run out." The Sofia City Administrative Court incorrectly and contrary to the substantive law concluded that the victims of discrimination, who initiated the proceedings under the PADA, need to provide evidence that the defendant's conduct gave rise to a "hostile, degrading, humiliating, insulting or threatening environment". The creation of such an environment should be derived from the very nature of the statements, the social status of the author and the addressees, as well as the context, i.e. from the specific circumstances in each case.

### Religion/belief

In January, the Supreme Administrative Court upheld<sup>87</sup> a decision of the Lovech Administrative Court confirming a CPD decision that in forcibly shaving the applicant's beard, the Lovech Prison had discriminated against him on the grounds of "religion". The applicant is a Muslim who wears a beard in accordance with his religious beliefs. By forcibly shaving his beard, he was subjected to less favourable treatment on the grounds of "religion" than any other person in a comparable situation had been or would have been treated.

In March, the Supreme Court of Cassation prevented a cassation appeal<sup>88</sup> against a decision of the Sofia City Court annulling a decision of the Sofia District Court that the defendant (head of a centre for religious research and consultations related to an Orthodox Christian church) instigated third parties to obstruct events of the plaintiffs - followers of the Hindu mystic Sri Chinmoy - as well as to restrict their indoor gatherings, which constitutes discrimination on the grounds of "belief" by incitement. A number of issues relevant to the outcome of the case were brought before the Supreme Court of Cassation, on which there is no case-law, but which had resolved incorrectly by the

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<sup>86</sup> Sofia City Administrative Court (2020). Judgment no. 3706 from 09.07.2020 on administrative case no. 1334/2020, Second Division, 40 court formation.

<sup>87</sup> Supreme Administrative Court (2020). Judgment no. 164 from 07.01.2020 on administrative case no. 15327/2018, V Division.

<sup>88</sup> Supreme Court of Cassation (2020). Ruling no. 221 from 25.03.2020 on civil case no. 2958/2019, civil college, Third Division.

Sofia City Court. The Supreme Court of Cassation did not allow a cassation appeal, finding some of the issues to be general in content and others to be inconsistent with the motives of the Sofia City Court.

## 12. Right to Asylum and to International Protection

**Even with international protection procedures resuming activities, following the lifting of the state of emergency due to Covid-19, throughout the year international and non-governmental organizations in Bulgaria had no access to the local offices of the State Agency for Refugees (SAR).**

### **Access to territory**

New arrivals seeking protection in 2020 increased by 57% compared to the previous year. The trend of seeking entrance into the EU through Bulgaria continued. The Bulgarian authorities issued 4,658 official refusals to entry, while 498 cases of indirect pushbacks were identified, affecting 3,493 people, as well as 569 cases of direct pushbacks, affecting 11,770 people at the borders.

Compared to Greece, Bulgaria consistently reports many times fewer newly-arrived refugees and migrants. The reasons behind this trend point to the significant obstacles that Turkish citizens face when attempting to gain access to the Bulgarian territory and to the asylum procedure, as well as to the forced returns they endure, being pushed back to Turkey. As a countermeasure, the Turkish authorities diverted the migratory pressure<sup>89</sup> from the Bulgarian to the Greek border.

Third-country nationals continued to transit through Bulgaria and to exit the country without any interference or pressure from state authorities. Compared to 2019, the number of illegal migrants on the Western Balkans route doubled.

The majority of migrants who nevertheless get detained by the police, once they are released from custody on the basis of an asylum application, similarly choose to exit the country with which they abandon their refugee proceedings before the SAR. This unobstructed passage through Bulgaria has gained the image of the Western Balkans as the most active migration route in Europe, with twice the number of illegal crossings<sup>90</sup> compared to the previous year.

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<sup>89</sup> *The Turkish Ambassador: Migration to your country is zero and will remain so in the future*, published on 3 May 2020 at: <https://offnews.bg/sviat/turskiat-poslanik-migratciata-kam-stranata-vi-e-nuleva-i-shte-ostane-727911.html>.

<sup>90</sup> European Border and Coast Guard Agency (FRONTEX), *Situation at EU external borders – Arrivals down in Western and Eastern Mediterranean* (17 November 2020), available at: <https://frontex.europa.eu/media-centre/news/news-release/situation-at-eu-external-borders-arrivals-down-in-western-and-eastern-mediterranean-7Wslzx>.

At the same time, the number of migrants entering the EU via the Eastern, Central and Western Mediterranean routes combined decreased substantially.<sup>91</sup>

### **Access to procedure**

Refugee recognition rates in Bulgaria continued to be among the lowest in the EU. The positive rulings for refugee status fell to 8%, while the granting of subsidiary protection slightly increased to 32%; 62% of the reviewed and closed cases resulted in rejections.

Foreigners detained for illegal entry and residence were subject to a 14-day mandatory quarantine, with a PCR test applied on entry and exit. During quarantine and the application protection, detained foreigners did not have access to legal aid and assistance. Due to its *force majeure* grounds, the quarantine period was not included in the average length of detention, which was 8 calendar/6 working days. In 2020, SAR registered 3,525 foreigners as applicants for international protection, which is an **increase by 63%** compared to the previous year.<sup>92</sup>

A new legislative provision from late 2020 introduced a supplementary termination clause, one that is in violation of the Geneva Convention and the Qualification Directive. The clause applies in those cases when refugees fail to submit an application for the issuance of Bulgarian identity documents within 30 days of receiving their status, or if the documents are stolen, lost or destroyed and refugees fail to renew them within 30 days. This provision de facto legalized the SAR practice in place since 2017, which has affected a total of 4,264 refugees to date.

