

# TARGETED STAKEHOLDER CONSULTATION 2021 RULE OF LAW REPORT

## UN HUMAN RIGHTS REGIONAL OFFICE FOR EUROPE (OHCHR)

This document presents the UN Human Rights Office's contribution to the targeted stakeholder consultation held by the European Commission in 2021 in the context of the second annual rule of law report.

It is a compilation of information related to Bulgaria, included in reports and documents of United Nations Treaty Bodies, Special Procedures and the Universal Periodic Review of the UN Human Rights Council, presented in a summarized manner. It also refers to statements and reports of the UN High Commissioner for Human Rights and her Office. The cited material covers the period 2018-2020.

It mentions both positive developments and challenges to the rule of law in Bulgaria, as well as recommendations issued by the UN Mechanisms on how these challenges can be addressed and how the rule of law can be further strengthened.

In light of the methodology proposed by the European Commission the submission is divided in four pillars: national justice systems, anti-corruption frameworks, media pluralism and freedom and other institutional issues related to the checks and balances essential to an effective system of democratic governance.

## **BULGARIA REVIEW**

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### **Justice System**

#### **➤ Independence**

In its 2018 concluding observations, the UN Human Rights Committee noted the constitutional amendments of 2015 reinforcing the independence of the Supreme Judicial Council but remained concerned at the low proportion of judges elected by their peers and the high proportion of members elected by the National Assembly in the Council, which may lead to potential politicization of its decisions. The Committee was concerned that the election by the National Assembly of the members of the Inspectorate of the Council, which has disciplinary functions, created a risk of political influence over this body. While noting the amendments of 2017 to the Judicial System Act, the Committee remained concerned by the weak accountability of the Prosecutor General, who (a) is essentially immune from criminal prosecution and irremovable by means of impeachment for other misconduct; (b) can request that the Council automatically suspend judges when they are suspected of committing an intentional indictable offence without an obligation to review the substance of the accusations or hearing the person affected; and (c) has coercive administrative powers outside of the criminal law. The Committee was also concerned about the uneven workload among the courts and the public's lack of trust in the judiciary.

The Committee recommended that Bulgaria continue to review the legislative framework and take measures to further guarantee and protect the full independence and impartiality of the judiciary by, inter alia, ensuring that judges operate without pressure and interference from the executive branch and raising awareness about the importance of the independence of the judiciary. In this regard, Bulgaria should (a) increase the proportion of judges elected by their peers within the Supreme Judicial Council; (b) reinforce the political detachment of the Inspectorate and enhance the role of the Council in disciplinary proceedings; (c) strengthen the accountability structure of the Prosecutor General in cases of misconduct and circumscribe the powers of the prosecution service in the non-criminal sphere; and (d) place sufficient resources at the disposal of the judicial system, particularly for overburdened courts ([CCPR/C/BGR/CO/4](#), para 43, 44).

➤ ***Quality of justice***

In its 2020 concluding observations, the UN Committee on the Elimination of Discrimination against Women was concerned that women and girls in Bulgaria, in particular those facing intersecting forms of discrimination, had limited access to justice, owing to pervasive corruption, social stigma, the inaccessibility of the judicial system, gender bias among law enforcement officers, including the police, the priority given to mediation and reconciliation procedures in cases involving gender-based violence against women, women's limited awareness of their rights and limited knowledge among judges and law enforcement officials of the Convention, the Optional Protocol thereto and the Committee's general recommendations. The Committee recommended that Bulgaria conduct a study to identify barriers faced by women and girls, in particular those who experience intersecting forms of discrimination, in terms of access to justice, and take effective measures to remove those barriers, including by raising the awareness of women of their rights and improving the accessibility of the judicial system ([CEDAW/C/BGR/CO/8](#), para 11-12).

