

# ***EU 2020: DEMANDING ON DEMOCRACY***

*Country & Trend Reports on Democratic  
Records by Civil Liberties Organisations  
Across the European Union*

## ***BULGARIA***



# ***Table of contents***

Key concerns .....	3
Justice system .....	3
Media environment and freedom of expression and of information .....	8
Other issues related to checks and balances .....	10
Enabling framework for civil society .....	13
Other systemic issues affecting rule of law and human rights protection .....	14
Impact of COVID-19 .....	14

# **Bulgaria // Bulgarian Helsinki Committee (BHC)**



BULGARIAN  
HELSINKI  
COMMITTEE

## **Key concerns**

- New rules introduced to monitor and investigate the work of the prosecutors general in a way that may threaten their independence
- Higher court fees hinder access to justice, while courts struggle to deliver justice in reasonable time and judgments still fail to be enforced
- Frequent episodes of violence against journalists that are often not met with effective responses
- National Human Rights Institution regarded as not sufficiently independent and effective, and a systematic failure to implement judgments of the European Court of Human Rights
- Discriminatory practices in the registration of civil society organisations representing minority groups persist
- Criminal provisions on fearmongering being used to try and censor criticism in the context of the COVID-19 pandemic

## **Justice system**

### ***Judicial independence***

*Appointment and selection of judges, prosecutors and court presidents*

Judges, prosecutors and investigators are appointed by the Supreme Judicial Council (SJC). In December 2015 the SJC was reorganised, following a constitutional amendment. In particular, two separate chambers within the SJC (one for judges and one for prosecutors) were created. Unfortunately, attempts to secure a majority of judges elected by judges in the Chamber of Judges (as a means of securing judges' independence) were rejected by the parliament.

*Independence and powers of the body tasked with safeguarding the independence of the judiciary*

Currently, under Article 130a (3) of the Constitution of Republic of Bulgaria, the Chamber of Judges consists of 14 members: 6 judges elected by judges, 6 judges elected by the parliament, and the chairs of the two supreme courts – the Supreme Court of Cassation (SCC) and the Supreme Administrative Court (SAC). The latter two are themselves not elected by other judges but by the plenary

of the SJC, i.e. with the participation of the members of the Prosecutorial Chamber.

The Prosecutorial Chamber consists of 11 members: 4 members elected by the prosecutors, 1 member elected by the investigators, 5 members elected by the parliament, and the Prosecutor General (PG).

The PG and the chairs of the SCC and SAC are elected by the SJC's plenary. Each of the chambers is responsible for appointments, promotions, dismissals, and secondment of the respective magistrates. They are also the competent bodies for attestations and in some cases of disciplinary proceedings. In practical terms, this means that the career development, the potential disciplinary proceedings, and other important decisions on the administration of the judicial system are either in the hands of the two chambers (where magistrates – and especially judges – elected by other magistrates are a minority); or they are in the hands of the SJC's plenary (where magistrates elected by magistrates do not form a majority and the decisive votes are in the hands of a 'big three' – the PG and the chairs of the supreme courts). This is contrary to recommendations from the Council of Europe (CoE)<sup>1</sup>, and has been criticised both by civil society organisations and by the European Commission for Democracy

through Law (the Venice Commission).<sup>2</sup> Nevertheless, no further legislative amendments were made or discussed on that matter.

In November the European Court of Human Rights (ECtHR) delivered its judgment in the case of *Mustafa v. Bulgaria* (no. 1230/17). The case concerns the conviction of the applicant, a civilian, at first and second instance by military courts, whereas the Supreme Court of Cassation, which considered the case at last instance in June 2016, did not have full jurisdiction. The Court held that the doubts raised by the applicant as to the independence and impartiality of the military courts could be regarded as objectively justified, in view of such factors as the submission of military judges to military discipline, their formal membership of the military corps, and the status of the military court's jurors, who are by definition officers of the army. The ECtHR found a violation of Article 6 § 1 of the Convention.

