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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**

**Preliminary draft report<sup>1</sup>**

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<sup>1</sup> This preliminary draft report has been made public by decision of the Monitoring Committee dated 28 January 2010.

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## I. Introduction

1. In my capacity as Chair of the Monitoring Committee, I paid fact-finding visits to Sofia on 5-7 November 2008 and 7-9 December 2009, 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 2007<sup>2</sup>, and to prepare an updated document.
2. Following the revision of the Rules of Procedures of the Parliamentary Assembly, adopted by the Standing Committee in Bern on 20 November 2009, establishing the preparation of a report at least once every four years on countries involved in a post monitoring dialogue<sup>3</sup>, I have prepared the present report on the post-monitoring dialogue with Bulgaria.
3. 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*".
4. Meanwhile, Bulgaria became a full member of the European Union on 1 January 2007.<sup>4</sup> 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.
5. Therefore, my visits 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.
6. Moreover, the second visit took place after the parliamentary elections of July 2009 which brought a completely new majority into power. This new situation offers new perspectives to the country which needs further reforms. This report presents the situation as I assessed it during my visits and a tentative roadmap for the country to meet eventually Council of Europe standards.
7. I am grateful to the Bulgarian parliamentary delegation for the extensive programme and excellent organisation of the visits and also to 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. I also wish to thank the Ambassador of Sweden, Mr Paul Beijer, who, in his capacity as representative of the country which held the chairmanship in the Committee of Ministers in November 2008, 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.
9. One of the main conclusions<sup>5</sup> of my visit to Sofia in November 2008 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.
10. 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 particularly the case of the constitutional amendments and the amendments to the Judicial System Act adopted in February 2007. I have the impression that, once joining the EU, Bulgaria did not consider implementation of Council of Europe commitments and obligations as a priority. This impression was confirmed by my interlocutors.

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

<sup>3</sup> See Resolution 1698 (2009) and Doc 12071 and addendum, report of the Committee on Rules of Procedure, Immunities and Institutional Affairs

<sup>4</sup> Bulgaria had joined NATO on 29 March 2004 and signed the European Union Treaty of Accession on 25 April 2005

<sup>5</sup> See aS/Mon (2008)34

11. During my last visit in December 2009 and after having met different interlocutors responsible for the new government, I noted a new positive trend in the relationship between the Assembly and the new Bulgarian authorities. Besides, all interlocutors expressed the will to move ahead with the implementation of the pending reforms.

12. I wish to recall that the political components of the Copenhagen criteria for EU membership<sup>6</sup> of 1993 largely coincide with Council of Europe membership obligations. Bulgaria has regrettably given priority to the economic requirements. In this context, a Co-operation and Verification Mechanism (CVM) has been 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. I believe that such a procedure would not have been necessary if Bulgaria had concentrated efforts to fulfil its obligations and commitments as Council of Europe member state.

13. This report summarises a number of key findings from my visits and the focus points of the post-monitoring dialogue with Bulgaria since the last resolution of the Assembly.

## II. Political context

### *i. Presidential elections 22 October 2006*

14. According to the OSCE/ODHIR International observation mission, the October 2006 presidential elections confirmed the credibility of the election process in Bulgaria. Elections took place in a competitive environment, and the range of seven presidential candidates and their vice presidential running mates permitted voters a genuine choice.

15. President Georgi Parvanov, the President of Bulgaria since 22 January 2002, was re-elected on 29 October 2006 with 75.95% in the second round and with a turnout of 38.97%.<sup>7</sup> The President serves as the head of state and commander-in-chief of the armed forces. He also chairs the Consultative Council for National Security. While unable to initiate legislation other than Constitutional amendments, the President can return a bill for further debate, although the Parliament can override the President's veto by a vote of a majority of all MPs.

### *ii. 2009 parliamentary elections and the new government*

16. The 5 July 2009 parliamentary elections in Bulgaria were the first national elections since the country joined the European Union in 2007.

