



OMBUDSMAN OF THE REPUBLIC OF BULGARIA

# **MONITORING THE EXECUTION OF THE ECtHR JUDGMENTS IN BULGARIA**

**STATE OF THE ART IN 2020**

# MONITORING THE EXECUTION OF ECtHR JUDGMENTS IN BULGARIA - 2020

As regards Bulgaria's progress in executing the judgments under the supervision of the Committee of Ministers in 2020, the following main conclusions can be reached:

First, over 27 years, from 1992 till 2019, the Committee of Ministers adopted only two interim resolutions against Bulgaria on the account of non-execution of ECtHR judgments. In the period from December 2019 to December 2020, **the Committee of Ministers adopted four interim resolutions against Bulgaria.** The four interim resolutions adopted for a relatively short period of time – one year – are yet another manifestation of the serious issues Bulgaria is currently experiencing with the rule of law. **An interim resolution is a measure of last resort of the Committee of Ministers taken in response to a serious delay or specific refusal of the State to execute a ECtHR judgment.** It is an expression of deep concern and a signal for the affected State about the lack of cooperation. The step which comes after a series of non-implemented interim resolutions is an infringement procedure. Bulgarian Helsinki Committee <https://www.bghelsinki.org/bg/news/20201204-press-interim-resolution-yordanova>



## The interim resolutions are:

- In December 2019 in the group of cases *S.Z. and Kolevi v. Bulgaria* concerning the impunity of the Prosecutor General and the inadequacy of criminal investigations.
- In October 2020 in the group of cases *UMO Ilinden and Others v. Bulgaria* concerning the systemic refusal of the Bulgarian authorities to register associations of Bulgarian nationals with a Macedonian self-awareness.
- In October 2020 in the group of cases *Velikova v. Bulgaria* concerning the failure to investigate cases of homicide and maltreatment of Bulgarian citizens by police officers.
- In December 2020 the Committee of Ministers of the Council of Europe adopted an interim resolution in the group of ECtHR sentences in *Yordanova and Others v. Bulgaria*. They concern actions of the authorities to remove the sole residences of Bulgarian nationals on the sole grounds that they are illegal.

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Despite the above positive trends, the execution of a large number of judgments is slow while Bulgaria continues to be on the list of the ten countries with the largest number of judgments under enhanced supervision by the Committee of Ministers. In 2020, Bulgaria reached sixth place among the Council of Europe Member States as regards the number of sentences of the ECtHR in Strasbourg. The ECtHR Annual Report shows that, in 2020, a total of 35 sentences were issued against Bulgaria finding at least one violation of the Human Rights Convention while their number in 2019 was 13 and in 2018 – 27. Ranked before Bulgaria by number of sentences are: Russia, Turkey, Ukraine, Romania and Azerbaijan but their population is much larger than ours. Our country used to be in top-ten by number of sentences for a long time but then dropped out of the ranking and it is now back to the negative top. At the same time, in the beginning of the week, the Parliamentary Assembly of the Council of Europe adopted a resolution listing Bulgaria among the ten countries with the largest number of non-executed ECtHR judgments which are still facing serious structural or complex problems, some for more than 10 years.

[https://echr.coe.int/Documents/Annual\\_report\\_2020\\_ENG.pdf](https://echr.coe.int/Documents/Annual_report_2020_ENG.pdf)



**In 2020, Bulgaria continued to be in the situation where the country is still sentenced in similar cases and going forward will pay great amounts of compensation while the citizens' rights are not effectively protected. This situation is unacceptable and decisive actions need to be taken to overcome it. As in previous years, the Ombudsman is committed to assist and provide support to the Minister of Justice through recommendations to the responsible institutions to take specific actions in relation to the sentences against Bulgaria.**

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## Main recommendations:

