

The situation of Democracy, the Rule of Law and Fundamental Rights in Bulgaria

LIBE mission to BULGARIA
23-24 September 2021



Policy Department for Citizens' Rights and Constitutional Affairs
Directorate-General for Internal Policies
PE 698.320 - September 2021

EN

The situation of Democracy, the Rule of Law and Fundamental Rights in Bulgaria

LIBE mission to BULGARIA
23-24 September 2021

Abstract

This In-Depth Analysis, written by the Policy Department for Citizens' Rights and Constitutional Affairs at the request of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs, examines the situation of Democracy, the Rule of Law and Fundamental Rights in Bulgaria and how Article 2 TEU values are respected and implemented in the country.

This document was requested by the European Parliament's Committee on Civil Liberties, Justice and Home Affairs.

AUTHOR and ADMINISTRATOR RESPONSIBLE

Ottavio MARZOCCHI

EDITORIAL ASSISTANT

Sybille PECSTEEN de BUYTSWERVE

LINGUISTIC VERSIONS

Original: EN

ABOUT THE EDITOR

Policy departments provide in-house and external expertise to support EP committees and other parliamentary bodies in shaping legislation and exercising democratic scrutiny over EU internal policies.

To contact the Policy Department or to subscribe for updates, please write to:

Policy Department for Citizens' Rights and Constitutional Affairs

European Parliament

B-1047 Brussels

Email: poldep-citizens@europarl.europa.eu

Manuscript completed in September 2021

© European Union, 2021

This document is available on the internet at:

<http://www.europarl.europa.eu/supporting-analyses>

DISCLAIMER AND COPYRIGHT

The opinions expressed in this document are the sole responsibility of the authors and do not necessarily represent the official position of the European Parliament.

Reproduction and translation for non-commercial purposes are authorised, provided the source is acknowledged and the European Parliament is given prior notice and sent a copy.

CONTENTS

LIST OF ABBREVIATIONS	4
1. INTRODUCTION AND BACKGROUND INFORMATION	5
1.1. Cooperation and verification mechanism	7
1.2. European Parliament follow-up of the situation in Bulgaria	8
1.3. The Commission Rule of Law reports on Bulgaria	9
2. JUSTICE	11
2.1. The Prosecutor General	11
2.2. The Supreme Judicial Council	12
2.3. Promotions	13
2.4. Issues related to quality and efficiency	13
3. ANTI-CORRUPTION FRAMEWORK	14
4. FREEDOM OF EXPRESSION AND INFORMATION, MEDIA FREEDOM AND PLURALISM	17
5. CHECKS AND BALANCES	19
6. EQUALITY	20
6.1. Minorities and hate speech	20
6.2. Racism	21
6.3. Roma	21
6.4. Women's rights	22
6.5. LGBTIQ	23
6.6. Anti-semitism	24
7. COVID-19 MEASURES	25
8. OTHER ISSUES	26
8.1. Police disproportionate use of force	26
8.2. Prisons	26
8.3. Asylum and migration	26
8.4. Golden passports	26

LIST OF ABBREVIATIONS

CoE	Council of Europe
DRFMG	Monitoring Group on Democracy, Rule of Law and Fundamental Rights
EP	European Parliament
EPPO	European Public Prosecutor
LIBE	Committee on Civil Liberties, Justice and Home Affairs
OLAF	European Anti-Fraud Office
OSCE	Organization for Security and Co-operation in Europe
RoL	Rule of Law

1. INTRODUCTION AND BACKGROUND INFORMATION

The Republic of Bulgaria became a Member State of the EU on 1 January 2007 and is a representative democratic republic.

The **President of the Republic** is elected directly by the people and is currently Rumen Radev. He was elected on 13 November 2016 (running as independent, with the support of the Bulgarian Socialist Party) for 5 years: his mandate is consequently expiring and elections will take place on 14 November. The term can be renewed once only and Radev will run for the post again.

The **Constitutional Court** is in charge of constitutional review of laws. The current chairman is Boris Velchev.

The parliament, the **National Assembly**, is unicameral and holds the legislative power. It consists of 240 deputies elected for 4 years. Elections were held in 2021 on 4 April, on 11 July and new elections will take place on 14 November, due to the failure of parties to create a majority to form a government.

The **main political parties** are:

- GERB, Citizens for European Development of Bulgaria (affiliated to EPP): the ruling political party between 2009 and 2021, its chairman is Boyko Borisov, former Bulgarian Prime Minister.
- BSP, Bulgarian Socialist Party alliance (affiliated to SD): the current leader is Korneliya Ninova.
- The Movement for Rights and Freedoms (DPS, affiliated to Renew): current chairperson is Mustafa Karadayi.
- There Is Such a People (ITN), a new political party led by (singer, TV host and politician) Slavi Trifonov.
- Democratic Bulgaria (DB), an alliance formed in 2018 by the parties Yes, Bulgaria!, Democrats for a Strong Bulgaria and The Greens; the chairmen are Atanas Atanasov and Hristo Ivanov.
- Stand Up.BG! We are coming! (ISMV), an alliance recently formed and comprising Volt, the so-called "poisonous trio" and other anti-corruption movements, the leader is Maya Manolova.
- We Are Continuing the Change is a new party recently created by the former Interim government Ministers for Economy and Finance, Kiril Petkov and Assen Vassilev.

When looking at the **2017 and 2021 national legislative elections**, it can be noticed that voter turnout dramatically fell from 52 % in 2017 to 49 and 40% in 2021. GERB fell from 95 seats to 75 and now 65; the BSP alliance also fell, halving its MPs from 80 to 43 and currently 36; DPS remained stable, from 26 to 30 to 29; the new party ITN raised from 51 in April to 65 in July, becoming the first party in the country; the new party DB raised from 27 in April to 34 in July; the new party ISVM remained stable in 2021, between 14 and now 13 MPs.

The **government** is currently an interim government appointed by the President on 12 May 2021 following the April elections and the failure by parties to form a majority. The Prime Minister is Stefan Dinechev Yanev.

The **political situation** in Bulgaria is politically tense, with conflicts between institutions (notably between the former Prime Minister Borisov and the Prosecutor General Ivan Geshev versus the President of the Republic Radev and his interim government) and between (traditional, as well as new) political parties, currently unable to form a government notwithstanding repeated elections.

Growing distrust towards institutions and politics and the perception that the State is captured by oligarchs and that corruption and organised crime reign in the country led to popular discontent and massive **demonstrations** taking place from July 2020 on. People called for the resignation of Mr Borisov and of Mr Geshev and demonstrated against corruption and oligarchs, following a series of events among which: national security service guarding a beach and covering up its abusive occupation by one of the strongmen in Bulgarian politics connected to the DPS (7 July); the subsequent arrest of aides of the President of the Republic, ordered by the Prosecutor General (9 July); the refusal of the Prosecutor General to inquire on certain issues;¹ pictures allegedly taken by a drone (or a person) of Mr Borisov sleeping on a bed with a gun, money and gold; audio recordings reportedly of Mr Borisov threatening adversaries, demonstrators and also MEP Yoncheva; disproportionate use of force by the police against demonstrators and journalists.