The UN Committee on the Rights of Persons with Disabilities in its 2018 concluding observations noted the shortage of trained sign language interpreters for deaf persons in judicial proceedings, and the lack of documents in accessible formats for blind persons and for persons with intellectual or psychosocial disabilities in different proceedings. The Committee recommended that Bulgaria ensure the availability of sign language interpreters and documents in accessible formats, such as Braille, electronic format and Easy Read, to all persons with disabilities in all judicial and administrative proceedings ([CRPD/C/BGR/CO/1](#), para 31-32).

In the 2020 report following her visit to Bulgaria, the UN Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material recommended to ensure easy access to child-sensitive justice mechanisms for complaints, reporting and referral, allowing victims to report abuse without fear of intimidation, stigma or revictimization. She also recommended that Bulgaria expedite efforts to reform the juvenile justice legislation and practice; and promote better regulation of child-friendly judicial proceedings, including scaling up child-friendly "blue rooms" ([A/HRC/43/40/Add.1](#), para 74c, 76l).

The UN Committee on the Elimination of Discrimination against Women in its 2020 concluding observations recommended to combat corruption and build the capacity of judges, prosecutors, lawyers and police officers, including by making training on the Convention, the Optional Protocol thereto and the Committee's jurisprudence and general recommendations a mandatory part of their professional training. (This recommendation was reiterated by the Special Rapporteur on violence against women, its causes and consequences in the 2020 report following her visit to Bulgaria - see [A/HRC/44/52/Add.1](#), para 68a). The UN Committee also recommended to introduce systematic capacity-building for judges, prosecutors, the police and other law enforcement officers on the strict application of criminal law provisions on gender-based violence against women and on gender-sensitive investigative procedures. The Committee recommended that Bulgaria ensure the effective enforcement of legislation to combat trafficking in persons, including by providing judges, prosecutors, border police, immigration authorities and other law enforcement officials with systematic training on the early identification and referral of trafficking victims to appropriate services and gender-sensitive interrogation methods ([CEDAW/C/BGR/CO/8](#), para 12, 24g and 26b).

The UN Committee on Economic, Social and Cultural Rights in its 2019 concluding observations recommended that gender-sensitive training be provided to law enforcement and judiciary personnel on the nature of violence against women, its causes and consequences and on how to handle cases of violence against women ([E/C.12/BGR/CO/6](#), para 32).

The UN Human Rights Committee in its 2018 concluding observations was concerned that Bulgaria remained one of the primary source countries of human trafficking in the European Union. The Committee recommended that Bulgaria continue to strengthen training of law enforcement officials, judges and prosecutors on trafficking, victim identification, witness protection, accountability and reparation ([CCPR/C/BGR/CO/4](#), para 23 and 24).

The UN Committee on the Rights of Persons with Disabilities in its 2018 concluding observations recommended that Bulgaria establish, in consultation with organizations of persons with disabilities, support decision-making procedures and provide continuous training on article 12 of the Convention on the Rights of Persons with Disabilities to the stakeholders concerned, including members of the judiciary ([CRPD/C/BGR/CO/1](#), para 29-30).

➤ ***Equal recognition before the law***

The UN Committee on the Rights of Persons with Disabilities in its 2018 concluding observations was concerned that Bulgaria's legislation still restricted the legal capacity of persons with disabilities and provided for guardianship for persons with psychosocial or intellectual disabilities. The Committee recommended that Bulgaria amend its legislation and adopt the Natural Persons and Support Measures Act and uphold and recognize the full legal capacity of all persons, regardless of their impairment, in accordance with the guidelines in general comment No. 1 (2014) on equal recognition before the law ([CRPD/C/BGR/CO/1](#), para 29-30).

