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Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

Post-monitoring dialogue with Bulgaria

Information note on the fact-finding visit to Sofia by the Chair of the Committee (5-7 November 2008)¹

Rapporteur: Mr Serhiy HOLOVATY, Alliance of Liberals and Democrats for Europe

¹ This information note has been made public by decision of the Monitoring Committee dated 31 March 2009.

I. Introduction

1. In my capacity as Chair of the Monitoring Committee, I travelled to Sofia on 5-7 November 2008, within the framework of the post-monitoring dialogue. My primary task was to collect information about the developments since the presentation of the last information note by my predecessor, Mrs Hanne Severinsen, in September 2006, and the comments by the Bulgarian authorities in February 2007², and to prepare an updated document.
2. In its Resolution 1211 (2000), the Assembly decided to close the monitoring procedure for Bulgaria and initiate a dialogue with the Bulgarian authorities *"on the issues referred to in paragraph 4, or any other issues arising from the obligations of Bulgaria as a member state of the Council of Europe, with a view to reopening the procedure in accordance with Resolution 1115 (1997), if further clarification or enhanced co-operation should seem desirable"*.
3. Meanwhile, Bulgaria became a full member of the European Union on 1 January 2007³. On joining the European Union (EU) in 2007, Bulgaria still faced serious challenges in ensuring the functioning of its judiciary and in fighting corruption and organised crime.
4. My visit took place in the particular context of post-monitoring dialogue with a country which has already acceded to the EU and from which one can expect the highest standards in terms of fulfilment of Council of Europe commitments and obligations.
5. I am grateful to the Bulgarian parliamentary delegation for the extensive programme and excellent organisation of the visit.
6. I am grateful to the Ambassador of Sweden, Mr Paul Beijer, who, in his capacity as representative of the country which holds the chairmanship in the Committee of Ministers, organised a briefing meeting for me with Ambassadors, senior representatives of diplomatic missions of a number of Council of Europe member states and the representative of the European Commission in Bulgaria.
7. I also wish to thank Ms Teodora Kaleynska, Director of the Council of Europe Information Office in Sofia, for her assistance. I also received a valuable contribution from the representatives of NGOs and minority communities, whom I met separately.
8. One of the main conclusions of my visit to Sofia was that, while moving steadily along the path of the implementation of the Assembly recommendations contained in Resolution 1211 (2000), the whole reform process in Bulgaria has been directed towards the introduction, implementation and consolidation of European standards which allowed Bulgaria to join the European Union as from January 2007. This was the declared goal of all the political forces in the country and there has been an enormous amount of legislation reviewed under the European Union auspices to meet this goal.
9. Regrettably, it is my general impression that, in the haste to meet the strenuous accession deadlines, some of the reforms and, in particular, the reform of the judiciary, have undergone numerous "cosmetic changes" that have pushed the reforms in an undesired direction. This was namely the case of the constitutional amendments and the amendments to the Judicial System Act adopted in February 2007.
10. I shall therefore prepare a comprehensive memorandum about the recent political and legislative developments and the implementation of accession commitments at a later stage, taking into account all available information, as well as contributions from other expert bodies of the Organisation. For the time being, I shall limit myself to summarising a number of key findings from my visit and the next focus points on which I believe we should enhance the post-monitoring dialogue with Bulgaria.
11. My general impression was that, being a member of EU, Bulgaria did not consider implementation of Council of Europe commitments and obligations as a priority. This impression was confirmed by my interlocutors.

² See Doc. AS/Mon (2007) 26 of 22 September 2006 and Doc. AS/Mon(2007)13 of 19 February 2007

³ Bulgaria had joined NATO on 29 March 2004 and signed the European Union Treaty of Accession on 25 April 2005

12. However, the political components of the Copenhagen criteria of 1993 largely coincide with Council of Europe membership obligations⁴. Bulgaria has regrettably given priority to the economical criteria. In this context, a Co-operation and Verification Mechanism (CVM) was set up by the European Commission to monitor progress and extend support in dealing with shortcomings in the fulfilment of the political criteria. The Commission and the other EU member states saw the need to closely co-operate with Bulgaria following accession, in particular to ensure that the necessary reforms were put in place to strengthen the judicial system and fight corruption and organised crime.