### **Discrimination against certain nationalities**

Asylum seekers from certain nationalities and in particular from the Ukraine, Algeria, Tunisia, and Morocco, faced discrimination. Nationals of Afghanistan also experienced discrimination, especially in that they face rejection of their applications in 99% of the cases.

### **Representation of unaccompanied children**

A positive development during the year was the introduction of a legislative amendment, under which the representation of unaccompanied children seeking or receiving protection was transferred from the municipal administrations to the National Legal Aid Bureau.<sup>93</sup> The law also introduced qualification requirements for in-house lawyers to be trained in the rights of the child, and a provision of representation in lieu of the standards for protection of the best interests of the child.

The selection and training of lawyers expected to perform this task was planned to begin in early 2021.

### **Deterioration of the effectiveness of judicial control**

The effectiveness of the judicial system concerning refugee protection was severely undermined. In January 2020, the President of the Supreme Administrative Court permanently transferred the jurisdiction overseeing refugee cases from the Court's Third Division, which had managed these

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<sup>91</sup> *Ibid.*

<sup>92</sup> State Agency for Refugees, *Annual Statistics for 2019*, 2,152 asylum seekers.

<sup>93</sup> Law on Asylum and Refugees (LAR) (prom. SG, issue 54 of 31 May 2002), Art. 25.

cases for twenty years, to the Fourth Division. As a result, 96% of the refugee cases heard during the year by Supreme Administrative Court were resolved overwhelmingly to the detriment of the refugees; and in 14% of the cases, the positive decisions issued by the lower court were revoked.

### **Access to work and employment**

While under procedure, asylum seekers acquire access to the right to work upon three months from their registration with the State Agency for Refugees provided that the proceedings are still ongoing.<sup>94</sup> In 2020, the COVID-19 pandemic, which worsened the economic situation in the country, also had a negative effect on the ability of asylum seekers to access work and income-generating activities.

### **Safe zones for unaccompanied children**

The first safe zone for unaccompanied children was opened in mid-2019<sup>95</sup> in the Voenna Rampa Hostel at the SAR registration and reception center in Sofia. This free zone accommodates children from Afghanistan, Pakistan and Iran. The second safe zone for unaccompanied children was opened in January 2020 in the Ovcha Kupel Hostel's Sofia Reception Centre. It accommodates children whose country of origin is in the Arab Peninsula.

### **Detention during refugee status proceedings**

In 2020, SAR detained individuals seeking protection in a locked-up centre until the proceedings lasted, after which the foreigners were transferred to a deportation centre overseen by the Interior Ministry.

The trend towards **zero integration of refugees** in Bulgaria continued for the **seventh consecutive year**.

## **13. Right to Health**

**Bulgaria is among the countries in the European Union where the exercise of the right to health faces serious challenges. Despite the overall improvement, there is still a significant lag behind the EU average health indicators and drastic differences from the best-performing countries.**

**Moreover, the Covid-19 pandemic deepened the rift. It placed vulnerable groups at an extreme disadvantage, increasing their health risks compared to other groups of Bulgarian citizens and for Bulgarian citizens compared to those of other European countries. During the autumn wave of Covid-19 in November and December, over 10,000 people more lost their lives compared to the medium number of deaths for the same months in the previous five years.**

### **The right to health and the Covid-19 pandemic**

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<sup>94</sup> Law on Asylum and Refugees (LAR) (prom. SG, issue 54 of 31 May 2002), Art. 29, para 3.

<sup>95</sup> Official opening of Bulgaria's first safe zone for unaccompanied children seeking international protection, published on 29 May 2019 by [www.iom.bg](http://www.iom.bg) at: [www.iom.bg/bg/content/откриване-на-сигурна-зона-за-непридружени-лица](http://www.iom.bg/bg/content/откриване-на-сигурна-зона-за-непридружени-лица).

In Bulgaria, at the beginning of the pandemic, insufficient treatment options for patients with coronavirus<sup>96</sup> were reported. The situation motivated severe restrictions on health provision, such as the suspension of routine consultations for pregnant women, immunizations, planned surgical and therapeutic activities between 13 March and 21 April 2020.<sup>97</sup> In addition, transplants were suspended from 13 March to 14 May 2020.

During the second wave of the Covid-19 epidemic, medical admission was restricted from 25 October 2020 to 16 January 2021, except for transplants, diagnosis, and treatment of patients with oncological and onco-hematological diseases, assisted reproduction activities, and births.

Bulgaria occupied the last place among all EU countries in terms of access to coronavirus testing. Even during the first wave of the epidemic, when Bulgaria was mildly affected, confirmed data on the shortages of medications was apparent.<sup>98</sup> Shortages were also reported for medicines for the treatment of cancer, chronic and rare diseases.<sup>99</sup> There were similar issues with access to anti-influenza antiviral drugs, antibiotics, corticosteroids, and low-molecular-weight heparins during the autumn months.

At the beginning of the crisis, the country did not react quickly to provide personal protective equipment for front-line workers, supply medications for hospitalized patients with severe Covid-19<sup>100</sup> cases, and promptly offer the maximum number of vaccines.

The boom of registered cases of Covid-19 spreading from October through December 2020 led to the collapse of the health care system and mass infections among medical personnel.