The Prime Minister, after making a reshuffle of the government and proposing a constituent Grand Assembly to draft a new Constitution, a draft of which was tabled in Parliament, made some concessions before heading to the April 2021 elections.²

In the following months, more information emerged: in May it became apparent that the Bulgarian security services were suspected of having wiretapped at least 32 politicians of the opposition before parliamentary elections in April;³ this was confirmed by caretaker Interior Minister Boyko Rashkov; on 1st of June, Bulgaria's special prosecution raided the interior ministry office and charged the person leading the wiretapping probe with illegal use of special intelligence tools and money laundering;⁴ on 2 June 2021 the United States imposed sanctions under the Magnitsky Act on three Bulgarians (including a former MP) and 64 companies linked to them over alleged corruption, including an oligarch accused of planning to create a conduit for Russian political leaders to influence the Bulgarian government;⁵ accusations of extortion and threats made by a landholder against the government of former Prime Minister Boyko Borisov; a state-owned bank providing hundreds of millions of euros to favored companies.⁶ Accusations of being "the long arm of the Kremlin" or the "servants of the US" were made in relation to the dismissal of the heads of the State Intelligence Agency, the State Agency for National Security and other senior positions at the Ministry of the Interior.⁷ In July, the caretaker

¹ see <https://www.politico.eu/article/bulgaria-lurches-into-political-crisis-over-its-murky-deep-state/>

² The OSCE International Election Observation Mission stated that in the April election, fundamental freedoms were respected, however massive use of state resources gave the ruling party "a significant advantage", see https://www.osce.org/files/f/documents/8/2/482801_0.pdf

³ see https://www.euractiv.com/section/politics/short_news/bulgarian-secret-services-suspected-of-eavesdropping-opposition-politicians/ and <https://www.politico.eu/article/bulgaria-how-it-became-mafia-state-of-eu/> discussing also misuse of EU funds.

⁴ <https://www.bne.eu/bulgarian-institutions-on-the-brink-of-war-after-raids-on-offices-of-key-interior-ministry-employees-212153/?source=bulgaria>

⁵ see <https://home.treasury.gov/news/press-releases/jy0208> and <https://www.reuters.com/world/us/us-blacklists-3-bulgarians-64-companies-over-corruption-2021-06-02/>; the government set up a commission to list all the entities and people connected with the sanctioned companies.

⁶ <https://www.politico.eu/article/bulgaria-sinks-under-pre-election-scandals-corruption-gerb-boyko-borisov/>

⁷ <https://www.eureporter.co/world/bulgaria/2021/06/17/the-caretaker-government-of-bulgarian-president-radev-dismissed-the-head-of-intelligence-he-saw-the-long-arm-of-the-kremlin-behind-his-removal/> ; Bulgaria appears to be a place where the US and Russia try to exert their influence, https://www.euractiv.com/section/politics/short_news/russia-defends-corruption-in-bulgaria-from-us-criticism/ and <https://www.theguardian.com/us-news/2021/jun/02/us-troops-accidentally-raid-sunflower-oil-factory-bulgaria>

government acted against Prosecutor General Ivan Geshev for the publication of telephone conversations by President Rumen Radev, with the aim of ousting him from the post.⁸

President Radev dissolved the 46th National Assembly and re-appointed Mr Yanev and the former Ministers (except three of them; Deputy Prime Minister for Public Order and Security and Minister of Interior Boiko Rashkov, and Justice Minister Yanaki Stoilov are reconfirmed) in a new **caretaker cabinet**,⁹ with elections taking place on 14 November, simultaneously with the first round of the presidential elections.

The political instability and lack of a government capable of making long-term reforms and plans is also at the basis of the fact that Bulgaria is one of the 2 remaining Member States that still have to table a national plan to access to the **EU Recovery and Resilience Facility funds**. The lack of action on the various fronts related to Rule of Law and fundamental rights also put Bulgaria at risk in relation to EU funds in general, both in relation to the **conditionality** regulation and the **enabling condition of compliance with the Charter of Fundamental Rights**.

1.1. Cooperation and verification mechanism

Since its entry in the EU, Bulgaria has been subject to the mechanism for cooperation and verification of progress (CVM) to address specific benchmarks in the areas of judicial reform and the fight against corruption and organised crime,¹⁰ and annual reports by the Commission were published between 2007 and 2019. The 2017 January evaluation report set out 17 recommendations, which once fulfilled in an irreversible way and without that developments reversing the course of progress, would end the CVM process. The latest Commission report published **on 22 October 2019** on progress in Bulgaria under the CVM¹¹ stated that *“The Commission considers that the progress made by Bulgaria under the CVM is sufficient to meet Bulgaria’s commitments made at the time of its accession to the EU”*. The Commission also underlined that *“Bulgaria will need to continue working consistently on translating the commitments specified in this report into concrete legislation and on continued implementation. The monitoring of the continued implementation of the reforms put in place by Bulgaria will need to be ensured by the post-monitoring council, and that will feed into the future dialogue with the Commission in the framework of the comprehensive rule of law mechanism. Before taking a final decision, the Commission will also take duly into account the observations of the Council, as well as of the European Parliament”*.

However, in the European Semester Country Specific Recommendations on Bulgaria published on **20 May 2020**,¹² the Commission clarified in par. 31 that *“a solid track record of final convictions in high-level corruption cases is needed to build public trust. Furthermore, a number of challenges persist, in particular ensuring effective criminal investigations, rebalancing the workload among courts, and streamlining local prosecution service offices. These issues are the subject of monitoring under the cooperation and verification mechanism. Under this mechanism, the Commission continues to monitor judicial reform and the fight against corruption in Bulgaria.”*

⁸ https://www.euractiv.com/section/politics/short_news/bulgarias-chief-prosecutor-faces-the-heat/

⁹ list of Ministers at <https://www.novinite.com/articles/211226/New+Caretaker+Government+in+Bulgaria%3A+PM+and+Most+Ministers+Keep+their+Office>

¹⁰ Commission Decision of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Bulgaria (CVM) to address specific benchmarks in the areas of judicial reform and the fight against corruption and organised crime

¹¹ https://ec.europa.eu/info/sites/default/files/progress-report-bulgaria-2019-com-2019-498_en.pdf

¹² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0502>

On **10 September 2020**, the LIBE committee heard Vice-President Jourovà and doubts were expressed about the lifting of CVM for Bulgaria, notably on the basis of the last developments in the country. On **30 September 2020** when discussing the 2020 Rule of Law Commission report, which raised a series of concerns on various issues, Ms Jourovà clarified that *"There is still the CVM mechanism ongoing. As you know, there were plans to lift it, but there is still unfinished business, for the Bulgarian authorities, especially for the government, the reforms have to be finalised"*.¹³

A post-monitoring mechanism and council was supposed to be established to prepare the follow-up to the eventual termination of the CVM, but as the Commission notes in the 2021 report, its establishment is yet to be finalised as there was an issue with the Civil Council and NGOs.¹⁴

There is a serious risk that due to the current situation of political instability in the country and the lack of a stable government capable of making radical reforms, the perspective of lifting the CVM for Bulgaria will be further delayed.

1.2. European Parliament follow-up of the situation in Bulgaria

The **DRFMG** (then "Rule of Law Monitoring Group") held an exchange of views open to all LIBE members on **21 November 2018** dedicated to the "Safety of journalists in Bulgaria" following the murder of Bulgarian journalist Viktoria Marinova on 6 October 2018.

Following the wave of demonstrations in Bulgaria during the summer of 2020, DRFMG discussed the latest developments in Bulgaria in relation to Democracy, Rule of Law and Fundamental Rights in Bulgaria on **28 August 2020**. Following the meeting, DRFMG issued a statement - press release to counter the release of dismissive information concerning the issues discussed, notably by the Prosecutors' Office.¹⁵ It also sent Follow-up questions to the exchange of views on latest developments in Bulgaria.¹⁶ A summary of the meeting, participants, issues discussed, relevant documents and exchanges of letters is available in the Activity report of the Democracy, Rule of Law and Fundamental Rights Monitoring Group by DRFMG Sophie In't Veld.¹⁷

As recalled, the LIBE committee discussed the CVM and the situation in Bulgaria on **10 September 2020**.

The European Parliament subsequently held a debate on the rule of law and fundamental rights in Bulgaria on **5 October 2020**, followed by the adoption of a resolution on **8 October 2020** on the rule of law and fundamental rights in Bulgaria.¹⁸ The resolution regretted the "significant deterioration" of democracy, the rule of law and fundamental rights, including the independence of the judiciary, separation of powers, the fight against corruption and freedom of the media; it condemned police violence and excessive intervention, particularly in cases where the violence was used against women,

¹³ <https://www.euractiv.com/section/justice-homeaffairs/news/jourova-bulgarian-government-should-take-the-protests-very-seriously/>

¹⁴ see pg 17-18 of the Commission Rule of Law report 2021.

