

**LIBERTIES**

**RULE OF LAW REPORT**

**2024**

**BULGARIA**

**#ROLREPORT2024**



BULGARIAN  
HELSINKI  
COMMITTEE



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## **FOREWORD**

This country report is part of the Liberties Rule of Law Report 2024, which is the fifth annual report on the state of rule of law in the European Union (EU) published by the Civil Liberties Union for Europe (Liberties). Liberties is a non-governmental organisation (NGO) promoting the civil liberties of everyone in the EU, and it is built on a network of national civil liberties NGOs from across the EU. Currently, we have member organisations in Belgium, Bulgaria, the Czech Republic, Croatia, Estonia, France, Germany, Hungary, Ireland, Italy, Lithuania, the Netherlands, Poland, Romania, Slovakia, Slovenia, Spain and Sweden, as well as a contributing partner organisation in Latvia.

Liberties, together with its members and partner organisations, carries out advocacy, campaigning and public education activities to explain what the rule of law is, what the EU and national governments are doing to protect or harm it, and gathers public support to press leaders at EU and national level to fully respect, promote and protect our basic rights and values.

The 2024 report was drafted by Liberties and its member and partner organizations, and it covers the situation during 2023. It is a ‘shadow report’ to the European Commission’s annual rule of law audit. As such, its purpose is to provide the European Commission with reliable information and analysis from the ground to feed its own rule of law reports, and to provide an independent analysis of the state of the rule of law in the EU in its own right.

Liberties’ report represents the most in-depth reporting exercise carried out to date by an NGO network to map developments in a wide range of areas connected to the rule of law in the EU. The 2024 report includes 19 country reports that follow a common structure, mirroring and expanding on the priority areas and indicators identified by the European Commission for its annual rule of law monitoring cycle. Thirty-seven member and partner organisations and one independent human rights expert contributed to the compilation of these country reports.

**[Download the full Liberties Rule of Law Report 2024 here](#)**

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# BULGARIA

## About the authors

Bulgarian Helsinki Committee



The Bulgarian Helsinki Committee (BHC) is an independent, non-governmental, not-for-profit civil society organisation for defending fundamental human rights in Bulgaria: political, civil, cultural, and social. It was established in 1992. Among other things, the organisation has a legal programme responsible for strategic litigation cases and participation in consultation or as *amicus curiae* before national and international bodies and institutions.

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## Key concerns

In the area of justice, the Parliament adopted a law establishing a mechanism for independent investigation of the Chief Prosecutor and their deputies. The Constitution was amended, splitting the Supreme Judicial Council into two separate councils, and ensuring judicial independence via the majority of judges elected by the judges. Significant progress has thus been achieved, yet it falls short of being satisfactory in light of all the key concerns identified in the European Commission's 2023 Rule of Law Report. The functioning of the Inspectorate to the Supreme Judicial Council was left unaddressed. Furthermore, key high-level corruption cases, which imply

the complicity of magistrates, have not made substantial headway.





As regards checks and balances, progress in public consultations was evident, though primarily for pieces of legislation deemed less important. The understandable focus on judicial reform hindered progress with parliamentary appointments for numerous bodies, whose members are serving past their term of office. The reluctance of courts and the Prosecutor's Office to act upon authorities' failure to implement judicial decisions of administrative courts has become increasingly apparent. Furthermore, the voting rights of prisoners and persons under guardianship remain limited, as does the right to political agitation in a minority language.

In 2023, the authorities continuously refused to register non-governmental organisations (NGOs) due to nationalistic aspirations. Additionally, there was harassment of same-sex couples and Sofia Pride organisers by the Prosecutor’s Office, as well as attacks against peaceful assemblies of the LGBTI community. All these incidents went without a prompt and appropriate response from the authorities.




The year saw two key instances of challenging European oversight in the face of decisions from the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU). National authorities failed to implement key judgments and legal standards in relation to people with mental disabilities, the Roma community, trans people and same-sex families. The Criminal Code was amended to include sexual orientation as a ground for increasing

the penalty for hate crimes, but the inclusion of gender identity and its expression were rejected.

### State of play (versus 2023)

-  Justice system
- N/A** Anti-corruption framework
- N/A** Media environment and freedom of expression and of information
-  Checks and balances
-  Enabling framework for civil society
-  Systemic human rights issues

#### Legend

- |   |   |   |
|---|---|---|
| <b>Regression</b>   | <b>No progress</b>  | <b>Progress</b>   |
|  |  |  |

## Justice system

### Key recommendations

- *Urgently reform the inspectorate of the Supreme Judicial Council and hold a procedure for the election of new inspectors.*
- *Urgently hold a transparent procedure for new members of the Supreme Judicial and the Supreme Prosecutorial Councils.*
- *Ensure transparent election of a new Chief Prosecutor after the creation of separate councils.*

## **Judicial independence**

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

In May, Parliament adopted a law, as part of the rule of law commitments under the Recovery and Resilience Plan, establishing a mechanism for the effective accountability and criminal liability of the Chief Prosecutor (CP) and their deputies, as well as judicial review of prosecutorial decisions not to open an investigation.<sup>1</sup>

The legislative package, among other things, introduces a new chapter (Chapter 31a) in the Criminal Procedure Code (CrPC) dedicated to a new procedural actor, an independent ad hoc prosecutor charged with investigating the CP and their deputies. The law also contains amendments to the Judicial System Act (JSA). The amendments provide, inter alia, that this ad hoc prosecutor, is to be appointed from a list of judges of the Supreme Court of Cassation (criminal chamber), appellate and regional courts (criminal divisions).