17. The centre-right GERB (Citizens for a European Bulgaria) movement won 39.7% of the votes, while the formerly ruling Coalition for Bulgaria obtained 17.7%; the Movement for Rights and Freedoms (DPS, supported by Bulgarians of Turkish ethnic origin) obtained 14.5% of the votes, the radical nationalistic ATAKA received 9.36%, the liberal Blue Coalition obtained 6.7%, and the centre-right Order, Law and Security, 4.13%.<sup>8</sup>

18. With 116 seats of 240 secured, including 50 women (ie. 20.8%), the results did not allow Prime Minister Boyko Borisov – previous Mayor of Sofia – to form an outright majority and thus an independent stable government. However, in this situation, he opted to form a minority government as opposed to entering into a coalition with other small right-wing parties.

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<sup>6</sup> "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.

<sup>7</sup> The President of the Republic of Bulgaria is elected directly by Bulgarian citizens, for a five-year term with the right to one re-election.

<sup>8</sup> Repartition in the National assembly :GERB (Citizens for a European Bulgaria) 116 seats, Coalition for Bulgaria 40 seats, Movement for Rights and Freedoms 38 seats, ATAKA 21 seats, Blue Coalition 15 seats, Order, Law and Security 10 seats (the latter parliamentary group has been dissolved just before my visit, following the dismissal of one of its members)

19. On the other hand, all right-wing parties, including the extreme right nationalists declared that they would support the Government with a view to solving Bulgaria's problems.

20. In July 2009, Prime Minister Borisov outlined the new government's priorities:

- increasing people's income and providing for economic growth; fighting the crisis, attracting investment and increasing business activity; incorporating the latest technologies in all spheres;
- guaranteeing the rule of law, fighting corruption and crime;
- reforming the judicial system in order to restore the sense of justice in society;
- restoring the trust of the EU in Bulgaria in order to unfreeze the blocked EU funds which are expected to help Bulgaria overcome the crisis quickly;
- improving living conditions, including social policy and health, as well as sports and the physical development of the Bulgarians;
- developing Bulgaria's human capital and providing for top quality education;
- turning Bulgaria into a main factor for stability in the region and the world, mainly in co-operation with NATO and the EU, focusing on the Balkans and the Black Sea regions.

21. Prime Minister Borisov made it clear that his party (GERB) had the necessary political will to achieve these objectives. He vowed to include all Bulgarian citizens of all ethnic and religious backgrounds, as well as those Bulgarians living abroad, in the goals of the new government.

### III. Functioning of the judiciary

22. The problem of judicial independence has to be viewed within the wider context of the reform of the judicial 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.

23. 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. Now, the Ministers of Justice and of Interior have announced their intention to join efforts to review and implement the reform of the Penal Code. I called on the authorities to consult the European Commission for Democracy through Law (Venice Commission) for such an important reform, already at the stage of drafting. Justice Minister Popova showed great interest in Council of Europe assistance during our meeting in December 2009 and expressed his intention to consult the Venice Commission on these reforms.

24. 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 Bulgaria<sup>9</sup>, and the comments thereon submitted by the Bulgarian authorities<sup>10</sup>, 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.

25. The Venice Commission 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 observations.<sup>11</sup> In its opinion, adopted at that meeting<sup>12</sup>, the Venice Commission concluded that the provisions of the Constitution of Bulgaria, including its amendments of February 2007, were generally in conformity with European standards and in line with constitutional practice in other European states.

26. 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.

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<sup>9</sup> Doc. AS/Mon(2006)26

<sup>10</sup> Doc. AS/Mon(2007)13

<sup>11</sup> Doc. CDL(2008)035

<sup>12</sup> Doc. CDL(2008)009

27. 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.

28. For the Venice Commission, the 2007 provisions of the Constitution relating to civil and criminal immunity in the judiciary are in line with previous recommendations and are to be welcomed.

29. 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 1999<sup>13</sup> 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."*

30. 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, has not been implemented.

31. 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.

32. 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.

33. During my first visit in November 2008, I was surprised to find out 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, which presented obvious problems in relation to the provision of fair trials. Therefore I warmly welcome the modification of the Criminal Procedure Code which came about in December 2008, abolishing the obligation for civilians to file lawsuits against police in military courts.