13. The Bulgarian parliament held a debate on Resolution 1211 (2000) back in December 2000 as recommended in paragraph 4i. However, considering that eight years have gone by and that some shortcomings are still noticeable in the fields mentioned below, I can only but encourage the Bulgarian National Assembly to hold a general debate on the rule of law in Bulgaria.

II. Functioning of the judiciary

14. The problem of judicial independence has to be viewed within the wider context of the reform of the judiciary system in Bulgaria. The latter has been a slow process, with the Bulgarian judiciary having made a pendulum swing from a strongly government-subordinated justice machinery, inherited from the totalitarian system, to a largely unaccountable and anarchist judiciary today, which is seen as inefficient, non-transparent and corrupt. This view is further accentuated by the executive and legislative bodies that show persistent and widespread mistrust towards the judiciary and are reluctant to concede the existence of a truly independent judicial branch.

15. As a matter of fact, the judiciary remains stigmatised by the lengthy preliminary proceedings in the criminal justice system, the low number of proceedings against high-level officials and civil servants involved in corruption cases and the non-execution of the Strasbourg Court judgments due to a low rate of reopening of criminal court cases following a judgment of the Strasbourg Court and to the absence of legal provisions enabling to do so in civil cases.

16. In February 2007, a package of constitutional amendments relating mainly to the judiciary was adopted. Regrettably, no expertise from the Council of Europe was sought prior to this adoption.

17. Following an exchange of views in May 2007 with the Bulgarian delegation on an information note prepared by the First Vice-Chair in the framework of the post-monitoring dialogue with Bulgaria⁵, and the comments thereupon submitted by the Bulgarian authorities⁶, the Monitoring Committee decided to ask the opinion of the Venice Commission on the Bulgarian Constitution, in particular with respect to the amendments adopted in February 2007.

18. The Venice Commission delegation visited Bulgaria in November 2007 and held an exchange of views with the Minister of Justice of Bulgaria at its meeting of March 2008, during which the Minister submitted both oral and written observations⁷.

19. In its opinion, adopted at that meeting⁸, the Venice Commission concluded that the provisions of the Constitution of Bulgaria, including its recent amendments of February 2007, were generally in conformity with European standards and in line with constitutional practice in other European states.

20. However, the Venice Commission considered that this did not mean that there was no room for further improvements in the text, with respect to both the chapter on human rights and the one on the judiciary. According to its opinion, from the angle of the separation of powers, the role of the Minister of Justice as Chair of the Supreme Judicial Council, with the right of initiative, is problematic. The Minister's right to propose the budget may contradict the constitutional principle of the budgetary independence of the Judiciary and membership in the Judicial Council should be incompatible with any representative mandate or political function.

⁴"Membership requires that candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and, protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union. Membership presupposes the candidate's ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union", Presidency Conclusions, Copenhagen European Council 1993, 7.A.iii.

⁵ Doc. AS/Mon(2006)26

⁶ Doc. AS/Mon(2007)13

⁷ Doc. CDL(2008)035

⁸ Doc. CDL(2008)009

21. It should be ensured that, within the Supreme Judicial Council, judges, prosecutors and investigating magistrates cannot interfere with each other's affairs. Moreover, the Probationary period of five years for new judges raises serious difficulties for judicial independence and the Inspectors are given too broad powers, with the risk of interference in the administration of justice.

22. For the Venice Commission, the new provisions of the Constitution relating to civil and criminal immunity in the Judiciary are in line with previous recommendations and are to be welcomed.

23. On the other hand, the difficulties relating to the structure of the Supreme Judicial Council have not been addressed since the earlier Venice Commission opinions. The Commission, in its opinion, recognises that the permanent status of the members of the Supreme Judicial Council, its administrative and financial independence and the terms of office of the members, which are quite separate from that of Parliament, enhance the conditions of independence also of the 11 members elected by Parliament. Nonetheless, the following comment from the Opinion of 22-23 March 1999⁹ remains relevant:

“30. The composition of the Council as set out in the Act is not in itself objectionable. It could work perfectly well in an established democracy where the administration of justice is by and large above conflict of party politics and where the independence of the Judiciary is very pronounced and well established. In such a situation, one would not expect the representatives of Parliament on the Council to be elected strictly on party lines and in any event, even if that were to happen, those elected would not feel in any way committed to act under instructions or directives from the party that elected them.