Amendments in the JSA introduce a separate system for the random selection of judges to be appointed as ad hoc prosecutors (Article 112 § 6 of the JSA). After its enactment, subsequent bills targeted various imperfections and omissions in

the initially adopted law. Key among these were missing references in the law to an ad hoc prosecutor for investigation of the deputy CPs,<sup>2</sup> as well as missing references to the separate system for random selection.<sup>3</sup> Following these amendments, the first ad hoc prosecutor, Daniela Taleva, was appointed by the Supreme Judicial Council (SJC) in December to investigate allegations against former deputy CP and current interim CP, Mr. Borislav Sarafov.<sup>4</sup> In a hearing before the SJC in November, Ms. Taleva stated that she would need a separate clerk and premises that ensure her independence and allow her to avoid direct contact with the person(s) investigated.<sup>5</sup> She also noted the lack of clarity on who will approve her vacation days if needed and whether it will be necessary for the investigative police officers working on the case to be specially appointed — all these aforementioned issues lacking a legal framework.<sup>6</sup>

### **Irremovability of judges, including transfers, dismissal and retirement regimes of judges, court presidents and prosecutors**

In 2023, Bulgaria took no steps to adapt the relevant legislative framework to avoid long-term secondment of judges to fill in vacant positions. Despite amendments in the JSA regarding secondments of prosecutors, the issue of the secondment of judges wasn't

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1 <https://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=195264>

2 <https://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=200114>

3 <https://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=198326>

4 <https://defakto.bg/?p=127285>

5 <https://defakto.bg/?p=126771>

6 <https://defakto.bg/?p=126771>

discussed further, pending the more pressing issue of amending the constitution. Certain proposals regarding the secondment of judges were published in October by the Institute for Market Economics.<sup>7</sup> By the end of January 2024, a working group had been formed in the Ministry of Justice for amendments to the JSA following the constitutional amendments, but no public information is available on whether—in addition to the issue of separating the SJC into two councils—the secondment of judges is discussed as well. Several civil society organisations known for advocating for the judicial reforms, including the Bulgarian Helsinki Committee, were not invited to participate in the working group.

***Independence (including composition and nomination of its members) and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)***

In 2023, significant changes were made to the legal framework governing the structure of the Supreme Judicial Council (SJC). A draft law proposing amendments to the constitution was introduced in July. In a rush to pass the bill before the end of the year, many Members of Parliament submitted proposals for amendments to the draft on the 14th and 15th of December. When the final vote took place on 20 December, there was scarcely any time left for substantial public consultation on the proposed

changes. The final text was promulgated in the State Gazette on 22 July.<sup>8</sup>

The key changes in relation to the judiciary include the separation of the SJC into two councils — the Supreme Judicial Council and the Supreme Prosecutorial Council, replacing the previous unified council with two chambers. The roles of both the Prosecutor's Office and the National Investigation Service within the judicial branch have been clearly defined. The competence of the Chief Prosecutor (CP) to execute methodological guidance and legality supervision of all prosecutors has been removed. The CP's term of office has been limited to a single five-year term. Additionally, an ad hoc prosecutor tasked with investigating the CP or their deputies has been granted the power to propose to the SJC to temporarily suspend the CP, among other changes.

To balance representation of judges elected by judges and safeguard the independence of the judiciary, the amendments envisage the following changes:

Firstly, the new Supreme Judicial Council will be composed of 15 members. This includes the presidents of the two supreme courts: the Supreme Court of Cassation and the Supreme Administrative Court. Eight members will be elected directly by judges, while the remaining five members will be elected by Parliament.

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7 <https://defakto.bg/?p=125150>

8 <https://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=202060>

The new Supreme Prosecutorial Council will consist of 10 members. The Chief Prosecutor (CP) will be a member by virtue of their position (*ex lege*). Two members will be elected directly by prosecutors, one member will be elected by investigators in the National Investigation Service, and the remaining six members will be elected by Parliament with a two-thirds majority.

In both councils, Parliament is prohibited from electing acting prosecutors or investigators as members (Article 130a § 3). Members of the councils are not eligible for immediate re-election after serving one term (Article 130a § 5).

Due to the amendments to the SJA in July, the members of the SJC selected from among the judges in 2022 never entered into office. Instead, the amendments established a timeframe for initiating the procedure for selecting and appointing new members to the newly created councils. This timeframe is set to six months from the date entry into force of the law (14 August 2023).

In November 2023, journalists uncovered information through a Freedom of Information (FOI) request that indicated an irregularity in the voting process for the selection of new judge representatives in the SJC in June 2022. The data revealed that 200 votes were cast through the system designated for judge voting, despite only 28 judges entering the Supreme Administrative

Court's building where the voting session was held. The Bulgarian Helsinki Committee's calls<sup>9</sup> for the resignation of Georgi Cholakov, the President of the Supreme Administrative Court, and the members of the SJC, were met with no response.

***Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal liability of judges***

Following a bizarre series of events, including an alleged assassination attempt using a bomb and publicly available tapped recordings of his conversations with a member of the SJC, the CP Ivan Geshev was dismissed by the SJC<sup>10</sup> and his deputy Borislav Sarafov was appointed as interim CP. On 8 June, during the process of Mr. Geshev's removal, Ognian Damyanov, a member of the SJC, disclosed that he, along with five other council members who had submitted requests for Mr. Geshev's dismissal, had been summoned to the prosecutor's office. Damyanov interpreted this summons as a response to their dismissal motions and viewed it as an abuse of power.<sup>11</sup>

In July, the interim CP, Sarafov, made significant remarks about a scandal known as 'The Eight Dwarfs'. This scandal is named after a restaurant owned by Petar Petrov, the former head of the investigative prosecutorial service of Sofia, who is now an attorney. The