#### *Accountability of judges and prosecutors*

In response to the harsh criticism from CoE bodies<sup>3</sup>, by request of the government on 23 July 2020, the Constitutional Court delivered a judgment where it found that the Prosecutor General (PG) cannot exert their supervisory competencies over prosecutors and

1 See Recommendation CM/Rec(2010)12 of the committee of ministers of Council of Europe, § 27.

2 See the Venice Commission's opinion on Bulgaria of 9 October 2017, [CDL-AD\(2017\)018](#), § 14.

3 Interim Resolution CM/ResDH(2019)367 of the Council of Europe's Committee of Ministers in December 2019 and Venice Commission's opinion on Bulgaria of 9 December 2019, [CDL-AD\(2019\)031](#), §§ 18, 27.

investigators who are investigating the PG themselves.<sup>4</sup>

Furthermore, amendments to the Criminal Procedure Code introduced in December 2020<sup>5</sup> created the position of a special prosecutor tasked with monitoring and investigating the work of the PG. Following a presidential veto, a majority of parliament successfully passed the amendments on 17 February 2021. Proposals for the position of the special prosecutor can be filed by any 6 members of the SJC's plenary as well as by the candidates themselves. The special prosecutor will be appointed for 5 years with no possibility to be re-elected. However, the rules foresee that, after leaving office, the special prosecutor will be able to file a request to be reinstated in the previous position occupied within the Prosecutor's Office before assuming the position of special prosecutor. This raises concerns not only over the impartiality of this prosecutor at the time of assuming office, but also in terms of their independence and impartiality in relation to their future position in the Prosecutor's Office following their term as special prosecutor. According to the government's ruling party, an important guarantee in that regard will be that all acts of the special prosecutor will be

subject to judicial control, including refusals to open an investigation. This, however, cannot be regarded as a guarantee of impartiality but merely of independent review. It has no effect on who is appointed special prosecutor, what their stance will be on issues related to the PG, or whether they will execute all their duties in good faith. Also problematic is the special prosecutor position's conformity with the Constitution itself, since such a figure is not envisaged in the Constitution.

#### *Perception of the independence of the judiciary*

At the end of May 2020, former members of the SJC wrote an open letter expressing 'regret' over their choice for Mr. Lozan Panov as chair of the SCC. The reason for this was mainly due to the management of the building of the Palace of Justice by Mr. Panov, in view of an episode where he allowed the shooting of a music video for a pop song.<sup>6</sup> Commenting on the letter on the state television channel, the then acting Minister of Justice, Danail Kirilov, said that Mr. Panov should resign not only for this reason but – among other things – also because of an interpretative decision of the SCC from 2018 regarding the confiscation

4 [Judgment no. 11 in case 15/2019.](#)

5 See <https://www.parliament.bg/bg/bills/ID/163448>.

6 See <https://dariknews.bg/novini/bylgariia/magistrati-izbrali-lozan-panov-nachelo-na-vks-poiskaha-ostavkata-mu-2226460>.

of assets.<sup>7</sup> This statement was met with harsh criticism by the Bulgarian Judges Association, which stated that demanding accountability of the chair of a court for that court's judgment or decision is a clear infringement of the independence of the court.<sup>8</sup>

## Quality of justice

### *Accessibility of courts*

Despite objections by civil society organisations in 2019, the parliament voted for the introduction of a higher court fee for appeals on points of law before the Supreme Administrative Court. For natural persons, the fee is 70 BGN (nearly 11% of the minimum gross wage and nearly 19% of the poverty line for Bulgaria in 2021) and for legal persons, for- or not-for-profit, it is 370 BGN (which is 57% of the minimum gross wage and nearly 100% of the poverty line for Bulgaria in 2021). This effectively dissuades persons to pursue judicial review of unfavourable judgments of administrative courts of the first instance. This includes many civil society organisations and informal collectives operating on a voluntary basis. With the same legislative amendments, objections before higher courts

against injunctions that discontinue hearing a case due to points of the procedure have also been increased to 30 BGN for natural persons and 150 BGN for legal persons. These amendments are enforced to date.

