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“Emerging issues of access to justice for vulnerable groups, in particular:

- migrants and asylum seekers;**
- children, including children perpetrators of crime”**

**Report presented by the Minister of Justice
of Bulgaria**

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Report of the Minister of Justice of the Republic of Bulgaria
Mrs Miglena Tacheva

During the last six years the Republic of Bulgaria has carried out a comprehensive reform of the judiciary in compliance with the basic principles of the constitutional state. Furthermore, the reform of the Bulgarian judicial system aims not only at strengthening the capacity and the effectiveness of the judiciary, but also at guaranteeing as widely as possible equal access to justice of all legal subjects in conformity with the best international practices in this field. The improvement in the quality of and increase in citizens' trust in the judicial system motivated the Bulgarian government to take the relevant measures to further attain the established priorities.

One of these basic priorities is undoubtedly the protection and promotion of human rights and the prevention of all forms of abuse and exploitation. Special attention is paid to more vulnerable groups of persons, such as women, children, migrants, refugees, persons without citizenship, asylum seekers, whose access to justice guarantees not only the rule of law, but also helps their successful integration in society. The Republic of Bulgaria is a party to a number of international instruments in this sphere – the European Convention on Nationality, the European Convention on Extradition, the Additional Protocol and the Second Additional Protocol to the European Convention on Extradition, the European Agreement on the Transmission of Applications for Legal Aid, the Convention on International Access to Justice, the Convention relating to the Status of Refugees, the Protocol relating to the Status of Refugees, the Convention on the Rights of the Child, the Convention for the Protection of Human Rights and Fundamental Freedoms, etc.

We highly appreciate the possibility to participate in this meeting of the European Ministers of Justice and we welcome the choice of the Council of Europe on the topics of discussion, which will allow exchange of views concerning immediate and topical questions for each European society. Furthermore, we take the opportunity to express our highest appreciation to the Kingdom of Spain as the host of the Conference.

We fully agree with the necessity of holding a discussion devoted to issues concerning the improvement of access to justice of vulnerable groups, the necessity of identification of up-to-date problems in this area and addressing them through a common approach and exchange of good practices.

We consider that the placing of particular groups of persons in a disadvantageous and unequal position in respect of others is absolutely unacceptable. At the same time, we take into consideration the fact that ensuring access to justice of vulnerable groups means not only ensuring one of the basic human rights, but guaranteeing the practical existence of cumulative actions as well. Only the integral existence of these actions can ensure the equal exercise of access to justice of vulnerable groups in comparison with the access to justice of the citizens of a country in which a person, for example, is residing illegally, is seeking asylum or refugee status, humanitarian status, etc. This means that we should ensure not only the simple access to judicial proceedings of these vulnerable groups, but we should also guarantee the respect and application of the principle of equality before the law of all participants in judicial proceedings, of their right to a fair trial, taking into consideration the specific circumstances of their situation before and during the proceedings (for example, the necessity of ensuring an interpreter in case they do not know the language of the country in which they are staying; the absence, in most cases, of identity documents and of a place to stay temporarily or permanently, etc.). Taking into consideration the above-mentioned facts, the measures for addressing these problems should include not only amendments of national legislations, where necessary, in view of compliance with the best international practices in this sphere or because of the excessively fast speed with which this problem is growing, but the measures should also include the necessity for timely and adequate responses to the emerging problems. Furthermore, our activity in this direction should also include encouragement of the interaction and strengthening of the cooperation between

governmental and non-governmental sectors at national level as well as continuation and improvement of international cooperation.

1. Legal basis of the issues concerning the access to justice of foreigners and persons seeking asylum according to the Bulgarian legislation

In compliance with the Constitution of the Republic of Bulgaria, foreigners resident in the Republic of Bulgaria have all the rights and obligations under the Constitution, with the exception of such rights and duties for which the Constitution and the laws require Bulgarian citizenship. The Bulgarian Law on Foreigners sets out the terms and procedures under which foreigners are allowed to enter, reside in and leave the Republic of Bulgaria, as well as their rights and obligations. According to the above-mentioned Law, a foreigner is “any person who is not a Bulgarian citizen, as well as a person having no effective citizenship in any state under the applicable national laws and holding an official document certifying his quality of statelessness”.

Furthermore, the Bulgarian Constitution establishes that the Republic of Bulgaria grants asylum to foreigners who are persecuted for reasons of their convictions or activities in defence of internationally recognised rights and freedoms. The terms and procedure for the granting of asylum are regulated by law. The Law on Asylum and Refugees is the relevant instrument establishing the conditions and the procedure for granting **special protection** to foreigners in the territory of the Republic of Bulgaria, as well as their concrete rights and obligations. The special protection that the Republic of Bulgaria provides to foreigners under this Law, taking into account the vulnerable condition of some of them, includes: asylum, refugee status, humanitarian status and temporary protection. Any foreigner may request to be granted protection in Bulgaria in accordance with the provisions of this Law. The will of the legislator to guarantee the above-mentioned terms means that a foreigner who has entered the Republic of Bulgaria to seek protection or who has been granted protection **cannot be returned to the territory of a country where his/her life or freedom is threatened due to his/her race, religion, nationality, membership of a specific social group or political opinion and/or belief, or where he/she faces a threat of torture or other forms of cruel, inhuman or degrading treatment or punishment.** These rights are guaranteed in a lawful administrative procedure before a **specialised state body** – the State Agency for Refugees to the Council of Ministers, whose refusal to grant such status can be appealed **under the rules of court proceedings** before the administrative courts and the Supreme Court of Administration of the Republic of Bulgaria.