¹⁵ see <https://www.europarl.europa.eu/news/en/press-room/20200904IPR86417/bulgaria-statement-by-the-democracy-rule-of-law-and-fundamental-rights-group>

¹⁶ see <https://www.europarl.europa.eu/cmsdata/211284/DRFMG%20questions%20to%20Bulgarian%20authorities.pdf>

¹⁷ see https://www.europarl.europa.eu/cmsdata/236988/DRFMG%20report%20to%20LIBE%20Committee_16%20June%202021.pdf

¹⁸ https://www.europarl.europa.eu/doceo/document/TA-9-2020-0264_EN.html

children and journalists; it expressed the EP “solidarity with the people of Bulgaria in their legitimate demands and aspirations for justice, transparency, accountability and democracy”; and called Bulgaria to fully respect EU values.¹⁹

A new exchange of views on the situation of the rule of law in Bulgaria was held by the DRFMG on **8 January 2021**. Follow-up questions were sent and answers received from the Bulgarian authorities.²⁰ A summary of the meeting, participants, issues discussed and relevant documents and exchanges of letters is available in the Activity report of the Democracy, Rule of Law and Fundamental Rights Monitoring Group by DRFMG Chair Sophie In’t Veld.²¹

On **16 September 2021**, the European Parliament plenary discussed in the presence of the Commission an oral question tabled by the LIBE Committee and proposed by the DRFMG on the “United States sanctions and the rule of law”.²² During the debate, Commissioner Johansson underlined that the fight against corruption is a priority for the Commission, that it is a matter mainly in the hands of the Member States, of EPPO and OLAF, and that it monitors corruption through the annual rule of law reports. At the same time, it also expressed “strong concerns” on the US decision to impose sanctions having effects on EU Member States without prior consultation. During the debate, MEPs criticised the lack of action of the Commission, the fact that the CVM has clearly not worked notwithstanding the Commission’s affirmations that it could be lifted and the non-provision of technical assistance by the Commission, the politicisation of the debates on corruption.

1.3. The Commission Rule of Law reports on Bulgaria

The Commission 2021 Rule of Law report on the situation in the European Union²³ and its country chapter on Bulgaria²⁴ examines the situation and the progress achieved in addressing the concerns expressed by the Commission in the 2020 Rule of Law report²⁵ and in other documents (like the CVM reports).

The general report on the situation of the rule of law in the EU mentions Bulgaria repeatedly. It recalls that “in autumn 2020, the Presidency (of the Council) organised a two-step process, with a horizontal discussion on general rule of law developments as well as a separate country-specific discussion, looking first at five Member States, based on the Rule of Law Report”, including Bulgaria (pg 25).

In relation to justice systems, the report takes note of the fact that “a reform of the (Supreme Judicial) Council, which was part of a more comprehensive Constitutional reform, was not approved by the Parliament” (pg 6) and that “Challenges regarding judicial independence remain[...], the composition and functioning of the Supreme Judicial Council and of the Inspectorate to the Supreme Judicial Council continue to raise concerns. A new law aiming to address the long-standing issue of accountability and lack

¹⁹ see EP press release <https://www.europarl.europa.eu/news/en/pressroom/20201002IPR88445/bulgaria-meps-call-for-eu-values-to-be-fully-and-unconditionally-respected> and par. 1 of the resolution.

²⁰ <https://www.europarl.europa.eu/committees/en/libe-democracy-rule-of-law-and-fundament/product-details/20190103CDT02662>

²¹ see https://www.europarl.europa.eu/cmsdata/236988/DRFMG%20report%20to%20LIBE%20Committee_16%20June%202021.pdf

²² https://www.europarl.europa.eu/doceo/document/O-9-2021-000057_EN.html

²³ https://ec.europa.eu/info/sites/default/files/communication_2021_rule_of_law_report_en.pdf

²⁴ https://ec.europa.eu/info/sites/default/files/2021_rorl_country_chapter_bulgaria_en.pdf

²⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1602583951529&uri=CELEX%3A52020DC0580> and <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1602582109481&uri=CELEX%3A52020SC0301>

of effective criminal liability of the Prosecutor General was declared unconstitutional. The issue therefore remains unresolved, with implications for the influence of the post of Prosecutor General over the justice system.” (pg 9).

In relation to the framework against corruption, it is noted that *“Bulgaria, ... have revised existing strategies and accompanying action plans”* (pg 11) but also that *“despite increased investigative activity and reinforced resources, progress in high-profile cases of corruption remain slow and a solid track record of final convictions remains to be established”* (pg 13).

On media freedom, the report recalls that in Bulgaria *“...the political independence of the media is considered to be an area of high risk”* but it is also noted that the country has *“introduced new legislation which is expected to further strengthen the independence of their media regulators”* (pg 16). At the same time, the *“Lack of transparency of media ownership remains a source of concern ..., as data on media ownership is still not fully disclosed to the public”,* while *“the lack of regulatory safeguards for fair and transparent allocation of state advertising combines with concerns related to transparency in the allocation of public funding to media outlets”*. Also the *“political influence on the media continues to be an issue of concern, also due to the lack of rules preventing politicians and political parties from owning media outlets.”* (pg 17).

Concerning checks and balances, the report highlights that *“the practice of introducing important legislative amendments through amendments to other unrelated legal acts, which bypass public consultation and impact assessment requirements, continues to raise concerns.”* (pg 21).

2. JUSTICE

As demonstrated by the wave of protests, there is a worrying and deep distrust in the justice system in Bulgaria, as the latter is perceived as protecting and serving the interests of those holding the political and economic power. As noted by the Commission in its 2021 Rule of Law report, the level of perceived judicial independence in Bulgaria remains low among the general public and average among companies, and has decreased slightly compared to 2020. It also recalls that a number of concerns related to the justice system²⁶ have been expressed by the European Commission, the Venice Commission, the European Court of Human Rights, the European Parliament, as well as NGOs and citizens. These relate notably to the Prosecutor general, the Supreme Judicial Council and the system of promotions, illustrated below.²⁷ The fact that these issues remain unresolved, further exacerbate the situation and creates a vulnus for citizens' trust in the institutions.

2.1. The Prosecutor General

The Prosecutor's Office has a unified structure and is headed by the Prosecutor General, who has wide powers in the Bulgarian justice system. The current Prosecutor General is Ivan Stoimenov Geshev.

Concerns were expressed by the European Commission,²⁸ the European Court of Human Rights²⁹ and the Council of Europe³⁰ in relation to:

- the lack of a possibility for an effective criminal investigation concerning the Prosecutor General and his or her deputies,
- the absence of judicial review against a decision of a prosecutor not to open an investigation,
- the combination of the powers of the Prosecutor General together with his position in the Supreme Judicial Council, which results in a considerable influence within the Prosecutor's Office, potentially in the Supreme Judicial Council (both in the Prosecutorial Council and in the Plenary) and within the magistracy.

The **European Parliament** expressed deep concern in its October 2020 resolution on Bulgaria on *"the fact that some systemic issues in the judiciary system identified by the European Court of Human Rights and the Venice Commission remain unresolved, in particular as regards the provisions relating to the Supreme Judicial Council and the Prosecutor General, notably the absence of any effective mechanisms for accountability or functioning checks and balances on their work"*. Parliament insisted *"that the Bulgarian*

²⁶ for a description of the justice system, see CEPEJ (2020), Study on the functioning of the judicial systems in the EU Member States.

²⁷ Among the positive developments reported by the Commission, there are: the launch of an Action Plan to address certain challenges expressed in the 2020 Rule of Law Report, which covers also the justice area; the creation of working groups to develop possible reforms; the removal of the online register on magistrate's membership in professional organisations; the increase in the funds allocated to the justice system; the reform of the regime for law firms.