Court fees and expenses are to be especially considered as regards cases for protection against discrimination under EU rules (in particular, the transposed Directives 2000/43/EC, 2000/78/EC, 2004/113/EC, and 2006/54/EC). In Bulgaria, the Protection against Discrimination Act stipulates that procedures both before the general courts and before the quasi-judicial equality body are exempt from all costs, both state fees and expenses (Articles 53 and 75(2)). In practice, however, this provision is not respected as the losing party is generally ordered to pay the winning party fees and expenses.<sup>9</sup>

### *Judicial reforms*

In June 2020 the then Minister of Justice, Danail Kirilov, dismissed the vote for electing members in the civic council of the Coordination and Cooperation Council ('post-monitoring council') that was proposed by the Bulgarian government as replacement of the Cooperation and Verification

7 For more information, see <https://bnt.bg/bg/a/ministr-danail-kirilov-ne-sme-obekt-na-monitoring>.

8 See the full statement at <https://judgesbg.org/wp-content/uploads/2020/06/deklarazia-SSB-june-2020.pdf>.

9 See European Commission, Directorate-General for Justice and Consumers, [A comparative analysis of non-discrimination law in Europe 2019](#), pp. 83 – 84.

Mechanism (CVM).<sup>10</sup> It is required that three civil society organisations be members of the civic council: an organisation experienced in issues of judicial reform, an organisation experienced in anti-corruption, and an employers' organisation. When selecting members by lot on 2 June 2020, the organisation with experience in judicial reform that was elected was the Bulgarian Institute for Legal Initiatives – a well-known organisation that is critical of the government.<sup>11</sup> After the lot drawing, the Ministry sent a press release stating that the minister 'rejects the results' because very few organisations participated in the lot.

## ***Fairness and efficiency of the justice system***

### *Length of proceedings*

In October the ECtHR delivered its judgment in the case *Petrov and Others v. Bulgaria* (application no. 49817/14). The case concerns the excessive length of the criminal proceedings brought against the two applicants between 2001 and 2011 and the failure of the national courts to award them compensation. The Court found a violation of the right to

a fair trial enshrined in Article 6 § 1 of the European Convention on Human Rights.

### *Execution of judgments*

A stark example of issues with the implementation of court judgments in Bulgaria is the case of Rosangela Svierkosky – a Brazilian national and mother of two children with Bulgarian citizenship who, despite a court decision granting her the exercise of parental rights, are currently held by the father without the possibility to contact the mother. No bailiff or other institution has succeeded in securing her relation to her children and she has not had reasonable contact with them since 2015.

In a notorious case in 2020, authorities failed to secure the transfer of possession of the premises of an elevator factory. The case became widely publicised via covert videorecording of the procedure. The video shows how a private security company fails to carry out orders of the bailiff, who requested the possession to be transferred after a court order. The recording was broadcasted by one of the national television stations but was not covered by most of the others.<sup>12</sup> The case exposes serious corruption

10 See the 2019 Report from the European Commission to the European Parliament and the Council on Progress in Bulgaria under the Cooperation and Verification Mechanism, pp. 3 – 4, available at [https://ec.europa.eu/info/sites/info/files/progress-report-bulgaria-2019-com-2019-498\\_en.pdf](https://ec.europa.eu/info/sites/info/files/progress-report-bulgaria-2019-com-2019-498_en.pdf).

11 For more information, see <https://defakto.bg/?p=67691>.

12 See <https://btvnovinite.bg/predavanja/tazi-sutrin/sled-sadebno-reshenie-zashto-chsi-ne-beshe-dopusnat-da-va-vede-novite-sobstvenici-na-zavod-v-dupnica.html>.

potentially involving the Prosecutor's Office, as illustrated in a video documentary.<sup>13</sup>

## **Media environment and freedom of expression and of information**

### **Media authorities and bodies**

The main self-regulatory body for journalists is the National Council of Journalism Ethics – a not-for-profit organisation.<sup>14</sup> While this body seems independent, the effectiveness of its work is questionable. Decisions of the body are not bound to any actual sanctions even for those media that have signed the Council's Ethical Code.