9 <https://www.bghelsinki.org/en/news/2023-11-09-press-sac-sjc>

10 <https://defakto.bg/?p=119551>

11 <https://defakto.bg/?p=120714>



Anti-Corruption Fund, a non-profit organisation, brought this scandal to light in 2020.<sup>12</sup> It involves an alleged criminal network, led by Petrov (also known as ‘The Euro’), which is believed to wield undue influence over several public institutions. This group interfered in a legal dispute among the co-owners of a company that manufactures elevators. In March 2023, the Prosecutor’s Office decided not to initiate criminal proceedings, but this decision was overturned by the court. In his July statements to the SJC, Sarafov strongly criticised the former CP, Ivan Geshev, for his negligence in addressing severe legal infractions when overseeing the return of high-value items used as evidence in the case.<sup>13</sup> The following August, the Prosecutor’s Office declared that a prosecutor, indeed Petrov himself, along with Petrov’s ex-wife, were formally charged with embezzlement of evidence under Article 215 § 1 of the Criminal Code. They also announced that Petrov is currently missing and has been declared wanted.<sup>14</sup> However, the Anti-Corruption Fund voiced its dissatisfaction with the case’s progression, pointing out that Sarafov has served as Geshev’s deputy for years and is demonstrably connected to the case. A spokesperson for the organisation expressed concern that Sarafov’s appointment as interim CP could potentially obscure the involvement of a broader spectrum of dependent magistrates associated with the criminal group. This

could also lead to the silencing of critical witnesses or restrict their testimonies to selected topics. The spokesperson further observed that the case presents an opportunity to reform the prosecution, an opportunity that, regrettably, is not being seized.<sup>15</sup> In August, Sarafov sent seven proposals to the SJC Prosecutorial College to impose disciplinary sanctions on four prosecutors and three investigators in the case.<sup>16</sup>

### **Other**

In November, Advocate General (AG) Sánchez-Bordona delivered his opinion in CJEU Case C-634/22 regarding the abolition of the Specialised Criminal Court in 2022. The Bulgarian Specialised Criminal Court (and respective Specialised Prosecutor’s Office, Court of Appeals and Appellate Prosecutor’s Office) was established in 2010 by the Parliament with a majority of the GERB party, at odds with the parliamentary opposition. The official reasoning was that this court is to prosecute white collar and very serious crimes (like terrorism). Subsequently, the court was involved in several corruption scandals publicised by investigative journalists. The case before the CJEU is brought by judges of the Specialised Criminal Court questioning the compatibility of the abolishment of that court with the EU law. The AG’s opinion is

12 [https://youtube.com/playlist?list=PLlytu5IULkSIZ8n\\_7fEY52fYqi5KHRIOUS&si=9BBEnweXki\\_uyp\\_D](https://youtube.com/playlist?list=PLlytu5IULkSIZ8n_7fEY52fYqi5KHRIOUS&si=9BBEnweXki_uyp_D)

13 <https://defakto.bg/?p=120895>

14 <https://defakto.bg/?p=122912>

15 <https://defakto.bg/?p=123195>

16 <https://defakto.bg/?p=123313>

that Article 19(1) TEU does not preclude a reform of the judicial system of a Member State, according to which a specialised criminal court is abolished. Its jurisdiction transferred to an ordinary court, however criminal cases whose initial hearing was dealt with in the abolished court would continue to be heard by the same formation of judges.<sup>17</sup> A judgement in the case has not been delivered in the reporting period.

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

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### ***Respect for fair trial standards, including in the context of pre-trial detention***

In September 2023, the CJEU delivered its decision in the *AB* case (C-209/22) concerning the omission in the Bulgarian legal framework of the concept of a suspect, and whether the protections provided for in the directives on the right to information in criminal proceedings (Directive 2012/13/EU) and the right of access to a lawyer in criminal proceedings (Directive 2013/48/EU) would extend to a person that is not yet accused but was subjected to search and seizure for possession of illicit substances. The Court's decision found that those directives do indeed apply in such cases. Next, the Court found that the EU law does not preclude a member state from limiting the judicial review to determine the lawfulness of coercive

measures to obtain evidence of a criminal offence if, subsequently, as part of the criminal proceedings, the court hearing the substance of the case is able to verify that the rights of the accused person have been respected. And lastly, the Court ruled that Article 3 of Directive 2013/48 does not preclude national legislation which provides that a suspect or accused person may be subject to search and seizure without having the right of access to a lawyer, provided it follows the assessment, taking it account all the relevant circumstances, that such access is not necessary in order for that person to be able to exercise his or her rights of defence practically and effectively.<sup>18</sup>

In the meantime, the EU Commission sent a letter of formal notice to Bulgaria in view of its breaches of Directive 2016/343 on the strengthening of certain aspects of the presumption of innocence, and of the right to be present at the trial in criminal proceedings.<sup>19</sup> More specifically, the procedure addresses public references to guilt, for example, when public authorities refer to a person as being guilty in public statements, and the availability of appropriate measures if this happens. The decision comes after the Commission already issued a verdict in another case concerning the same subject, and concluded that the issue was resolved.<sup>20</sup>

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17 <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62022CC0634>

18 <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62022CJ0209>

19 [https://ec.europa.eu/commission/presscorner/detail/en/inf\\_23\\_4367](https://ec.europa.eu/commission/presscorner/detail/en/inf_23_4367)

20 <https://verfassungsblog.de/at-a-snails-pace/>

In October, the ECtHR delivered its judgement in the case *Pengezov v. Bulgaria* (Application No. 66292/14)<sup>21</sup> brought by a judge in relation to his temporary suspension from his duties on account of his indictment for irregularities allegedly committed in the performance of his former duties. The Court found, inter alia, that the proceedings for suspension of the applicant were marked by the absence of procedural safeguards and proper reasoning for the SJC's decision, an inadequate review carried out by the Supreme Administrative Court, and the absence of a judicial review of his indictment. While none of this alone amounts to a violation of Article 6 of the ECtHR, the cumulative effect of these issues amounts to a violation of Article 6, in particular the insufficient scope of the Supreme Administrative Court's review of the SJC's decision regarding its purpose and the arguments raised by the applicant.