## **Anti-corruption framework**

### **➤ *Prevention***

The UN Committee on Economic, Social and Cultural Rights in its 2019 concluding observations welcomed steps taken by Bulgaria to combat corruption, in particular the adoption of the Action Plan to Prevent and Fight Corruption and of the Anti-Corruption and Forfeiture of Assets Act. It was concerned about remaining challenges in the fight against corruption and in the conduct of investigations into corruption cases, including cases against high-level officials, such as the lack of qualified experts and of adequate resources. The Committee recommended to allocate adequate human, material and financial resources for the implementation of the Action Plan to Prevent and Fight Corruption and the enforcement of anti-corruption legislation; strengthen the capacity of the judiciary to combat corruption effectively; raise the awareness of the public and State officials about the anti-corruption legislation and the Action Plan to Prevent and Fight Corruption and ensure the protection of whistle-blowers and civil society activists working on anti-corruption, from persecution and violence ([E/C.12/BGR/CO/6](#), para 10-11).

The UN Human Rights Committee in its 2018 concluding observations welcomed the adoption in 2018 of the Anti-Corruption and Forfeiture of Assets Act, creating a single anti-corruption commission. It was concerned about the fact that until then very few convictions for high-level corruption were confirmed by final court decisions, reportedly due to the insufficient prosecutorial capacity to handle complex cases in an effective manner, limited access to external expertise and lack of effective cooperation between the prosecution and investigation services. The Committee was equally concerned about the low percentage of public institutions that complied with the requirement to publish the conflict of interest declarations of their employees. The Committee recommended to increase its efforts to combat corruption, mainly by addressing the shortcomings in the investigation and prosecution of high-level corruption, while ensuring that its legal procedures are consistent with protections under articles 9&14 of the Covenant on Civil and Political Rights, increasing compliance with the legislation related to conflicts of interest and ensuring that whistle-blowers are guaranteed sufficient protection against prosecution for reporting corruption and other wrongdoings ([CCPR/C/BGR/CO/4](#), para 41-42).

At its Universal Periodic Review in 11/2020 Bulgaria received several recommendations pertaining to corruption, including to enact reforms to promote the independence of the judiciary and to eliminate corruption in the judicial system; introduce the legal framework necessary to effectively investigate and prosecute persons engaged in high-level corruption; or pursue reform of the judiciary, including by strengthening efforts to combat corruption ([A/HRC/46/13](#)).

## **Media pluralism**

### **➤ *Framework for journalists' protection***

At its Universal Periodic Review in November 2020, Bulgaria received numerous recommendations pertaining to the media, including to ensure full and effective freedom of the media and protection of journalists and media operators; investigate all forms of attacks, threats and violence against journalists and ensure full accountability; implement measures to ensure a safe and independent working environment for journalists and media workers, and intensify efforts to diversity ownership of the media and promote public media independence ([A/HRC/46/13](#)).

The UN Human Rights Committee in its 2018 concluding observations was concerned about numerous reports of attacks, threats and harassment of journalists, which go unpunished, and of political pressure on journalists and the media through, inter alia, advertising funding and threats of slander to secure favourable media coverage and suppress criticism, including of corruption. The Committee was concerned at reports of excessive fines against the media reporting on the banking and financial sectors, and of insufficient transparency of media ownership and financing, resulting in strong media concentration. It also noted with concern that defamation remains a criminal offence sanctioned by criminal fines and public censorship. The Committee recommended that Bulgaria continue training police officers, judges and prosecutors in human rights standards relating to freedom of expression and assembly and the lawful use of force; protect journalists against any form of harassment, attack or excessive use of force; promptly investigate such acts and bring those responsible to justice, including the murder of journalist Victoria Marinova; increase media pluralism and the diversity of views and information accessible to the public, taking into account the Committee's general comment No. 34 on the freedoms of opinion and expression; ensure that any form of public funding for the media and journalists is allocated in a transparent and non-discriminatory manner using objective criteria, and that no fines or other regulatory measures are imposed on the media other than in strict compliance with the Covenant, so that independent journalists and media can function without undue interference and consider repealing all criminal provisions against defamation and ensure that they do not serve to stifle freedom of expression ([CCPR/C/BGR/CO/4](#), para 37-38).

