

# COMMISSIONER FOR HUMAN RIGHTS OF THE COUNCIL OF EUROPE

DUNJA MIJATOVIĆ

REPORT FOLLOWING HER VISIT TO BULGARIA  
FROM 25 TO 29 NOVEMBER 2019



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## SUMMARY

Commissioner Dunja Mijatović and her team visited Bulgaria from 25 to 29 November 2019. During the visit, the Commissioner held discussions with the Bulgarian authorities, the Ombudsman, the Chair and members of the Commission for Protection against Discrimination, journalists, human rights defenders and other representatives of civil society. The present report focuses on the following issues raised during the visit: racism, intolerance and discrimination; certain aspects concerning violence against women and domestic violence; and media freedom.

### **Racism, intolerance and discrimination**

The Commissioner considers that there is a need for a political and cultural shift as regards the treatment and image of minority groups in Bulgaria, as well as for enhanced legal protection against discrimination and offences motivated by hatred or bias. Recognising racist motivation as an aggravating circumstance for all offences and implementing the judgments of the European Court of Human Rights, including those on forced evictions and the registration of associations of persons identifying as belonging to a minority, are among the immediate steps which the government should take. In addition, the authorities should strongly condemn and take measures to effectively tackle extremist nationalist, racist and antisemitic manifestations which have occurred repeatedly in Bulgaria in recent years.

The Commissioner is concerned about the hate speech prevailing in Bulgaria, in particular against Roma, LGBTI people and other minority groups. Hate speech and hostility against Roma persist at all levels of society, with little if any response from the authorities to counter this long-standing phenomenon. She regrets the lack of reaction to some very serious incidents of hate speech perpetrated by high-level politicians and calls on the authorities to take a strong stance against hate speech and impose sanctions when necessary.

The Commissioner deplores the situation of Roma who had to leave their homes following rallies targeting their communities in several localities, including Voyvodinovo, a village from where some 200 individuals left their houses under the threat of mob violence in January 2019. They were not provided with adequate alternative housing. The Commissioner calls upon the authorities to urgently address the situation of the persons affected, many of whom are now living in extremely precarious conditions. Moreover, besides this pressing responsibility, it is critical that the authorities act to substantially improve the housing situation of Roma in the long term, including through sustained efforts to formalise, and ensure security of housing tenure in existing settlements.

### **Violence against women and domestic violence**

The Commissioner regrets that, at the occasion of the public debates which started a few years ago in relation to the attempted ratification by Bulgaria of the Istanbul Convention, disinformation about the scope and purposes of the Convention has been propagated and deeply rooted stereotypes about gender roles in society have surfaced. She is concerned to see that current developments continue along the same line, as shown by the recent freezing of the adoption of the Child Protection Strategy by the Parliament and the postponement by six months of the entry into force of the new Social Services Act, which was due on 1 January 2020. She is furthermore concerned that the above-mentioned debates have triggered heightened intolerance against human rights defenders, in particular those working in the fields of women's and LGBTI persons' rights.

The government should confront these dangerous trends and raise public awareness about the need to improve the protection of victims of violence against women and domestic violence. The

Commissioner strongly urges the authorities to reopen the debate on the ratification of the Istanbul Convention, adopt the Child Protection Strategy and ensure the timely and effective implementation of the Law on Social Services. In addition, national legislation should be further amended to bring it into line with international standards concerning gender-based violence against women and domestic violence.

The Commissioner is concerned that despite the high levels of violence against women and domestic violence, the services available to victims are insufficient and do not adequately cover all regions of Bulgaria. As a matter of urgency, and notwithstanding any blockages in the ratification of the Istanbul Convention, the authorities should take steps to increase the number of shelters and other social services necessary to victims of domestic violence. The Commissioner urges the authorities to encourage and support, at all levels, including through appropriate financial allocations, the work of NGOs involved in combating violence against women and domestic violence.

### **Media freedom**

Commissioner Mijatović notes the continuous deterioration of media freedom in Bulgaria. Non-transparent media ownership, harassment of journalists and the use of defamation suits are chronic problems. In addition, political influence over media outlets severely undermines the credibility of the press. The Commissioner wishes to emphasise that citizens need a free, investigative and independent press in order to be able to participate more actively in the democratic fabric of society.

The Commissioner stresses that the state is the ultimate guarantor of the principle of pluralism and is responsible for encouraging a diverse and independent media. The authorities are strongly urged to show political will to address the regulatory and implementation deficiencies which currently accommodate the excessive concentration of media ownership.

The Commissioner urges the Bulgarian authorities to repeal criminal provisions against defamation offences and to deal with such incidents through strictly proportional civil sanctions only. They should send a clear signal that threats and attacks on journalists are unacceptable and will not go unpunished.

Lastly, the authorities are encouraged to take measures to promote better professional protection and working conditions for journalists. The legislation concerning the composition and mandate of the Council for Electronic Media should be improved with a view to ensuring its independence and effectiveness.

## INTRODUCTION

1. The Commissioner for Human Rights of the Council of Europe, Dunja Mijatović (the Commissioner), carried out a visit to Bulgaria from 25 to 29 November 2019. The visit focused on the following issues: racism, intolerance and discrimination (section I of the present report); certain aspects concerning violence against women and domestic violence (section II), and media freedom (section III).
2. During the visit the Commissioner met with the Vice President of Bulgaria, Iliana Iotova; the Deputy Prime Minister and Chairperson of the National Council for Cooperation on Ethnic and Integration Issues, Tomislav Donchev; the Minister of Justice, Danail Kirilov; the Minister of Interior, Mladen Marinov; the Minister of Regional Development and Public Works, Petya Avramova; the Deputy Minister of Foreign Affairs and National Coordinator for Combating Antisemitism, Georg Georgiev; the then Prosecutor General, Sotir Tsatsarov; and members of the Council for Electronic Media. In addition, the Commissioner met with the Ombudsman, Diana Kovacheva; the Chairperson, Ana Dzumalieva, and members of the Commission for Protection against Discrimination; members of the Commission on Religion and Human Rights and of the Committee on Legal Affairs of the National Assembly; and the Chairperson of the Bulgarian Delegation to the Parliamentary Assembly of the Council of Europe, Dzhema Grozdanova. She also had exchanges with journalists, human rights defenders, and other representatives of civil society.
3. The Commissioner travelled to the Stolipinovo neighbourhood of Plovdiv, where she met with members of the Roma community. She also held discussions in Plovdiv with the Deputy Mayor of the Maritsa Municipality and the Mayor of the village of Voyvodinovo, followed by a visit to the village. In Sofia, the Commissioner visited a crisis centre for women victims of domestic violence.
4. The Commissioner would like to thank the Bulgarian authorities in Strasbourg and Sofia for their assistance in organising her visit and for providing her with additional information following the visit. She expresses her gratitude to all her interlocutors in Bulgaria for sharing with her their knowledge, experiences and insights.<sup>1</sup>

## 1 RACISM, INTOLERANCE AND DISCRIMINATION

5. In the following subsections, the Commissioner wishes to address some aspects concerning intolerance and hate speech against minorities in Bulgaria; societal hostility and institutional discrimination against Roma, with a focus on their housing situation; the right to freedom of association of persons identifying as ethnic Macedonians; and the authorities' response to racism, intolerance and discrimination.

### 1.1 INTOLERANCE AND HATE SPEECH TOWARDS MINORITIES

6. The Commissioner notes with alarm the rampant intolerance manifested towards minority groups in Bulgaria, affecting especially Roma; Muslims; migrants and asylum-seekers; persons identifying as ethnic Macedonians; and lesbian, gay, bisexual, transgender and intersex (LGBTI) people. This attitude is also reflected in the predominantly negative media coverage of minorities, who are often associated with criminality or presented as posing a danger to the values of the majority population

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<sup>1</sup> This report was finalised on 10 March 2020.

or to national interests. Moreover, the Commissioner regrets that some high-level officials have used their position as a platform to further fuel antagonism and intolerance in Bulgarian society.

7. Furthermore, the Commissioner is worried about the reported upsurge of hostile acts, including hate crimes, perpetrated against members of minorities and their communities. The Commissioner's attention has been drawn notably to the recent wave of anti-Roma rallies occurring across Bulgaria (see subsection 1.2 below), the reported incidents of public incitement to anti-Muslim and anti-Roma hatred, and the attacks against religious sites and institutions, such as the synagogue and the Grand Mufti's Office in Sofia, in January and July 2019, respectively.<sup>2</sup>
8. In addition, the Commissioner notes with concern the extremist manifestations periodically taking place in Bulgaria, including desecrations of Holocaust memorials and other monuments,<sup>3</sup> as well as racist chants and Nazi salutes performed by Bulgarian football fans during games.<sup>4</sup> However, she learned with satisfaction that unlike in previous years, the ban imposed in February 2020 by the Mayor of Sofia on the "Lukov march", an event which since 2003 has gathered every year far right extremists from various European countries and Bulgarian citizens, was upheld by the courts. The Commissioner welcomes the organisation, since 2018, of counter-protests for tolerance as well as the procedure recently initiated by the prosecution authorities to dissolve the Bulgarian National Union Edelweiss, the organiser of the march.
9. The Commissioner is concerned about rising homophobia in Bulgaria. A civil society survey published in March 2019 indicated an increase, in recent years, in societal rejection of LGBTI rights and in hostile manifestations against LGBTI persons.<sup>5</sup> Moreover, an earlier survey carried out at the level of the European Union has identified Bulgaria as one of the countries in which offensive language about LGBT people by politicians was "very widespread".<sup>6</sup> Among the incidents of 2019, the Commissioner learned with regret about several instances of assault against LGBTI persons as well as of repeated attacks against the LGBTI community centre "Rainbow Hub" in Sofia. Furthermore, she found it singularly conflicting that the programme for Plovdiv as European Capital of Culture 2019, organised under the motto "Together", was marred by virulent statements by politicians opposing the "Balkan Pride" photo exhibition scheduled in this context. Likewise, some candidates standing for the local elections organised in Bulgaria last October reportedly ran campaigns advancing an anti-LGBTI agenda including a ban on the Sofia Pride.<sup>7</sup>
10. Lastly, the Commissioner is encouraged by the resilience of human rights defenders and other representatives of civil society in Bulgaria who continue to show remarkable resolve in standing up for human rights in the face of persisting challenges. She warmly welcomes the memorandum of partnership and collaboration "Together for Bulgaria, together for Europe", launched in early 2019 by the Organisation of Jews in Bulgaria "Shalom" and the GLAS Foundation (Gays and Lesbians Accepted in Society) and signed by several NGOs, the Association of European Journalists – Bulgaria, and representatives of the authorities.