### **Other**

In September 2023, the EU Commission formally closed the Cooperation and Verification Mechanism (CVM) for Bulgaria and Romania.<sup>22</sup> According to the Commission's announcement, for both Member States the Commission concluded that they had satisfactorily met their obligations set out under the CVM at the time of accession to the Union. The still-needed progress will continue to be nurtured under the Commission's annual Rule of Law Report. Despite formal improvements

achieved in recent years, closing the CVM for Bulgaria amid reforms rather than after concrete results is unfortunate, and will loosen the pressure on the various national actors to advance the needed changes. A case could be made that the CVM has been mismanaged by the European Commission, which has ignored Bulgaria's persistent rule of law challenges and backsliding. The lack of effective sanctions and enforcement mechanisms for the CVM worsened this. A more robust and comprehensive approach is needed to safeguard the rule of law in Bulgaria and the EU.<sup>23</sup>

21 <https://hudoc.echr.coe.int/?i=001-228013>

22 [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_23\\_4456](https://ec.europa.eu/commission/presscorner/detail/en/ip_23_4456)

23 <https://verfassungsblog.de/bulgarias-mafia-state-and-the-failure-of-cvm/>

## Checks and balances

### Key recommendations

- *Maintain broad dialogue with civil society on all draft laws.*
- *Review and fortify the legal framework to ensure that authorities enforce judicial decisions of administrative courts.*
- *Amend the constitution and legislation to address the voting rights of prisoners and persons under guardianship, and to allow the use of minority languages for voter communication during elections.*

### Process for preparing and enacting laws

#### **Framework, policy and use of impact assessments, stakeholders/public consultations (particularly consultation of judiciary on judicial reforms), and transparency and quality of the legislative process**

The evaluation of the process of public consultations and the transparency and quality of the legislative system, as it operated in 2023, yields ambivalent results. Though there were some areas where there was improvement in transparency and the extent of public consultation, such as amendments to the Penal Code on hate crimes and amendments to the Law on Protection of Domestic Violence, the situation worsened in the realm of judicial reforms. A significant number of amendments made during the year, both to the Constitution and to the JSA, were enacted hastily and chaotically, with

a noticeable amount of non-public negotiation between political entities. The political parties announced the initial draft law on the constitutional amendments, which was a starting point set by them with no preliminary discussions with civil society.

During the public consultations, various civil society organisations presented their position statements on the proposed JSA bill. The Bulgarian Helsinki Committee noted that the amendments, which are not solely aimed at judicial reforms, offer a chance to tackle other problems within the constitution and bring to a close the implementation of certain judgments of the ECtHR. By the end of 2023 Bulgaria had 175 ECtHR judgments with pending implementation. Of those, 92 are leading and 83 repetitive.<sup>24</sup>

More specifically, human rights defenders suggested the introduction of a general ban

24 <https://www.coe.int/en/web/execution/bulgaria>

on discrimination in the constitution and the expansion of protected grounds to encompass all those listed in the EU's Charter of Fundamental Rights. They also proposed the inclusion of a provision on fair trials, the introduction of limitations on state interference in private life and home, and the removal of articles that restrict the voting rights of individuals under guardianship and prisoners.<sup>25</sup> However, none of these proposals were discussed.

### ***Independent authorities***

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The situation with state bodies, and their parliament-appointed members whose terms of office have expired but who remain in their position until they are replaced, remains. As of January 2024, the number of such positions in various bodies is 80.<sup>26</sup> Among them are two seats in the Constitutional Court, the new anti-corruption commission, eleven members in the SJC, five members of the Data Protection Commission, five members of the Commission for Protection from Discrimination (national equality body), five members of the National Bureau for Control over Special Surveillance Means, and others. This issue, which undermines the principle of terms of office and peaceful transition of power, was caused by power struggles between the three unofficially ruling parties, none of whom

has the necessary majority in Parliament. In December, they announced that they would develop a mechanism for decision-making on appointments.<sup>27</sup> In January 2024, the procedure for electing two members from the Parliament's quota in the Constitutional Court started. The rules for electing the members were published in a secluded section of the Parliament's website on 8 December, and a vote took place on 12 December 2023.<sup>28</sup> This was rapidly followed by the public announcement of three nominations for constitutional judges, two of which are active MPs, well-known to be staunch defenders of their party lines. The candidates' hearing was held on 18 January 2024,<sup>29</sup> and nominations were voted upon on the next day.