### **Framework for the protection of journalists and other media activists**

Attacks and violence against journalists are a rising concern. The journalist Dimitar Kenarov was arrested on 2 September 2020 while covering an anti-government protest that turned violent. Despite identifying himself as a reporter multiple times, he was taken away by three police officers and was subjected

to violence while being handcuffed. The next morning a forensic doctor confirmed his injuries and bruises. According to the police report, Kenarov, who was handcuffed and escorted to a nearby police department where he spent a few hours without being given any explanation, was actually "visiting" the station upon the "invitation" of the officer on duty that night. At the end of January 2021 prosecutors refused to open a formal investigation, citing an internal probe, carried out by the same police department that was in charge of guarding the protests. In practice, the Sofia Directorate of Interior Affairs was tasked to investigate the incident itself.<sup>15</sup>

Another attack was also reported during the national conference of the Citizens for European Development of Bulgaria party (GERB). The journalist Polina Paunova of the Bulgarian service of Radio Free Europe/Radio Liberty was attacked by young men who attended the political rally while trying to interview them as she earlier saw them clashing with anti-government protesters. Paunova's cell phone, which she used for filming the event, was grabbed and thrown on the ground multiple times while she herself was pushed and hit. The ruling party's conference was held during protests demanding the resignation of Prime Minister Boyko Borissov and Prosecutor General Ivan Geshev, which at the

13 The video is accessible here: [https://youtube.com/playlist?list=PLlytu5IULkSIZ8n\\_7fEY52fYqi5KHRIUS](https://youtube.com/playlist?list=PLlytu5IULkSIZ8n_7fEY52fYqi5KHRIUS)

14 See <https://mediaethics-bg.org/>.

15 See <https://aej-bulgaria.org/en/justice-for-dimiter-kenarov/>.

time of the events had been going for 28 days. The men, who can be seen assaulting Paunova in the video of the incident, had been allowed to the designated area by the security of the event.<sup>16</sup> While Paunova and her colleagues were asking the security guards for help, another participant at the rally approached Paunova, insisting that the journalist show her press card, pushing and insulting her. The police did not intervene. However, due to the wide coverage of the events, one of the attackers was identified. After reaching an agreement with the Prosecution, he was sentenced to two years of probation.<sup>17</sup>

### ***Freedom of expression and of information***

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In 2020 charges were pressed against the chair of the Bulgarian Pharmacists Union, prof. Asena Serbezova, over an expert opinion she expressed in an interview for the Bulgarian National Radio. The charges against Prof. Serbezova are in connection with her warning of an approaching crisis in the supply of some medicines, which the Prosecutor's Office says caused undue concern. They were pressed under Article 326 of the Criminal Code (CC),

which provides that “a person who transmits over the radio, by telephone or in some other way false calls or misleading signals for help, accident or alarm, shall be punished by imprisonment for up to two years.” The actions of the Prosecutor's Office were widely criticized and were seen as an attempt at a broader application of the provision whose main function is to penalize the authors of fake bomb alerts and people who abuse police, fire brigade, and ambulance workers by calling 112 without needing their assistance. The Association of European Journalists – Bulgaria (AEJ) made several statements, condemning the practices of bringing charges against experts for opinions they have expressed as a “form of obscurantism that goes directly against Bulgaria's European Union (EU) membership because it clearly shows a lack of understanding of the fact that democracy can only work in the presence of free and independent media”.<sup>18</sup>

There has also been an attempt to use the above-mentioned article against two doctors from Plovdiv who were summoned to explain themselves in relation to a statement they had made in the media that the hospital they work at was not prepared to treat patients diagnosed with COVID-19. However, following a strong

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16 See <https://www.svobodnaevropa.bg/a/30767484.html>.

17 See <https://aej-bulgaria.org/en/aej-bulgaria-condemns-attack-on-journalist/and> <https://prb.bg/bg/news/aktualno/48543-dve-godini-%E2%80%9Eprobatsiya%E2%80%9C-poluchi-podsadim%C2%A0-izvarshil-huliganski-deystviya-spyam>.

18 See <https://aej-bulgaria.org/en/statement-on-the-charges-against-the-chairwoman-of-the-bulgarian-pharmaceutical-union/>; as well as <https://www.svobodnaevropa.bg/a/30920941.html>.

public response, the Prosecutor's Office did not press charges against them.