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<sup>2</sup> Balkan Insight (5 July 2019), [Bulgarian Muslims condemn Islamophobic attacks](#).

<sup>3</sup> The Sofia Globe (12 April 2019), [Swastikas daubed on monument in Bulgaria's Stara Zagora](#).

<sup>4</sup> The Sofia Globe (29 October 2019), [UEFA penalises Bulgarian Football Union over racist behaviour at Bulgaria-England Euro 2020 match](#).

<sup>5</sup> Dimitar Bogdanov, Slavyanka Ivanova, Liliya Dragoeva, [Shrinking space for LGBT people in Bulgaria](#), 2019, GLAS Foundation, project Call it Hate: Raising Awareness of Anti-LGBTI Hate Crime, co-founded by the Rights, Equality and Citizenship Programme (2014-2020) of the European Union.

<sup>6</sup> See data at: [EU LGBT data explorer](#), European Union Agency for Fundamental Rights (FRA), Survey on fundamental rights of lesbian, gay, bisexual and transgender people in EU (2012).

<sup>7</sup> See ILGA Europe, [Annual review](#) of the human rights situation of lesbian, gay, bisexual, trans and intersex people in Bulgaria covering the period of January to December 2019.

## 1.2 SOCIETAL HOSTILITY AND INSTITUTIONAL DISCRIMINATION AGAINST ROMA, WITH A FOCUS ON THE RIGHT TO HOUSING

11. The Commissioner finds deeply disturbing the very violent and even deadly racist attacks that have occurred against Roma people, including children.<sup>8</sup> Members of civil society have shared with the Commissioner their concern that most racist attacks in Bulgaria are committed against Roma people. The Commissioner finds that hostility against Roma has reached alarming levels, as indicated by the recent wave of anti-Roma rallies which took place in several localities across Bulgaria. She was struck by the scale and the consequences of these events, which have forced hundreds of Roma to leave their homes and have rendered many of them homeless or destitute.<sup>9</sup>
12. The Commissioner wishes to refer in particular to the conflict which broke out in the village of Voyvodinovo in January 2019, following a dispute involving two young Roma men and an ethnic Bulgarian army officer. On the same day, anti-Roma protests demanding the demolition of all Roma houses in the village were organised. Local residents, members of extremist groups, described by witnesses as “football fans”, and army personnel attended the protest and addressed retaliatory threats to Roma people. The authorities of the Maritsa Municipality, to which the village belongs, immediately demolished some houses and issued orders for the demolition of others on the grounds that they were built illegally or were unsafe. According to the information received by the Commissioner, some 200 Roma people left the village in fear, virtually overnight.
13. The Commissioner is concerned that while the authorities managed to prevent physical attacks against the Roma people, they failed to protect them from being expelled from the village. It appears from the reports available to the Commissioner that none of the responsible authorities did anything to appease the situation. Instead, the conflict was exacerbated by the highly injurious anti-Roma statements of the Defense Minister, who travelled to Voyvodinovo shortly after the outbreak of the conflict.<sup>10</sup>
14. NGOs have informed the Commissioner that many of those who have fled Voyvodinovo are now living in Plovdiv and in several remote villages in extremely precarious conditions. She witnessed this situation during her visit to the Stolipinovo neighbourhood in Plovdiv, where she met with one of the affected Roma families. The Commissioner was dismayed by the degradation, insalubrity and lack of basic services in Stolipinovo. She learned with regret that the children were attending a segregated school where the quality of education was much lower than in their previous school in Voyvodinovo. The parents had lost their jobs and were struggling to find employment. They had abandoned their plans to return to Voyvodinovo, where they were no longer welcome and where they were in danger of losing their home. The family had declined the alternative housing proposed by the authorities, as it would have involved the separation of the children from their father and had been offered for only six months.
15. In Plovdiv, the Commissioner also met with the Deputy Mayor and other officials of the Municipality of Maritsa (the village of Voyvodinovo is a part of this municipality), and with the Mayor of Voyvodinovo. The local authorities appeared unconcerned about the future of the affected people, several of whom had in the meantime lodged a complaint before the European Court of Human Rights (“the Court”).<sup>11</sup> The Commissioner was informed that the demolition orders had been

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<sup>8</sup> European Roma Rights Centre (ERRC), [Written submission](#) to the Committee on the Elimination of Racial Discrimination, for consideration at its 92<sup>nd</sup> Session (24 April -12 May 2017) – Bulgaria, 5 April 2017.

<sup>9</sup> For earlier events, see Bulgarian Helsinki Committee, [Human Rights in Bulgaria in 2018](#), annual report, July 2019.

<sup>10</sup> The Sofia Globe (14 January 2019), [Bulgaria's Voyvodinovo saga \[...\] and the voices of concern](#).

<sup>11</sup> *Silviya Andonova Paketova and Others v. Bulgaria*, No. 17808/19, communicated on 5 July 2019. The Court indicated interim measures in this case.



suspended pending a final decision by the domestic courts. The offer to accommodate separately members of some families was a result of the shortage of social housing and of the fact that unmarried couples could not be considered as a family. The Commissioner also visited Voyvodinovo, where she spoke with local residents who stated that no serious conflict had previously occurred between them and the Roma people. However, they did not want Roma families to return to the village, as they did not approve of their lifestyle.

16. The Commissioner also recalls that in April 2019 another grave incident occurred in Gabrovo, following an altercation involving three Roma men and a shop assistant. Reports indicate that, for four consecutive nights, residents armed with batons protested and demanded that Roma people be banished from the city. Some houses were set on fire and Roma people were threatened with retaliation. The authorities reportedly urged Roma to spend the next few days with relatives in other municipalities. Many Roma left the city temporarily.<sup>12</sup>
17. The Commissioner is concerned that orders for the demolition of Roma houses are often issued in the context of manifestations of hostility against Roma, as was the case in Voyvodinovo.<sup>13</sup> Therefore, she is worried that the authorities' decision to consistently pursue the demolition of houses in Roma settlements may be influenced by other considerations than the illegality or lack of safety of the buildings, invoked as reasons for this measure. Several officials with whom she spoke referred in this connection to the "different lifestyle" of Roma and to "Roma criminality".
18. The Commissioner notes that according to NGO reports, around 97% of the 514 demolition orders for residential buildings issued in 2010-2012 by the Directorate for National Construction Control, and 89% of demolition orders for such buildings issued by local authorities in 2012-2016 (in a sample of 61% of municipalities in Bulgaria) concerned Roma houses.<sup>14</sup> Furthermore, NGOs estimate that at least half of Roma in Bulgaria live in illegally built housing.<sup>15</sup> The lack of registration resulting from this situation often has serious consequences for the persons concerned, from the lack of access to health care to the lack of identity documents and the lack of voting rights. Residents of informal settlements are also barred from requesting improvements to the public infrastructure. In most cases, those evicted are not provided with adequate alternative housing. However, temporary solutions have been found in some localities, such as Peshtera, where the municipality paid rent for one year to the evicted persons.
19. Regarding the housing situation of Roma in general, the Commissioner notes that nearly 30% of Roma reside in segregated neighbourhoods such as Stolipinovo.<sup>16</sup> While the EU-MIDIS II survey shows that gaps between Roma and non-Roma in respect of housing indicators are smaller than in other countries with large Roma minorities, the housing conditions of Roma in Bulgaria are clearly worse than those of the majority population. This is demonstrated, notably, by the limited access of Roma to tap water and sanitation in their dwellings.<sup>17</sup> According to the information available to

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<sup>12</sup> The Sofia Globe (13 April 2019), [Many Roma have fled Gabrovo, as Bulgarian town braces for another 'no to aggression' protest.](#)

<sup>13</sup> See [letter](#) from the Council of Europe Commissioner for Human Rights, Mr. Nils Muiznieks, to the Prime Minister of Bulgaria, Mr. Boyko Borissov, 26 January 2016, CommDH(2016)9.

<sup>14</sup> Daniela Mihailova, Alexander Kachamov, [Roma Evictions and Demolition of Roma Houses: A Sustainable Solution for Roma Integration or a Problem of Roma Discrimination in Bulgaria?](#), 2017, Equal Opportunities Initiative Association/Open Society Foundations.

<sup>15</sup> [Civil society monitoring report](#) on implementation of the National Roma Integration Strategy in Bulgaria, 2019, p. 24.

<sup>16</sup> *Idem*, p. 23.