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

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#### ***Transparency of administrative decisions and sanctions (including their publication and the availability and publicity of data concerning administrative decisions)***

Bulgarian law does not stipulate sanctions for breaches of the provisions on the availability and disclosure of data related to administrative decisions. This became evident during a campaign to evict Roma people from their only

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25 [https://www.parliament.bg/pub/cW/20231005134204\\_20230921135127\\_PG-49-316-00-3.20.9.23%20-%20Copy.pdf](https://www.parliament.bg/pub/cW/20231005134204_20230921135127_PG-49-316-00-3.20.9.23%20-%20Copy.pdf)

26 <https://www.dnevnik.bg/4566571>

27 <https://www.dnevnik.bg/4560680>

28 [https://www.parliament.bg/bg/ns\\_acts/ID/165262](https://www.parliament.bg/bg/ns_acts/ID/165262)

29 <https://www.parliament.bg/bg/theme-site/ID/65>

homes in the Orlandovtsy precinct of Sofia in 2023.<sup>30</sup> Municipal authorities are obliged to publish their acts when evicting people from municipal land and removing illegal constructions, but there are no sanctions in the law if these administrative acts are not published. Failure to publish the acts prevents timely appeals before expiry of the deadline. The events in Orlandovtsy are a striking example of administrative harassment where due to individual delinquent behaviour—as admitted in an official document issued by the borough’s mayor—the entire Roma community is subjected to collective punishment in a manner like the one found contrary to the European Convention on Human Rights (ECHR) in the case of *Pakotova and Others v. Bulgaria* (Nos. 17808/19 and 36972/19, 4 January 2023).

### **Implementation by the public administration and State institutions of final court decisions**

There is a tendency for a certain category of judicial decisions of administrative courts to be ignored and remain unimplemented. An example from last year is court decisions annulling unlawful refusals to issue identity cards, as well as court decisions annulling unlawful refusals of access to public information. Such acts can remain unfulfilled for months and years, and possibly forever. The administrative head of the

competent court refused to impose a fine, and the prosecutor’s office refused to investigate the case, arguing that this particular category of acts is not enforceable.

## **Electoral framework**

### ***Limitations on the right to vote***

While the legal framework for elections in Bulgaria provides an overall adequate foundation for fairness, it contains important deficiencies in violation of international standards. Article 42 § 1 of the Constitution provides for a blanket disenfranchisement of prisoners and persons under guardianship. The ECtHR so far has condemned Bulgaria four times for violations of Article 3 of Protocol No. 1 of the ECHR - three times over the rights of the prisoners to vote and once over the right to vote of a person under guardianship.<sup>31</sup> These cases have been under the enhanced supervision procedure by the Committee of Ministers of the Council of Europe since 2016.<sup>32</sup> Unfortunately, Article 42 § 1 of the Constitution was not amended with the amendments of the Constitution adopted by the Parliament in December 2023. Thus, at present, the prisoners and the persons under guardianship continue to be subject to blanket disenfranchisement.

30 Events are now subject to the case *Aleksieva and Others v. Bulgaria* (No. 30915/23) before the ECtHR.

31 ECtHR, *Kulinski and Sabev v. Bulgaria*, No. 63849/09, 21 July 2016; ECtHR, *Dimov and Others v. Bulgaria*, Nos. 45660/17 and 13 others, 8 June 2021; ECtHR, *Anatoliy Marinov v. Bulgaria*, No. 26081/17, 15 February 2022; ECtHR, *Tingarov and Others v. Bulgaria*, No. 42286/21, 10 October 2023.

32 Latest decision delivered in March 2023: [https://search.coe.int/cm/pages/result\\_details.aspx?objec-tid=0900001680aa6d0a](https://search.coe.int/cm/pages/result_details.aspx?objec-tid=0900001680aa6d0a)

Article 65 § 1 of the Constitution imposed a restriction on the right to stand in parliamentary elections for those holding dual citizenship. This has, for many years, been a concern for the OSCE.<sup>33</sup> With the December 2023 constitutional reform, that provision was amended. Only those dual citizens who had lived in Bulgaria 18 months before the elections are eligible.

Article 181 § 2 of the Election Code prohibits campaigning in languages other than

Bulgarian. This limits the possibility of some ethnic minorities to effectively participate in the elections in their mother tongue. In May 2023, the ECtHR found a violation of Article 10 of the ECHR in the case of *Mestan v. Bulgaria*, in which the applicant, a leader of a minority political party, was fined for speaking Turkish during the 2013 election campaign.<sup>34</sup> The provision of Article 181 § 2 of the Election Code has not been amended since then.

## Civic space

### Key recommendations

- *The authorities should enhance the training provided to police officers to better handle protests involving vulnerable minorities.*
- *Training should be conducted for the employees of the Registration Agency to ensure they can effectively implement the decisions of the ECtHR, particularly in cases involving Macedonian organisations.*
- *The prosecutor's office should thoroughly analyse the data related to the obstruction of peaceful LGBTI community meetings. They must also ensure that the perpetrators have been identified and held accountable.*

## Freedom of association

### Formation, establishment and registration of associations, including rules on membership

The registration of Macedonian associations in Bulgaria remains the main issue concerning freedom of association in the country in 2023. Throughout the year, the Registry Agency (RA) has issued several discriminatory and

33 OSCE. *Bulgaria: Early Parliamentary Elections, 2 April 2023*, Warsaw, 27 July 2023, p. 5.

34 ECtHR, *Mestan v. Bulgaria*, No. 24108/15, 2 May 2023.

arbitrary refusals for registration, which were upheld by the courts. These refusals were primarily because the applicants claimed the existence of an ethnic group that the authorities do not recognize in Bulgaria. According to the authorities, the activities of these associations would contradict the constitution and the unity of the nation. In some cases, the courts rejected appeals against refusals for other formal reasons that are not required by law, such as the lack of mention in the registration documents of the exact time of the meeting of the founders.

No progress was made in implementing past ECtHR rulings in cases of refusal to register Macedonian associations.