²⁸ Progress report Bulgaria 2019[COM(2019)498], p. 6, as well as in the RoL reports 2020 and 2021.

²⁹ ECtHR, judgment of 5 February 2010, Kolevi v. Bulgaria, paras. 121-127, 129, 135 and 136

³⁰ Council of Europe, Supervision of the execution of the European Court's judgments, Committee of Ministers Decision CM/Del/Dec(2021)1398/H46-6 of 11 March 2021 and CM/Notes/1398/H46-6 of 9-11 March ; Committee of Ministers Decision CM/Del/Dec(2020)1377bis/H46-9 of 1-3 September 2020 and CM/Notes/1377bis/H46-9 of 3 September 2020. See also Committee of Ministers (Interim Resolution CM/ResDH(2019)367 of 5 December 2019 and CM/Notes/1362/H46-6 of 3-5 December 2019; Venice Commission Opinion (CDL-AD(2019)031).

authorities fully comply with the case law of the European Court of Human Rights and the recommendations of the Venice Commission and GRECO pertaining to the judiciary, in particular as regards the Supreme Judicial Council and the status of the Prosecutor General, in order to ensure the independence of the judiciary; notes that the Commission report of 22 October 2019 on progress in Bulgaria under the CVM mentions that a broad debate has taken place in the media, with some stakeholders voicing concerns regarding the nomination procedure and main candidate for the Prosecutor General, and that street protests were organised by civil society organisations;" (par. 6).

On 29 January 2021, a law creating a "special prosecutor" charged with any investigation against a Prosecutor General and/or his or her deputies was approved by Parliament, however on 10 February 2021 it was brought before the Constitutional Court by the President of the Republic and was declared unconstitutional on 11 May 2021.

- **The issues raised related to the lack of appropriate mechanisms to ensure the accountability and criminal liability of the Prosecutor General remain in place.**

2.2. The Supreme Judicial Council

Concerns were expressed by the Commission (and the Council of Europe and the EP, see above par. 6 of the 2020 resolution) in its Rule of Law reports in relation to the composition and functioning of the Supreme Judicial Council, which shall be renewed in October 2022, and notably on:

- the fact that the overall number of judges elected by their peers in the Judicial Chamber does not amount to a majority,
- the decisive role of the Prosecutor General in the Prosecutors' chamber, the significant influence on the SJC Plenary and potentially also on the Judges' chamber, since lay members elected by Parliament to the Judges' chamber may also be prosecutors (and are currently, including investigating magistrates),
- the Inspector General and the 10 Inspectors of the Inspectorate to the Supreme Judicial Council (who are independent and elected by the National Assembly) continue their work despite their mandate ending in April 2020.

Supreme Judicial Council 25 Members Presided by the Minister of Justice		Concerns and issues highlighted by the Commission
Judicial Chamber	Prosecutorial Chamber	
14 members: 2 ex officio: Presidents of the Supreme Court Cassation and of the Supreme Administrative Court 6 elected by judges 6 elected by Parliament	11 members: Prosecutor General, ex officio 5 elected by Parliament 4 elected by prosecutors 1 elected by investigators	Judges Chamber: - the members elected by their peers are a minority - the members elected by Parliament can be prosecutors (and are currently, including investigating magistrates) The Prosecutor General plays a decisive role in the prosecutorial chamber, the SJC and in the magistracy

A working group established on a possible reform of the composition and functioning of the Inspectorate to the Supreme Judicial Council was established (a reform was proposed in the draft new Constitution but this was not adopted in the end).

- **The problems related to the Supreme Judicial Council are not resolved.**

2.3. Promotions

The Commission expressed concern on the promotion regime within the judiciary in relation to the fact that:

- appointments of judges to higher positions have not been carried out as per the ordinary procedure of open competition leading to the lack of regular merit-based promotions (for more than three years),
- a number of lay members of the SJC are promoted at the end of their mandate,
- there is an increasing number of secondments,
- there is a proposal to grant automatic promotion to district courts judges becoming parts of regional courts.

The Commission called also for a wide consultation of stakeholders and impact assessment of the ongoing reform of the judicial map. It also recalled the Council of Europe concerns related to the broad discretionary powers of the Courts Presidents for allocating additional remuneration of magistrates.

2.4. Issues related to quality and efficiency

In relation to quality, court fees were reduced for claims introduced online, but not in all other cases: the UN Committee on the Elimination of Discrimination against Women raised concerns in relation to limited access to justice by women and girls.

Digitalisation of justice is still lagging behind, despite legislative efforts.

The efficiency of the administrative justice system showed significant progress.

3. ANTI-CORRUPTION FRAMEWORK

Bulgaria had established a Commission for Counteracting Corruption and Illegal Assets Forfeiture (Anti-corruption Commission) in 2017-2018, which is responsible for preventive and the repressive actions regarding high-profile corruption (although the competence for cases was transferred to Specialised Criminal Courts and investigations under the supervision of the Specialised Prosecutor's Office). A 2021-2027 anti-corruption strategy was adopted in March 2021.

Bulgaria takes part in the **European Public Prosecutor's Office** (EPPO). A majority of the 10 required Bulgarian candidates for delegated prosecutors failed to meet the requirements set out in the EPPO Regulation and were rejected by EPPO.³¹ The Prosecutors' College of the Supreme Judicial Council finally appointed the six new delegated prosecutors only in September.

Notwithstanding these developments, the **scale of corruption in Bulgaria and its ramifications remain extremely worrying**: a recent report "Bulgarian Organised Crime Threat Assessment 2020" published by the Center for the Study of Democracy, fraud with EU funds is comparable to the largest markets for organised crime such as human trafficking, drug trafficking and illegal fuel trade. Abuses range from 5-15% of the funds, are committed by white-collars, notably in agriculture, and in other areas.³² Corruption weighs heavily on normal citizens of the poorest country of the EU, poisoning economy, institutions and society as a whole.

The **European Commission** underlines in the 2021 RoL report on Bulgaria that:

- the perception among experts and business executives is that the level of corruption in the public sector remains high (in the 2020 Corruption Perceptions Index by Transparency International Bulgaria scores 44/100 and ranks 19th in the European Union and 69th globally, remaining stable over the past five years),
- the Anti-corruption Commission reduced by 20% the number of performed inspections and reports received,
- "Results in final high-level corruption convictions remain low with no solid track-record of final convictions": the Commission recalls that OLAF recommended to recover EUR 6 million after alleged abuse of power at a Bulgarian ministry of Interior,³³

³¹ https://www.euractiv.com/section/politics/short_news/bulgaria-will-not-have-its-10-eu-delegated-prosecutors-in-time-for-launch/, https://www.euractiv.com/section/politics/short_news/eu-chief-prosecutor-says-6-missing-delegated-prosecutors-not-up-for-discussion/ and <https://www.novinite.com/articles/211188/Bulgaria%27s+Supreme+Judicial+Council+Approves+Six+European+Delegated+Prosecutors>

³² <https://www.novinite.com/articles/211225/EU+Funds+Fraud+in+Bulgaria+Committed+on+Massive+Scale;> see also the documentary "The Eight Dwarfs: A New ACF Investigation Tracks the Story of a Takeover of a Million-dollar Business", see <https://www.youtube.com/watch?v=BuldtVxkaY>; Interior minister Boyko Rashkov before the summer accused the prosecution of keeping secret a list of 38 magistrates and politicians who own undeclared property abroad.

³³ see https://ec.europa.eu/anti-fraud/media-corner/news/01-02-2021/olaf-recommends-recovery-nearly-eu6-million-after-alleged-abuse-power_en stating: "The Bulgarian Ministry of the Interior breached the terms of its grant agreement by using EU money to buy SUVs from older stocks instead of new all-terrain police cars, according to an investigation closed recently by OLAF, the European Anti-Fraud Office. OLAF has recommended the recovery of nearly €6 million in European funds and that criminal proceedings could be considered against officials of the Ministry".