<sup>17</sup> FRA, [Second European Union Minorities and Discrimination Survey](#), Roma - Selected findings, 2017, pp. 31-35; European Commission, [Roma inclusion measures reported under the EU Framework for NRIS](#), 5 September 2019.

the Commissioner, in 2017-18 there was an evident deterioration in the implementation of policies under the National Roma Integration Strategy (2012-2020) regarding the area of housing.<sup>18</sup>

20. Government attempts to legalise houses in informal settlements have been overall unsuccessful, although legalisation was achieved in some pilot projects such as those carried out in Kjustendil and Dupnitsa. Current legislation only allows the legalisation of houses built before 31 March 2001, whereas other houses can be demolished at any time. Moreover, the legislation requires that the applicant either be the owner of the land or have a legal right to build on the land. Other factors, including strict building and planning requirements and the complexity and high costs of the procedures have also contributed to the poor outcome of legalisation efforts.<sup>19</sup>
21. The Commissioner was often told during her visit that many municipalities do not have social housing available and that they are not under a legal obligation to set aside funds for this purpose. Only a few municipalities are in the process of building new social housing, funded from the EU operational program (Regions in Growth). In 2015-16, 414 social homes were completed, however, this is far from meeting existing needs.<sup>20</sup> Furthermore, although local authorities are responsible for initiating social housing projects, many of them reportedly lack the technical capacity to carry them out. The authorities are yet to adopt the new National Housing Strategy, presented for discussion in 2018.
22. While the lack of social housing is a problem which affects Bulgarian society at large, the Commissioner is concerned that it affects Roma people disproportionately. The Commissioner was informed that municipalities are free to establish their own eligibility criteria for social housing, which often include the requirement that applicants should not have previously lived in an “illegal” building or should have a formal address. Another obstacle to Roma’s access to social housing is public opposition at local level, which has prompted some municipalities to cancel construction projects.
23. The Commissioner recalls that Bulgaria was already found in violation of the European Social Charter in 2006, after carrying out forced evictions of Roma. The European Committee on Social Rights found that the legislation limiting the possibility of legalising dwellings disproportionately affected Roma and that the evictions did not satisfy the conditions required by the Charter, notably as they rendered the evicted persons homeless. Moreover, the Committee recalled that evictions should always be enforced in conditions that respect the dignity of the evicted persons.<sup>21</sup> In 2012, the Court also found, in *Yordanova and Others v. Bulgaria*,<sup>22</sup> that the enforcement of an eviction order issued on the basis of legislation that did not require the examination of proportionality would violate Article 8 of the European Convention on Human Rights (right to respect for private and family life). The Commissioner was informed that the proportionality test was recognised by the Supreme Administrative Court, however, the application of this principle by lower courts was inconsistent. As part of the execution of the Court’s judgment in *Yordanova*, the authorities have set up a working group to amend the domestic legislation so as to include a specific requirement for the examination of proportionality in the context of evictions, in addition to the proportionality test which already exists with respect to administrative decisions in general.

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<sup>18</sup> Civil society monitoring report 2019 (n. 15 above), pp. 7 and 21-30.

<sup>19</sup> World Bank, [A roof over our heads. Housing in Bulgaria](#), October 2017.

<sup>20</sup> [Fourth report](#) submitted by Bulgaria pursuant to Article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities, 2017, p. 20.

<sup>21</sup> [European Roma Rights Centre \(ERRC\) v. Bulgaria](#), Collective complaint No. 31/2005, decision published on 31 March 2007.

<sup>22</sup> *Yordanova and Others v. Bulgaria*, No. 25446/06, 24 April 2012.

### 1.3 THE RIGHT TO FREEDOM OF ASSOCIATION OF PERSONS IDENTIFYING AS ETHNIC MACEDONIANS

24. The Commissioner notes that Bulgaria has still not executed the long-standing judgments of the Court in the group of cases *The United Macedonian Organisation (UMO) Ilinden and Others v. Bulgaria Nos. 1 and 2*,<sup>23</sup> concerning the unjustified refusal of the authorities to register associations aiming to achieve “the recognition of the Macedonian minority in Bulgaria” (violation of Article 11 of the European Convention on Human Rights). While as part of the execution of the Court’s judgments in this group of cases the authorities established, as of 1 January 2018, a new procedure for the registration of non-profit organisations, it appears that this has not led to improvements in the actual registration of associations promoting Macedonian identity and culture.<sup>24</sup> The Commissioner regrets that, despite the Court’s finding that the restrictions imposed by Bulgaria on the applicant organisations and their members “were not necessary in a democratic society”, the applicants have still not been able to register their associations.
25. Moreover, the Commissioner was informed that steps were taken for the dissolution of two associations which were registered in 2019, on the grounds that there is no Macedonian minority in Bulgaria and that these associations constitute a threat to national unity.<sup>25</sup> In addition, the Commissioner learned that the persons who have registered these associations have been reportedly questioned on the “real purpose” of their organisations. Furthermore, in October 2019 the Sofia Court of Appeal refused to register the “Society of repressed Macedonians in Bulgaria, victims of the communist terror”, on the grounds expressed in 2000 by the Bulgarian Constitutional Court that there is no “Macedonian ethnos” in Bulgaria.<sup>26</sup>
26. The Commissioner notes in this respect that Macedonians are not recognised as a national minority in Bulgaria and are not included in the scope of application of the Framework Convention for the Protection of National Minorities (FCNM). She recalls that while highlighting the right to self-identification enshrined in the FCNM, the Advisory Committee on the FCNM regretted that the authorities had not initiated any dialogue in this regard with persons identifying as Macedonians, although the latter have reiterated their wish for recognition as a national minority.<sup>27</sup>

### 1.4 THE AUTHORITIES’ RESPONSE TO RACISM, INTOLERANCE AND DISCRIMINATION

#### 1.4.1 INSTITUTIONAL, LEGAL AND POLICY FRAMEWORK

27. The Commissioner welcomes the appointment, in 2017, of a National Coordinator for the Fight against Antisemitism and the setting up of a contact group under the chairmanship of the National Coordinator, which includes senior officials from various ministries and government agencies, as well as the Chairperson of the Commission for Protection against Discrimination (CPD) and the

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<sup>23</sup> *The United Macedonian Organisation Ilinden and Others, Nos. 1 and 2* (59491/00 and 34960/04), judgments final on 19 April 2006 and 8 March 2012. The execution of the Court’s judgments in this group of cases is examined by the Committee of Ministers of the Council of Europe under the enhanced procedure. The Court issued similar judgments in the cases *UMO Ilinden and Others v. Bulgaria (no. 3)*, No. 29496/16, 11 April 2018 and *Yordan Ivanov and Others v. Bulgaria*, No. 70502/13, 11 April 2018.

<sup>24</sup> See Committee of Ministers of the Council of Europe, 1355<sup>th</sup> meeting (23-25 September 2019), supervision of the execution of the Court’s judgements, [UMO Ilinden and Others v. Bulgaria](#) (group), No. 59492/00.

<sup>25</sup> *Idem*. The two organisations are the “Civil Association for the Protection of Fundamental Individual Rights” and the association “Ancient Macedonians”.

<sup>26</sup> Decision No. 1 of the Bulgarian Constitutional Court of 29 February 2000; see *The United Macedonian Organisation Ilinden – PIRIN and Others v. Bulgaria*, No. 59489/00, 20 October 2005, paragraph 25.

<sup>27</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities, [Third Opinion on Bulgaria](#), published on 30 July 2014, pp. 5 and 9-10.

organisation “Shalom”. She also welcomes the memorandum of co-operation signed in 2018 between the government and representatives of the Jewish community with a view to better counteracting all forms of antisemitism.

28. The National Council for Ethnic and Integration Issues (NCEII), which functions as an advisory and coordinating body assisting the government in its policy regarding national, ethnic and religious minorities, is chaired by a Deputy Prime Minister and includes senior officials from all ministries and organisations representing national minorities. The Commissioner regrets that persons identifying as Macedonians and Pomaks, who are not recognised as national minorities in Bulgaria, are not represented in this forum. The NCEII also coordinates and monitors the implementation of the National Strategy for Roma Integration (2012-2020) and the action plan for the strategy’s implementation. The Commissioner was informed that NGOs do not generally see the NCEII as effective and that major NGOs representing Roma and the Turkish minority have distanced themselves from it. The appointment as chair of the NCEII of a Deputy Prime Minister belonging to an extremist nationalist party, in 2017-2018, has notably led to the collapse of the NCEII’s co-operation with Roma NGOs.
29. Bulgaria ratified the International Convention on the Elimination of All Forms of Racial Discrimination. It has not signed Protocol No. 12 to the European Convention on Human Rights, which provides for a general prohibition of discrimination, or the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.
30. The Commissioner commends the efforts made by Bulgaria to improve protection against discrimination and bias motivated crimes based on an opinion of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) on the relevant provisions of the Criminal Code, requested by the government in 2017. She was informed that a bill has been recently tabled before the Parliament which aims to eliminate the possibility to sanction perpetrators of the offence of “propagating fascist and other anti-democratic ideology”, provided at Article 108 (1) of the Criminal Code, with an administrative fine. The bill was prepared in consultation with the National Coordinator and is supported by the Prosecutor General and “Shalom”.
31. Despite these efforts, the Commissioner notes that several gaps remain in the domestic legislation against racism and discrimination. Articles 162-164 of the Criminal Code criminalise advocating of, or incitement to discrimination, hatred or violence, as well as the perpetration of acts of violence against persons and damages to property on grounds including race, nationality, ethnic origin and religion, but not colour, language, sexual orientation, gender identity and sex characteristics; and the setting up and management of, or participation in organisations or groups involved in such incitement or acts of violence. There is no reference in the code against racial discrimination in the exercise of one’s public office or occupation or against the public expression, with a racist aim, of an ideology which claims the superiority of, or which depreciates or denigrates a group of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin. Moreover, racist motivation is recognised as an aggravating circumstance only for offences of murder and bodily injury. Regarding civil and administrative law, the Protection Against Discrimination Act of 2004 (PADA), which is the main antidiscrimination law, also lacks explicit provisions on discrimination based on gender identity and sex characteristics. Similarly, the Radio and Television Act of 2002 prohibits incitement to hatred based on race, sex, religion and nationality but not on the grounds of sexual orientation, gender identity or sex characteristics.
32. Lastly, the Commissioner notes that, despite the prevalence of racist and other intolerant manifestations in Bulgaria, the government has not adopted an action plan for combating racism

and discrimination. On the contrary, the Commissioner was alarmed to learn that shortly after the events in Voyvodinovo, the Defense Minister proposed a “Concept for the integration of the unsocialised Gypsy (Roma) ethnicity”, which contains proposals that are highly problematic from a human rights point of view, such as those aimed at cutting social welfare for Roma, providing free abortions to Roma mothers with more than three children, the destruction of informally held houses, and a crackdown on “Roma crime”.<sup>28</sup> The Commissioner is concerned that this policy document, which was refuted by the NCEI and the Parliament, remains potentially open for future debate before the government.