31. The Venice Commission considers that even though the Supreme Judicial Council may not in fact have been politicised it is undesirable that there should even be the appearance of politicisation in the procedures for its election. In each of the two most recent elections for the parliamentary component of the Supreme Judicial Council, under two different Governments the respective opposition parties did not participate with the result that on each occasion the parliamentary component of the Supreme Judicial Council was elected exclusively by representatives of the governing parties.

32. A high degree of consensus in relation to the election of this component should be sought. The Bulgarian Parliament discusses nominations in advance of the vote in the plenary in a parliamentary committee. Such a mechanism should be capable of being used to ensure appropriate opposition involvement in elections to the Supreme Judicial Council.”

24. A previous key recommendation, which was to provide for an election of the parliamentary component of the Supreme Judicial Council by a qualified majority to enable a certain representation from the opposition, was not implemented.

25. Eleven members are still elected by Parliament while it remains possible for a simple majority in Parliament to elect all of these members. One solution might be to have only one third of the members of the Council elected by Parliament with a qualified majority.

26. The Venice Commission welcomed the constructive reaction of the Bulgarian authorities to its opinion and expressed its readiness for further co-operation with them as well as with the Parliamentary Assembly.

27. I was surprised to find out during my visit that legal proceedings involving the staff of the Ministry of the Interior and members of the police forces were brought before the military court system. The Sofia Military Appellate Court was the court of final appeal for such cases. Obviously, the use of military courts to try civilians presents serious problems in relation to the provision of fair trials. Moreover, all human rights groups I met during my visit claimed that the fact that members of police forces were tried by military courts represented a serious obstacle to their accountability for alleged human rights abuses. NGOs claimed that this separate court system encouraged a latent bias in favour of police and resulted in half-hearted prosecutions by military prosecutors, who were not eager to see law enforcement officials punished.

28. I have later on been informed by the Bulgarian delegation to PACE that the Criminal Procedure Code was modified in December 2008, abolishing the obligation for civilians to file lawsuits against police in military courts.

⁹ CDL-INF(1999)005e

29. As regards judges' training, I was also surprised to find out that judges are trained only after their appointment and that there is no system of evaluation of their competences. Obviously, this, added to the widespread perception of corruption, gives rise to the widespread mistrust towards the judiciary. I encourage cooperation with the Council of Europe for the training of judges.

III. Independence of the media from the executive

30. After her last visit, Mrs Severinsen concluded that the problem of media independence vis-à-vis the executive or legislative authority seems to have been solved, at least at the legislative level, with the adoption and the subsequent coming into effect of the Television and Radio Act (TRA), in January 2005. The amended provisions have extended the independence of the Council of Electronic Media (CEM)¹⁰ through a system of rotation (three of its nine members changing every two years) and the irrevocability of its members, as well as by a clause according to which no member of the CEM can be recruited to managerial positions in other public radio and TV broadcasting entities. This independent body has also been given the authority to elect the heads of the Bulgarian National Radio and the Bulgarian National Television companies.

31. However, the fact that major media are ruled by persons with important political influence contributes to a climate of mistrust towards the media and the perception of their lack of independence from the executive, as well as from all spheres of influence. The recent reports of murders and of physical assaults on journalists raise another major problem in Bulgaria.

32. Physical assaults, threats and harassment of investigative journalists are also reported. Freedom of the press has to be guaranteed and cases of violence and harassment against journalists thoroughly investigated.

33. I was dismayed to hear that former Interior Minister Rumen Petkov publicly insulted journalist Jurgen Roth and called for violence against him on 11 November 2008, less than a month after Ognyan Stefanov, editor of the news website Frognews, was seriously injured in a murder attempt.

34. Some representatives of the opposition regretted that there was no media law, thus leaving a number of pending questions open to corporate influence and criminal activities. They claimed that the recent law on electronic media only deals with technical issues and does not guarantee the independence of the work of journalists in practice, even though it is enshrined in the Constitution.

35. Although a media law is not a common standard in all Council of Europe member states, I suggest that the National Assembly organise a debate on this issue and eventually draft a law which would address the issue of media group concentration and set standards for media independence from any kind of political or financial influence. The Bulgarian authorities could seek Council of Europe expertise in this field.