34. In its judgment of 5 November 2009 on the case *Kolevi vs. Bulgaria*<sup>14</sup>, the ECtHR decided there were violations of Article 5 § 3 (to be brought promptly before a judge or other officer authorised by law to exercise judicial power), Article 5 § 1 and 5 § 3 (unlawful and lengthy deprivation of liberty), Article 5 § 4 (appeal against detention examined speedily) and Article 2 of the Convention (ineffective investigation and lack of the requisite independence). In the Court's opinion, the fact that the Government have not shown that at least some of the numerous grave allegations made during the relevant period against Mr F., the Chief

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<sup>13</sup> CDL-INF(1999)005e

<sup>14</sup> Application no 1108/2002

Public Prosecutor, were ever investigated, is highly relevant in the present case as it corroborates the applicant's allegation concerning the absence in Bulgarian law of sufficient guarantees for an independent investigation into offences of which the Chief Public Prosecutor or other high-ranking officials close to him may be suspected.

35. 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 competencies. Obviously, this, added to the widespread perception of corruption, gives rise to deep mistrust towards the judiciary. I can only but encourage co-operation with the Council of Europe for the training of judges.

36. 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 thus to be done to do so in civil cases until last June.

37. As regards the length of proceedings in December 2009, the Chairman of the Supreme Court informed me that, since our last meeting in 2008, a specific committee had been set up to examine this problem. It has come up with proposals for amending the legislation by establishing reserve lawyers, which would allow the problem of absenteeism in the Court to be eradicated, which is a major reason for delays in proceedings.

#### **IV. Independence of the media from the executive**

38. After her last visit, my predecessor, Mrs Severinsen, had 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)<sup>15</sup> 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.

39. 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. Furthermore, the recent reports of murders and of physical assaults of journalists raise major concern in Bulgaria.

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

41. 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. On this case, it is regrettable that investigations have not yet led to any prosecution and I hope light will shortly be shed on this case and the perpetrators will be duly prosecuted.

42. During my first visit in November 2008, 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 dealt with technical issues and did not guarantee the independence of the work of journalists in practice, even though it was enshrined in the Constitution.

43. Most recently, members of the parliament and opposition group of the Coalition for Bulgaria and of the Monitoring Committee of the Parliamentary Assembly also informed the Monitoring Committee about attempts to influence media, both the regulatory bodies and the media themselves. According to them, the concentration of property in the media sector continues, making corporate interests of some media susceptible to political pressure and thus weakening the independence of the media in society.

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<sup>15</sup> 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.

44. 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 consider drafting 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 should seek Council of Europe expertise in this field.

## V. Rights of persons belonging to national minorities

45. Under the Constitution, all citizens are equal before the law, irrespective of ethnic, religious and linguistic status.<sup>16</sup> 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. This Act was welcomed as a tool which offers protection for the victims of discrimination and allows transposition of EU directives into Bulgarian legislation.

46. The overall minority situation in the country is generally fairly satisfactory. Historically, ethnic Turks and 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 on 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 38 members out of 240 in the National Assembly and is also represented in local municipalities.

47. According to data for 2007 presented by the Max Planck Institute and the Institute of Sociology at the Bulgarian Academy of Sciences, the rate of unemployment stood at 7.6% among persons of Bulgarian ethnic origin, 26.8% for persons from the Turkish minority and at 48,3% among persons belonging to the Roma minority.

48. 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 prepared by the Committee on Legal Affairs and Human Rights, and which should be debated in the Assembly in April 2010. According to his report, in Bulgaria, enrolment rates of Roma children in schools are significantly lower than those of children from the majority. Furthermore, segregated schools (with mostly Roma children), which are in charge of the education of 70% of Roma children, have poorer infrastructures and less resources and materials than the mainstream schools. According to the 2001 census, 18.1% of the Roma were illiterate.

49. The Decade of Roma Inclusion action plans (2005-2015), did lead to some improvements in recent years of the situation but efforts must be continued, namely in the field of housing conditions and access to education and employment<sup>17</sup> to which the new government should commit itself.