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

### **➤ *Independent authorities***

At its March 2019 meeting, GANHRI Subcommittee on Accreditation (SCA) re-accredited the Ombudsman of the Republic of Bulgaria (ORB) with A status. The SCA commended the ORB for advocating for the amendment of its enabling law to address the previous SCA recommendations. In particular, the ORB had advocated for a broader mandate including the ability to address human rights violations resulting from the acts and omissions of private individuals and entities. The SCA advised that the selection process of the Ombudsperson could be further strengthened by explicitly requiring the advertisement of vacancies, and by specifying the means to achieve broad consultation and/or participation of civil society in the process and encouraged the ORB to advocate for the formalization and application of a broad and transparent process including specific requirements. It also encouraged the ORB to

continue advocate for funding commensurate with its full mandate. (See GANHRI SCA Report of March 2019 at:

<https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20Report%20March%202019%20-%20EN%20.pdf> )

In its 2020 concluding observations, the UN Committee on the Elimination of Discrimination against Women recommended that Bulgaria ensure the Ombudsman has sufficient technical and financial resources and strengthen its mandate regarding the promotion and protection of women's rights and gender equality ([CEDAW/C/BGR/CO/8](#), para 18).

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

The UN Human Rights Committee in its 2018 concluding observations recommended that Bulgaria ensure that surveillance activities conform with its international obligations, including the principles of legality, necessity and proportionality, that they are subject to periodic judicial review, and that persons affected by these measures have access to effective remedies. The Committee also recommended to avoid imposing preventive control measures on terrorist suspects and ensure that the right to a fair trial and the existing legal safeguards in the criminal justice system, including those related to children in conflict with the law, are respected at all times ([CCPR/C/BGR/CO/4](#), para 34).

➤ ***The enabling framework for civil society***

In 2020, several Special Procedures mandate-holders initiated a dialogue with Bulgaria regarding draft amendments to the Law on Non-Profit Legal Persons/Entities, citing concern that if adopted, the bill may hamper the work of independent non-profit organizations, including those that promote and protect human rights, and stigmatize those that receive funding from abroad. ([BGR 3/2020](#), available at <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>).

The UN Committee on the Elimination of Discrimination against Women in its 2020 concluding observations recommended to strengthen collaboration with civil society organizations working for women's rights and gender equality and financially support civil society organizations that provide assistance to women facing discrimination, gender-based violence and the violation of their rights. The Committee also recommended to allocate adequate funding to civil society organizations that provide accessible shelters and support services to women who are victims of gender-based violence and enhance cooperation with such organizations ([CEDAW/C/BGR/CO/8](#), para 16 and 24).

The UN Special Rapporteur on violence against women in her report from 2020 following the visit to Bulgaria recommended that Bulgaria strengthen collaboration between State institutions and civil society organizations, ensuring the legal and social conditions for the regular exercise of their activities in defence of women's rights and for the elimination of violence against women, and protecting them from undue restrictions and attacks on their work ([A/HRC/44/52/Add.1](#), para 65s).

In the 2020 report following her country visit, the UN Special Rapporteur on the sale and sexual exploitation of children, recommended that Bulgaria coordinate efforts with NGOs that work to detect, receive and refer cases of sexual abuse and exploitation of children; ensure sufficient State funding for civil society and other service providers to maintain sustainable and high-quality services ([A/HRC/43/40/Add.1](#), para 78c).

The UN Committee on the Rights of Persons with Disabilities in its 2018 concluding observations recommended that Bulgaria provide continuous funding for organizations of persons with disabilities and transparent criteria and mechanisms for consultation ([CRPD/C/BGR/CO/1](#), para 14).

At its Universal Periodic Review in November 2020, Bulgaria received several recommendations pertaining to civil society, including about measures to ensure vibrant, diverse and engaged civil society, consult with organisations and address intimidation and threats ([A/HRC/46/13](#) – note: the Addendum to the UPR outcome document reflecting Bulgaria’s positions on the recommendations received will be tabled at the Human Rights Council later in March 2021).