IV. Rights of persons belonging to national minorities

36. Under the Constitution, all citizens are equal before the law, irrespective of ethnic, religious and linguistic status¹¹. At the beginning of 2004, a Protection from Discrimination Act came into force and, in 2005, a Commission for Protection from Discrimination was set up.

37. The overall minority situation in the country is generally fairly satisfactory. Historically, ethnic Turks and the Roma were the two biggest groups subjected to discrimination. Between 1984 and 1989, the Turkish minority living in Bulgaria was subject to human rights violations of an unprecedented scale. Since the 1990s, however, the situation of ethnic Turks has considerably improved. The Movement for Rights and Freedoms, a political party composed mostly of ethnic Turks, has been in two consecutive government coalitions now. The community is represented by 28 members out of 240 in the National Assembly and is also adequately represented in local municipalities (12.5% of municipal mayors and 15.2% of municipal councillors).

38. The Roma situation, on the contrary, continues to be of concern. On this specific issue, I refer to the report on the situation of Roma in Europe (Rapporteur: Mr József Berényi, Slovak Republic, EPP/CD), being

¹⁰ Originally set up in 2002, this body is an independent specialised authority in charge of the regulation of radio and TV broadcasting in the country by registration and licensing of the radio and TV operators and by supervising exclusively whether the radio and TV operators abide to the regulations.

¹¹ Article 6, paragraph 2 of the Bulgarian Constitution

prepared by the Committee on Legal Affairs and Human Rights, and which will be debated in the Assembly in 2009.

39. The Bulgarian authorities tend to be reluctant to recognise the distinct ethnic identity of the approximately 5,000 Macedonians living in Bulgaria. There have been reports of occasional infringements of the freedom of peaceful assembly and freedom of association of this ethnic group, but my tight programme did not allow me to meet their representatives. I encourage the Bulgarian delegation to send me relevant information on this issue.

40. In this regard, the execution of the judgment of the European Court of Human Rights in the case of the *United Macedonian Organisation Ilinden - Pirin and others* is still pending. The case concerns the dissolution of a political party aimed at achieving "the recognition of the Macedonian minority in Bulgaria" and relates to freedom of assembly of groups of people standing for such recognition. In its judgment of 20 October 2005, the Strasbourg Court found that the dissolution of the political party Umo Ilinden-Pirin in 2000 violated Article 11 of the Convention as nothing in the party's programme or in the declarations of its leaders had challenged the principles of democracy.

41. Two re-registration attempts by the political party – with the same name and statutes as that unjustifiably dissolved – have failed since the Court's judgment. A third one is currently under consideration. The Committee of Ministers is following closely this particular case.

42. During my visit, I received no clear explanation on the reasons for the lack of progress in this regard and I requested further details on the measures taken to implement the Court's judgment¹².

43. According to the information presented in the opinion of the Advisory Committee on the Framework Convention for the Protection of National Minorities¹³ "teaching of the languages of persons belonging to minorities within the compulsory curriculum remains limited, and their use as languages of instruction is virtually non-existent. In its Resolution on the implementation of the Framework Convention for the Protection of National Minorities by Bulgaria¹⁴, the Committee of Ministers concluded that "additional efforts are expected from the State as regards teaching of and in the languages of persons belonging to minorities as well as in order to promote knowledge of the culture and identity of minorities and foster intercultural dialogue and tolerance through education". In this regard, as my programme did not allow me to enquire specifically on this issue, I would also like to ask the Bulgarian authorities to provide me with factual updated information including on measures taken to address this problem.

44. According to the same report, the implementation of the Framework Convention remains problematic, as is the use of languages of persons belonging to minorities, be it in dealings with the administrative authorities or in criminal proceedings.

45. Bulgaria has neither signed nor ratified the European Charter for Regional and Minority Languages. This question was raised with national authorities but answers remained vague or evasive. I therefore have to ask the Bulgarian delegation to provide me with more information on the obstacles that impede the signing and ratification of the above-mentioned Council of Europe Charter.