In September, the Committee of Ministers of the Council of Europe examined the group of cases *OMO Ilinden and others against Bulgaria*, concerning refusals to register associations of Macedonians. The Committee expressed deep regret that more than 17 years after the first ECtHR decision of this group, associations aiming at “recognition of the Macedonian minority” in Bulgaria continue to be unregistered.<sup>35</sup>

At the beginning of February, several persons attacked the Macedonian Cultural Club in Blagoevgrad with stones and broke its windows. The perpetrators were identified and arrested. They were two municipal employees who, together with their wives, explained to the police that they threw stones at the windows of

the club as a sign of indignation at the attitude of the border authorities of the Republic of North Macedonia towards the Bulgarian citizens who went to Skopje to pay respect at the grave of Gotse Delchev, a revolutionary active at the turn of 20th century cherished in both Bulgaria and North Macedonia. The Prosecutor’s Office announced that the perpetrators will not be charged, but will be required to compensate the owner of the premises.<sup>36</sup> In June 2023, the owner of the premises terminated the lease, and the club was forced to close after only a few months of existence.<sup>37</sup>

### ***Involuntary dissolution***

In July, the Bulgarian Helsinki Committee initiated a petition endorsed by numerous esteemed representatives of civil society, media, and academia. The petition urged the Prosecutor’s Office to dissolve the ultra-nationalist/fascist populist party, Vazrajdane. This initiative was sparked by a series of events in the first half of 2023, where the party or its key members were implicated in at least two instances of obstructing peaceful assemblies. These included a protest against Russia’s aggression in Ukraine and the screening of an LGBTI-themed movie. The party was also involved in antisemitic speech online, such as failing to remove a Holocaust-related collage of a Jewish politician, and in Parliament, where a Jewish MP was labelled a ‘foreigner’, ‘traitor’, and ‘anti-human’. The party also failed to moderate antisemitic comments

35 <https://rm.coe.int/0900001680ac9a17>

36 <https://www.24chasa.bg/bulgaria/article/13733727>

37 <https://www.24chasa.bg/bulgaria/article/14371883>



on their Facebook posts. While the petitioners cited these recent events as grounds for action, they also provided the Prosecutor's Office with a comprehensive review of the party's publicly reported anti-democratic activities.<sup>38</sup> These included hate speech against minorities since 2015, attacks on the freedom of expression of journalists who challenge their positions since 2019, undermining anti-COVID-19 measures in 2020 and 2021, calls for their supporters to storm the Parliament in 2021, and systematic public endorsement of Russia's 2022 military aggression against Ukraine. The district's Prosecutor's Office can independently file for dissolution before the Civil Court, while the CP could file for dissolution before the Constitutional Court. In August, the Sofia District Prosecutor's Office rejected the request for action.<sup>39</sup> This decision is currently under appeal. The interim CP has yet to respond to the petition.

### ***Criminalisation of activities, including humanitarian or human rights work***

In 2023, the Prosecutor's Office initiated a preliminary inquiry against Sofia Pride, based on a request from a civil committee to hold a referendum to ban 'gender ideology' in schools. The inquiry was not a formal investigation, but the prosecutors gathered information from the pride organisers about the financing of an

outdoor advertising campaign. The campaign featured billboards showing photos of different families including same-sex couples, heterosexual couples, and single parents. The prosecutors were interested in knowing who funded the campaign and whether the 'fathers' of the children pictured on one of the billboards with their mothers had consented to the photos. The couple's children were conceived through in vitro procedures. The child protection authorities were tasked with inspecting the family's home to determine whether the children were being raised in a safe and healthy environment. The two mothers were also asked to provide documents on the legality of the in vitro procedures performed. However, the organisers of Sofia Pride did not receive any information about the completion of the inquiry until the end of the year. In August, one of them attempted to gain access to the file, but it was refused with the explanation that the inquiry had not been completed.<sup>40</sup>

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

#### ***Bans on protests***

In February, the annual Lukov March was prevented by the police.<sup>41</sup> This memorial march is in honour of Hristo Lukov, a general from the early 20th century. Lukov was known for his support of the Nazi regime and its model

38 <https://www.segabg.com/hot/category-bulgaria/prokuraturata-otkaza-da-iska-razpuskane-na-vuzrazhdane>

39 <https://www.segabg.com/hot/category-bulgaria/prokuraturata-otkaza-da-iska-razpuskane-na-vuzrazhdane>

40 <https://www.dnes.bg/obshtestvo/2023/08/10/prokuraturata-razsledva-signal-sreshtu-reklama-na-sofia-praid.579238>

41 <https://www.svobodnaevropa.bg/a/32288118.html>

of government during World War II. He led a scouting organisation modelled after the Hitler Youth and had personal contacts with Hermann Goering. Although every year requests are sent to the Sofia Municipality to ban the march, its organisers do not use any Nazi symbols and slogans and the court has repeatedly overturned the mayor's orders to ban the event. The event continues to be a draw for radicalised youth, organising torchlight processions and marching in antique military uniforms.

In October and November, the municipality banned several peaceful demonstrations. These were organised by citizens demanding an end to hostilities in Gaza and the admission of humanitarian aid.<sup>42</sup> The bans were based on assumptions about potential illegal actions by the participants. However, these assumptions were made without analysing the participants' previous actions or any related violations of public order, incitements to violence, or manifestations of hate speech and antisemitism. Some of these bans were upheld by the court, while others were overturned.