### **Regulatory activity**

During the state of emergency from 13 March 2020 to 13 May 2020, the Minister of Health issued 75 orders<sup>101</sup> introducing, revoking, or changing measures to limit the spread of the epidemic. The Supreme Administrative Court received over 900 appeals against these orders.<sup>102</sup> Some of the changes were introduced following a decision by the Prime Minister.

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<sup>96</sup> Ministry of Healthcare (2020), Report on the expenditure made by the Ministry of Healthcare in connection with the measures to prevent the spread of COVID-19 and its treatment in the period 01.01.2020 – 30.11.2020, available at:

[https://www.mh.government.bg/media/filer\\_public/2021/02/02/obiasnitelna\\_zapiska\\_covid\\_19\\_prb\\_mz\\_301\\_12020.pdf](https://www.mh.government.bg/media/filer_public/2021/02/02/obiasnitelna_zapiska_covid_19_prb_mz_301_12020.pdf).

<sup>97</sup> Order of the Minister of Healthcare from 13 March 2020, available at:

[https://www.mh.government.bg/media/filer\\_public/2020/03/13/rd-01-124-vuvejdane-protiepidemichni-merki.pdf](https://www.mh.government.bg/media/filer_public/2020/03/13/rd-01-124-vuvejdane-protiepidemichni-merki.pdf).

<sup>98</sup> *Prohibited and deregistered drugs – leading cause of alerts from patients reveals March data on online platform of the BG Association for the Development of Parallel Medicine Trade*, published on 27.04.2020 by the Bulgarian Association for Development of Parallel Medicine Trade on: <https://parallel-trade-development.org/bg/page/Pres-saobstenia>.

<sup>99</sup> Information sent to the BHC dated 13 February 2021.

<sup>100</sup> Information sent to the BHC by the Bulgarian Pharmaceutical Union on 13 February 2020.

<sup>101</sup> Ministry of Healthcare (2021) orders available at: [https://www.mh.government.bg/bg/normativni-aktove/zapovedi-pravilnitsi-instruktsii/?from\\_date=13.03.2020&to\\_date=13.05.2020](https://www.mh.government.bg/bg/normativni-aktove/zapovedi-pravilnitsi-instruktsii/?from_date=13.03.2020&to_date=13.05.2020).

<sup>102</sup> Ministry of Healthcare (2021) orders available at: [https://www.mh.government.bg/bg/normativni-aktove/zapovedi-pravilnitsi-instruktsii/?from\\_date=13.03.2020&to\\_date=13.05.2020](https://www.mh.government.bg/bg/normativni-aktove/zapovedi-pravilnitsi-instruktsii/?from_date=13.03.2020&to_date=13.05.2020).

The health legislation was amended to introduce anti-epidemic measures; an entirely new *Measures and Actions during the State of Emergency Act* was adopted. Subsequently, both of these bills were rewritten and amended several times following criticism from the legal community.<sup>103,104</sup>

### **Non-pharmaceutical interventions to protect the right to health in the context of the pandemic**

The measures adopted in Bulgaria were inconsistent in nature and disproportional in application and this had a negative influence on the unfolding of the crisis.<sup>105</sup> During the first state-imposed quarantine in March-May 2020, the severe restrictions affected different social groups unevenly. Most severely affected were the most vulnerable – particularly, segregated communities, people with disabilities, people in closed institutions, women, and children at risk. School children were required to stay at home for the longest time. No benefits were provided for people with disabilities.

After the state of emergency was terminated, for a short time, all restrictions were lifted. The previously announced intentions to tighten measures upon reaching a certain threshold did not materialize. As a result, new regional peaks and difficulties in providing treatment occurred. The arrival of the colder season and the beginning of the school year occurred in an atmosphere of diffuse spread. To control the spread of the virus, the authorities implemented extreme and discriminatory measures, which were applied belatedly and on a limited scale. This approach again affected disproportionately people with disabilities, segregated communities, and children.

Similar trends transpired in the vaccination process officially launched at the end of 2020. In early 2021, it became clear that vaccination process in Bulgaria would be significantly slower than in other European countries. It began with vaccinating doctors and teachers. Still, the plan was thwarted in mid-February. Instead of vaccinating the elderly, the chronically ill, and the vulnerable as a matter of priority, the available doses were released universally to all citizens, following a personal order from the prime minister, just before the scheduled parliamentary elections.<sup>106</sup>

### **Infodemia, health behavior, and mental health**

The health crisis quickly created a new field for the thriving of misinformation. This aspect was influential for the decisions of large groups of people regarding the risk of viral disease, compliance with anti-epidemic measures, and vaccination.

Covid-19 took over by storm the Bulgarian media environment in March 2020.<sup>107</sup> Analyses are lacking as to what part of these publications were false information. Discrepant messages arrived both from an expert position and from government officials. More than half of Bulgarians shaped their opinion of the health crisis based on rumours and the most common conspiracy theories circulating on the subject.<sup>108</sup>

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<sup>103</sup> *The draft bill for amendment of the Health Act: summarizing the chaos*, published on 07 May 2020 by Maria Sharkova at: <https://mariasharkova.com/законопроектът-за-изменение-на-закон/>.

<sup>104</sup> Bulgarian Centre for Non-Profit Law (2020), *Rights in the pandemic – the effects of COVID-19 in Bulgaria*, available at: [http://bcnl.org/uploadfiles/documents/2020\\_6\\_19%20COVID-19%20Imprint%20in%20Bulgaria.pdf](http://bcnl.org/uploadfiles/documents/2020_6_19%20COVID-19%20Imprint%20in%20Bulgaria.pdf).