Charges under the same article were pressed against the chair of the NGO "Boets", Mr. Georgi Georgiev. He was accused of causing panic with his statements that the authorities in Vidin refused to test people who were in contact with others who have COVID. Yet he was found not guilty by the Court.<sup>19</sup>

## ***Other issues related to checks and balances***

### ***Process for preparing and enacting laws***

The National Assembly of Bulgaria recently adopted some questionable legislative practices, leading to a significant deterioration in the quality of amended legal acts. These practices include the following:

- The drafting of legal acts without public consultations.
- In accordance with the Bulgarian Constitution, the bills shall be read and voted in two readings in the Parliament, during different sessions, but many amendments are initiated for the first time just before the second vote.
- The National Assembly often amends, supplements, and repeals the laws via

transitional and concluding provisions of other laws governing completely different legal issues. Those transitional and concluding provisions usually are lacking motivation.

- Amendments, especially concerning criminal law including the length of deprivation of liberty as a specific punishment, are often adopted with only formal reasons after widely publicised criminal cases.
- Formal character and poor quality of the motives, the report and the ex-ante impact assessment, including the reasoning on why amendments are required and the objectives of the act; the financial and other means necessary for the adoption or change of regulation; the expected results from its application, including the financial ones, analysis regarding the compatibility with the European Union law.
- The lack of legal experts involved in the legislative process: in early 2019, the chairman of the Legislative Council, including a number of prominent law experts, insisted on closing the body due to the inactivity of this body. The functioning of the Council has been suspended de facto since late 2017.

At the beginning of February 2021, the president of the Republic of Bulgaria turned to the Constitutional court with questions regarding the legislative procedure. He requested that the Constitutional judges analyse certain practices of the National Assembly of Bulgaria related to amending, supplementing and repealing laws voted by the Assembly before their

19 For more information, see <https://www.svobodnaevropa.bg/a/30832112.html>.

promulgation in the State Gazette. The matter is still pending before the Constitutional court.<sup>20</sup>

### ***Independent authorities***

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The national quasi-judicial equality body – the Commission for Protection against Discrimination – does not seem to demonstrate sufficient independence, capacity, and powers.

In terms of independence, it should be noted that the body consists of 9 members – 5 elected by the parliament and 4 by the president. Only the parliament has a procedure for public hearing of the nominees for members of the Commission, but there is no transparency as regards the selection process. Nominations are a matter of internal decision within the parliamentary groups. Only parliamentary represented parties can nominate members, with no guarantees that the minimal standards of the competencies of the nominees will be respected. Civil society organisations may send questions for the hearing which are read by the parliamentary commission but have no other influence on the election procedure. The president has no transparent procedure on the matter whatsoever. Furthermore, during the current term of office of the members of the commission no case of sanctions against

a high-profile politician – if any exists – has been published. This comes in the context of a rise of political hate speech in Bulgaria in the past few years.<sup>21</sup>

In terms of capacity, the Commission seems to be lacking human resources and capacity for strategic planning for the existing resources. For example, during the current term of office of the members of the commission its public hearing room was renovated while no financial resources have been invested into securing publication of the Commission's decisions, more accessible website, and e-administration. Moreover, length of proceedings before the Commission are substantial although the body is meant as an administrative body with a simplified and a faster course of proceedings. Furthermore, no procedure for independent control over the length of proceedings before the Commission exists.

In terms of powers, the Commission seems to be lacking any tools for tackling online hate speech where the author of that speech can only be identified through obtaining data from foreign hosting or service provider companies like social media platforms. This calls into attention, among other things, the outdated system of the EU's anti-discrimination directives which lag behind similar regulations for other administrative bodies, such as the ones contained in Regulation (EU) 2017/2394

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20 Constitutional case No. 3/2021, see <http://www.constcourt.bg/bg/Blog/Display?id=920&type=1>.

21 See for example <https://www.coe.int/en/web/commissioner/-/bulgaria-should-counter-harmful-narratives-endangering-human-rights-and-step-up-efforts-to-fight-hate-speech-and-domestic-violence>.

or the General Data Protection Regulation, where Mutual Assistance Mechanisms exist.