### **Other**

In June, the screening of the film 'Close' (2022, directed by Lukas Dhont) as part of the Sofia Pride Film Fest programme was disrupted by a crowd of protesters. The film narrates the story of two boys on the brink of puberty who face homophobic bullying at school. Despite the film not depicting any intimacy between

the protagonists or intergenerational sexual encounters, it was branded as 'paedophilic' and became the target of a smear campaign based on fake news, mobilising representatives of various ultranationalist groups. On the day of the screening, 10 June, these protesters entered the cinema lobby and surrounded the theatre with posters and chants against paedophilia. They expressed their intention to buy tickets and join the rest of the audience, a move to which the police did not object. Consequently, the organisers cancelled the screening. A similar protest occurred during a screening of the film in Plovdiv on 14 June. On 24 June, the ultranationalist/fascist Vazrajdane party organised a mass protest in the city of Varna.<sup>43</sup> Aggressive demonstrators chanted death threats against the spectators and the municipal councillors from the ruling progressive party who attended the screening. The police responded by confining the spectators inside the cinema building, barring them from exiting, while the aggressive mob blocked the exits. Despite the intensity of the situation, the police did not take action to disperse the crowd, and no arrests were reported.

## **Attacks and harassment**

### **Physical attacks on people and property**

In July 2023, the Sofia Appeals Court increased the severity of the sentence imposed on Boyan Stankov/Rasate, a presidential candidate and leader of an ultranationalist/fascist party. The

42 <https://www.mediapool.bg/stolichna-obshtina-zabrani-shestvie-v-podkrepa-na-palestina-news352260.html>

43 <https://www.svobodnaevropa.bg/a/varna-film-vazrazhdane-ataka/32473452.html>

first instance court's verdict in 2022 related to an incident on 30 October 2021, when Rasate and a group of nationalists invaded an LGBTI community centre in Sofia, ransacking the premises and assaulting an employee.

The first court recognised the act as motivated by homophobia and transphobia, which were not accounted for in the Criminal Code at the time. The court ruled that the assault on the employee was carried out with conditional

intent (*dolus eventualis*), leading to a conviction of 'hooliganism' under Article 325 § 1 of the Criminal Code.

However, the appeals court found that the attacker had also committed minor bodily harm with hooligan motives, a crime under Article 131 § 1.12. The decision was appealed to the Supreme Court of Cassation on points of law, but no judgement was delivered during the reporting period.

## **Disregard of human rights obligations and other systemic issues affecting the rule of law environment**

### **Key recommendations**

- *Take urgent measures to improve the situation of persons deprived of their liberty in psychiatric institutions and social care homes.*
- *Consider a mechanism for enhancing execution of international courts' judgments and introduce changes in legislation, if needed.*
- *Introduce legal framework on same-sex families and legal gender recognition.*

### **Systemic human rights violations**

#### **Widespread human rights violations and/or persistent protection failures**

In January 2023, the ECtHR delivered its judgement in the case of *Paketoova and Others*

*v. Bulgaria* (Nos. 17808/19 and 36972/19, 4 January 2023).<sup>44</sup> The case concerns authorities' omissions, resulting in ethnic Roma being driven away from their homes and the village they lived in after anti-Roma protests, fuelled by public statements of a cabinet minister. According to the Court's judgement, officials repeated public displays of non-acceptance

<sup>44</sup> <https://hudoc.echr.coe.int/?i=001-219776>

of the Roma and opposition towards their return, reinforcing the applicants' legitimate fear for their safety and representing a real obstacle to their peaceful return. The case is a vivid illustration of how evictions formally aimed at addressing the illegal construction of buildings (in this case, the victims' homes) are being weaponized by the authorities against marginalised Roma communities. Following the case of *Yordanova and Others v. Bulgaria* (see below), this case confirms that authorities' stance on the matter has not changed in over ten years and is systematic in nature. This was further proved by the events in Orlandovtsy.

In February, the Supreme Court of Cassation handed down a disgraceful decision to unify case law, finding that the legal framework in Bulgaria does not allow the change of gender data in civil registers due to the transsexuality of the person for whom the change is requested.<sup>45</sup> This decision comes as a follow-up to an earlier Constitutional Court decision to the same effect, according to which the concept of 'sex' in the Constitution is to be understood only as biological and binary. The possibility of legal gender recognition was thus theoretically completely foreclosed. The merits of the ruling make a severe retreat from respect for international law and recognition of the legal effect of the ECHR and European Union law. In practice, however, individual judges continued to disregard this binding decision, and in January 2024, a judge referred a preliminary ruling to

the European Court of Justice on legal gender recognition and freedom of movement within the Union.<sup>46</sup>

In July, the Parliament passed amendments to the Criminal Code.<sup>47</sup> Among other things, these amendments introduced sexual orientation as a basis for certain aggravated offences, but only when it served as the motivation for the perpetrator's actions. The list of aggravated offences based on race, ethnicity, or xenophobia was also expanded. This expansion was in response to an infringement procedure initiated by the European Commission regarding the transposition of the Council Framework Decision 2008/913/JHA. However, due to strong opposition from the fascist/populist party Vazrajdana, the Bulgarian Socialist Party (a PES member), and critical members of GERB (the largest party in the Parliament and an EPP member), the number of aggravated statutes (qualified version of criminal offences) based on race, ethnicity, or xenophobia exceeds those based on sexual orientation. For instance, statutes enhancing penalties for coercion (Article 143 § 3.2), threats of bodily injury or murder (Article 144 § 3.4), stalking (Article 144a § 3), and arson (Article 330 § 2.6), cover offences motivated by racism or xenophobia, but not those motivated by sexual orientation.