<sup>105</sup> *Individual rights in the conditions of COVID-19. The Balance*, published on 25 March 2020 by Maria Sharkova, <https://mariasharkova.com/индивидуални-права-в-условията-на-covid-19-6/>.

<sup>106</sup> “You supervise personally and open ‘green vaccination lanes’”. *Prime minister orders vaccination of all who want*, published on 19 February 2021 by [www.svobodnaevropa.bg](http://www.svobodnaevropa.bg), <https://www.svobodnaevropa.bg/a/31111221.html>.

<sup>107</sup> Information provided to the BHC with a letter dated 23 February 2021.

<sup>108</sup> Trend Sociological Agency (2020). *Researches*, available at: <https://rctrend.bg/?p=698>.

The informational environment that emerged as a result of these developments directly impacted raising the general level of anxiety in society, affecting people's mental health in general and children's in particular.

#### **Right to health 2020 - a result in objective indicators**

In 2020, Bulgarian citizens were systematically prevented from exercising their right to health. As a result, in the period October - December 2020, the number of deaths in the country doubled compared to the average for the past five years.<sup>109</sup> The proven mortality from Covid-19 quickly put the country in the first place in the world concerning this indicator.<sup>110</sup>

## 14. Women's Rights

**In 2020, an unprecedented number of authoritative international bodies and experts made recommendations to Bulgaria to improve legislation and measures to combat domestic and gender-based violence against women. Ineffective laws, as well as practices of the public institutions, do not provide adequate protection to the growing number of victims of domestic violence. There are still no official statistics in Bulgaria on the number of reports and victims of domestic violence; there is no coordination between the various bodies working on prevention and protection. The first lockdown against the spread of the coronavirus lead to an increase in the incidence of domestic violence and the number of victims of domestic violence, both globally and nationally.**

#### **Domestic violence**

The measures to limit the spread of Covid-19, including social isolation and restrictions on human rights, lead to an increase in the incidence of violence against women during the past year. During the spring of 2020 – at the time of the first lockdown - reports of domestic violence doubled.

Although there are no official country statistics, data from the Ministry of Interior reveals there is a notable increase in the number of reports of domestic violence registered on the 112 emergency telephone line. In the one-year period between March 2019 and March 2020, 26,567 signals were received, which is 3,584 more than in the previous period. According to data from the three hotlines for victims of domestic violence, during the first lockdown the cases grew by 12%, calls with reports from victims - by 50%, and the number of emails with such reports increased three-fold.

The increase in domestic violence reports to the 112 emergency telephone line after the introduction of the state of emergency in March is particularly high. From 1 to 13 March 2020, a total of 819 alerts were submitted, and for the period between 13 March and 13 May 2020 they were 4,875. Despite the sharp increase in reports from victims of domestic violence, the provision of protection to them is hampered by some of the restrictions and the lack of vacancies in crisis accommodation centres.

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<sup>109</sup> National Statistical Institute (2020), *Weekly deaths*, available at:

<https://www.nsi.bg/bg/content/18121/basic-page/умирания-в-българия-по-седмици>.

<sup>110</sup> Coronavirus deaths, Statistics and Research, available at: <https://ourworldindata.org/covid-deaths?country=IND~USA~GBR~CAN~DEU~FRA>.

The number of premeditated murders of women, in which the perpetrator is a relative or partner of the victim, also increased. In the period between March and May 2020, nine women lost their lives in such circumstances.

#### **Drop in newly-opened cases: from 2,072 in 2019 to 1,558 in 2020**

Although the cases of domestic violence are on the increase, the number of court cases is declining. Restrictions in the work of the courts and limited mobility, increased social exclusion and other difficulties arising from the pandemic led to a **25% reduction in the number of newly-opened domestic violence cases in the first half of 2020 compared to the same period in 2019.**<sup>111</sup>

The total number of protection orders issued under the *Domestic Violence Protection Act* registered by the Ministry of Interior in 2020 is 3,057 – which is **45% less than in 2019**, when their number was 5,561.<sup>112</sup>

#### **Recommendations of international bodies and experts to Bulgaria**

In 2020, Bulgaria repeatedly came under criticism and received numerous recommendations from reputable international bodies to improve its legislation and measures for combatting domestic and gender-based violence against women. Reports on the subject were made by the UN Committee on the Elimination of Discrimination against Women,<sup>113</sup> the UN Special Rapporteur on Violence against Women Dubravka Šimonović<sup>114</sup> and the Council of Europe Commissioner for Human Rights Dunja Mijatović.<sup>115</sup>

Some of the recommendations relate to renewing the debate on the ratification of the Council of Europe *Convention on Preventing and Combating Violence against Women and Domestic Violence* (Istanbul Convention), to amend the *Domestic Violence Protection Act* and the *Criminal Code* as measures to combat violence against women and domestic violence; amendments were also recommended in the *Protection against Discrimination Act*, the *Family Code* and some administrative documents that will address the many discriminatory and humiliating practices against women in Bulgaria.

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<sup>111</sup> Supreme Judicial Council (2020). *Summary of statistical tables on the court data during the first half of 2020*. Annex 111: Report one civil cases of all district courts for the first six months of 2020. Available at: <http://www.vss.justice.bg/root/f/upload/29/Tablici-01-06-2020.pdf>.

<sup>112</sup> Ministry of Interior (2020). Information received by BHC under a request for access to public information with decision no. 812104-5/13.01.2020.