#### 1.4.2 THE AUTHORITIES’ RESPONSE TO HATE CRIME AND HATE SPEECH

33. Several of the Commissioner’s interlocutors, including the CPD and the Ombudsperson have stressed that the training and awareness-raising activities that the authorities and national human rights structures have carried out, including in co-operation with the European Union and OSCE-ODIHR, have not been sufficient to enhance the authorities’ response to racist offences. Few hate speech cases reach the courts and conviction rates for both hate speech and hate crimes remain low.<sup>29</sup> According to NGOs, hate speech and hate crime legislation is often applied with respect to members of minorities, while persons belonging to the majority population are rarely prosecuted. In particular, parliamentary immunity is systematically used to shield members of the National Assembly from accountability for hate speech. There is no specific system in place for recording hate crimes in Bulgaria.<sup>30</sup> In addition, the lack of consideration of bias motivation of offences leads to ineffective investigations and to mere accusations of “hooliganism” (rioting).<sup>31</sup>
34. Furthermore, the Commissioner notes the prevailing opinion that the Council for Electronic Media (CEM), which is the regulatory body for radio and television broadcasting, does not react adequately to hate speech disseminated through media channels. While the CEM has imposed some fines, these were low and did not have a deterrent effect. According to the information available to the Commissioner, the CEM has not applied stronger sanctions such as the withdrawal of broadcasting licences.

#### 1.4.3 THE EQUALITY BODY (COMMISSION FOR PROTECTION AGAINST DISCRIMINATION) AND THE OMBUDSMAN

35. The CPD appears to face significant challenges in its work. Recent interpretations given by the Supreme Administrative Court (SAC) to the PADA and other equality legislation limit the CPD’s capacity to declare legislation as discriminatory or to sanction public entities. However, the CPD has issued a number of decisions by which it imposed sanctions on employers, media outlets or politicians for acts of discrimination or incitement to discrimination against minorities.<sup>32</sup> At the same time, the Commissioner was informed that CPD members lack functional immunity and have sometimes been investigated following decisions issued by the CPD. Moreover, on several occasions when the CPD has sanctioned media outlets for their discriminatory coverage of minorities, the media reacted by refusing to cover the CPD’s activity, or by doing so negatively. Lastly, CPD

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<sup>28</sup> See ERRC, [letter](#) to Boyko Borissov, Prime Minister, and Sotir Tsatsarov, Prosecutor General of the Republic of Bulgaria, 13 May 2019.

<sup>29</sup> European Commission against Racism and Intolerance (ECRI), [Fifth report on Bulgaria](#), published on 16 September 2014, paragraph 38; Committee on the Elimination of Racial Discrimination, [Concluding observations](#), 31 May 2017, paragraph 13.

<sup>30</sup> OSCE-ODIHR Hate Crime reporting – Bulgaria, available at: <https://hatecrime.osce.org/bulgaria>.

<sup>31</sup> See the Court’s judgment in the case of *Abdu v. Bulgaria*, No. 26827/08, 11 March 2014.

<sup>32</sup> A decision issued by the CPD against a Deputy Prime Minister on account of a discriminatory public statement against Roma women, which was upheld by the court of first instance, was [overturned](#) by the SAC in January 2019.

representatives stressed that additional funding would be necessary for the CPD to carry out key activities, such as training and awareness-raising projects, including at its regional centres.

36. The Commissioner was pleased to learn that the CPD gives careful attention to the issue of antisemitism. However, she is concerned about the CPD's view that it has no competence to examine complaints lodged by persons identifying as ethnic Macedonians, including with respect to their right to freedom of association. Furthermore, NGOs stressed that the CPD has no positive case law concerning LGBTI persons. They also expressed concern that the selection process for CPD members, which is political, has allowed the designation to the CPD of representatives of extremist parties.
37. The Commissioner notes with satisfaction that in 2019, the institution of the Ombudsman was accredited by the Global Alliance of National Human Rights Institutions (GANHRI) with the accreditation status "A", meaning that it is fully compliant with the [Paris Principles](#) on National Human Rights Institutions. She commends the Ombudsman's efforts to advance the inclusion in domestic legislation of more specific provisions on the application of the principle of proportionality with respect to evictions<sup>33</sup> and her efforts to promote a human rights compliant solution to the situation created following the events in Voyvodinovo. She also notes with satisfaction that the Ombudsman has issued recommendations concerning the discriminatory statements made by some candidates during the electoral campaign for local elections in the second half of 2019.

## 1.5 CONCLUSIONS AND RECOMMENDATIONS

38. Events such as the mobbing and violent evictions of Roma in Voyvodinovo illustrate the disastrous impact that hate speech can have on the lives of people and communities. The Commissioner recalls the Council of Europe Committee of Ministers' [Declaration on the rise of anti-Gypsyism and racist violence against Roma in Europe \(2012\)](#) and urges Bulgarian political leaders to strongly and publicly condemn all acts of racist violence against Roma, as well as hate speech directed against them.
39. The authorities should show "zero tolerance" to hate speech, which is not protected by the right to freedom of expression. In line with the [General Policy Recommendation no. 15 on Combating hate speech](#) adopted by the European Commission against Racism and Intolerance (ECRI) in 2015, the authorities should withdraw all financial and other forms of support by public bodies from political parties and other organisations that use hate speech or fail to sanction its use by their members. The Commissioner calls on the authorities to consistently enforce penalties against the use by politicians of hate speech inciting to violence, hatred or discrimination and to strengthen the mandate and the capacity of the Council for Electronic Media to prevent and sanction any manifestations of racism in the media.
40. The Commissioner underlines the importance of ensuring that hate crimes committed against Roma and members of other minorities are effectively investigated and that the perpetrators of such crimes are prosecuted. Sentences imposed should be effective, proportionate and appropriate to the offence committed, in accordance with the Council of Europe Committee of Ministers' [Guidelines on eradicating impunity for serious human rights violations](#) (2011).
41. The authorities should pay particular attention to the recording of hate speech and hate crimes and ensure that law enforcement officials and legal professionals are adequately and systematically trained to recognise and effectively investigate and sanction crimes committed with a racist motive. The Commissioner considers it important that the authorities continue to monitor closely the

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<sup>33</sup> Recommendations regarding the right to housing were also made in the Ombudsman's annual report for 2018.

activities of extremist right-wing groups, particularly in light of the recent intensification of their activities.

42. The Commissioner urges the Bulgarian authorities to ratify Protocol no. 12 to the European Convention on Human Rights and the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.
43. In accordance with the ECRI [General Policy Recommendation no. 7 on National legislation to combat racism and racial discrimination](#) (revised in 2017), the authorities should take steps to amend the legislation in order to provide that racist motivation constitutes an aggravating circumstance for all criminal offences.
44. Furthermore, the provisions of the Criminal Code on hate crimes and hate speech, the general antidiscrimination legislation and the media legislation should be amended to include sexual orientation, gender identity and sex characteristics as bias and discrimination grounds, as well as aggravating factors, as relevant. The Committee of Ministers' [Recommendation CM/Rec\(2010\)5 on measures to combat discrimination on grounds of sexual orientation or gender identity](#) provides guidance in this respect. In addition, the Commissioner recommends that the authorities strengthen the capacity of police officers, prosecutors and judges to effectively investigate and prosecute offences motivated by a bias based on sexual orientation, gender identity or sex characteristics. This may include the establishment of dedicated LGBTI focal points in some police stations to increase trust within the LGBTI community and encourage reporting. Furthermore, the Bulgarian authorities are urged to take a strong public position against violations of the human rights of LGBTI persons and to encourage factual, objective and professional reporting by the media on LGBTI persons and issues.
45. The Commissioner wishes to emphasise that irrespective of the precariousness of Roma people's tenancy, the retaliatory demolition of their homes, without a proportionality assessment and without providing for adequate alternative solutions where these are needed, is not only unlawful, but contributes, in addition, to the further stigmatisation and marginalisation of Roma. No instances of collective punishment, nor situations where the public take the law into their own hands are tolerable in a democratic society committed to the values of the rule of law, equality and non-discrimination. The authorities are urged to take this matter extremely seriously and adopt all necessary measures to effectively protect all persons, including Roma, from any acts of violence, threats and intimidation.
46. The Commissioner recalls that the practice of forced evictions, consisting in "the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without provision of, and access to, appropriate forms of legal or other protection"<sup>34</sup> has been recognised at international level as a gross violation of human rights, in particular the right to adequate housing.<sup>35</sup> She calls on the Bulgarian authorities to take measures to avoid future forced evictions and identify long-term housing solutions for all persons at risk of eviction.
47. The Commissioner urges the authorities to act swiftly to improve the legal safeguards accompanying evictions. They should notably finalise without delay the legislative amendments providing for the application of the principle of proportionality in the context of evictions, in line

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<sup>34</sup> United Nations Committee on Economic, Social and Cultural Rights, [General Comment no. 7](#) (1997).

<sup>35</sup> United Nations Commission on Human Rights, Resolution 1993/77, available at: [https://ap.ohchr.org/documents/alldocs.aspx?doc\\_id=4162](https://ap.ohchr.org/documents/alldocs.aspx?doc_id=4162).

with the Court's judgment in the case of *Yordanova and Others v. Bulgaria*. She recalls that according to the case-law of the European Committee of Social Rights, it is the responsibility of the state to ensure that evictions, when carried out, respect the dignity of the persons concerned even when they are illegal occupants, and that alternative accommodation or other compensatory measures are available.<sup>36</sup> Alternatives provided must fully respect the rights of children and of vulnerable persons. In particular, children should never be separated from their families based solely on the socio-economic situation of their parents.

48. In any case, the Commissioner is of the view that, in addition to improving access to social housing, the authorities should take more resolute measures for the legalisation of existing informal Roma settlements, based on existing good practices. The housing conditions of Roma should be improved in line with the principles included in Recommendation [Rec \(2005\) 4](#) of the Council of Europe Committee of Ministers on improving the housing conditions of Roma and Travellers in Europe.
49. Bulgaria should take decisive measures to execute the Court's judgments concerning the right to freedom of association of persons aiming to advance the recognition of the Macedonian minority in Bulgaria and the promotion of Macedonian culture. The authorities are urged to allow persons identifying as ethnic Macedonians to register their associations and refrain from refusing registration on grounds related to the recognition or non-recognition of the Macedonian minority in Bulgaria. Bearing in mind the principle of free self-identification enshrined in Article 3 of the FCNM, the Commissioner urges the authorities to engage in a constructive dialogue with persons identifying themselves as ethnic Macedonians, as well as with persons belonging to other groups interested in the protection offered by the FCNM.
50. The authorities are urged to take all necessary measures to ensure that the Commission for Protection against Discrimination is fully independent at institutional and operational level. The revised [General Policy Recommendation no 2 on Equality Bodies to combat racism and intolerance at the national level](#), adopted by ECRI in 2017, provides detailed standards and guidance in this regard. The Chair of the CPD, the Ombudsman and staff holding leadership and decision-making powers within these institutions should benefit from functional immunity<sup>37</sup> and be protected against judicial harassment. The CPD and the Ombudsman should be provided with sufficient resources to effectively and flexibly carry out their work, including at any regional offices.