50. In *European Roma Rights Centre (ERRC) v. Bulgaria*<sup>18</sup>, the European Committee on Social Rights found a violation of Article 16 of the revised European Social Charter regarding the housing conditions and the circumstances of eviction of Roma families, together with a violation of Article E (non-discrimination). In its Resolution CM/ResChS(2007)2 on Collective Complaint No. 31/2005 by the European Roma Rights Centre against Bulgaria, the Committee of Ministers looks forward to Bulgaria reporting, on the occasion of the submission of the next report concerning the relevant provisions of the European Social Charter (revised), that the situation has improved, and keeping the Committee of Ministers regularly informed of all progress made. This country report should be published in spring 2010<sup>19</sup>.

51. In this context, I was dismayed to find out that the new government moved the National Council for cooperation on Ethnic and Demographic Issues which was set up 10 years ago under the responsibility of the Council of Ministers, thus abolishing the only proper institution dealing with Romas issue, transferring it

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<sup>16</sup> Article 6, paragraph 2 of the Bulgarian Constitution

<sup>17</sup> Human rights NGOs regretted that the GERB party campaign promises to allocate posts in the administration to Romas has not yet been held.

<sup>18</sup> Complaint No. 31/2005, decision on the merits, 18/10/2006

<sup>19</sup> In a subsequent complaint also lodged by the European Roma Rights Centre against Bulgaria (Complaint No. 46/2007), the ECSR found further violations of the rights of Roma under the Charter. In this case the Committee held, inter alia, that the failure of the authorities to take appropriate measures to address the exclusion, marginalisation and environmental hazards which Romani communities are exposed to in Bulgaria, as well as the problems encountered by many Roma in accessing health care services, constituted a breach of Article 11§§ 1, 2 and 3 of the Revised Charter in conjunction with Article E. The Committee of Ministers is scheduled to decide on the follow-up to this decision in early 2010.

to a unit of two persons in the Ministry of Labour. I am convinced that the human rights issues of Romas require a global approach and active support from the government.

52. The Bulgarian authorities are 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.

53. As regards, the execution of the judgment of the European Court of Human Rights in the case of the *United Macedonian Organisation Ilinden - Pirin and others*, this has been pending for a long time. However, on 1 December 2009, the Committee of Ministers adopted the final resolution on the execution of the UMO Ilinden case.<sup>20</sup>

54. The case concerned the dissolution of a political party aimed at achieving “the recognition of the Macedonian minority in Bulgaria” and relates to freedom of association 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. 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 under consideration.

55. In its final resolution, the Committee of Ministers concludes: “underlying in this context that the Political Parties Act, as modified in January 2009, reduced from 5000 to 2500 the level of members required to form a political party and that this new level seems, in addition, likely to resolve the problems encountered by the applicants in forming their party in conformity of the requirement of the 2005 Political Parties Act. [...] it seems that the applicants can at present apply for the registration of their party in proceedings which are in conformity with Article 11 of the Convention. [...] the general measures [taken], and in particular the awareness-raising measures taken by the Bulgarian authorities to ensure that applicable domestic law [are] interpreted in conformity with the Convention and thus [should] prevent violations similar to that found by the European Court.”<sup>21</sup>

56. Moreover, the Venice Commission, in its Opinion on the Constitution of Bulgaria from 2008<sup>22</sup>, expressed its concern “that [...] provisions [in the constitution] could be used to prevent minority linguistic, ethnic or religious groups from organising themselves at all” and suggested “to amend some of the above mentioned provisions in the Constitution by softening their wording in order to convey an open attitude towards minorities also in the language used in the Constitution”.

57. According to the information presented in the opinion of the Advisory Committee on the Framework Convention for the Protection of National Minorities<sup>23</sup> “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 Bulgaria<sup>24</sup>, 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.

58. 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

<sup>20</sup> For further details on this case, please see AS/Jur(2008)24 on implementation of judgments of ECtHR, introductory memorandum by the rapporteur, Mr Christos Pourgourides, Cyprus, EPP/CD

<sup>21</sup> Resolution CM/ResDH(2009)1201 Adopted by the Committee of Ministers on 3 December 2009 at the 1072<sup>nd</sup> meeting of the Ministers’ Deputies on the Execution of the judgment of the European Court of Human Rights, *United Macedonian Organisation Ilinden – PIRIN and others against Bulgaria*, (Application No. 59489/00, judgment of 20 October 2005, final on 20 January 2006

<sup>22</sup> Opinion on the constitution of Bulgaria no. 444 / 2007CDL-AD(2008)009 Or. Engl. adopted at the 74<sup>th</sup> Plenary Session of the Venice Commission on 14-15 March 2008.