<sup>113</sup> Concluding observations on the eight periodic report of Bulgaria, CEDAW/C/BGR/CO/8. Available at: <https://undocs.org/en/CEDAW/C/BGR/CO/8>.

<sup>114</sup> General Assembly (2020). *Report of the Special Rapporteur on violence against women, its causes and consequences, on her visit to Bulgaria*, A/HRC/44/52/Add.1, available at: <https://undocs.org/A/HRC/44/52/Add.1>.

<sup>115</sup> Commissioner for Human Rights of the Council of Europe (2020). *Report following her visit to Bulgaria from 25 to 29 November 2019*. Available at: <https://rm.coe.int/report-on-the-visit-to-bulgaria-from-25-to-29-november-2019-by-dunja-m/16809cde16>.

## Gender equality

Bulgaria did not make significant progress in the **Gender Equality Index**.<sup>116</sup> Bulgaria ranks 17<sup>th</sup> among the 28 EU member states in the overall ranking. **The deepest gender inequalities in the country are in the domains of money and time, where Bulgaria ranks last in the EU.**

Violations of equal pay and equal opportunities in the workplace are also evident from the judgment in the case of ***University Women of Europe (UWE) v. Bulgaria*** of the European Committee of Social Rights published on 29 June 2020.<sup>117</sup> The Committee found a violation of the right to equal pay in three cases: the lack of effective means of protection against pay discrimination; failure to introduce and apply the principle of pay transparency;<sup>118</sup> the requirement to maintain a national equality body is not met.<sup>119</sup>

The Ministry of Labour and Social Policy has prepared a concept for a system for monitoring the equality between women and men in Bulgaria. Relevant institutions will have to submit up-to-date information on the relevant indicators.

## Rights of women in childbirth

In April, the 2019 official statistics of the National Statistical Institute were published, which reported zero maternal mortality. However, data from the National Health Insurance Fund<sup>120</sup> for the same period reveals that seven deaths were reported by medical establishments related to pregnancy, childbirth and in the postpartum period. A letter from the Medical Audit Agency<sup>121</sup> reveals that six inspections of such cases were performed in 2019.

At the end of 2020, a draft medical standard for Obstetrics and Gynaecology<sup>122</sup> was put forward, as it had been lacking after the repeal of the then-acting standard in 2017 by a court act. For the first time, the document introduces into normative regulation some good practices in maternal health, but again there are no requirements for implementation of international recommendations in the field.

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<sup>116</sup> European Institute for Gender Equality (2020). *Gender Equality Index 2020: Digitalisation and the future of work*. Available at: <https://eige.europa.eu/publications/gender-equality-index-2020-digitalisation-and-future-work>.

<sup>117</sup> European Committee of Social Rights (2019). *University Women of Europe (UWE) v. Bulgaria*, no 125/2016, Decision of 6.12.2019. Available at: <http://hudoc.esc.coe.int/fre/?i=cc-125-2016-dmerits-en>.

<sup>118</sup> *Ibid.*, paras. 143-153.

<sup>119</sup> *Ibid.*, paras. 154-162.

<sup>120</sup> Information received by the BHC under a request for access to public information, letter no. PД-19-51/31.01.2020.

<sup>121</sup> Information received by the BHC under a request for access to public information, letter no. 93-00-6/04.02.2021.

<sup>122</sup> Ministry of Healthcare (2020), *Draft ordinance for the introduction of a medical standard Obstetrics and Gynaecology*, available at: [https://www.mh.government.bg/media/filer\\_public/2020/11/10/akusherstvo\\_i\\_gunekologia.pdf](https://www.mh.government.bg/media/filer_public/2020/11/10/akusherstvo_i_gunekologia.pdf).

# 15. Rights of People with Mental Disorders

**Bulgaria is among the countries that has a systemic problem with the conditions in psychiatric hospitals and social care institutions. Yet another report of the European Committee for the Prevention of Torture (CPT) described the inhuman treatment of people with mental illness in Bulgarian institutions – hitting with sticks and restraining with chains. There was no reaction from the Ministry of Health. Strategies and programmes developed by state institutions exist only on paper.**

**Since 2014, psychiatric hospitals and social care institutions have been operating in complete lack of transparency. The then Minister of Health Petar Moskov refused to renew the agreement between the BHC and the Ministry, thereby suspending the access of this and other NGOs to psychiatric hospitals. In 2020, the BHC sent several letters to the newly-appointed Minister of Health, Prof. Dr. Kostadin Angelov, insisting that independent human rights monitoring be allowed in the mental health facilities, but they remained unanswered. The Ministry of Labour and Social Policy also refused to facilitate access to the social care institutions transferring responsibility for the decision to the municipalities.**

## **General context and perspectives**

No adult social care institutions were closed down in 2020. The number of specialized institutions for adults is 161 with 8,822 adults living in them.<sup>123</sup> The total number of people on waiting lists for placement in residential care is 4,460. The number of people on waiting lists for use of community social services for adults is 1,865, while those waiting to be accommodated in adult social care institutions is 2,595. The total number of social care services for adults in the country is 551.

In the next programming period, the government has plans to focus on the deinstitutionalization of adults. The stated intention is to close 28 adult social care institutions. The number of people accommodated in institutions for people with disabilities that are subject to deinstitutionalization projects is 2,759.