In another case, OLAF investigated and discovered fraud in relation to €8 million allocated by the European Commission for a project to expose the ruins of the ancient city of Serdica, located in the centre of Sofia, as

- there is limited evidence as to the effectiveness of measures related to the integrity of the public administration.³⁴
- lobbying is not regulated
- there is no specific law on whistleblowing (but legal protections for witnesses are applicable)
- some measures were taken to counter risks of corruption when using urgent public procurement procedures during Covid emergency

The **European Parliament** 2020 resolution on Bulgaria stated that “in recent years, reports of the misuse of Union funds in Bulgaria have been proliferating and should be thoroughly investigated; whereas in recent months, Bulgarian citizens have witnessed a large number of high-level corruption allegations, some of which have directly involved the Prime Minister; whereas also in recent months, international media have repeatedly reported possible interconnections between criminal groups and public authorities in Bulgaria;” (par. L).

Parliament also noted that “serious concerns over the fight against corruption in Bulgaria persist; whereas this threatens to undermine citizens’ trust in public institutions;” (par. R) and expressed concern on the fact “that corruption, inefficiency, and a lack of accountability continue to be pervasive problems in the judiciary and that public trust in the judicial system remains low because of the perception that magistrates are susceptible to political pressure and render unequal justice; notes the increased number of investigations into high-level corruption, including cases with cross-border aspects, opened against high-ranking officials and persons of high public interest; notes with concern the discrepancies between the decisions of lower and upper instance courts, which also contribute to the lack of final and effective convictions; points out the necessity of conducting serious, independent and active investigations and achieving results in the areas of anti-corruption, organised crime and money laundering, and of thoroughly looking into the allegations of high-level corruption following the audio recordings that emerged in the summer of 2020 and in relation to the Apartment-gate and Guesthouse-gate scandals, the tanker affair, the Rosenets seaside estate case and the scandal surrounding the alleged illegal transfer of money from the Bulgarian Development Bank, all of which – taken together – suggest deep and systemic weaknesses in rule of law and anti-corruption measures in Bulgaria; expresses concern, moreover, at less high-profile examples of rule of law shortcomings in Bulgaria, such as the treatment of apartment owners at Sunset Resort, Pomorie;”. Parliament welcomed the establishment of the new unified anti-corruption agency and called “on the Bulgarian authorities to ensure that the agency is able to manage the broad remit of its responsibilities effectively, including the prevention, investigation and forfeiture of illegal assets;” (par. 7).

The EP also called the government and the Commission to “ensure stricter control on the way Union funds are spent and to immediately address concerns that taxpayers’ money is being used for the enrichment of circles associated with the ruling party;” (par. 23).

half of these funds were misused, see https://www.euractiv.com/section/politics/short_news/olaf-uncovers-fraud-in-ancient-city-under-sofia-project/

OLAF is investigating 29 cases of alleged misuse of European funds and corruption in Bulgaria, as stated at the EP CONT committee by an OLAF representative in July 2021, see <https://www.world-today-news.com/olaf-is-investigating-29-allegations-of-fraud-with-eu-funds-in-bulgaria-europe/>

³⁴ Among the positive developments: the streamlining of the organisational structure of the Anti-corruption Commission; the adoption of a new anti-corruption strategy; the launch of the Action Plan to follow-up the 2020 Rule of Law report; the creation of a working group for the reform of the Criminal Code; the verification system for asset declaration and conflict of interest;

It also called “on the Bulgarian authorities to investigate the revelations contained in the FinCEN files, which showed that three Bulgarian banks were involved in processing payments identified as being at high risk of money laundering and linked to financing of organised crime and terrorism; takes the view that Bulgaria needs to take decisive action to improve the supervision of the banking sector and step up anti-money laundering measures, including through strengthening the institutions investigating these issues; underlines that the FinCEN files revealed the deficiencies of the global system and its vulnerability to abuse by criminals and the corrupt, and highlighted the urgent need to improve banking supervision worldwide and to adopt better mechanisms to deal with cross-border transactions” (par. 26).

4. FREEDOM OF EXPRESSION AND INFORMATION, MEDIA FREEDOM AND PLURALISM

The situation of media freedom and pluralism is extremely problematic. Bulgaria ranks 112th out of 180 monitored countries (one place down compared to 2020) and is the worst placed EU Member State in the 2021 **World Press Freedom Index** of Reporters without Borders.

The **Media Pluralism Monitor** for Bulgaria assesses the risks to media pluralism at high risk for Market plurality (82% - high risk), Political independence (70% - high risk) and Social inclusiveness (79% - high risk), with Fundamental protection at medium risk (42% - medium risk).³⁵

The Radio and Television Act was amended to strengthen the independence of the media regulator and to implement the revised Audiovisual Media Services Directive.

The **Commission** RoL report 2021 expresses concern on:

- the budget of the Media regulator, which was increased and then cut again,
- the lack of transparency of media ownership, as data is still not fully disclosed to the public,
- a significant news media concentration during 2020,
- a lack of regulatory safeguards for fair and transparent allocation of State advertising and lack of transparency in the allocation of public funding to media outlets,
- the continued political interference in the media, lack of legislation preventing politicians and parties from owning media outlets (notably in the TV and newspaper sectors),
- a lack of measures supporting directly the media sector to counter the negative impact of the COVID-19 pandemic on media pluralism,
- the working environment and safety of journalists, as well as access to public information, remains difficult and journalists face political pressure and self-censorship, attacks, harassment (as registered on the Council of Europe Platform to promote the protection of journalism and safety of journalists)³⁶ and abusive lawsuits,
- one of the Platform alerts concerns the case of a journalist who was allegedly beaten by the police and detained for 24 hours, which the Prosecutor's office refused to investigate,³⁷

According to [Amnesty International's 2020/2021 Report on the State of the World's Human Rights](#) published in April 2021, media freedom has further deteriorated, as authorities targeted journalists and critics, and cracked down on anti-government protests.

³⁵ see https://cadmus.eui.eu/bitstream/handle/1814/71939/bulgaria_results_mpm_2021_cmpf.pdf?sequence=1&sAllowed=y

³⁶ <https://www.coe.int/en/web/media-freedom/bulgaria>: 21 active alerts, 4 resolved cases; in 2021 there are 6 alerts active and 1 resolved with a reply from Bulgaria. In 2020 there were 7 alerts and 3 resolved with a reply.

³⁷ see https://www.coe.int/en/web/mediafreedom/detailalert?p_p_id=sojdashboard_WAR_coesoiporlet&p_p_lifecycle=0&p_p_col_id=column3&p_p_col_pos=1&p_p_col_count=11&sojdashboard_WAR_coesoiporlet_alertPK=106244446&sojdashboard_WAR_coesoiporlet_displayLink=SojPortlet.getDashboardPortletId%28%29

Reporters Sans Frontières World Press Freedom Index states that Press freedom is “trapped” as “*The few outspoken journalists are constantly subjected not only to smear campaigns and harassment by the state, but also to intimidation and violence. The situation of the media is very worrying because no one is interested in investigating or condemning violence against journalists. The police beat freelancer Dimiter Kenarov when arresting him in September 2020. Masked men beat investigative reporter Slavi Angelov outside his home in March 2020. Another investigative reporter, Nikolay Staykov, received death threats in June 2020 after releasing a documentary about high-level judicial corruption. Journalists are often summoned and questioned by police about their work, while politicians and oligarchs maintain relations marked by corruption and conflicts of interest in the pro-government media. Delyan Peevski, the oligarch who was the most notorious embodiment of this aberrant state of affairs, has sold his media outlets but his influence over the media continues to be problematic. The government allocates EU and public funding to media outlets with a complete lack of transparency, with the effect of encouraging recipients to go easy on the government in their reporting. At the same time, judicial harassment of independent media, such as Bivol and the Economedia group, constantly poses a threat to press freedom. One of Economedia’s owners, Ivo Prokopiev, was finally acquitted in June 2020 on charges that seem to have been politically motivated.*”³⁸ RSF had proposed to the government a series of measures to improve the situation of media freedom and pluralism, but discussions on it were suspended, the Commission reports.