V. Office of Ombudsman

46. The Parliamentary Ombudsman institution in Bulgaria was established by the Law on the Ombudsman which came into force on 1 January 2004. After a one-year delay and two failed attempts, the National Assembly appointed Mr Ginyo Ganev, MP from Coalition for Bulgaria, as the country's first national ombudsman, in April 2005.

47. During our meeting, Mr Ganev raised some issues regarding the independent functioning of the institution, such as the need to envisage an enhanced parliamentary majority for election and removal from office of the ombudsman, as well as his wish to see a larger number of persons approaching the office,

¹² AS/Jur(2008)24 on implementation of judgments of ECtHR, introductory memorandum by the rapporteur, Mr Christos Pourgourides, Cyprus, EPP/CD

¹³ Opinion on Bulgaria, adopted on 27 May 2004 and made public on 5 April 2006, Doc. ACFC/OP/I(2006)001

¹⁴ ResCMN(2006)3, adopted by the Committee of Ministers on 5 April 2006 at the 961st meeting of the Ministers' Deputies

including legal persons. He also wished that the Ombudsman be given the right to submit draft laws to parliament on issues related to the protection of human rights and individual freedoms.

48. Moreover, the Ombudsman complained about the lack of independence from local self-government authorities of local ombudsmen or public mediators, established in 2003. He suggested that a legal framework be introduced providing that the latter co-operate with, and receive support from, the national Ombudsman. He also favoured the establishment of an institution of independent specialised ombudsmen.

49. I recommend, as already done by my predecessors, that the Parliamentary Ombudsman's proposals be considered within the framework of a future constitutional revision so as to further consolidate and reinforce the efficiency of the Ombudsman's institution.

VI. Efforts to combat corruption and police abuses

i. Anti-corruption measures

50. Bulgaria remains a country with endemic corruption that has gained the ranks of the administration and the judiciary. In the past, the broad immunity enjoyed by judges was mainly blamed for corruption within the judiciary. However, although such immunity has been reduced to a mere functional one, this has not solved the problem of judicial corruption.

51. On 26 November 2008, the European Commission decided to cut Bulgaria's access to 220 million euros in EU funding for its persistent failure to tackle corruption and organised crime. It had already frozen nearly 500 million Euros in aid to Bulgaria last summer for the continuing weaknesses in the country's control system and the cases of fraud and irregularities.

52. Upon accession to the EU, however, the Bulgarian authorities and the other EU member states had recognised that far-reaching judicial reform and a "*concerted effort to fight corruption and organised crime were necessary if Bulgarians were to be able to exercise their rights as EU citizens and benefit from all the opportunities, including financial support, that EU membership would bring. More broadly, they recognised that principles which are at the heart of the EU – respect for the rule of law, mutual recognition and cooperating on the basis of a fundamental bargain of trust – could only be put into practice if these problems were tackled at source*".¹⁵

53. Against this background, the European Commission and the other EU member states saw the need to closely co-operate with Bulgaria following accession to ensure that the necessary reforms were put in place to strengthen the judicial system and to fight corruption and organised crime.

54. The Cooperation and Verification Mechanism (CVM) was set up by the European Commission to monitor progress and extend support in dealing with these shortcomings.

55. An inter-ministerial anti-corruption committee was set up in charge of coordinating government efforts to fight public corruption and organising public awareness campaigns.

56. During 2006, the Ministry of the Interior reported 451 complaints of police corruption, 179 of which were submitted to its hotline or website. The complaints resulted in 57 officers being fired and 81 officers being administratively sanctioned.¹⁶ I have requested the Minister of the Interior to provide me with updated statistics, including on investigations by the Ministry, into criminal acts committed by the police.

57. In January 2006, a Council to improve coordination between the anti-corruption committees of the National Assembly, the Council of Ministers and the Supreme Judicial Council was established.