<sup>23</sup> Opinion on Bulgaria, adopted on 27 May 2004, and made public on 5 April 2006, Doc. ACFC/OP/I(2006)001

<sup>24</sup> ResCMN(2006)3, adopted by the Committee of Ministers on 5 April 2006 at the 961<sup>st</sup> meeting of the Ministers’ Deputies

authorities or in criminal proceedings. It is regrettable that no changes to the legislative provisions have been made.

59. Bulgaria has neither signed nor ratified the European Charter for Regional and Minority Languages. This question was raised with the 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.

60. A delegation of the Advisory Committee on the Framework Convention for the Protection of National Minorities visited Bulgaria from 28 September to 2 October 2009 in the context of the monitoring of the implementation of this convention in Bulgaria. Bulgaria submitted its second State Report under the Framework Convention in November 2007. Following its visit, the Advisory Committee will adopt its own report (Opinion) in Spring 2010, which will be sent to the Bulgarian Government for comments. The Committee of Ministers of the Council of Europe will then adopt conclusions and recommendations in respect of Bulgaria.

61. Furthermore, hate speech towards the representatives of the Roma and Muslim communities in the last elections and later have been reported.<sup>25</sup> Openly racist language has been used with impunity in the printed media<sup>26</sup>, which stereotype Roma and attack the dignity of the Roma. Actions are to be taken by government to foster tolerance and mutual respect, including an exemplary attitude from political leaders. Public statements of members of the government attacking minorities or their religious practices or even against the outgoing majority from the Socialist party (BSP) are regularly reported. This creates a bad rhetoric to say the least and exposes society to division. This is intolerable in a Council of Europe and EU member State.

62. The Criminal Code was amended in April 2009 to add incitement in speech to ethnic hostility or hatred, print or other mass media, or through electronic information systems, or through other means to the provision on propaganda and incitement to racial or national hostility or hatred or to racial discrimination. The penalty was also increased to imprisonment of up to four years (from a maximum penalty of three years imprisonment) and the maximum fine was increased to 10000 Levs (~5.000 Euro). This development is welcome and I must stress that systematic prosecution of perpetrators of acts of violence or discrimination or speech – be they from law enforcement bodies or non-states actors – can only lead to their eradication.

63. Furthermore, it is to be noted that the Council for Electronic Media (CEM), in its capacity as an independent regulators has been given the task of supervising the activities of radio and television and should use its right to sanction in this regard.<sup>27</sup>

64. I was informed during my last visit that the Bulgarian parliament rejected the 2008 activity report of the Commission for Protection against Discrimination, contesting the use of public funds and asking for detailed information, arguing that the Commission had spent millions but had only taken action on cases of discrimination four times in 2008. The Bulgarian Socialist Party (BSP) MPs and the ethnic Turkish Movement for Rights and Freedoms (DPS) both defended the Commission for Protection against Discrimination while the governing centre-right Citizens for European Development of Bulgaria (GERB) the nationalist party ATAKA and the rightist 'Blue Coalition' strongly criticized the report before it was finally rejected.

65. I can only regret the putting into question of this institution and I invite the government to support it, even if its funding should be monitored more closely as all public funds in a country weakened by corruption. It is furthermore regrettable that the debate on this institution has been politicised.

66. During his visit to Bulgaria on 3 - 5 November 2009, the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, assessed progress in the protection of the rights of minorities and disadvantaged children in Bulgaria. His report should be published at the beginning 2010.

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<sup>25</sup> SKAT TV continues to broadcast intolerant and discriminatory views against persons belonging to Roma and Turkish ethnic minorities and other private broadcasters (BBT cable TV) are also notorious for their use of extremely aggressive and abusive language against Roma and other minorities

<sup>26</sup> In particular in newspapers such as "Ataka", "Nova Zora", and "Novinar"

<sup>27</sup> Sanctions can range from fines against the broadcasters in breach of the law to revocation of the broadcasting licence.