### ***Accessibility and judicial review of administrative decisions***

Amendments to the Administrative Procedure Code came into force in 2019, and the amount of fees in cassation proceedings was increased. Currently, the fee for filing a cassation appeal in the Supreme Administrative Court was BGN 5 for natural persons and for non-governmental organizations and BGN 25 for companies. After the amendments in 2019, this fee increased to BGN 70 for natural persons and BGN 370 for non-governmental organizations and companies. The lawfulness of the amendments was challenged before the Constitutional Court and in its opinion the Plenum of the Supreme Administrative Court argued that the amount of the citizens' fee was not excessive because it «corresponds in proportion» to the minimum monthly salary (BGN 560 for 2019) and therefore it was not contrary to the European Convention on Human Rights. However, with increasing the court fees in administrative cases, the state virtually deprived citizens of their ability to file such complaints, because only a few have the financial opportunity to pay high court fees.

There has also been an alarming trend in the practice of the Bulgarian courts concerning the conviction of claimants and complainants in proceedings for protection against discrimination with fees and costs. In accordance with the provision of Art. 75 (2) of the

Protection against Discrimination Act “for proceedings before a court under this law no state fees are collected, but the costs are at the expense of the court’s budget”. According to this provision, the parties shall be exempted unconditionally from the payment of fees and expenses in discrimination cases. “Expenses” within the meaning of Art. 75 includes all expenses, without exception. The phrase “for proceedings” applies as much to the costs of state fees, witnesses and expertise as to litigation, because it pursues the same purpose - to ensure that persons affected by discrimination are able to make their claims regardless of their financial situation because undoubtedly burdening them with the costs of these cases would have a deterrent effect. This would lead to an ineffective prosecution of discrimination in public life, contrary to the legal goal. However, in many anti-discrimination cases, the parties are ordered to pay the costs according to the outcome of the case.

In April the ECtHR delivered its judgment in the case *Chorbadzhiyski and Krasteva v. Bulgaria* (no. 54991/10). It concerns the disproportionate restriction on the applicants' right of access to a court as a result of the excessive amount of court fees they were ordered to pay in a successful claim for damages against the State (violation of Article 6 § 1 found). The court fees ordered were more than half of the total amount granted to the applicants (around 55%). The proceedings in issue took place between 2003 and 2011.

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## **Enabling framework for civil society**

### ***Freedom of association***

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A large group of ECtHR judgments that remain not implemented is related to the unjustified refusals of the courts, in 1998 – 1999, 2002 – 2004, 2010 – 2013 and 2014 – 2015, to register an association with the aim of achieving “the recognition of the Macedonian minority in Bulgaria”. In October and November 2019, the Bulgarian authorities provided information on the registration by the Registration Agency of “Civil Association for the Protection of Fundamental Individual Rights” which aims at “protecting the human rights of the Macedonians and other ethnic minorities in Bulgaria”, as well as of another association - “Ancient Macedonians”. This is a persisting issue as in May 2020 the ECtHR delivered two judgements on similar cases, holding that there has been a violation of Art. 11 of ECHR due to the refusal of the Bulgarian Courts to register two associations – Society of the Repressed Macedonians in Bulgaria Victims of the Communist Terror and Macedonian Club for Ethnic Tolerance in Bulgaria. The ECtHR found that such

restrictions and actions cannot be seen as necessary in a democratic society.<sup>22</sup>

### ***Freedom of assembly***

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In July 2020 protests against the government and the Prosecutor General took place in Sofia. On the 56th day of the protests, tensions escalated, resulting in the arrest of 126 people and police brutality. Many complained that following their arrests, they were not only beaten by the police officers but were also denied access to an attorney. However, all of the arrested but one were released by the court several days later. No policemen were indicted and no information on investigations of police brutality was released.<sup>23</sup>

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22 SEctHR (2020) Macedonian Club for Ethnic Tolerance in Bulgaria and Radonov v. Bulgaria, case no. 67197/13, Judgment of 28.05.2020; Vasilev and Society of the Repressed Macedonians in Bulgaria Victims of the Communist Terror v. Bulgaria, case no. 23702/15, Judgment of 28.05.2020.

23 See <https://civicspacewatch.eu/bulgaria-protests-continue-peacefully-after-tension-escalated-in-sofia-on-the-second-of-september/>.