58. Over the years, the Council of Europe has accompanied Bulgaria in its efforts to fight against corruption through its Group of States against Corruption (GRECO). In its compliance report, adopted on 1 June 2007¹⁷, GRECO concluded that, during the second evaluation round, the Bulgarian authorities had implemented satisfactorily or dealt with in a satisfactorily manner over half of the 11 recommendations GRECO had addressed to them. Three recommendations had been partly implemented and one had not been implemented. I wish to reiterate in particular the recommendation made by GRECO to the Bulgarian authorities "*to establish*

¹⁵ Report from the Commission to the European Parliament and the Council on progress in Bulgaria under the co-operation and verification mechanism, Brussels, 23.7.2008, COM(2008) 495 final

¹⁶ idem

¹⁷ Greco RC-II (2007)4

an adequate system of protection for those who, in good faith, report suspicions of corruption within the public administration, as well as to introduce training for public officials to report such suspicions" (partly implemented). GRECO also recommended to *"introduce clear rules/guidelines for situations where civil servants move to the private sector, in order to avoid situations of conflict of interests"* (not implemented).¹⁸

59. As concerns the fight against organised crime, according to information provided by the Ministry of Interior, there is a certain improvement. The number of registered crimes has dropped by 9% compared to the same period of last year (13% for crimes against property, 15% for robberies and 14% for thefts). During 2008, the operations of 137 organised crime groups with 234 participants were uncovered wholly or partially. 110 persons were indicted of whom 12 were foreigners.

60. I encourage the Bulgarian authorities to closely follow up and implement the recommendations made by both the European Commission and GRECO with a view to speeding up the implementation of the anti-corruption reform and adopting a more proactive approach in tackling organised crime networks.

ii. Police abuses

61. Although human rights training is mandatory at the police academy and officers' schools, human rights abuses by the police continue. Impunity remains a problem, as the lack of accountability inhibits government attempts to address such abuses.

62. According to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its 2006 visit to Bulgaria,¹⁹ 94% of the cases of police violence into which the Military Prosecutor's Office had carried out preliminary inquiries had been notified by the victims or their relatives. This suggests that prosecutors rarely use their ex-officio powers to open preliminary investigations at their own initiative, which is surprising, considering the system of unannounced visits to police establishments and Investigation Detention Facilities by prosecutors, during which they are supposed to check all documentation and speak in private with detained persons.

63. In its report, the CPT highlighted the important role played by judges and prosecutors, but also by staff working at Investigation Detention Facilities and other competent authorities, in preventing ill-treatment by law enforcement officials through the diligent examination of all relevant information regarding possible ill-treatment which may come to their attention, whether or not that information takes the form of a formal complaint.

64. As recommended by the CPT, an instruction should be issued for the attention of all prosecutors in Bulgaria making it clear that, even in the absence of a formal complaint, the prosecutorial authorities are under a legal obligation to undertake an investigation whenever they come across credible information that ill-treatment of persons deprived of their liberty may have occurred.

65. Human rights groups claimed that medical examinations in cases of police abuses are not properly documented, that allegations of police abuse are seldom investigated thoroughly and that offending officers are very rarely punished. Impunity of police officers should be tackled.

66. I requested updated statistics from the Minister of the Interior and the Minister of Justice but, since they are not directly in charge, they could not provide me with the relevant figures. I hope the Bulgarian authorities will provide me with these figures in due time for the preparation of my report.

67. The law entitles the Ombudsman to examine human rights violations following the filing of a complaint or at his own initiative. I would like to receive further information from the Ombudsman's Office on resources available to examine complaints against the police and statistics concerning this kind of complaint.

68. As concerns the situation in prisons, NGO prison monitors report that brutality by prison guards against inmates, as well as brutality among inmates, continue to be serious problems. Corruption also continues to plague the system.

69. Prison overcrowding remains a problem, although the Ministry of Justice reported a slight decrease in the prison population following the introduction of a probation system. There were 11,165 prisoners in the country's 13²⁰ prisons, a figure that the Ministry of Justice estimated exceeded by three times the capacity of the prison

¹⁸ idem

¹⁹ Report to the Bulgarian Government on the visit to Bulgaria carried out by the CPT from 10 to 21 September 2006, Doc. CPT/Inf (2008) 11

²⁰ including Boychinovtsi juvenile prison

system.

70. I expect the Minister of Justice to provide me with statistics and update information on the prison situation and efforts undertaken to overcome overcrowding.

VII. Defamation

71. Defamation, insult and libel are punishable under Articles 146 to 148 of the Criminal Code. The law provides only for financial penalties (fines) and excludes imprisonment. However, those convicted acquire a criminal record. This can be a great hindrance in their professional life.