- Strengthen the coordination mechanisms among the institutions responsible for the execution of ECtHR sentences against Bulgaria. The lack of progress in this regard in 2020 has once again shown that general preventive measures need to be applied as taken by the State;
- The Ombudsman's monitoring in 2020 has shown once again that measures need to be taken to strengthen the role of the Ministry of Justice and the Procedural Representation of the Republic of Bulgaria before the ECtHR Directorate as regards the coordination of the process of aligning the national legislation and institutional practice to the ECtHR judgments;
- It is logical for the coordination of the execution process to continue to be provided by the Procedural Representation of the Republic of Bulgaria before the ECtHR Directorate but a new form for the coordination could be considered to make it much more effective and achieve actual progress. This is especially true for the cases where actions need to be taken by the executive and the cases where measures can only be implemented through a change in case-law or administrative practice or legislative amendment;
- This is why the Ombudsman proposes that an inter-institutional coordination council be set up involving representatives (experts) of all national institutions which need to be engaged directly in the process of coordination and monitoring of the implementation of the measures to execute ECtHR sentences;
- Such a mechanism could ensure the effective execution of the ECtHR judgments and productive cooperation of the authorities and institutions with competence in the area;
- Along with this, the council could significantly increase the awareness of the ECtHR case-law and the standards of observance of the fundamental human rights. This could actually result in a decrease in sentences under enhanced supervision by the Committee of Ministers for many years;
- The alignment of the national legislation and case-law to the ECHR and the ECtHR case-law will also ensure a more effective guarantee of the observance of the fundamental rights and freedoms of the Bulgarian citizens;
- It is appropriate for such an inter-institutional coordination mechanism to include mainly representatives of the executive;
- Yet, the mechanism would only be effective if its sessions are also attended by representatives of the judiciary and the legislature;
- It would be appropriate for the council to get together for periodic sessions (at least four sessions a year) so that its members could discuss the measures which need to be taken, commit to implement them, ensure coordination of the implementation in their institution and provide information about the progress;
- The coordination process needs to include the national Ombudsman in the role of public advocate who encourages the applications of the conventions for the protection of the fundamental rights and freedoms of individuals as well as independent experts and representatives of non-governmental organisations.



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## Other recommendations:

Yet again the Ombudsman recalls that after the entry into force of the provision of Article 28, para 3 of the Statutory Instruments Act at the end of 2016, the National Mechanism for compliance review of statutory instruments with the ECHR needs to be applied both by the executive and the legislature. A practice where the bills put forward by Members of Parliament are not checked for compliance with the ECHR and the ECtHR case-law could lead to a violation of the international standards of observance of human rights and new convictions of Bulgaria in Strasbourg.

In this sense, it is appropriate to consider legislative amendments providing for a preliminary assessment of the bills proposed by Members of Parliament for compliance with the ECHR when they concern the citizens' fundamental rights and freedoms. Next, a general finding should be made that Bulgaria is lagging behind in the process of joining international legal acts making it possible for citizens to lodge complaints before supranational (convention) authorities if their rights are breached.

In 2020 Bulgaria yet again failed to take any steps to join the Optional Protocol to the Convention on the Rights of Persons with Disabilities and the Third Optional Protocol to the Convention on the Rights of the Child. Along with this, Bulgaria has not yet ratified Protocol 16 to the ECHR which ensures a possibility for a cooperation mechanism between the national court and the ECtHR similar to the requests for preliminary rulings to the Court of Justice of the European Union. This mechanism will significantly facilitate the alignment of the case-law of the Bulgarian court to that of the ECtHR and will contribute to ensuring fewer conviction. The new ECtHR judgments against Bulgaria in 2020 totalled 36.



- **Signing and ratification of Protocol No. 16 to the ECHR by Bulgaria**

There has been no progress in relation to the signing of Protocol No. 16 to the ECHR by Bulgaria. The Ombudsman will continue to monitor the process and insist on its ratification in 2021.



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The 2020 Annual Report of the Ombudsman lists the recommendations in relation to:

- Deficiencies in investigations in cases of death or inhuman treatment. Violations of the right to life and the prohibition of torture, inhuman and degrading treatment (Article 2 and Article 3 of the Convention);
- Prohibition of torture (Article 3). Over crowdedness and poor conditions in places for deprivation of liberty and remedies them (Article 3);
- Placement in centres for minors and underage persons (Article 5);
- Violations of the right to a fair trial (Article 6);
- Right to respect for private and family life (Article 8);
- Freedom of thought, conscience and religion (Article 9);
- Restitution and other matters of possession (Article 1 of Protocol No. 1);
- Problems related to the citizens' election rights;
- Signing and ratification of Protocol No. 16 to the ECHR by Bulgaria.

A repeated case under enhanced supervision was completed in 2020 – 59273/10 *Petkov and Parnarov v. Bulgaria*.