## 2 VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE

51. Bulgaria lacks a mechanism for the systematic collection of data on violence against women and domestic violence, which makes it difficult to map the specificities of these phenomena. According to a [survey](#) carried out by the EU Fundamental Rights Agency (FRA) in 2014, 28% of women in Bulgaria have experienced physical or sexual violence since the age of 15 and 39% have experienced psychological violence perpetrated by current or former partners.<sup>38</sup> Bulgaria's score for the domain of violence in the European Institute for Gender Equality (EIGE) [Gender Equality Index 2017](#) indicated a higher incidence and severity, as well as lack of disclosure of violence against women, compared to the EU average. Data released by the authorities last year on 25 November, the

<sup>36</sup> *European Roma Rights Centre (ERRC) v. Bulgaria* (n. 21 above), paragraph 56.

<sup>37</sup> See ECRI General Policy Recommendation No. 2 ([revised in 2017](#)) and European Commission for Democracy through Law (Venice Commission), Opinion No. 897/2017, [Principles on the protection and promotion of the Ombudsman institution](#) ("The Venice Principles"), 3 May 2019.

<sup>38</sup> FRA, [Violence against women: an EU-wide survey – Main results](#), 2014, pp. 28-29 and 73-74. See also Partners Bulgaria Foundation, Center for the Study of Democracy, Human Rights Academy (Norway), [National Study on Domestic and Gender-Based Violence in Bulgaria](#), Analytical report, 2016.



International Day on the Elimination of Violence Against Women, revealed that some 30 000 reports of domestic violence were made to the emergency number 112 during 2019. NGOs have reported in this respect a worrying increase in the past three years of murders of women committed by spouses, partners and close relatives.<sup>39</sup>

52. In the following subsections, the Commissioner will share her observations on certain developments which have followed the signing by Bulgaria of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) on 21 April 2016, as well as on the authorities' response to violence against women and domestic violence.

## 2.1 THE NEED TO CHALLENGE HARMFUL NARRATIVES

53. The Commissioner regrets that, at the occasion of the public debates which started a few years ago in relation to the attempted ratification by Bulgaria of the Istanbul Convention, disinformation about the scope and purposes of the Convention has been propagated and deeply rooted stereotypes about gender roles in society have surfaced. The information available to the Commissioner indicates that parliamentary debates on the ratification were preceded by a large-scale campaign organised by groups which challenged the Convention for supposedly creating the preconditions for recognising a "third gender" and undermining the traditional family. Several religious organisations and political parties opposed the ratification and a wide range of media adopted strong editorial policies against it. According to NGO reports, the debates in Parliament revealed misogynistic attitudes regarding the issues covered by the Convention.
54. On 27 July 2018 the Constitutional Court ruled, by eight votes to four, that the Istanbul Convention contravened the Bulgarian Constitution.<sup>40</sup> The decision refuted the term "gender" as defined in the Istanbul Convention,<sup>41</sup> as well as related notions of "gender equality" and "gender-based violence". It found that, by defining "gender" as a "social construct", the Convention relativised the biologically determined distinction between men and women. It added that if society loses its capacity to distinguish between a man and a woman, combating violence against women would become a formal, unfulfilled commitment. Human rights NGOs working in a variety of areas characterised the decision as a severe blow to women's rights.<sup>42</sup>
55. The Commissioner recalls that the Istanbul Convention sets comprehensive standards to prevent and combat violence against women and domestic violence, protect victims and punish perpetrators. She is satisfied that these purposes were highlighted in the dissenting opinions to the decision of the Constitutional Court.<sup>43</sup> Moreover, while recognising that men may also be victims of domestic violence, the Convention stresses that such violence affects women disproportionately. The Convention also recognises the structural nature of violence against women as gender-based violence and that it is a manifestation of the historically unequal power relations between women and men. Therefore, it highlights the importance of combating discrimination against women and achieving gender equality in law and in fact. The purpose of the term "gender", as used in the

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<sup>39</sup> Advocates for Human Rights, the Bulgarian Gender Research Foundation, Alliance for Protection against Gender Based Violence, [Stakeholder Report for the United Nations Universal Periodic Review](#), 3 October 2019.

<sup>40</sup> Decision no. 13 of 27 July 2018, issued in case no. 3/2018.

<sup>41</sup> For the purposes of the Istanbul Convention, the term "gender" means "the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men" (Article 13 c).

<sup>42</sup> Bulgarian Helsinki Committee (30 July 2018), [NGOs in Bulgaria condemn Constitutional Court decision rejecting Istanbul Convention](#).

<sup>43</sup> See Verfassungsblog on Matters Constitutional – Radosveta Vassileva (2 August 2018), [Bulgaria's Constitutional Troubles with the Istanbul Convention](#).

Convention, is not to replace the biological definition of “sex”, nor the terms “women” and “men”, but to make the point that “gender stereotypes and roles” about women and men need to be tackled because they play a part in the perpetuation of violence against women.

56. During her meetings with representatives of NGOs, the Commissioner was informed that women’s rights defenders including NGOs working with victims of violence against women and domestic violence and those having the term “gender” in their names, as well as academics working in the field of gender studies have been confronted with obstacles in performing their work. Notably, they have become a target of ongoing smear campaigns and hate speech in the media by members of the same groups which opposed the ratification of the Istanbul Convention. As a result of the negative public perception created around them, some NGOs decided to change their name and others faced attempts to close them or cuts in funding which forced them to significantly scale down their programmes. At the same time, acts of physical violence against LGBTI individuals and attacks on offices of LGBTI organisations have intensified.
57. The Commissioner learnt, in addition, that campaigners used the same harmful narrative of a supposed “gender ideology” to oppose the adoption of the draft National Child Protection Strategy (2019-2030) and the entry into force of the amended Social Services Acts passed in early 2019.<sup>44</sup> The new Act and Strategy were presented as creating an opportunity for EU-based social services providers and Bulgarian NGOs to remove children from Bulgarian families and place them with networks of child sex offenders and with gay couples abroad. Provisions of the act aiming to improve services available to victims of domestic violence and those of the draft strategy strengthening the prohibition of corporal punishment of children were attacked as destroying traditional family values and denying parents their rights. On 29 September 2019, in this context, a conference on “social kidnapping of children” was held in Sofia and in the first week of October parents from several towns rushed to collect their children from schools, having heard rumours that social services would be removing children.
58. The Commissioner also learned that following this campaign, the Prime Minister withdrew the Child Protection Strategy and Parliament adjourned by six months the entry into force of the Social Services Act, which was due on 1 January 2020. She regretted the view expressed by several officials she met in Bulgaria that neither the government nor Parliament could do otherwise, as there was no popular support for this new act and strategy. Instead, the Commissioner considers that the government’s lack of engagement and participation in the debates taking place in society resulted in an asymmetric controversy that appears to be dominated by those who oppose the new act and Child Protection Strategy. The Commissioner concurs with the Ombudsman’s view that the government should more actively engage in public debate to expose such dangerous misrepresentations of its policies.

## 2.2 THE AUTHORITIES’ RESPONSE TO VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE

### 2.2.1 THE NEED TO PROMOTE GENDER EQUALITY

59. According to the EIGE [Gender Equality Index 2019](#), gender inequality in Bulgaria is more severe compared to the EU average. In light of the issues presented in the previous subsection, the Commissioner stresses, in the first place, the crucial importance of promoting equality between women and men as a measure to prevent violence against women and domestic violence. She wishes to highlight, in addition, the importance of awareness-raising and training programmes for

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<sup>44</sup> [Letter](#) from Bulgarian civil society organisations to representatives of European Union institutions, 15 January 2020.

professionals involved in the prevention and combating of violence against women and domestic violence, notably for law enforcement authorities, the judiciary and other legal professionals. Despite the capacity-building programmes implemented so far, the Commissioner is concerned about the reports which indicate that prejudice and social tolerance of violence against women and domestic violence are, among other factors, at the root of a systemic failure to adequately protect victims and bring perpetrators to justice.<sup>45</sup>

60. More generally, the Commissioner is concerned that while Bulgaria has adopted a National Strategy for Promoting the Equality of Women and Men (2016–2020) and relevant action plans, stakeholder reports indicate the lack of a clearly defined policy in this area. Moreover, she notes the concerns expressed by NGOs and the Ombudsman that the Act on Equality between Women and Men, in force since 2016, lacks concrete substantive provisions and does not adequately address issues that perpetuate the stereotypical roles and responsibilities of women in Bulgaria, despite requiring the elimination of such stereotypes.<sup>46</sup>

### 2.2.2 LEGAL FRAMEWORK FOR THE PROTECTION OF VICTIMS OF VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE

61. The Commissioner was informed by the authorities that Bulgaria does not envisage taking further steps for the ratification of the Istanbul Convention in the near future. The authorities intend to rely primarily on the United Nations Convention on the Elimination of all Forms of Discrimination against Women, ratified by Bulgaria in 1982, to improve their response to violence against women and domestic violence.
62. The Commissioner notes that Bulgaria has taken some steps to better address domestic violence under criminal law and the [Protection against Domestic Violence Act](#) (PADVA). Amendments to the Criminal Code adopted since 2015 include: the repeal of the provisions preventing the prosecution of those who committed sexual abuse or rape of a minor if they later married the victim; the criminalisation of stalking and psychological violence; the introduction of domestic violence as an aggravating circumstance for several offences including kidnapping, abduction and threats; the introduction of higher sanctions for failure to comply with a court decision or a protection order; and limiting the possibility to terminate cases investigated *ex parte* at the victims' request. The Commissioner was also informed that draft amendments to the Code of Criminal Procedure are under preparation for the full transposition into Bulgarian legislation of the Victims' Rights Directive 2012/29/EU and that an inter-ministerial working group has been set up at the Ministry of Justice to prepare a draft law for amending the PADVA.
63. Regarding the current legal framework, the Commissioner is concerned, however, that several provisions in the Criminal Code are not in line with international human rights standards. Regarding substantive provisions, she is concerned that marital rape is not explicitly criminalised and the definition of rape (Article 152) only covers women victims, is not fully based on lack of consent and does not cover all types of rape, falling short of the standards and recommendations elaborated by the United Nations Committee on the Elimination of Discrimination against Women (CEDAW),

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<sup>45</sup> Advocates for Human Rights, Bulgarian Gender Research Foundation, Alliance for Protection against Gender Based Violence, [Stakeholder Report for the United Nations Universal Periodic Review](#), 3 October 2019.