The **European Parliament** 2020 resolution on Bulgaria expressed “*deep concern at the serious deterioration of media freedom in Bulgaria over the past decade; calls on the Bulgarian authorities to foster a favourable environment for freedom of expression, in particular by increasing transparency of media ownership and preventing the excessive concentration of ownership of media and of distribution networks, including through the proper application of the existing legislative framework, as well as by repealing criminal provisions against defamation offences; underlines the need to make the composition and mandate of the Council for Electronic Media more independent and effective; is concerned about the reports of the continued practice of influencing the media through the preferential allocation of Union funds to government-friendly media*” (par. 8)

Concerning the protection of journalists, Parliament called on “*the Bulgarian authorities to ensure the protection of journalists at all times and thus safeguard their independence; strongly condemns the instances where government-critical journalists have become the target of smear campaigns and calls on the Bulgarian authorities to curtail these undemocratic practices; deplores incidents of violence against reporters and the destruction of their technical equipment; urges the Bulgarian authorities to launch a comprehensive investigation into all cases of violence against journalists covering the protests; calls on the Bulgarian authorities to ensure that police officers and other officials respect press freedom and allow journalists and media professionals to cover demonstrations safely; stresses that violence at the hands of state agents is contrary to the duty of the Member States to uphold press freedom and to protect the safety of journalists*” (par. 9).

Parliament then called on “*the Bulgarian authorities to fully and comprehensively address all alerts submitted on the Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists, and to fully adhere to the recommendations of the Council of Europe Commissioner for Human Rights, in order to ensure a safe environment for journalists in Bulgaria*” (par. 10).

The **Council of Europe Commissioner on Human rights** on 3 September 2020 called Bulgarian authorities to investigate police violence against journalists.³⁹

³⁸ <https://rsf.org/en/bulgaria>

³⁹ <https://www.coe.int/en/web/commissioner/-/bulgaria-must-investigate-police-violence-against-journalists>

5. CHECKS AND BALANCES

The 2021 **Commission** Rule of Law report highlights⁴⁰ concerns in relation to:

- the limited use of public consultation and impact assessment, especially for legislation proposed by Members of Parliament, which is on the rise,
- the practice of introducing important legislative amendments through amendments to other legal (often unrelated) acts (as noted also in the 2020 Rule of Law Report), as such amendments bypass the requirements for public consultation and impact assessment
- the legislative practice of adopting major amendments between the first and second reading in the National Assembly without public consultation,
- although the draft law on foreign funding of NGOs was not further pursued, civic space *“remains narrowed, and in some occasions, members of the civil society appear to be under pressure, through smear campaigns, intimidation and negative narrative. In November 2020, at the occasion of the Universal Periodic Review, Bulgaria received several recommendations related to the need to improve civic space and to address intimidation and threats”*.⁴¹

Also the European Parliament 2020 resolution on Bulgaria stated that the EP *“Is deeply convinced that the Bulgarian Parliament should play a pivotal role in ensuring accountability of the executive and is one of the necessary checks and balances to uphold the rule of law; is concerned by the governing majority’s practice of hastily passing legislation, often without proper debate or stakeholder consultation; takes notes of the very low level of public trust in the Bulgarian Parliament; regrets the recent restrictions imposed on journalists on the premises of the National Assembly, which limit their access to parliamentarians and thus the possibilities for media scrutiny over the work of the legislature”* (par. 5).

⁴⁰ among the positive developments: the increase of financial and human resources for the NHRIs and improving the decision-making process and the abandonment of a draft lex NGO.

⁴¹ see Universal periodic review UN 2020, letter by the High Commissioner to the Foreign Minister: <https://lib.ohchr.org/HRBodies/UPR/Documents/Session36/BG/HCLetter-Bulgaria.pdf> and Human Rights Council Forty-sixth session 22 February–19 March 2021 Agenda item 6 Universal periodic review Report of the Working Group on the Universal Periodic Review* Bulgaria : <https://undocs.org/en/A/HRC/46/13>

6. EQUALITY

There are two national human rights institutions in Bulgaria:

- the **Ombudsperson**, which is an impartial and independent constitutional body, elected by the National Assembly, tasked with intervening in cases where acts or omissions of state and municipal bodies and public services providers violate citizens' rights and freedoms. It has accreditation status "A". The current Ombudsperson is Diana Kovacheva since 2019.

The **Commission for protection against discrimination**, which is a semi-judicial equality body examining complaints related to discrimination. The Chairperson is Ana Dzhumalieva, who was invited to the DRFMG twice and replied to questions raised by MEPs on the difficult situation of Roma, LGBTIQ persons and other minorities in Bulgaria by providing an explanatory paper available on the DRFMG website.⁴²

6.1. Minorities and hate speech

The **FRA** 2021 Annual report also discussed the issue of hate speech: *"National human rights bodies raised concerns about the growing rate of hate speech in ... Bulgaria... in 2019. Reporting from Bulgaria in 2019, the Commissioner for Human Rights of the Council of Europe (CoE) warned of "rampant intolerance manifested towards minority groups"... The Bulgarian Helsinki Committee highlighted the role of politicians during 2019 in reinforcing negative stereotypes and discriminatory perceptions of minority groups"*.

The report also stated that *"Both the CoE Commissioner for Human Rights¹⁰⁹ and the Bulgarian Ombuds institution pointed to deficiencies in the national legal framework for combating hate crime in Bulgaria, including the lack of effective measures for prosecuting offenders"*.

The 2020 **European Parliament** resolution on Bulgaria noted that *"a number of incidents have been reported in recent years concerning the use of hate speech against minorities, including by government ministers; whereas parliamentary immunity is systematically used to shield members of the Bulgarian National Assembly from accountability for hate speech"* (letter K).

The EP condemned hate speech targeting minorities, and notably *"all instances of hate speech, discrimination and hostility against people of Romani origin, women, LGBTI people and persons belonging to other minority groups, which remains an issue of acute concern; calls on the authorities to respond vigorously to incidents of hate speech, including by high-level politicians, to enhance legal protection against discrimination and hate crimes, and to investigate and prosecute such crimes effectively; welcomes the judicial ban of the annual neo-Nazi 'Lukov March' and the opening of an investigation into the organisation behind it – the 'BNU'; calls on the Bulgarian Government to enhance cooperation with international and local human rights monitors and to take all the necessary measures to safeguard the rights of minorities effectively, in particular the rights to freedom of expression and freedom of association, including through implementation of the relevant judgments of the European Court of Human Rights⁽¹³⁾; calls on Bulgarian authorities and officials to firmly condemn all acts of violence and hate speech against minorities;"* (par. 15)

The **CoE Commissioner for Human Rights** issued a series of recommendations to Bulgarian authorities to strengthen the fight against racism, intolerance and discrimination on 31 March 2020 in

⁴² <https://www.europarl.europa.eu/cmsdata/211819/cdp-answers.pdf>

her report on the visit to the country. She called for stronger commitment to combat racism, fight gender stereotypes and increase media freedom in Bulgaria.⁴³

6.2. Racism

On 13 May 2020, the **UN Special Rapporteurs** on contemporary forms of racism and on minority issues, issued a joint statement on Bulgaria calling on the Government of Bulgaria to stop hate speech and racial discrimination against the Roma minority in its response to COVID-19, and halt police operations targeting Roma neighbourhoods during the pandemic.⁴⁴

On 18 February 2021, the **European Commission** opened an infringement procedure against Bulgaria for a failure to fully transpose EU rules on combating racism and xenophobia in its criminal laws.