72. In accordance with Resolution 1211 (2000) of the Assembly, "*sanctions against journalists should be brought out of the sphere of criminal law and awards for damages limited to reasonable amounts, taking into account that journalists should abide by the principle of respect for privacy, in conformity with Article 8 of the European Convention on Human Rights.*"²¹

73. I raised this issue with most of my interlocutors, including the Minister of Justice, who could not give me any convincing argument for justifying the fact that these sanctions remain in the sphere of Criminal law. I believe it is not enough that imprisonment is excluded from the Criminal Code and that defamation should simply be excluded from it. I expect Bulgaria to decriminalise defamation within a short delay.

VIII. Other outstanding questions

i. Execution of the judgments of the European Court of Human Rights

74. The European Court of Human Rights issued 53 judgments in 2007 in cases concerning Bulgaria. The number of complaints submitted to the Court is growing year after year. However, according to the Bulgarian Helsinki Committee, as well as the Bulgarian Lawyers for Human Rights, the government has done little to hold the institutions and officials who committed the violations accountable for their actions.

75. The non-execution of judgments of the European Court is partly due to the absence of legal provisions allowing the reopening of a civil court case following a judgment of the Strasbourg Court. Re-opening of proceedings for criminal cases had been provided for in the legislation, but implementation remains to be seen in practice.

76. In a number of cases²² and some others currently pending before the European Court, breaches of the right to life and of the prohibition of ill-treatment have been found, as the authorities either used excessive force (by killing people with fire-arms) or failed to account for the deaths or injuries of people detained in police custody (violations of Articles 2 and 3 of the European Convention on Human Rights. For instance, although the facts occurred in the 1990s, the first judgments on these issues were delivered by the European Court as early as 2000 (and continued until 2007) and are still pending for execution both as regards the undertaking of individual measures (i.e. to erase as much as possible the consequences of the violation) and of general measures (the adoption of measures which will prevent future similar violations, such as legislative changes, administrative and judicial practice changes, etc.).

77. I raised several cases with different interlocutors and requested further information as regards concrete measures, both general and individual, that have actually been taken to implement the Strasbourg Court judgments since 2000.

78. As regards the reopening of civil proceedings, the Bulgarian Code of Civil Procedure envisaged, until March 2008, reopening of civil proceedings, but this possibility was excluded from the Code in March 2008. The Committee of Ministers of the Council of Europe adopted in 2000 a special Recommendation on Reopening which invites all contracting parties to the ECHR to ensure that their legal systems provide adequate possibilities for re-examining cases, including reopening of proceedings. The legislator should bring back this possibility for the reopening of judicial proceedings in civil cases.

79. I encourage the authorities to address the question of non-execution of the Strasbourg Court's judgments by introducing legal provisions allowing the reopening of a court case in civil cases, and developing the practice in penal cases. Council of Europe assistance is currently provided in this respect and co-operation should be further strengthened.

²¹ Resolution 1211 (2000), paragraph 4.ix. of

²² *Velikova vs. Bulgaria*, application no 41488/98, *Nachova vs. Bulgaria*, application no 43577/98 and 43579/98

ii. *Claims of the former prisoners of Belene Island*

80. Like my predecessors in the past, I have been approached on several occasions by the Association of Justice, Rights, Culture and Co-operation in the Balkans (hereafter "the association") that represents 517 former prisoners of the Belene Island concentration camp and other victims of the forced assimilation in Bulgaria between 1984 and 1989. During those years, nearly one million ethnic Turks were subjected to forced "bulgarisation" and about 850 – 900 ethnic Turks were sent to prisons or concentration camps arbitrarily and without due process. Between May and September 1989, 350,000 ethnic Turks were forcibly deported to Turkey in order to make Bulgaria a mono-ethnic country. Mr Loutfi, Head of the Bulgarian parliamentary delegation, during the debate on the need for international condemnation of the crimes of totalitarian communist regimes at the Assembly's January 2006 part-session, considered that this was an "*ethnic genocide, aimed at undermining the religious, political and ethnic identity of a minority*". The former prisoners of the Belene Island have the following claims:

- proper investigation of the crimes committed between 1984 and 1989 and bringing those guilty before a court;
- compensation from the state that would adequately compensate them for their physical, moral and material damage;
- counting the years spent in prison for calculating retirement age or pension due for service to the state.