The Bulgarian legislation also ensures access of vulnerable groups of foreigners through non-admission of restrictions with respect to the rights or privileges of foreigners seeking or granted protection in the Republic of Bulgaria, based on race, nationality, ethnic origin, sex, descent, religion, education, convictions, political affiliation, personal and social status or property status. Foreigners seeking or granted protection **are entitled to a Bulgarian identity document.** Furthermore, **family members** accompanying a foreigner in respect of whom a protection granting procedure has been initiated or who has been granted protection, have the same rights and obligations, unless special circumstances require otherwise. The State provides conditions for **any foreigner seeking protection in the Republic of Bulgaria to obtain legal protection,** including **free legal aid** under the provisions of the Law on Legal Aid. Currently a National programme for integration of refugees in the Republic Bulgaria for the period 2005 – 2007 is being carried out. The Integration Center for Refugees is the body which implements in practice the state policy concerning the integration of these groups of persons. The Center is under the direct authority of the above-mentioned State Agency for Refugees to the Council of Ministers. A National programme for integration of refugees in the Republic Bulgaria for the period 2008 – 2010 has also been developed.

2. Legal basis of the issues concerning the access to justice of children-perpetrators of crime according to the Bulgarian legislation

No less attention should be paid to guarantee and improve the access to justice of another type of vulnerable persons – children. In this group we should include not only children who are victims of crime, but also children who are perpetrators of crime. Ensuring their access to justice involves

taking into consideration a whole complex of factors, among which the most significant should be: the best interest of the child, assessment of the motive for the commission of the relevant crime, participation of the child perpetrator of a crime or of juvenile antisocial behaviour in the procedures/proceedings, as well as determination of the most adequate measures which should be imposed on minor offenders with the purpose of re-education.

According to the Bulgarian Penal Procedure Code one of the cases in which the participation of a defence counsel in criminal proceedings is mandatory is in cases where the accused party is a minor. The penal proceedings establish **special rules** for examination of cases of crimes committed by minors, taking into consideration the special features of the offence, the age of the perpetrators and the particularities of their psychological development. In these cases pre-trial proceedings are conducted by appointed investigative bodies with special professional training. Furthermore, with respect to minors, only the following remand measures may be taken: supervision by the parents or guardian; supervision by the administration of the educational establishment where the minor has been placed; supervision by the inspector at the child pedagogical facility or by a member of the local Commission for Combating Anti-Social Acts of Minors and Underage Persons; remand in custody. The remand measure of custody is taken only in exceptional cases. The Penal Procedure Code also envisages that, where necessary, **a pedagogue or a psychologist** participates in the interrogation of an accused minor, who may ask questions with the permission of the investigative body. The court hearing in cases against minors is conducted behind closed doors, unless the court finds it in the interest of the public to examine the case at an open court hearing. Where it is necessary to clarify facts which may have a negative impact on the minor defendant, the court may temporarily remove the minor from the courtroom after hearing the defence, the parents or the guardian and the prosecutor.

In view of the complete guarantee of the minor perpetrator's rights and at the same time for the purpose of establishing an appropriate environment for the child, the parents or guardians are summoned to the hearings of cases against minors. They have the right to take part in the collection and verification of evidentiary materials and to make requests, remarks and objections. Furthermore, with respect to minors who have committed a crime, only **a limited number of punishments** can be imposed on them above all with the objective of re-educating and preparing them for socially useful work.

With respect to the antisocial behaviour of minors, a specialised state body, **the Central Commission for Combating Juvenile Delinquency** to the Council of Ministers, and **Local Commissions for Combating Juvenile Delinquency** are being established at municipalities. The Central Commission develops, participates in the drafting and proposes to the Council of Ministers, the ministries, other institutions and non-governmental organisations, programmes and activities to prevent and combat crime including factors for the commission of crime by minors or for their delinquent behaviour, such as: outreach programmes for juveniles in order to prevent and eliminate antisocial behaviour or crime and inclusion in activities that facilitate normal development and education; programmes for their education and social integration; vocational training and employment programmes for juveniles who have spent time in social school boarding houses, reformatory boarding schools, correctional institutions and those on suspended sentences and on parole; outreach programmes for parents whose children have committed misdemeanours or offences; and incentive programmes for employers who employ juveniles who have exhibited delinquent behaviour or have committed crimes.