6.3. Roma

The **Fundamental Rights Agency**, in its 2021 Annual report, noted that *“Recent national surveys on public attitudes towards Roma confirm the high levels of intolerance illustrated in FRA’s survey. In Bulgaria, 80 % of respondents stated that they do not trust Roma, while only 51.2 % would accept ‘living in the same country with Roma’.”* It also notes that *“Council of Europe reports published in 2020 ... point to de facto segregation of Roma children”* and also that *“It was not always clear that lockdowns and other restrictive measures introduced in Roma neighbourhoods were proportionate. For example, Bulgaria placed six Roma neighbourhoods under quarantine as a precautionary measure even before any cases were identified.”* FRA also published a specific report on the Implications of COVID-19 pandemic on Roma and Travellers communities in Bulgaria on 15 June 2020.⁴⁵

The April 2021 Report on the state of Human Rights denounced the placing of some **Roma** communities under mandatory COVID-19 quarantines and severely restricted their movement, while officials engaged in openly racist rhetoric towards Roma. It also affirmed that domestic violence remained widespread and resources to support victims were insufficient, and that lesbian, gay, bisexual, transgender and intersex people faced discrimination and social exclusion.⁴⁶

In June 2021 the **Supreme Administrative Court** judged the leader of the nationalist party VMRO and former deputy prime minister Krassimir Karakachanov guilty of discrimination against Roma.⁴⁷

On 2 November 2020, the **CoE commissioner on human rights** also called Bulgarian authorities to prevent forced evictions, tackle the stigmatisation and marginalisation of Roma and improve their access to adequate housing, including social housing.⁴⁸

The **European Parliament**, in its resolution on Bulgaria of 2020, had also deplored *“the climate of hostility against people of Romani origin in some populated communities, particularly against those who had to leave their homes following rallies targeting their communities in several localities; deplores the mobbing and violent evictions of Roma people in the Voyvodinovo area; calls on the authorities to urgently*

⁴³ <https://www.coe.int/en/web/commissioner/-/stronger-commitment-needed-to-combat-racism-fight-gender-stereotypes-and-increase-media-freedom-in-bulgaria>

⁴⁴ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25881>

⁴⁵ https://fra.europa.eu/sites/default/files/fra_uploads/bq_report_-_covid-19_impact_on_roma_en.pdf

⁴⁶ <https://www.amnesty.org/en/documents/pol10/3202/2021/en/>

⁴⁷ https://www.euractiv.com/section/politics/short_news/bulgarias-former-deputy-pm-accused-of-anti-roma-discrimination/

⁴⁸ <https://www.coe.int/en/web/commissioner/-/bulgarian-authorities-should-prevent-forced-evictions-tackle-the-stigmatisation-and-marginalisation-of-roma-and-improve-their-access-to-adequate-housing>

address the situation of the persons affected; believes that resolute measures to improve the general housing situation of people of Romani origin should continue; believes that it is necessary to fully eradicate the educational segregation of children of Romani origin; calls on the authorities to put a stop to hate speech and racial discrimination against people from the Romani minority in the response to COVID-19, and to halt police operations targeting Romani neighbourhoods during the pandemic" (pg.16).

6.4. Women's rights

Bulgaria is the only EU Member State that has stated that the Istanbul Convention is not in conformity with the national Constitution, as decided by the Constitutional Court upon request of a group of MPs, in a controversial judgment using the term "gender ideology", which does not exist.⁴⁹ This disinformation argument keeps on being used by politicians from across the political spectrum.

The **European Parliament** resolution on Bulgaria of 2020 took *"note of the ruling of the Constitutional Court of 27 July 2018 regarding the incompliance of the Istanbul Convention with the Constitution of Bulgaria; regrets the fact that this decision prevents Bulgaria from ratifying the Convention; is deeply concerned by the persistent negative and misrepresentative public discourse regarding the Convention, which has been shaped by a widespread disinformation and smear campaign following negative coverage on the topic by several media outlets with alleged links to government and opposition parties, made all the more worrisome by the participation of politicians and political parties represented in the Bulgarian Parliament; is concerned that the persistent negative attitude towards the Convention further contributes to the stigmatisation of vulnerable groups at risk of gender-based violence, whose situation has been particularly exacerbated by the COVID-19 and lockdown measures throughout Europe, including Bulgaria, and further emboldens and inculcates a feeling of impunity among the perpetrators of gender-based crimes; regrets the fact that recent changes to the Criminal Code which introduced stricter penalties for gender-based violence have proven insufficient to address the complexity of the issue and above all to prevent it; calls on the Bulgarian authorities, therefore, to enhance the prevention and fight against domestic violence, to do what is necessary to allow for the ratification of the Istanbul Convention, and to introduce as many elements from the Convention which are in line with its constitutional order while seeking a broader solution for the remaining elements, as well as increasing the number of shelters and other social services needed to provide support for the victims of domestic violence"*. (par. 17)

The **Committee on the Elimination of Discrimination against Women** issued a series of recommendations to authorities in March 2020,⁵⁰ while the report of **the Special Rapporteur on violence against women**, its causes and consequences published on 19 May 2020 also makes a series of recommendations, and notably to ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention).⁵¹

⁴⁹ <https://balkaninsight.com/2018/07/27/bulgaria-s-constitutional-court-says-istanbul-convention-not-in-line-with-basic-law-07-27-2018/>

⁵⁰ [Concluding observations \(2020\) CEDAW/C/BGR/CO/8](#)

⁵¹ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/114/17/PDF/G2011417.pdf?OpenElement>

6.5. LGBTIQ

Bulgaria ranks 20% in the ILGA-Europe Rainbow map, being the 4th worst placed EU Member State on the basis of a series of legal and policy criteria (notably, the country has no law on same-sex co-habitation, civil partnership or marriage).⁵²

According to the June 2020 Pew Research Centre report on the global perceptions of homosexuality, 48 % of respondents in Bulgaria shared the opinion that homosexuality should not be accepted in society (a result similar to most of the other Central and Eastern European states) and the rate of persons accepting homosexuality decreased, making it one of the lowest in Europe.⁵³

The **FRA 2021 Annual report** reports about an online questionnaire targeting LGBTI students aged 14–19 showing that 70.6 % of respondents had been verbally harassed during the last year, 34.2 % had been physically harassed, and 19.1 % had been attacked. FRA also reports about a study revealing that negative stereotyping, LGBTI invisibility at school, and lack of internal support for victims of bullying are among the most critical problems in Bulgaria.⁵⁴

The **European Parliament** considered in its 2020 resolution on Bulgaria that *“it necessary to eliminate discrimination against persons on the basis of their sexual orientation or gender identity, both in law and in practice in all spheres; calls on the Bulgarian authorities to amend the Protection against Discrimination Act to explicitly include gender identity as grounds for discrimination; calls on the Bulgarian authorities to amend the current Criminal Code to encompass hate crimes and hate speech on grounds of sexual orientation, gender identity and expression, and sex characteristics; calls on the Bulgarian authorities to implement the relevant case law of the Court of Justice and the European Court of Human Rights and, in that context, to address the situation of same-sex spouses and parents with a view to ensuring their enjoyment of the right to non-discrimination in law and in fact, and to establish an appropriate legal framework that provides equal rights for all couples”* (par. 18).

The **Franet** National contribution to the Fundamental Rights Report 2021 on Bulgaria discusses a case where the Supreme Administrative Court overturned a decision of the equality body in an online hate speech case: *“On 30 April 2020, the Supreme Administrative Court repealed a decision of the Commission for Protection against Discrimination for dismissing a case of homophobic messages on Facebook. The equality body had dismissed the case due to the failure of applicants to provide sufficient information to identify the alleged offenders. The court disagreed with the equality body’s arguments and instructed it to re-open the case and undertake all necessary measures to collect the missing information.”*⁵⁵

On 9 July 2020, the **ECtHR** ruled in the case *Y.T. v. Bulgaria* (No. 41701/16) that the domestic court’s refusal to allow a transsexual person of male appearance to be registered as a male, without giving relevant and sufficient reasons and without explaining why it had been possible to recognise identical gender reassignment in other cases, violates his right to respect for private and family life under Article 8 of the ECHR.⁵⁶

⁵² <https://www.rainbow-europe.org/#8626/0/0> ; see also the chapter on Bulgaria <https://www.ilga-europe.org/sites/default/files/2021/bulgaria.pdf>

⁵³ cited in Franet National contribution to the Fundamental Rights Report 2021 Bulgaria, pg 15 https://fra.europa.eu/sites/default/files/fra_uploads/frr2021_bulgaria-frr2021_en.pdf

⁵⁴ see https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-fundamental-rights-report-2021_en.pdf

⁵⁵ see pg 4 and pg 10, https://fra.europa.eu/sites/default/files/fra_uploads/frr2021_bulgaria-frr2021_en.pdf

⁵⁶ [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-203898%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-203898%22]})

In March 2020 the **CoE Commissioner for Human Rights** releases recommendations calling on the Bulgarian authorities to strengthen the capacity of police officers, prosecutors and judges to effectively investigate and prosecute violence against lesbian, gay, bisexual, trans and intersex (LGBTI) persons.