In early January 2024, the Supreme Administrative Court issued its final ruling, finding police officers guilty of using violence

45 <https://www.vks.bg/talkuvatelni-dela-osgk/vks-osgk-tdelo-2020-2-reshenie.pdf>

46 <https://app.lexebra.com/judgement-acts/6d186eb2-71a6-4b4e-8efd-43ac0572f2ac>

47 <https://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=198063>

against anti-government protesters during the mass demonstrations in 2020. The incidents of police brutality were captured on camera at the Council of Ministers building. The footage revealed a group of uniformed officers assaulting a non-resisting man, knocking him to the ground. In a separate incident, a young female protester was undressed by police officers. The ministry's representative in the case informed the court that the victim was "inappropriately attired" and had exhibited "disgraceful" behaviour.<sup>48</sup>

### **Follow-up to recommendations of international and regional human rights monitoring bodies**

In 2023, the Council of Europe Anti-torture Committee (CPT) visited Bulgaria once again to review the implementation of the long-standing CPT recommendations regarding the situation of persons deprived of their liberty in psychiatric institutions and social care homes. The problem found by the CPT in such establishments in Bulgaria during the 2017, 2020 and 2021 visits was highly concerning.<sup>49</sup> In November, the Parliament established an ad hoc parliamentary committee on the rights of psychiatric patients.<sup>50</sup> The committee held its first meeting in January 2024 and reviewed the findings of the Ombudswoman's

visit to psychiatric hospitals in three Bulgarian cities.<sup>51</sup> This parliamentary focus on the topic is undoubtedly welcome and a positive development. In the meantime, for the first time in nine years, the Bulgarian Helsinki Committee was again allowed to undertake monitoring visits in psychiatric hospitals as well, providing long overdue civil society oversight.<sup>52</sup>

### **Implementation of decisions by supranational courts, such as the Court of Justice of the EU and the European Court of Human Rights**

In March, the Supreme Administrative Court openly opposed the implementation of a ruling by the CJEU on a preliminary inquiry. This opposition pertains to national proceedings in which the CJEU issued its decision in the *V.M.A./Pancharevo* case (C-490/20), also known as the Baby Sara's case. According to its judgement, the CJEU established that a member state is obligated to issue an identity card or a passport to a child of a same-sex couple recognized by another member state. This should be done without requiring a birth certificate to be drawn up beforehand by its national authorities. The plaintiffs of the underlying case are two women - a Bulgarian citizen and a British woman born in Gibraltar. Their child was born in Spain but cannot obtain the

48 <https://www.mediapool.bg/bit-ot-politsiyata-zad-kolonite-na-ms-osadi-mvr-za-12-hil-lv-news354986.html>

49 <https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-cpt-carries-out-a-visit-to-bulgaria>

50 <https://bntnews.bg/news/s-ironiya-i-obidi-deputatite-sazdadoha-komisiya-za-pravata-na-psiichnol-nite-hora-1257051news.html>

51 <https://www.parliament.bg/bg/parliamentarycommittees/3247>

52 <https://www.bghelsinki.org/en/news/2024-01-17-BHK-dostyp-psihiatrichni-bolnici>

citizenship of his British mother due to the specifics of citizenship in an overseas territory. To prevent the child from remaining stateless, his mothers requested the issuance of a birth certificate from the municipality based on the address registration of the Bulgarian mother. However, the municipality refused to recognize the Spanish birth certificate, which lists two mothers. In the national proceedings, the court of first instance fully complied with the interpretation of the CJEU and even overruled the refusal of the mayor of Pancharevo borough to draw up the child's birth certificate. However, the Supreme Administrative Court, with its final decision, annulled the decision of the first instance court. It found that there is evidence in the case file suggesting that the Bulgarian citizen is not the biological mother of the child, even though no such document exists. The family has since applied to the European Court of Human Rights (ECtHR).<sup>53</sup>

In May, the ECtHR found with its decision in the case of *Koilova and Babulkova v. Bulgaria* (No. 40209/20), that Bulgaria has violated Article 8 of the ECHR as it has not provided a legal framework for the recognition of same-sex families. The decision entered into force, but before the end of the year the government did not take any action on the implementation.

Pursuant to the ECtHR's decision in the case of *Stoyanova v. Bulgaria* (No. 56070/18) in August, the Supreme Court of Cassation reopened the case for the homophobic murder of 25-year-old student Mihail Stoyanov in a

park in Sofia in 2008. In October, the court issued a new decision. On one of the main issues, key to the finding of a violation by the ECHR - that the last judicial instance did not take into account homophobic motivation as an aggravating circumstance, and the lower judicial instances took it into account, but did not discuss what weight they ascribed to that factor in their overall assessment of the mitigating and aggravating factors - the Supreme Court of Cassation did not succeed in correcting the shortcomings of the national proceedings so far. Indeed, the new decision draws attention to homophobic motives and states that they are aggravating, but nonetheless, it did not attach to that finding any tangible legal consequences.

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<sup>53</sup> The case has not yet been communicated.

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## **Contacts**

### ***Bulgarian Helsinki Committee***

The Bulgarian Helsinki Committee (BHC) is an independent non-governmental organisation for the protection of human rights, established in Sofia, Bulgaria in 1992.

The objectives of the BHC are to promote respect for the human rights of every individual; to stimulate legislative reform to bring Bulgarian legislation in line with international human rights standards; to trigger public debate on human rights issues; to carry out advocacy for the protection of human rights; and to popularise and make widely available human rights instruments.

ulitsa “Varbitsa” 7  
1504 Sofia  
Bulgaria  
[bhc@bghelsinki.org](mailto:bhc@bghelsinki.org)  
[www.bghelsinki.org](http://www.bghelsinki.org)

### ***The Civil Liberties Union for Europe***

The Civil Liberties Union for Europe (Liberties) is a non-governmental organisation promoting the civil liberties of everyone in the European Union. We are headquartered in Berlin and have a presence in Brussels. Liberties is built on a network of 19 national civil liberties NGOs from across the EU.

Ebertstraße 2. 4th floor  
10117 Berlin  
Germany  
[info@liberties.eu](mailto:info@liberties.eu)  
[www.liberties.eu](http://www.liberties.eu)



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