## **Other systemic issues affecting rule of law and human rights protection**

### **Implementation of judgments of the European Court of Human Rights**

Bulgaria's record on implementation of judgments of the ECtHR did not improve in 2020. According to the European Implementation Network, the country has 77 leading cases pending for an average of 6 years and 9 months.<sup>24</sup>

In 2021 amendments were made in the Bulgarian Criminal Procedure Code (CPC) in relation to the execution of the ECtHR judgement on the case *Kolevi v. Bulgaria*. These amendments aim to address the lack of guarantees of an independent and effective criminal investigation of the Prosecutor General identified by the Court. With the adopted amendments, the investigation in cases of crimes committed by the Prosecutor General or their deputy shall be conducted by the “prosecutor of the investigation against the Prosecutor General or their deputy.” In case of a refusal by the prosecutor of the investigation against the PG to initiate pre-trial proceedings, the refusal may be appealed before the Specialised Criminal Court and the Specialised Criminal Court of Appeal. The

procedure for the election of a prosecutor of the investigation against the Prosecutor General or their deputy shall be carried out by the plenary of the Supreme Judicial Council and the candidates can be nominated by the Members of the Plenary of the Supreme Judicial Council. Self-nominations are also allowed. The election decision shall be by a majority, not less than fifteen votes, by open vote. The term of office shall be five years without the right to a second term.

These amendments were quickly adopted by the National Assembly, disregarding public concerns expressed on the matter. The President Rumen Radev vetoed the bill on grounds that the amendment does not offer a fair and sustainable solution to the problem of the lack of effective investigation of a sitting prosecutor general and is in violation of a number of constitutional principles, among them the independence of the court of the prosecution. The National Assembly, however, overturned the veto.<sup>25</sup>

## **Impact of COVID-19**

### **Emergency regime**

On 13 March 2020, the Parliament announced that Bulgaria is in a state of emergency due

24 See <https://www.einnetwork.org/bulgaria-echr>.

25 See <http://www.bta.bg/en/c/DF/id/2363702>.

to the Covid-19 pandemic. The state of emergency lasted two months. However, in May 2020, legislative amendments were passed by the Parliament in the Health Act which allowed the establishment of an ‘emergency epidemic situation’ (EES). The Act provides for the power of the Council of Ministers to declare an epidemic emergency situation in the territory of the country, in case of immediate danger to the life and health of the public due to the spread of a contagious disease. The Act also provides for the conditions which should be met in order for such an emergency to be declared. The Act governs the implementation of temporary anti-epidemic measures which include (i) the suspension or limitation of various activities and services provided to the public, (ii) the restriction on movements within the country and (iii) a ban on entry of foreign nationals in the country, with the exception of individuals who have been issued a permanent, long-term or continuous residence certificates and their family members.

The measures may be implemented by virtue of an order of the Minister of Health or of another competent authority.

On 14 March 2020, the President challenged the provisions of the Health Act and the declaration of an emergency epidemic situation before the Constitutional Court. The head of state contests the power of the Council of Ministers to declare the measures, as well as the lack of a deadline for the measures and the

criteria for assessing the danger to human life and health, and the disproportionate restriction of their rights.

However, on 23 July 2020 the Constitutional Court, despite many statements of NGOs, legal practitioners and university professors in support of the President’s request that certain provisions of the Act must be found unconstitutional, rejected the application and found the amendments in line with the Constitution and the possible restriction of citizens’ rights proportionate.<sup>26</sup>

### *Impact on the justice system*

In Bulgaria, the special law on the measures during the state of emergency temporarily suspended the procedural deadlines in all judicial, arbitration and enforcement proceedings with the exception of criminal proceedings, European Arrest Warrant proceedings and proceedings related to coercive measures. The amendments to the law, adopted in April 2020, defined more precisely these exceptions by adding a separate annex containing an exhaustive list of all judicial proceedings for which the suspension did not apply. The amendments also authorised the courts to hold distance hearings, including in criminal proceedings, provided that the direct virtual participation of all parties is duly ensured. In practice, many courts started using Skype for holding open hearings on cases that were