## **Findings of the European Committee for the Prevention of Torture**

On 2 December 2020, the CPT published a shocking report on the situation in Bulgarian psychiatric hospitals and social care institutions for adults following an ad hoc visit earlier

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<sup>123</sup> Statistical data cited in this chapter have been provided to BHC by the Social Assistance Agency under an access to public information request, letter № 91-00-0020/11.01.2021.

that year.<sup>124</sup> The delegation visited three state psychiatric hospitals and three institutions for people with mental disabilities in Bulgaria. Instead of adequate treatment and developmental support, the CPT delegation established practices of hitting with sticks and restraining with chains in these institutions.

Psychiatric hospitals in Bulgaria operate in conditions of lack of transparency and arbitrariness and for this reason have adopted medieval methods of treatment of the most vulnerable members of society. A clear example of this are the means of immobilization found in the visited establishments, which visibly cause pain and are often used for days on end. The Committee was adamant that such a shameful practice was unacceptable and had to be stopped immediately.

In the institutions for people with mental disorders there is also physical abuse by staff. There is evidence that staff sometimes shout at residents, and paramedics and guards carry sticks and sometimes hit the clients with them. Poor professional skills, inadequate training and supervision undoubtedly increase the risk of abuse.

The Committee supported the plan of the Bulgarian authorities and called for the acceleration of the process of closure of a number of social care institutions by 2022 and for the development of appropriate community services. It further recommended that the Bulgarian authorities develop a specific strategy in relation to the Covid-19 pandemic, such as the introduction of a state-funded regime for regular PCR testing of staff and patients and clients on admission.

### **Twice as many unemployed with disabilities**

The current data on employment of people with disabilities from the Social Assistance Agency from 2019<sup>125</sup> reveals yet another year of failure. There is no explanation why 1,047 employers announced 2,439 vacancies for people with disabilities in the course of the year, but only 835 people were referred to them by the labour offices, and ultimately only 86 people were employed.

The largest share of employment of people with disabilities was provided by two EU-funded projects, but again for a much smaller number of people than initially planned. Employment was provided to 224 young people with permanent disabilities, but with a target of 550 young people, and 5,932 adults with a target of 8,000. Only four young people with disabilities were enrolled in training programmes under the first project and 311 people - under the second.

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<sup>124</sup> CPT, *Report to the Bulgarian Government on the visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 21 August 2020*, CPT/Inf (2020) 39, Strasbourg, 2 December 2020.

<sup>125</sup> Social Assistance Agency, *2019 Activity Report*.

In September, the BHC sent a proposal with concrete steps, but the Social Ministry did not respond. The proposal outlined three priorities: financing home-based services; introduction of an adequate mechanism for support of people with disabilities in accordance with their needs; development of vocational training and employment programmes.

### **New legislation, but only on paper**

The *Social Services Act* and the *Regulations for its implementation* finally came into force in 2020. They were adopted with the goal of ensuring the accessibility of the social services, but for the most part the ideas remain only on paper. The Social Assistance Directorates, which are supposed to have a central role, lack the technical and expert skills to implement the law.

At the end of the year, a draft ordinance on the planning of social services was published for discussion.<sup>126</sup> This document is illustrative of the lack of readiness and political will by the state to turn the principles of the *UN Convention on the Rights of Persons with Disabilities* into existing national norms. It fails to provide for any participation in the planning process of the social service users themselves, and affirms the segregation of services and people according to their disabilities. This means that social services will again be constructed in a way that defines caring for people through disability rather than through their strengths and the unlocking their full potential.

Not a single act adopted in 2020 contains any options for the transition from institutional care to community living or from segregated social services to public ones. In practice, the principle of residential services and limited opportunities for people with disabilities continues. Independent living in the community would be achieved by providing detached housing with a well-organized set of universal rather than segregating social, rehabilitation and integration services provided by the local authorities.

## **16. Rights of Children in Institutions**

**The focus of the child protection system in 2020 was on deinstitutionalization and closure of large institutions. At the end of 2020, the last social care institution for children was closed down. Four medical institutions housing 277 children aged 0 to three years of age, however, are still in operation. On 1 July 2020, the *Social Services Act* entered into force. For the first time Bulgarian law stipulated deadlines for the closure of the country's institutions: by 2021 of all institutions for medical and social care of children, and by 2035 of all institutions for people with disabilities.**

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<sup>126</sup> The draft ordinance and the opinions on it are available at: <http://www.strategy.bg/PublicConsultations/View.aspx?lang=bg-BG&Id=5716>.

### Children v. Parents

Once again a discussion erupted in Bulgaria that opposed the rights and interests of children to those of parents. It was provoked by civil and religious organizations and individuals who opposed the role of the state in raising and educating children. Public tensions were also used for political purposes when the nationalist IMRO-BND party introduced a bill to amend the *Child Protection Act* with a particular emphasis on the rights of "biological parents" and undermining the principle of the best interests of the child in the imposition of protection measures. More than 140 non-governmental organizations pointed out that the proposals have no place in the country's legislation as they are not in line with the UN Convention on the Rights of the Child and with European law.

### An uncertain "child-friendly justice"

The morally outdated *Juvenile Delinquency Act* is still in force in Bulgaria. It provides for the imposition of measures that are "educational" in theory, but are in fact punitive measures against underage perpetrators of anti-social acts. This law affects over 10,000 children each year. The Ministry of Justice committed itself to reform in this area, but the bill prepared in 2016 has not yet been tabled in parliament. The total number of children in the four correctional boarding schools is 119 or 1.3% of all children registered with juvenile re-educational units ('children's pedagogical rooms') across Bulgaria. Children placed in boarding schools live in inappropriate conditions, without access to adequate health care and quality education. Some of them are subject to violence and although this is publicly known to some institutions, the state is not taking action to address this.