## VI. Office of Ombudsperson

67. 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 the Coalition for Bulgaria, as the country's first national ombudsman, in April 2005. The Ombudsman is to submit an annual report on his activities to the National Assembly by 31 March every year and publish an annual bulletin on his activities.

68. During our meetings, 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, including legal persons.

69. 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 should be introduced providing that the latter co-operate with, and receive support from, the national Ombudsman.

70. I recommend, as was already done by the Assembly in its Resolution 1615 (2003), that “exclusive and transparent procedures for appointment and dismissal [of the Ombudsperson] by parliament by a qualified majority of votes” be applied. I further recommend, along the lines with repeated recommendation from the Venice Commission, that the Parliamentary Ombudsperson’s office be considered within the framework of a future constitutional revision so as to further consolidate and reinforce the efficiency of the Ombudsperson's institution.

## VII. Efforts to combat corruption and police abuses

### i. Anti-corruption measures

71. 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 the cause of 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.

72. On 26 November 2008, the European Commission decided to cut Bulgaria’s access to 220 million Euros in EU funding as a sanction 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.

73. Upon accession to the EU, the Bulgarian authorities and the other EU member states 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*”.<sup>28</sup>

74. 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.<sup>29</sup>

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

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

<sup>28</sup> 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

<sup>29</sup> See final report from the Commission to the European Parliament and the Council, on progress in Bulgaria under the co-operation and verification mechanism {sec(2009) 1074}, Brussels 22 July 2009 (com(2009) 402)

77. 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.<sup>30</sup> 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.

78. 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 2007<sup>31</sup>, GRECO concluded that, during the second evaluation round, the Bulgarian authorities had implemented satisfactorily or dealt with in a satisfactory 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 “to establish 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).<sup>32</sup>

79. As concerns the fight against organised crime, according to information provided by the Ministry of Interior in 2008 and 2009, there is a certain improvement. The number of registered crimes has dropped by 9% as 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.

80. The endemic corruption and perception of lack of action by the government is believed to be one of the reasons for failure of the Socialist government to win the 2009 elections again. The GERB party based its electoral campaign on this topic and its will to crack down on corruption in a considerable way. During our meetings, representatives of the government confirmed their commitments and stressed the very high expectations of the people in this regard.

81. I encourage the new Bulgarian government and competent 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*

82. 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.

83. 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<sup>33</sup>, 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 taking into account the existence of 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.

84. 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.

85. 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.

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<sup>30</sup> idem

<sup>31</sup> Greco RC-II (2007)4

<sup>32</sup> idem

<sup>33</sup> 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

86. The CPT carried out an ad hoc visit to Bulgaria from 15 to 19 December 2008, but authorities have not yet allowed the publication of the report and their comments. I encourage the authorisation of the publication of the CPT report on its 2008 visit to the country without further delay.

87. Human rights groups claim 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.

88. I was not able to collect the relevant figures during my visit, but I hope the Bulgarian authorities will provide me with these figures in due time for the finalisation of this report.

89. 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 type of complaint.

90. 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 a serious problem. Corruption also continues to plague the system.

91. Prison overcrowding remains a problem, although the Ministry of Justice has reported a slight decrease in 2008 in the prison population following the introduction of a probation system. There were 11,165 prisoners in the country's 13 prisons.<sup>34</sup> According to the Ministry of Justice, this figure exceeded by three times the capacity of the prison system.

92. I believe the Ministry of Justice will provide us with statistics and updated information for the final report on the prison situation and the information on the efforts undertaken to overcome prison overcrowding.

## VIII. Defamation

93. 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.

94. 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.*"<sup>35</sup>

95. I raised this issue with most of my interlocutors, including previous and current Ministers of Justice, who could not give me any convincing argument for justifying the fact that these sanctions remain in the sphere of Criminal law. The new Minister of Justice, Mrs Margarita Popova, even expressed her opinion that the population was probably ready for this change and committed herself to put defamation on the agenda of the working group of the human rights directorate to seek its advice on the issue.