<sup>46</sup> See also Advocates for Human Rights, Bulgarian Gender Research Foundation, Alliance for Protection Against Gender Based Violence, [Bulgaria's Compliance with the Convention on the Elimination of All Forms of Discrimination Against Women](#), submission to the 70th Session of the Committee on the Elimination of Discrimination against Women, 29 September 2017.

including in its case-law.<sup>47</sup> Moreover, under Article 93 (31), an offence is considered to have been committed in conditions of domestic violence if “it is preceded by systematic physical, sexual or psychological violence”. The term “systematic” is interpreted by the prosecution authorities as requiring three separate acts of violence committed by the same perpetrator for prosecution to be opened. In the Commissioner’s view, this provision not only exposes victims of domestic violence to serious risks but also limits the possibilities to sanction perpetrators and sends a dangerous message to the public that domestic violence is acceptable. In respect of procedures, the Commissioner is concerned that the burden placed in certain *ex parte* investigations on victims of domestic violence to collect evidence and prove the accusation acts as a barrier to victims’ effective access to justice and potentially deprives many of them of an effective remedy. This is all the more worrying as according to the EIGE Gender Equality Index 2017, Bulgaria has the lowest disclosure rate of domestic violence in the EU.<sup>48</sup>

64. Some provisions of the PADVA are also problematic. Notably, Article 10(1) includes a one-month time limit for victims to apply for a protection order. After a month, the application is time-barred, and the victim must experience a new act of violence before seeking protection. The Commissioner notes that the CEDAW Committee has already called on the authorities to amend this article so as to remove this time limit.<sup>49</sup>

### 2.2.3 AVAILABILITY AND ACCESSIBILITY OF SUPPORT SERVICES FOR VICTIMS OF DOMESTIC VIOLENCE

65. The Commissioner is concerned at the severe lack of support services for victims of domestic violence in Bulgaria, most of which are only accessible in larger cities but not in all regions. She welcomes in this respect the authorities’ plan to set up support services in all 28 regions of Bulgaria.
66. At present, there are only thirteen crisis centres for women and their children victims of domestic violence in the entire country. In Sofia, the Commissioner visited the only crisis centre for women victims of domestic violence operating in the city, which at that time had full occupancy, hosting six women and four children. The centre is operated by the Animus Foundation, with the services provided being partly funded by the authorities. The Animus Foundation also manages, with financial support from the Ministry of Justice, one of the two helplines operating in Bulgaria, the other line being managed by the Pulse Foundation. Furthermore, the Commissioner notes that, although under the Legal Aid Act victims of domestic violence and sexual violence are entitled to free legal aid, the procedures are reportedly lengthy and cumbersome, leaving victims in urgent situations without the immediate protection that they need.

### 2.2.4 COORDINATION AND FINANCIAL RESOURCES

67. The Commissioner welcomes the coordination measures established between the prosecution authorities and the police and the development of guidelines and instructions setting out the working methodology with respect to incidents of domestic violence. However, she is concerned about the civil society reports which indicate a general lack of coordination, monitoring and evaluation of policies and measures to prevent and combat violence against women and domestic

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<sup>47</sup> CEDAW Committee, Concluding observations [2012](#) and [2020](#); CEDAW Committee, Communication no. 31/2011 (*V.P.P. v. Bulgaria*), [Views](#) adopted by the Committee at its fifty-third session, 1-19 October 2012 (24 November 2012). See also Article 36 of the Istanbul Convention – Sexual violence, including rape.

<sup>48</sup> <https://eige.europa.eu/gender-equality-index/2017/compare-countries/violence/3/bar>

<sup>49</sup> CEDAW Committee, Concluding observations (2020) (n. 47 above).

violence.<sup>50</sup> In this respect, the Commissioner was pleased to learn about the preparatory work currently carried out at the Ministry of Justice in view of establishing a coordination mechanism (Commission on Domestic Violence) and encourages the authorities to set up this mechanism as soon as possible.

68. Regarding financial resources, the Commissioner was informed that the funds allocated annually by the Ministry of Justice for the development and implementation of programs for the prevention of, and protection against domestic violence have so far been insufficient to meet the existing needs. As mentioned, NGOs working with victims of violence against women and domestic violence have recently experienced cuts in their funding. According to the information provided to the Commissioner, financial support for key services provided by NGOs, including crisis centres, is generally limited and unstable.

### 2.3 CONCLUSIONS AND RECOMMENDATIONS

69. The Commissioner regrets that the debates initiated in Bulgaria a few years ago with respect to the Istanbul Convention have escalated into worrying trends which pose serious threats to human rights, in particular the rights of women, children and LGBTI people. The ongoing attacks against NGOs, the withdrawal by the government of the Child Protection Strategy and the postponement of the entry into force of the new Social Services Act are among the most regrettable examples of these developments.
70. The Commissioner strongly urges the authorities to reopen the debate on the ratification of the Istanbul Convention, confront harmful narratives and raise public awareness about the need to improve the protection of victims of violence against women and domestic violence. The government should use this occasion to engage more actively in public debate and dispel misconceptions about the Convention in public discourse in Bulgaria. The Commissioner wishes to stress that the Istanbul Convention is about preventing and combating violence against women and domestic violence. By ratifying the Convention, Bulgaria would join the majority of member states of the Council of Europe which have recognised its importance as a unique instrument that tackles violence against women comprehensively and in all its forms.<sup>51</sup>
71. The Commissioner encourages the authorities to use the relevant Council of Europe publications and other materials to adequately inform the public debate on the objective, purposes and importance of the Istanbul Convention.<sup>52</sup>
72. In 2016, Bulgaria hosted the High-level conference which launched the [Council of Europe Strategy for the Rights of the Child \(2016-2021\)](#). The Commissioner stresses that child protection, social protection and the protection of women's rights are key human rights obligations which cannot be overlooked on the grounds of lack of consensus in society or public opposition to certain ideas. She calls on the authorities to adopt the Child Protection Strategy without delay and to ensure the timely and effective implementation of the Law on Social Services.

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<sup>50</sup> Bulgaria's Compliance with the Convention on the Elimination of All Forms of Discrimination Against Women, 2017 (n. 46 above).

<sup>51</sup> See also [letter](#) from the Council of Europe Commissioner for Human Rights, Mr. Nils Muižnieks, to Ms. Tsveta Karayancheva, President of the National Assembly of Bulgaria, 19 January 2018.

<sup>52</sup> Available at: <https://www.coe.int/en/web/istanbul-convention/publications>. See also European Commission for Democracy through Law (Venice Commission), [Armenia - Opinion](#) on the constitutional implications of the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), No. 961/2019, 14 October 2019.

73. Promoting equality between women and men is a crucial tool in the prevention of violence against women and domestic violence. The Commissioner urges the authorities to fight sexist prejudices based on the idea of inferiority of women or on stereotyped roles for women and men in society, which fuel misperceptions and social tolerance of violence against women and domestic violence and significantly hinder, at a systemic level, the authorities' capacity to adequately protect victims and ensure the accountability of perpetrators. She calls on the authorities to fight any discrimination against women in law enforcement and the judiciary and enhance capacity-building for all officials in the justice system to ensure a gender-sensitive approach to cases concerning violence against women and domestic violence. She draws attention to the Council of Europe Committee of Ministers Recommendation [CM/Rec\(2019\)1](#) on preventing and combating sexism that provides detailed guidance on addressing sexism in different fields, including in access to justice.
74. National legislation should be further amended to bring it in line with international standards concerning gender-based violence against women and domestic violence. The Commissioner calls on the authorities to amend the Criminal Code to explicitly criminalise marital rape and amend the definition of rape in accordance with the standards and recommendations developed notably in the [General Recommendation No. 35](#) on gender-based violence against women adopted by the United Nations Committee on the Elimination of Discrimination against Women. The authorities should make the necessary amendments to remove the requirement of "systematicity" as a precondition to prosecution and ensure that protection orders are immediately available to victims of violence against women and domestic violence. The Commissioner also urges the authorities to ease the burden of proof in *ex parte* investigations and guarantee victims' access to free legal aid so as to ensure their effective access to justice and to an effective remedy.
75. As a matter of urgency, the authorities should take steps to increase the number of shelters and other social services available to victims of violence against women and domestic violence and ensure that legal assistance is easily accessible to victims in all regions of Bulgaria. She wishes to remind the authorities that according to the Council of Europe minimum standards for support services, there should be at least one place for accommodation in a crisis center per every 10 000 residents.<sup>53</sup> Lastly, the Commissioner urges the authorities to encourage and support, at all levels, including through appropriate financial allocations, the work of NGOs involved in combating violence against women and domestic violence. It is essential to ensure that women's rights defenders work in an enabling environment, being protected from attacks by non-state actors, and that the perpetrators of such attacks do not remain unpunished.
76. The Commissioner recommends that the authorities systematically collect data on all forms of gender-based violence against women, including domestic violence, disaggregated by relevant factors, including sex, age and the relationship between the victim and the perpetrator, and ensure that accurate and accessible data are available on the number of cases reported, investigations, prosecutions, convictions and the sanctions imposed on the perpetrators, as well as on the remedies provided to victims.

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<sup>53</sup> Council of Europe, [Combating violence against women: minimum standards for support services](#), p. 38.