### Last childcare institution is closed down

On 30 December 2020, the last three childcare institutions for children deprived of parental care in Stara Zagora were closed down, but four institutions for medical and social care with 277 children aged from 0 to 7 are still in operation.<sup>127</sup>

A total of 612 children and young people were taken out of their residential facilities by the autumn: 185 of them started independent living after reaching the age of majority, 269 were placed in a family environment, 26 - in specialized institutions, and 132 - in other residential services, i.e. every fourth child from a residential service ends up in an institution again.

A total of 2,552 cases of successful prevention of abandonment were registered during the year.

The social services for children in operation by the end of 2020 were 634, with the largest share still being residential services. Over 40% of the alternatives to orphanages are small group homes - family-type accommodation centres, and there are 267 of them across the country. Nearly 3,700 children, including 1,416 with special needs, are growing up in residential services instead of in a family environment.

The debate whether small group homes are a step towards community living or repeat the existing institutional model is still ongoing. These facilities bear all the hallmarks of closed institutions:

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<sup>127</sup> The information was provided to BHC under an access to public information request by the Social Assistance Agency's Executive Director, Romyana Petkova, letter no. 91 0019/11.01.2021 and by the Ministry of Health, letter signed by Secretary General, Hristina Getova, letter no. 93-00-202/15.01.2021.

segregation, a strict regime of eating, sleeping, daily activities and walking, limited going out and contacts with the outside world. During the Covid-19 pandemic the centres isolated themselves even more due to the lack of basic equipment for online communication.

### **Every third child in the medical and social institutions in a new-born**

The number of infants and young children entering the institutions for medical and social care remains alarmingly high. In 2020, a total of 171 children were placed in these institutions for children aged 0 to three; every third child enters the system directly from a maternity ward or from another medical institution. Despite the explicit ban introduced in 2018, these institutions continue to accommodate healthy children and new-borns without special needs (about 10% of all placements).

The 2011 Ministry of Health Concept for deinstitutionalization of children from the medical and social care institutions<sup>128</sup> provided for the closure of all such institutions and the creation of new integrated health and social services by 2020. In 10 years, however, only three out of the planned 20 centres for all-round services children with special needs and chronic diseases have been set up. Using the Covid-19 pandemic as an excuse, the government extended the reform by one year and in December started an "urgent" procedure for the closure of eight out of the 12 institutions for medical and social care. A total of 204 children were transferred from them, of which 163 were reintegrated, adopted, placed in foster care or in residential services, and 41 children that were in need of permanent medical care were transferred to the remaining four institutions for medical and social care in the cities of Varna, Kardzhali, Pleven and Stara Zagora. During 2021, the remaining 277 children must be transferred from them.

Thirty children died in the baby institutions in the past year (39 in 2019).

### **Abuse and sexual exploitation of children**

In April, the UN Special Rapporteur on the sale and sexual exploitation of children, Maud de Boer-Buquicchio, presented her report on Bulgaria to the UN Human Rights Council.<sup>129</sup> According to her observations, the sale of babies and illegal practices in interstate adoption by poor and socially isolated communities in Bulgaria are increasingly being used as criminal ways to cope with poverty. Sexual exploitation of children, including sexual violence in the family and in residential institutions, is also a reality in Bulgaria, but given the lack of systematically collected data, the share of child prostitution and investigations is unknown.

There is still no unified system in place for the registration of cases of violence against children. According to the Interior Ministry, in 2019 the total number of crimes against children was 2,268, and the reports filed with the Child Protection Departments were 1,171. Many cases of violence against children remain "invisible" given the stigma surrounding sexual abuse and the fact that domestic violence is largely considered a "family affair".

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<sup>128</sup> Concept for deinstitutionalization of the children from the institutions for medical and social care, 12 July 2011, <https://www.mh.government.bg/bg/politiki/strategii-i-kontseptsii/koncepcii/koncepciya-deinstitucionalizaciya-na-decata-ot-domovete/>.

<sup>129</sup> *Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, on her visit to Bulgaria*, A/HRC/43/40/Add.1, 14 February 2020: <https://undocs.org/en/A/HRC/43/40/Add.1>.

Due to unequal access to social services and education, the children most affected in all spheres are children from marginalized communities - Roma children, children living or working on the streets, children of migrants or refugees, unaccompanied or separated children, children in residential services and institutions, girls and boys with different sexual orientation.

## 17. Rights of LGBTI people

**In 2020, the decline in the situation of LGBTI people in Bulgaria continued. The COVID-19 pandemic had a very negative impact on LGBTI communities, dooming many of them to isolation from each other. Due to anti-epidemic measures, the first LGBTI community centre in Bulgaria was closed down, and the second, which was opened during the year, failed to start operating fully. In at least two cases, LGBTI activists were confronted with a persistent refusal of the Commission for Protection from Discrimination to conduct an investigation and initiate proceedings for protection against discrimination based on sexual orientation. At the same time, the ECtHR established a violation against Bulgaria in a case concerning the refusal of the Bulgarian courts to allow the change of the gender designation of a trans man in his civil status documents.**

### **Bias crimes and hate speech**

In 2020, the GLAS Foundation's platform for hate speech and hate crimes against LGBTI people received 37 signals, most of which related to psychological or physical violence against students in school, but only two of the cases were reported to the police.