On 9 February 2020, the **CJEU** held a hearing on a landmark case involving female couple – one Bulgarian woman and one Gibraltar-born British woman – and the Bulgarian municipality of Sofia, which refused to issue a birth certificate for the couple's daughter, who was born in Spain in 2019 and who might become stateless. According to Bulgarian authorities, same-sex couples cannot be registered on the birth certificate as parents. The case is pending, following the publication of the opinion of the Advocate General.⁵⁷

The 12 June 2021 **gay pride** in Sophia was preceded by a series of attacks of hooligans in various places in the country, while fundamentalists organised anti-pride protests on the same day of the pride. Notwithstanding this, it was the first pride without violent accidents - also thanks to stronger police protection - and recorded a record participation of citizens (10.000) calling for equality and respect of fundamental rights.⁵⁸

6.6. Anti-semitism

On 16 February 2021, the ECHR found Bulgaria guilty of ignoring Holocaust denial and anti-Semitism, as authorities had reacted inadequately by not reprimanding or convicting Volen Siderov, the far-right leader of the pro-Russian Ataka (Attack) party - which was part of the ruling coalition - for his anti-Semitic and anti-Roma comments.⁵⁹

⁵⁷ <https://www.euractiv.com/section/non-discrimination/news/bulgaria-must-allow-baby-of-same-sex-couple-to-travel-eu-adviser/>

⁵⁸ <https://www.fairplanet.org/story/from-bulgaria-to-germany-geopolitics-determine-lgbtqand-rights/>

⁵⁹ https://www.euractiv.com/section/politics/short_news/bulgaria-convicted-of-ignoring-holocaust-denial-and-anti-semitism/

7. COVID-19 MEASURES

The current Covid situation in Bulgaria is dramatic: Bulgaria is the country with the lowest number of fully vaccinated citizens in Europe, as only 18%, while it has the highest overall mortality in the world, including one of the highest numbers of COVID-19 deaths per capita.⁶⁰

Bulgaria declared a “**State of emergency**” between 13 March and 13 May 2020, while the Health Act was modified on 12 May to introduce on 13 May an “**Emergency epidemic situation**”, which was renewed repeatedly and will be in place until the end of November. The Constitutional Court declared the regime constitutional on 23 July 2020.⁶¹

The **National Assembly** continued its works during the Covid crisis and rules to ensure continuity were adopted to allow participation of MPs under isolation or quarantine through videoconference.

The **justice system** was suspended during the state of emergency and for one month only urgent cases were processed.

During the first phases of the emergency, the government introduced a law to punish spreading of false information, which raised concern, was vetoed by the President of the Republic and then modified.⁶²

⁶⁰ https://www.euractiv.com/section/politics/short_news/dont-be-europes-idiots-warns-bulgarias-chief-healthinspector/?utm_source=piano&utm_medium=email&utm_campaign=13777&pnespid=tKZ8DT1WabJD2uaarTPuDoiV5Bb1WoUsMeS4m7p4vhBmm5hyXXIHtCRyFdj9ukVYisChrYOA. Unfortunately also the powerful Bulgarian Orthodox Church resisted restrictive health measures and disregarded them on the occasion of religious events, weakening the policy to counter Covid in Bulgaria, <https://www.euractiv.com/section/languages-culture/news/in-romania-bulgaria-thousands-defy-covid-crowding-for-epiphany/>

⁶¹ for critical analysis of the Bulgarian emergency regime, see <https://verfassungsblog.de/tag/bulgaria/>

⁶² see also <https://www.europarl.europa.eu/cmsdata/231907/Overview%20Covid%20Measures%20DRF%2024%20LIBE.pdf> and <https://www.europarl.europa.eu/cmsdata/238172/Overview%20Covid%20Measures%20DRF%2030%20LIBE.pdf>

8. OTHER ISSUES

8.1. Police disproportionate use of force

The EP resolution on Bulgaria of 2020 in its par. 11 condemned “any form of violence against peaceful demonstrations; ...highlights that the use of violence and disproportionate force is unacceptable; expresses particular dismay at the allegations of the use of force against women and children, including children with disabilities; is concerned by the unlawful and excessive audits conducted into private businesses that have publicly expressed their support for the protests; condemns the violent and disproportionate intervention by the police during the protests in July, August and September 2020; calls on the Bulgarian authorities to ensure a full, transparent, impartial and effective investigation into the actions of the police”.

Videos of police violence during anti-corruption protests of last year which led to an investigation into police brutality that did not lead to the identification of the perpetrators were discussed in **parliament** in August 2021. MPs adopted a statement calling the police brutality “a disgraceful act of inhumane and humiliating treatment” and issued an apology to the victims of police aggression.⁶³

8.2. Prisons

The EP condemned “*inhumane conditions in Bulgarian prisons found by the European Court of Human Rights, including the existence of overcrowding, poor sanitary and material conditions, limited possibilities for out-of-cell activities, inadequate medical care and the prolonged application of restrictive penitentiary regimes*” in its 2020 resolution on Bulgaria.

8.3. Asylum and migration

Parliament also expressed concern in par. 19 of the same resolution on the fact “*that persons who may be in need of international protection have been prevented from entering Bulgarian territory or expelled, at times with force, without the opportunity to apply for asylum or an individualised assessment; is particularly concerned about the troubling deportation of members of the Turkish opposition, in violation of international treaties and despite valid court orders issued by competent Bulgarian courts; calls on the Bulgarian authorities to ensure full compliance of asylum legislation and practice with the asylum acquis and the Charter of Fundamental Rights; calls on the Commission to deal with the infringement procedure against Bulgaria as a matter of priority;*”

8.4. Golden passports

On 20 October 2020 the Commission wrote to Bulgaria to highlight its concerns regarding its investor citizenship scheme and requesting further details. The Bulgarian government had one month to reply to the letter requesting further information, following which the Commission had to decide on the next steps. At the time of writing, the Commission has not yet taken any further action.

⁶³ <https://www.politico.eu/article/police-violence-video-triggers-uproar-in-bulgaria/>

An article revealed on 19 January 2021 that Bulgaria is continuing to deliver 'golden passports' to wealthy non-EU citizens theoretically in return for investments, but such investments in most cases do not materialise.⁶⁴

Recently, also the US called the country to ensure appropriate security in the procedure and that they are issued only to good-faith citizens who do not represent a threat to the internal security of the United States.⁶⁵

⁶⁴ <https://www.euractiv.com/section/justice-home-affairs/news/the-mystery-of-bulgarias-golden-passports-deepens/>: the article reports that 98 foreigners only used the scheme and that in December 2020 the Minister of Interior processed 20 more applications.

⁶⁵ <https://www.euractiv.com/section/global-europe/news/us-warns-bulgaria-to-clean-up-the-passport-for-cash-mess/>

This In-Depth Analysis, written by the Policy Department for Citizens' Rights and Constitutional Affairs at the request of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs, examines the situation of Democracy, the Rule of Law and Fundamental Rights in Bulgaria and how Article 2 TEU values are respected and implemented in the country.