### 3 MEDIA FREEDOM

77. The Commissioner notes with regret the apparent deterioration of media freedom in Bulgaria over the past years. The World Press Freedom Index currently ranks Bulgaria 111<sup>th</sup> out of 180 countries worldwide, in decline compared to its previous rankings.<sup>54</sup> Numerous reports point to persistent problems in Bulgaria's media environment, with negative trends intensifying in respect of the concentration of media ownership; political influence over media outlets; judicial pressure on investigative journalists and the use of criminal defamation suits against journalists; and shortcomings in self-regulation.<sup>55</sup>
78. The Commissioner's predecessor had already made extensive recommendations to the authorities in respect of these challenges in a report following his visit to Bulgaria in 2015.<sup>56</sup> Below, the Commissioner will focus on selected issues which, in her view, continue to pose significant threats to media freedom in Bulgaria. She wishes to stress, from the outset, that an independent and pluralistic media is an essential prerequisite for the fulfillment of the right to receive and impart information enshrined in Article 10 of the European Convention on Human Rights. The Commissioner underlines that the availability and accessibility of diverse information and views allowing citizens to exchange information and ideas and make their informed choice is vital for the functioning of democracy.<sup>57</sup>

#### 3.1 THREATS TO MEDIA PLURALISM AND LACK OF TRANSPARENCY OF MEDIA OWNERSHIP AND FINANCING

79. The Commissioner notes that several studies continue to identify media ownership concentration and the lack of media ownership transparency as the main challenges for media pluralism and freedom in Bulgaria.<sup>58</sup> The media market is often described as an entanglement between politicians, business and media outlets, in which a small number of owners control the majority of media. Most media outlets in Bulgaria are reportedly held by a few influential actors who also control other businesses or are involved in politics. According to media analysts, up to 80% of print media is currently concentrated in a single media group, which is also the main stakeholder of the only press distribution company in the country.<sup>59</sup>
80. The Commissioner was informed that in November 2018, the Compulsory Deposit of Copies of Printed and Other Works Act was amended so as to require media outlets to provide information about their owners and all funding received, including the names of donors. The Commissioner learned that some provisions of the amendments were criticised by observers who considered that they placed an excessive burden on small, independent media outlets funded mainly through donations, including crowdfunding, and could discourage private individuals from supporting such

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<sup>54</sup> Reporters Without Borders, 2019 World Press Freedom Index, <https://rsf.org/en/bulgaria>. Bulgaria was ranked 87<sup>th</sup> in 2013 and 100<sup>th</sup> in 2014.

<sup>55</sup> See Parliamentary Assembly of the Council of Europe, [Resolution 2296\(2019\)](#), 27 June 2019, Post-monitoring dialogue with Bulgaria, item 18.3.1.; Union of Publishers in Bulgaria, [The Media Freedom White Paper](#), 2018; Reporters Without Borders, <https://rsf.org/en/bulgaria#alerteszone>.

<sup>56</sup> [Report](#) by the Council of Europe Commissioner for Human Rights, Mr. Nils Muižnieks, following his visit to Bulgaria from 9 to 11 February 2015, 22 June 2015, CommDH(2015)12.

<sup>57</sup> See the [Recommendation CM/REC\(2018\)1](#) of the Committee of Ministers to Member states on media pluralism and transparency of media ownership, 7 March 2018.

<sup>58</sup> See, for example, Resource Centre on Media Freedom in Europe, Special Dossier, [Media freedom in Bulgaria](#), May 2018, and the resources quoted therein; European Centre for Press and Media Freedom (ECPMF), Osservatorio Balcani e Caucasio, S.E.E.M.O., [Bulgaria: Media ownership in a "captured state"](#), 2019;

<sup>59</sup> *Idem*; Union of Publishers in Bulgaria, [The Media Freedom White Paper](#), 2018 (n. 55 above).

outlets. The fines provided by the law for failing to provide information, ranging from BGN 10 000 (approx. EUR 5 000) to 15 000 (approx. EUR 7500) for an initial infringement and twice as much for a subsequent infringement were also considered disproportionate and as a tool which could potentially be used to restrict the freedom of expression of small media outlets.<sup>60</sup> Moreover, the Commissioner's interlocutors expressed concern that the Act entrusts control over the regularity of declarations of ownership and financing to the Ministry of Culture, rather than to an independent specialised body.

81. The Commissioner was also informed that the various provisions on ownership disclosure continue to be implemented only partially and that transparency is in many cases not ensured, as media outlets are often registered under proxies or offshore companies. In addition, it is reported that offshore companies continue to operate although the law prohibits such companies from holding TV or radio licences since 2014.
82. Another persisting concern is the lack of legal provisions defining thresholds based on objective criteria (such as capital share, circulation, revenues or audience share) to prevent a high concentration of media ownership. Moreover, it appears that some categories of data concerning the media market, such as print circulation, are not collected.<sup>61</sup> Media convergence is still covered by the general provisions on market competition set out in the Protection of Competition Act (2008), which, as noted by the Commissioner's predecessor in 2015, lacks specific rules that would take into account the need for media pluralism.<sup>62</sup> In any case, the Commissioner's interlocutors noted that so far the antitrust regulator, the Commission for Protection of Competition, has not taken any action against excessive media ownership concentration.

### 3.2 POLITICAL INFLUENCE AND INTERFERENCE WITH EDITORIAL INDEPENDENCE

83. The Commissioner is worried at the numerous signals indicating the pervasive political influence over the media. According to a survey carried out in mid-2017 by AEJ-Bulgaria,<sup>63</sup> over two thirds of 200 Bulgarian journalists interviewed stated that most of the interference in the media came from politicians, and 92% defined interferences as "common" and "widespread". Respondents considered that dailies, both national and regional, were the most affected. In this respect, several reports highlighted that the drop in advertising revenues has made media more dependent on state funding and, as a consequence, more vulnerable.<sup>64</sup> The Commissioner was also concerned about the reports on the continued practice of keeping the media under influence through the preferential allocation of EU funds to government-friendly media.<sup>65</sup> In its 2018 observations on Bulgaria, the United Nations Human Rights Committee expressed concerns about 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.<sup>66</sup>
84. In contrast to the situation of privately-owned outlets, the Commissioner noted the overall opinion that the issue of lack of independence was less acute for public service media. However, she learned

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<sup>60</sup> See Association of European Journalists (AEJ) – Bulgaria (17 September 2018), [The fate of the transparency of the media's ownership bill is to be decided between first and second reading](#).

<sup>61</sup> IREX, [Media Sustainability Index 2019 – Bulgaria](#), p. 10.

<sup>62</sup> Report by the Council of Europe Commissioner for Human Rights, Mr. Nils Muižnieks, following his visit to Bulgaria, 2015 (n. 56 above), paragraph 157.

<sup>63</sup> AEJ – Bulgaria, [The big comeback of political pressure in Bulgaria](#), December 2017.

<sup>64</sup> Resource Centre on Media Freedom in Europe, Special Dossier, Media freedom in Bulgaria, May 2018 (n. 58 above).

<sup>65</sup> IREX, [Media Sustainability Index 2019 – Bulgaria](#).

<sup>66</sup> United Nations Human Rights Committee, [Concluding Observations](#) on the fourth periodic report of Bulgaria, 15 November 2018, paragraph 37.



that the Radio and Television Fund, which should have been established according to the Law on Radio and Television adopted in 1998, in order to provide independent funding for radio and television activity, has still not been set up. The Commissioner was particularly concerned to learn about a serious recent incident at the Bulgarian National Radio (BNR). According to information provided to her, on 13 September 2019, the BNR stopped broadcasting for five hours after journalists at the station reportedly refused to accept the suspension of anchor Silvia Velikova.<sup>67</sup> The mandate of the director general of the BNR was subsequently terminated and following an initial examination by the broadcast media regulator, the Council for Electronic Media (CEM), the case was referred to the prosecution authorities for further investigation.

85. Lastly, the information provided to the Commissioner indicates that hidden political advertising in the media remains a problem in Bulgaria. Although the Electoral Code requires all broadcasters to separate paid content from editorial and news reporting and to clearly mark it as such, the recent electoral campaigns for the May 2019 European Parliament elections and the local elections which took place in October 2019 showed that paid political advertisement was still not sufficiently distinguishable from non-paid material resulting from journalistic editorial work.

### 3.3 OTHER THREATS TO MEDIA FREEDOM

#### 3.3.1 VIOLENCE AGAINST JOURNALISTS, HARASSMENT AND INTIMIDATION OF JOURNALISTS

86. The Commissioner is deeply concerned by the reported incidents of violence and other attacks against journalists, several of which have been recorded by the Council of Europe Platform to promote the protection of journalism and safety of journalists.<sup>68</sup> The most serious attacks and threats include the beating with a baseball bat of the editor of a local news portal, in early 2016; the assault and injury of a television presenter in central Sofia, in July 2017 and the setting on fire of the car of another journalist in October 2017; death threats against a journalist, during a filmed interview, in October 2017; threats against a journalist by a Deputy Prime Minister and a member of Parliament, in a live broadcast on 6 October 2017; and the injury of two journalists while covering clashes between protesters and the police in the incidents which occurred in Gabrovo in April 2019.<sup>69</sup> The OSCE Representative on Freedom of the Media, Harlem Désir, also condemned these attacks and threats against journalists in a number of statements.<sup>70</sup> The Commissioner reacted to the killing of journalist Victoria Marinova, in October 2018.<sup>71</sup> According to information provided by the authorities, the perpetrator was convicted, and the killing was not related to the journalist's work. However, it does not appear that effective and prompt investigations are carried out generally into such incidents.
87. The Commissioner is also concerned about the widespread use of smear campaigns and other forms of harassment and intimidation of journalists. The Commissioner's attention was drawn in particular to the arrest and detention, in September 2018, of a reporter of the Bulgarian investigative journalism website *Bivol* and of his counterpart from Romania, who attempted to prevent and document the destruction of material related to a large-scale fraud in EU funded

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<sup>67</sup> See the [alert](#) submitted to the Council of Europe Platform to promote the protection of journalism and safety of journalists on 17 September 2019, "Suspension of Bulgarian National Radio Broadcasts Point to Vulnerability of Editorial Independence".

<sup>68</sup> <https://www.coe.int/en/web/media-freedom/bulgaria>

<sup>69</sup> See paragraph 16 of this report.