The year was marked by a landmark case of homophobic and transphobic violence. On 27 September, a crowd of minors, part of the Botev Plovdiv Soccer Club fan club, attacked in Tsar Simeon's Garden in Plovdiv two young girls with eggs and shouted homophobic insults at them. It later became clear that the group had organized on Instagram to "cleanse" the park of "gays". The prosecutor's office initiated pre-trial proceedings for bodily injuries with xenophobic and hooligan motives. Human rights organizations sent a letter to the Minister of Justice and parliament requesting that hate crimes be criminalized,<sup>130</sup> but no official response was received. The incident resonated with the LGBTI community, with peaceful protests in Burgas and Plovdiv. After the event in Plovdiv, two activists received public threats through graffiti, and in one case pre-trial proceedings were instituted.

At the same time, society as a whole shows a predominantly positive attitude. According to the results of a nationally representative survey on attitudes towards LGBTI people,<sup>131</sup> more

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<sup>130</sup> *After the Plovdiv violence human rights organizations insist on legislative changes*, published on 30 September 2020 by [www.sofiaprider.org](http://www.sofiaprider.org), <https://sofiaprider.org/?p=3573>.

<sup>131</sup> *Acceptance of LGBTI people in Bulgaria grows, but a large percentage are still unaware of the lack of equal treatment in law*, published on 11 November 2020 by the GLAS Foundation, available at: <https://glasfoundation.bg/?p=9120>.

than half of Bulgarians fully agree that human rights should be guaranteed to everyone, regardless of sexual orientation and gender identity. Three-quarters of the respondents supported recognizing bias motives as an aggravating circumstance when a crime is committed. 58% have a positive view of the inclusion of information about LGBTI people in the curriculum in the secondary schools.

### Case-law and legislative basis

The case-law under the Protection against Discrimination Act in cases of unequal treatment of LGBTI people remains scarce. In two cases, the equality body closed files on complaints from gay activists about threats in connection with holding peaceful community events, including the iconic Sofia Pride. The decisions were overturned by the court and re-terminated by the Equality Body or left unanswered until the end of the year. The complaint about Sofia Pride was in connection with the pre-election campaign of the candidate of the ultranationalist party Ataka Volen Siderov in the local elections in 2019, in which he promised that if elected, he would prevent the "gay parade" in the capital city Sofia.

In 2020, in its decision the Sofia City Administrative Court confirmed the refusal of the mayor of the Krasno Selo district of Sofia Municipality to register a birth certificate for a child born to a same-sex family in the United States, as one of the partners is a Bulgarian national. In October, in a similar refusal by a Sofia municipal mayor, another panel of the same court made a preliminary inquiry to the Court of Justice of the European Union on EU law and respect for national and constitutional identity in such situations.

With regard to the legal recognition of gender, the Supreme Court of Cassation opened an interpretative case on whether and under what conditions it is permissible to allow legal gender reassignment in case of established transsexuality, which will be heard in 2021.<sup>132</sup> In July, the ECtHR delivered a judgment in *Y.T. v. Bulgaria*.<sup>133</sup>

A draft National Strategy for the Promotion of Equality between Women and Men 2021-2030 was put up for public discussion in the autumn. The BHC proposals on the strategy for the protection of LGBTI rights were rejected on the basis of the Constitutional Court's ruling on incompatibility of the Istanbul Convention with the Bulgarian Constitution.

### Health, freedom of expression and of freedom of assembly

The pandemic situation affected the LGBTI community in several ways. 21% of participants in a study on the effect of the pandemic on LGBTI people reported<sup>134</sup> that their mental health had deteriorated as a result of the situation and the introduced social isolation measures. In response to the anti-epidemic measures, the office of Rainbow Hub, the first

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<sup>132</sup> Supreme Court of Cassation (2020). Injunction for initiating an interpretive decision no. 2/2020.

<sup>133</sup> ECtHR (2020). *Y.T. v. Bulgaria*, no. 41701/16, Judgment of 9 July 2020, available at: <http://hudoc.echr.coe.int/fre?i=001-203898>.

<sup>134</sup> *How did the COVID-19 pandemic affect the Bulgarian LGBT+ community?*, published on 12 December 2020 by GLAS Foundation, available at: <https://glasfoundation.bg/?p=9141>.

Bulgarian LGBTI community centre in Sofia, which opened only two years ago, was closed down. Many of the centre's activities continued online.

In October, the opening of another space for the LGBTI community was announced - "The Steps" of the Single Step Foundation, which for the time being works entirely online. During the year, the foundation launched the #endHIVbg campaign for free HIV home testing.

On account of the pandemic, Sofia Pride took place virtually. On 13 June, an online concert was broadcast via Facebook and Neterra watched by a total of 23,000 people.

### Conclusions and recommendations

The main problems in the sphere of LGBTI concern the regulation of personal and family relations of same sex couples, protection from hate crimes and hate speech, and the legal recognition of gender identity.

In this regard, we put forward the following recommendations:

- To conduct an in-depth analysis of the work of the Commission for Protection from Discrimination on case files in connection with the grounds of the anti-discrimination directives, including with a focus on online hate speech.
- To include in the *Criminal Code* more serious penalties for acts committed on the basis of sexual orientation or gender identity.
- To reform the *Family Code* to regulate de facto family relationships, including of same sex couples.
- To introduce regulations for a clear and simplified procedure for changing the gender in civic documentation.
- To introduce regulations that prohibit and sanction the surgical modification of the genitals of minors with intersex conditions in order to establish the male or female sex of the person.
- To introduce a cross-sectoral approach in the preparation of national strategies and action plans for the various vulnerable groups in all their diversity.