26 Decision 10/2020 from 23 July 2020 on Constitutional case No. 7/2020. See: <http://www.constcourt.bg/bg/Acts/GetHtmlContent/b2ff2778-7f70-41c6-a319-963776aa073>

not suspended and could not be postponed. The practice was first introduced for hearing criminal cases but was gradually utilised in civil cases as well. In Bulgaria, the operation of the courts during the state of emergency was organised according to a decision of the Supreme Judicial Council adopted on 15 March 2020. The decision suspended all court cases with the exception of those specifically listed in it, introduced mandatory submission of documentation by post or electronic means of communication, instructed the courts to provide information on pending cases only by phone or electronically, restricted the access to court buildings and obliged the courts to send subpoenas and other cases related documentation only by phone or electronically. On 14 April 2020, following the amendments to the law on the measures during the state of emergency, the list of cases exempted from suspension was revised to correspond to the list of exceptions included in the newly adopted annex to law. On 28 April 2020 the obligation of courts to send subpoenas and other case-related documentation only by phone or electronically was revised and conventional handling was permitted for cases, in which the party had not provided a phone number or an electronic address.<sup>27</sup> In May 2020 the Supreme Judicial Council adopted Guidelines and Measures regarding the operation of Courts during the pandemic. The guidelines were amended several times.<sup>28</sup>

### *Inequalities and discrimination*

At the beginning of the pandemic, neither the Ministry of the Interior (MoI) nor the Commission for Protection against Discrimination (CPD) reported about incidents of xenophobic speech, acts of harassment, or violent attacks against persons of, or perceived as being of, Asian origin, or coming from a country identified as at high risk. Incidents involving Italians and other EU nationals from the Member States where the virus is reported/perceived to be widespread were not reported either. The media reported about occasional cases of services being denied to persons coming from countries where the virus is reported to be widespread (a hotel cancelled the booking of four Italian opera singers, an airline company which disembarked British tourists, allegedly in response to protests by other passengers). None of the cases was referred to the police or the national equality body.

The media reported that cities with large Roma populations were restricting the access to and from segregated Roma neighbourhoods by organising temporary checkpoints and checking the identification papers of everyone entering or leaving the neighbourhood. The measures were implemented independently by the local authorities after consulting the National Operational Headquarters. On 19 March 2020, the Sofia Regional Prosecutor's

27 See [https://fra.europa.eu/sites/default/files/fra\\_uploads/bg\\_report\\_on\\_coronavirus\\_pandemic\\_-\\_may\\_2020.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/bg_report_on_coronavirus_pandemic_-_may_2020.pdf).

28 See <http://www.vss.justice.bg/page/view/105223>.

Office instructed the local mayors in Sofia to assess the situation and organise checkpoints to control the movement from and to Roma neighbourhoods. The instruction was issued “in relation to the information, published in the media, about gathering and movement of groups of people (more than two adults) in neighbourhoods in the city of Sofia inhabited by persons of different ethnic background, clearly demonstrating their unwillingness to comply with the restrictions imposed.” In the city of Kazanlak, some of the access points to the Roma neighbourhood were sealed with concrete to make the neighbourhood accessible only through the checkpoints. The NGO Amalipe Center for Interethnic Dialogue and Tolerance commented that authorities must be careful when implementing such measures to avoid the causing of tension, which can escalate into ethnic tension, and that “measures must apply equally to everyone.” Other civil society organisations and Roma rights activists also expressed concerns that the measures are discriminating against the Roma populations in these cities. Neither the Ombudsman nor the equality body commented publicly on these measures. The Ministry of the Interior noted that the restrictive measures were applied by the competent authorities equally to all Bulgarian citizens and without discrimination on any ground. The checkpoints were progressively removed.

### ***Control and surveillance***

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Bulgaria’s Constitutional Court on 17 November 2020 declared unconstitutional a provision in the Electronic Communications

Act, which allowed law enforcement to access traffic data kept by telecom operators on the grounds of checking whether a person is complying with quarantine orders. The amendments were part of the State of Emergency Act, passed by Parliament earlier in the year to fight the Covid-19 pandemic, but were challenged by opposition members of parliament, who argued that the scope of the amendments was too broad because it was not limited only to coronavirus quarantine cases and would not expire once the current epidemiological state of emergency was over.

The Constitutional Court agreed, ruling that the provision was disproportional because “the right to privacy is not a privilege solely for periods when times are relatively calm, but also in times of crisis, where any interference should be, as a constitutional imperative, proportional and strictly necessary.”