



OMBUDSMAN OF THE REPUBLIC OF BULGARIA

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

**STATE OF THE ART IN 2021**

# MONITORING THE EXECUTION OF ECtHR JUDGMENTS IN BULGARIA - 2021

*As regards Bulgaria's progress in executing the judgments under the supervision of the Committee of Ministers in 2021, the following main conclusions can be drawn:*

First, the total number of judgments to be implemented and monitored by the Committee of Ministers has decreased significantly. Statistics show that as of 31 December 2021 the total number of ECtHR judgments in the implementation phase is 173. Most of these, i.e. 89 cases are leading, and the remaining 84 are recurring. During the year, only 6 cases and 32 recurring cases were closed for review. Thus, during the year the number of unfulfilled judgments against Bulgaria in monitored cases increased both in terms of leading and recurring cases. The number of unfulfilled ECtHR judgments is 165 at 31 December 2020, and 170 and 208 at 31 December 2019 and 31 December 2018, respectively.

Second, 45 new convictions were monitored by the Committee of Ministers in 2021, significantly higher than the number of decisions in 2020, when they were 32. The number in 2020 is similar to the number of monitored judgments in 2018 (36) and much lower than the number of monitored judgments in 2019 (18).

In 2021, the total number of closed cases with a final resolution was 38, compared to 37 closed cases in 2020. It is noteworthy that the number of closed cases in 2021 and 2020 is significantly less than the cases closed in 2019 (56).

1. Current data as of 31 December 2021, source Country Factsheet <https://rm.coe.int/1680709740> <https://www.coe.int/en/web/execution/bulgaria>

Third, regarding the compensations paid by Bulgaria in 2021, our country paid EUR 381,596 in compensations. In 2020, their total value is EUR 320,393, which is less than the compensations paid in 2019 of EUR 421,823. However, Bulgaria's progress remains extremely unsatisfactory compared to the progress of other countries in the region, e.g. the amount of due compensations paid by Northern Macedonia in 2021 is EUR 143,350.

Fourth, as of 31 December 2021 the total number of judgments under enhanced supervision by the Committee of Ministers was 62 cases. By comparison, as of 31 December 2020, a total of 48 judgments were under enhanced supervision by the Committee of Ministers, and in 2019 there were 41 judgments under enhanced supervision by the Committee of Ministers. The overall trend of closing the supervision in sentences in the two supervision procedures (standard and enhanced) continued. 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.



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In 2021, Bulgaria reached the 7th 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 2021 a total of 37 sentences were issued against Bulgaria finding at least one violation of the Human Rights Convention, while their number in 2020 was 35, in 2019 was 13, and in 2018 was 27.

At the same time, 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.

In 2021, the conclusions made in the previous years are still valid:

- a significant number of judgments remain under enhanced supervision for a decade;
- there is also a steady tendency of convictions, which are still under enhanced supervision and unfortunately concern a large number of ECHR texts, which requires a large number of complex measures to be taken;
- the number of leading judgments on which the general recommendations of the ECtHR have been implemented is still incomparably smaller than those on which no satisfactory progress has been made;
- Bulgaria continues to pay extremely high compensations for violated rights. Although actions for implementation have been taken on almost all convictions in the years since they were issued, they are still not enough to close the monitoring, despite the efforts of various institutions and working groups. For this reason the recommendations of the Committee of Ministers on the implementation of such judgments has hardly changed.

In 2021, Bulgaria continued to be in a situation of being 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 be taken to overcome it. As in previous years, the Ombudsman is committed to assisting and providing support to the Minister of Justice through recommendations to the responsible institutions to take specific actions in relation to the sentences against Bulgaria.



- **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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## Key ECtHR judgments in 2021

In 2021, three judgments of the ECtHR against Bulgaria became “key cases”, unlike 2020 when there was no key judgment against Bulgaria based on the official report of ECtHR and in 2019 there was no such case, either.

At the end of June 2021, the Bureau of the ECtHR defined as “key cases” three judgments of the Court against Bulgaria in 2021. Among them are the two judgments in the *Budinova and Chaprazov v. Bulgaria* and *Behar and Gutman v. Bulgaria* cases. The complainants were supported by BHC.

**Both cases concern the Bulgarian state’s refusal to protect Roma and Jewish people from impersonal hate speech** circulated in numerous racist and anti-Semitic publications and public statements by Volen Siderov. The third case is before the Grand Chamber of the Court and concerns the non-investigation of allegations of sexual abuse of a child by a Bulgarian social institution, who was subsequently adopted in Italy.

The judgments in the *Budinova and Chaprazov v. Bulgaria* and *Behar and Gutman v. Bulgaria* cases are the first and so far the only ones in the practice of the ECtHR, which establish a positive obligation of **the state to sanction speech that incites ethnic hatred against groups of the population, but which is not uttered in the presence of the victims and is not a direct incitement to violence**. In these cases the Court found violations of Article 14 (protection against discrimination) and Article 8 (right to privacy) of the ECHR.

Clarifying the ECtHR’s case-law in hate speech cases provides an important means of protecting members of various vulnerable communities in Europe from discriminatory attacks against their privacy. The significance of these cases is especially great for Bulgaria, where many of them are targets of racist, anti-Semitic, homophobic, Islamophobic and other incitements.

[https://www.echr.coe.int/Documents/Cases\\_list\\_2021\\_ENG.pdf](https://www.echr.coe.int/Documents/Cases_list_2021_ENG.pdf)



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Other issues, for which the ECtHR case-law is still pointing deficiencies in Bulgarian legislative framework and practices for its implementation are:

- the defects of the ongoing investigations into death cases and inhuman treatment. Violations of the right to life and the prohibition of torture, inhuman and degrading treatment (Articles 2 and 3 of the Convention);
- the prohibition of torture (Article 3); Overcrowding and poor conditions in places of detention and the means of protection against them (Article 3);
- placements in centres for minors and underage persons (Article 5);
- violations of the right to fair trial (Article 6);
- the right to respect for personal and family life (Article 8);
- the freedom of thought, conscience and religion (Article 9);
- restitution and other matters of possession (Article 1 of Protocol 1);
- problems related to the right to suffrage;
- signing and ratification of Protocol 16 to the ECHR by 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.