81. The former prisoners' representatives claim that their case could not be brought before the Strasbourg Court since the national remedies could not have been exhausted, as the authorities refused to take responsibility for what happened in the communist times. As these people are not represented politically, I would like to ask the authorities to consider their requests which seem to be legitimate to me.

IX. Concluding remarks

82. The weaknesses of the judiciary in Bulgaria have repercussions on most spheres of society which hampers the proper functioning of all democratic institutions.

83. I encourage Bulgaria to take all necessary measures to implement Assembly Resolution 1211 (2000), in close co-operation with the Venice Commission and other relevant Council of Europe mechanisms and bodies with a view to strengthening the rule of law and eventually fulfilling its obligations and commitments as a Council of Europe member state, but also as an EU member state.

84. During my visit to Sofia, the Bulgarian authorities demonstrated their intention to further co-operate with the Council of Europe and promised to request Venice Commission assistance before adopting important legislation. I am expecting the authorities to follow this up and the Delegation to supply me with the answers to all the questions raised during my visit and reiterated in this information note without further delay, and to provide observations and complementary information, accompanied by any supporting documents, legal texts, decrees, etc. Their co-operation should allow me to draft a comprehensive memorandum which will take into account all available information, including comments provided by the Bulgarian delegation, as well as contributions from other expert bodies of the Organisation.

APPENDIX

Programme of the fact-finding visit to Sofia (5-7 November 2008)

Mr Serhiy HOLOVATY, Chairman of the Monitoring Committee
Ms Marine TREVISAN, Co-secretary of the Monitoring Committee

Wednesday, 5 November 2008

18.00 Meeting with Council of Europe Ambassadors

Thursday, 6 November 2008

09.15-09.45 Meeting with the Chairman of the Supreme Court, Prof. Lazar GRUEV

10.00-10.30 Meeting with the Chairman of the Supreme Administrative Court, Mr Konstantin PENCHEV

11.00 Meeting with NGOs

13.30-14.15 Meeting with the Minister of Justice, Ms M. TACHEVA

14.30-14.45 Meeting with the President of the National Assembly, Mr Georgi PIRINSKI

15.15-16.00 Meeting with the Ombudsman of the Republic of Bulgaria, Mr Ginyo GANEV

16.30-17.15 Meeting with the Minister of the Interior, Mr Mikhail MIKOV

17.30-18.15 Meeting with the Vice-Minister of State Administration, Ms Maria DIVIZIEVA

19.30 Working dinner with members of the PACE delegation on invitation by the Head of the Bulgarian delegation to the PACE, Mr Younal LOUTFI

Friday, 7 November 2008

08.30-11.10 Meetings with leaders of political groups in the parliament:

08.30-08.50 Parliamentary Group of the United Democratic Forces, Mr Yordan BAKALOV

08.50-09.10 Parliamentary Group of Democrats for Strong Bulgaria, Mr Ivan KOSTOV

09.10-09.30 Parliamentary Group of Bulgarian People's Union,
Co-chairs: Mr Krasimir KARAKACHANOV and Mr Stefan SOFIYANSKI

09.30-09.50 Parliamentary Group of Bulgarian New Democracy, Mr Borislav RALCHEV

09.50-10.10 Parliamentary Group of the Ataka Coalition, Mr Volen SIDEROV

10.10-10.30 Parliamentary Group of National Movement Simeon the Second, Mr Plamen MOLLOV

10.30-10.50 Parliamentary Group of Coalition for Bulgaria, Mr Angel NAYDENOV

10.50-11.10 Parliamentary Group of the Movement for Rights and Freedoms, Mr Ahmed DOGHAN

11.15-11.45 Meeting with the Chairman of the Civil Society and Media Committee, Mr Ivo ATANASSOV

11.45-12.15 Meeting with the Chairman of the Committee on Human Rights and religious denominations,
Prof. Ognyan GERDJIKOV

14.00-15.30 Meeting with NGOs

- 16.00-17.00 Joint meeting with representatives of different churches and religious denominations
- 17.00-18.00 Joint meeting with the Director of the Bulgarian National Television Broadcasting; Chairman of the Council of Electronic Media; President of the Society of Bulgarian Journalists