Only a review of all the complex factors leading to child criminality, among which the most significant ones are the influence of the external environment and factors within the family, can allow effective evaluation of the risks, identification of up-to-date problems and contribute to the elaboration of an efficient conception for state policy in the sphere of prevention and the fight against the delinquent behaviour of minors.

3. Legal basis of the issues concerning the access to justice of children who are victims of crime according to the Bulgarian legislation

With respect to children who are victims of crime, we consider that the existence of child-friendly procedures within the pretrial and court proceedings, taking into consideration the psychological condition and the capacity of each child, the participation of pedagogues and psychologists in the investigation and procedural actions in cases where children are involved, as well as the right of children to be informed in a manner and language which they can understand about their rights in the criminal proceedings and its progress, are only part of the guarantees for equal access to justice of children who are victims of crime.

In compliance with the Bulgarian **Law on protection of the child**, the basic principles of protection are as follows: recognition and respect for the child's personality; the raising of the child in a family environment; securing of the interests of the child in the best possible way; providing special protection to children at risk or to children of prominent talent; encouragement of the voluntary participation in child protection activities; persons directly involved in child protection activities to be selected in accordance with their personal qualities and social communication abilities, and with attention to their professional training; restrictive measures of a temporary nature; immediate child protection actions; provision of specialised medical care; preventive measures for security and protection of the child; control of the effectiveness of the measures undertaken. Child protection under this Law is carried out through protection measures with respect to children or through special protection with respect to children at risk. The protection measure "placement of the child outside his or her family" is imposed only when conditions explicitly provided by law are present and following a specific procedure (for example, when the child is a victim of domestic violence and there exists a serious danger to his or her physical, psychological, moral, intellectual or social development).

In compliance with the Law on protection of the child, any person who is aware of a situation of a child in need of protection shall immediately report the case to the competent authorities in the field of child protection, which are as follows: Directorate of "Social Assistance", the State Agency for Child Protection, which is a **specialised state body**, or the Ministry of the Interior. The legislator guarantees that the same obligation exists as well for all persons who become aware of such situations in the course of exercising their profession or occupation, irrespective of their being bound by professional secret.

We are satisfied that the Bulgarian legislation in the sphere of protection of children who are crime victims is in conformity with Recommendation Rec (2006) 8 of the Committee of Ministers to the Member States on assistance to crime victims, the Framework Decision of the Council of the European Union of 15 March 2001 on the standing of victims in criminal proceedings and other relevant instruments.

4. Position of the Republic of Bulgaria on the Convention of the Council of Europe on the protection of children against sexual exploitation and sexual abuse

The Republic of Bulgaria fully shares the necessity of undertaking a common approach in the sphere of the prevention of and fight against all forms of child exploitation and abuse and in particular against sexual violations towards children. We consider that the Convention of the Council of Europe on the protection of children against sexual exploitation and sexual abuse is a result not only of many years' work of the Council of Europe in the field of the protection of children against violence, but is also a result of the extremely rapid development of this negative phenomenon. In this way, not only is the significance of this problem accentuated as well as the necessity of undertaking immediate actions in this regard, but also the intolerance of each contemporary democratic society towards all forms of sexual exploitation and abuse of children is clearly demonstrated.

The Convention of the Council of Europe on the protection of children against sexual exploitation and sexual abuse is a comprehensive legal instrument, which includes all aspects concerning the protection of children against sexual exploitation and sexual abuse. This is due to the fact that

the above-mentioned Convention ensures full and clear consolidation of the existing international standards in this sphere and provides added value in this regard. Furthermore, we fully share the idea that this new instrument will assist in overcoming the existing gaps in this area and confirm the principle of the equal protection of all children through promotion of concrete and unified standards and definitions in this field.

In 2006 and 2007 significant amendments to the Bulgarian Penal Code were adopted with the purpose of prevention and continuation of the fight against sexual exploitation and abuse of children. They were aimed at strengthening the protection of minors and increasing the sanctions for perpetrators of sexual offences against children. The amendments adopted in 2007 enlarged the range of criminal prosecution by the introduction of new definitions and new corpora delicti. This undoubtedly demonstrates the strong desire of the legislator for the identification of up-to-date problems in this respect and the finding of an adequate response through condemnation of all forms of sexual violations against children.

Guided by the aspiration to continue and improve the progress made so far, the Republic of Bulgaria will sign the Convention of the Council of Europe on the protection of children against sexual exploitation and sexual abuse.

5. Conclusion

The Republic of Bulgaria considers that the discussion on the issues connected with access to justice of vulnerable groups of persons (immigrants, persons seeking asylum and children, including children perpetrators of crime) undoubtedly contributes to the profound and adequate participation of each member state of the Council of Europe in international legal cooperation. We share the idea that the opportunity provided to us today by the meeting of the European Ministers of Justice is of great value, in view of the fact that it allows us not only to share our experience in this regard, but also the opportunity to obtain positive solutions from other states' practices.