<sup>70</sup> See for instance "[Unacceptable physical attack on journalist in Bulgaria says OSCE media freedom representative, calls for investigation](#)", 27 September 2018.

<sup>71</sup> See the Commissioner's [statement](#) on the murder of the journalist, 8 October 2018.

projects, and to the on-going tax investigations by the prosecution authorities of the founder and of the editor-in-chief of *Bivol*, after their reporting, in March 2019, on a real estate scandal allegedly involving high-level government officials.<sup>72</sup> The Commissioner learned with concern that this harassment allegedly extends to the families of the two journalists.

88. As a positive development, the Commissioner notes that on 23 October 2015, 7 June 2016 and 22 July 2016 the administrative courts of Vratsa and Sofia confirmed on appeal that the fines imposed by the Financial Supervision Commission on three media outlets for the alleged dissemination of false news regarding the functioning of the banking sector and financial instruments were illegal.<sup>73</sup>

### 3.3.2 THE NEED TO DECRIMINALISE DEFAMATION

89. The Commissioner regrets that Bulgaria has still not decriminalised insult and libel (Articles 146 - 148 of the Criminal Code), although the sanction of imprisonment for these offences was repealed in 2000 and replaced with criminal fines and public censure. She recalls that the fines, which are up to approximately EUR 1 500 for insult and EUR 3 500 for libel may in some cases be increased, or, if the defendant meets certain criteria, replaced with administrative fines and the interdiction to pursue a profession for up to three years (article 78a of the Criminal Code). The Commissioner is concerned by the decision of the Bulgarian courts, in June 2019, to convict a journalist of the “Capital Weekly” on a charge of defaming the former chair of the Financial Supervision Commission, and to fine him EUR 500.<sup>74</sup> The Commissioner was informed that as part of the execution of the Court’s judgment in the case of *Bozhkov v. Bulgaria*,<sup>75</sup> concerning similar convictions, in 2018 the authorities created an inter-ministerial working group which has prepared draft amendments to the Criminal Code.<sup>76</sup> The proposed amendments include the exemption from criminal liability and the imposition of an administrative sanction where the defamation concerns a public authority or official and the removal or reducing of the lower limits of fines.

### 3.3.3 SHORTCOMINGS IN SELF-REGULATION AND OTHER FORMS OF REGULATION

90. The Commissioner notes with concern that efforts for the self-regulation of media have not been successful in Bulgaria. An issue raised several times during her visit concerns the coexisting of two ethical codes, adopted in 2004 and in 2014, none of which was considered effective, but which nonetheless split, at least formally, the ethical standards formally adhered to by different media groups. Moreover, as noted in several reports,<sup>77</sup> a large part of the media has not signed either of the two codes.
91. Regardless of these codes, the Commissioner regrets to note that the protection of the status and social rights of journalists has worsened. The Commissioner was informed that media outlets regularly offer journalist contracts for services rather than employment contracts. Working hours are often unregulated, along with little or no social benefits and relatively low salaries. There are no collective agreements for journalists and efforts made by the Union of Bulgarian Journalists to promote the adoption of legislation in this respect have proved fruitless. Moreover, the Commissioner learned that trade union protection is practically non-existent in private media and

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<sup>72</sup> International Press Institute (2 October 2019), [Bulgarian news site faces government harassment campaign](#).

<sup>73</sup> See Report by the Council of Europe Commissioner for Human Rights, Mr. Nils Muižnieks, following his visit to Bulgaria, 2015 (n. 56 above), section 3.3.1, Sanctions on the media related to reporting on the banking and financial sector, and the information on the relevant [alert](#) recorded by the Platform to promote the protection of journalism and safety of journalists.

<sup>74</sup> Reporters without Borders (7 June 2019), [Bulgarian reporter’s defamation conviction sets dangerous precedent](#).

<sup>75</sup> *Bozhkov v. Bulgaria*, No. 3316/04, judgment of 19 April 2011.

<sup>76</sup> See the status of the execution of the judgment at: <http://hudoc.exec.coe.int/eng?i=004-1909>.

<sup>77</sup> See, for example, IREX (2018), [Media Sustainability Index 2018 – Bulgaria](#).

journalists are not protected against changes in the editorial policies of their employers. Several investigative journalists were reportedly forced to resign from one of the main television networks after it was acquired, in February 2019, by a Bulgarian businessman allegedly having close ties with a party represented in Parliament.

92. The Commissioner's interlocutors agreed, in addition, to the need to reform the rules concerning the composition and work of the CEM,<sup>78</sup> so as to professionalise its activity and make it more transparent. The Commissioner notes that the credibility of CEM's independence appears to be undermined, *inter alia*, by the political appointment and election of its members, by the President of Bulgaria and the Parliament, respectively. Under the current rules, journalists are not involved in the appointment of the members of CEM, and only a few journalists are represented in this body.

### 3.4 CONCLUSIONS AND RECOMMENDATIONS

93. During her visit the Commissioner was repeatedly told that in many areas of debate, the media has swayed public opinion, to the detriment of governmental efforts to protect human rights. The Commissioner notes that this view appears to be contradicted by the numerous reports which indicate the existence of strong ties between the governmental political sphere and media. In light of this, the Commissioner is concerned by the authorities' lack of reaction to diminishing media pluralism in Bulgaria. She wishes to stress, however, that as highlighted by the Court and the UN Committee on Human Rights, the state is the ultimate guarantor of the principle of pluralism and is responsible for encouraging a diverse and independent media.<sup>79</sup>
94. The authorities are strongly urged to show political will to address the regulatory and implementation deficiencies which currently accommodate the excessive concentration of media ownership, using the guidance provided by standards developed within the Council of Europe.<sup>80</sup>
95. As a starting point, the authorities should ensure that reliable and accessible market data are collected and made available, allowing the monitoring and evaluation of media pluralism in Bulgaria. The authorities should encourage the publication of regular reports, by the Council of Electronic Media or other designated bodies or institutions, on media ownership.
96. The Commissioner recommends that the Bulgarian authorities consider, in consultation with media freedom specialists and representatives of media professionals, the adoption of rules aimed at preventing individual actors from acquiring significant media power in the entire national media market or in specific media sectors. As recommended by the Council of Europe Committee of Ministers, these rules may include the establishing of thresholds of ownership based on objective criteria such as capital shares, voting rights, circulation, revenues, or audience share.<sup>81</sup>
97. The authorities responsible for the application of these rules should be vested with the power to react to media concentration operations of all forms, and impose appropriate sanctions, if need be. The Commissioner recommends that the Bulgarian authorities establish or designate an

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<sup>78</sup> Report by the Council of Europe Commissioner for Human Rights, Mr. Nils Muižnieks, following his visit to Bulgaria, 2015 (n. 56 above), paragraph 203.

<sup>79</sup> ECtHR, *Informationsverein Lentia and Others v. Austria*, No. 13914/88; 15041/89; 15717/89; 15779/89; 17207/90, 24 November 1993, paragraph 38; Committee on Human Rights, [General Comment No. 34](#) on Article 19: freedom of opinion and expression (2011), paragraph 14.

<sup>80</sup> See <https://www.coe.int/en/web/freedom-expression/adopted-texts>.

<sup>81</sup> Recommendation [CM/Rec\(2007\)2](#) of the Committee of Ministers to member states on media pluralism and diversity of media content, paragraph I.2.3.; Recommendation [CM/Rec\(2018\)1](#) of the Committee of Ministers to member states on media pluralism and transparency of media ownership, Appendix, Guidelines on media pluralism and transparency of media ownership, paragraph 3.4.

independent authority responsible for the application of ownership and concentration rules in the media sector that would be bound to take into consideration its specificities and the need to ensure media freedom, pluralism and independence.

98. The Commissioner considers necessary the introduction of transparent and non-discriminatory regulation of governmental distribution of state advertising and public funds to the media, along with clear rules for the accountability of agencies distributing the funds and of recipients of funding.
99. The authorities are urged to adopt the mechanisms needed to protect the editorial independence of public service media organisations from political or economic influence. These mechanisms could be established in co-operation with civil society.<sup>82</sup>
100. The Commissioner calls on the authorities to take measures to ensure a stricter enforcement of the Election Code's provisions on distinguishing paid from editorial content in political coverage.
101. In accordance with the established case-law of the European Court of Human Rights, states have a positive obligation to foster a favourable environment for freedom of expression, in which everyone can exercise their right to freedom of expression and participate in public debate effectively, irrespective of whether their opinions are received favourably by the authorities or others.<sup>83</sup> The Commissioner also recalls the Recommendation of the Committee of Ministers of the Council of Europe to member states on the protection of journalism and safety of journalists and other media actors, which stresses that member states should put in place a comprehensive legislative framework that enables journalists and other media actors to contribute to public debate effectively and without fear.<sup>84</sup> The Bulgarian authorities should signal very strongly that threats and attacks on journalists are unacceptable and will not go unpunished. They should initiate prompt, thorough and transparent investigations, bring perpetrators to justice, and ensure that dissuasive punishments are imposed for such attacks. The investigation of such attacks should duly take into account any possible link to journalistic activities in a transparent manner.
102. The Commissioner urges the Bulgarian authorities to repeal criminal provisions against defamation offences and to deal with such incidents through strictly proportional civil law sanctions only. The current criminal law provisions, even if they do not provide for prison sanctions, continue to send a negative signal to the public at large and have a chilling effect on the work of investigative journalists.
103. The Commissioner recommends that the authorities take measures to promote better professional protection and working conditions of journalists. They are encouraged to review the legislation on the composition, independence and effectiveness of the Council for Electronic Media and ensure that journalists and other representatives of media are included in the composition of CEM and are involved in the monitoring of CEM's decisions and accountability.

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<sup>82</sup> Recommendation CM/Rec(2007)2, paragraph I.3.4.

<sup>83</sup> ECtHR, *Dink v. Turkey*, Applications Nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, 14 September 2010, paragraph 137.

<sup>84</sup> Recommendation [CM/Rec\(2016\)4](#) of the Committee of Ministers of the Council of Europe to member States on the protection of journalism and safety of journalists and other media actors, adopted on 13 April 2016.