96. I believe it is not enough that imprisonment is excluded from the Criminal Code and that defamation as such should once for all be excluded from it. I expect Bulgaria to decriminalise defamation rapidly.

## IX. Other outstanding questions

### *i. Execution of the judgments of the European Court of Human Rights (ECtHR)*

97. The ECtHR passed 60 judgments including 51 findings against the country in 2008 as compared to 51 findings out of 53 judgments in 2007.

98. 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 to account the institutions and officials who committed the violations.

99. The non-execution of judgments of the European Court has been partly due to the absence of legal

<sup>34</sup> including Boychinovtsi juvenile prison

<sup>35</sup> Resolution 1211 (2000), paragraph 4.ix. of

provisions allowing the reopening of a civil court case following a judgment of the Strasbourg Court. Re-opening of proceedings for criminal cases was provided for in the legislation, in Article 422(1)4 of the Bulgarian Criminal Procedure Code in 2006. As always, implementation remains to be seen in practice.

100. In this regard, according to Prof. Lasar Gruev, President of the Supreme Court, since the entry into force of the Code in 2006, 5 cases have been lodged before the Supreme Court, 4 cases in 2007 and 1 in 2009, which all have been reopened.

101. In a number of cases<sup>36</sup> 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 individual measures (i.e. to erase as much as possible the consequences of the violation for the victim) and general measures (the adoption of measures which will prevent future similar violations, such as legislative changes, administrative and judicial practice changes, etc.).

102. As regards the reopening of civil proceedings, the Bulgarian Code of Civil Procedure had first envisaged the reopening of civil proceedings, but this possibility was excluded from the Code in March 2008.<sup>37</sup> However, in June 2009, the new Civil Procedure Code was amended (new Article 303 para 7) to eventually allow for the possibility of reopening cases following a judgment by the Strasbourg Court establishing a violation of the European Convention of Human Rights or one of its Protocols. I hope this positive development will remain in the legislation.

103. I welcome the introduction of legal provisions allowing the reopening of a court case in civil cases. Now practice has to be developed in penal and civil cases which should help address the question of non-execution of the Strasbourg Court's judgments. Council of Europe assistance is currently provided in this respect and co-operation should be further strengthened.

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

104. Like previous rapporteurs on the post-monitoring dialogue with Bulgaria, I have been approached on several occasions by the Association of Justice, Rights, Culture and Co-operation in the Balkans (hereafter "the association"), which 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, the then 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 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.

105. The former prisoners' representatives claim that their case could not be brought before the Strasbourg Court since the national remedies could not be 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.

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<sup>36</sup> *Velikova vs. Bulgaria*, application no 41488/98, *Nachova vs. Bulgaria*, application no 43577/98 and 43579/98

<sup>37</sup> In this regard, the Committee of Ministers of the Council of Europe had, in 2000, adopted 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.

## **X. Concluding remarks**

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

107. 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.

108. During my visits to Sofia, the newly elected Bulgarian authorities demonstrated their intention to actively co-operate with the Council of Europe and promised to request Venice Commission assistance before adopting important legislation. I can stress that most interlocutors had well prepared our meetings and showed readiness to improve the situation in their field. In this regard, I recommend that the Monitoring Committee invites the Bulgarian authorities to request without delay the opinion of the Venice Commission on the Draft Law amending and supplementing the Penal Procedure Code recently submitted by the government to the National Assembly, in order to ensure its compliance with the European Convention on Human Rights.

109. The new government has to seize the momentum and the strong support of the population to set Bulgaria on the right track of a modern democracy. Some outstanding concerns and worrying trends listed in Resolution 1211 (2000) and mentioned in this report remain to be addressed promptly by the new government, which should take concrete steps to:

- take greater account of European standards and the opinions of Council of Europe experts on the draft laws it examines;
- ensure the independence of the judiciary and of the media is guaranteed with regard to the executive authorities and that there a greater diversity of opinion on national television;
- the Bulgarian parliament held a debate on Resolution 1211 (2000) in December 2000 as recommended in paragraph 4i. However, considering that nine years have gone by and that some shortcomings are still noticeable in the fields mentioned above, the Bulgarian National Assembly should take into account the present report and hold a debate on its conclusions;
- improve the rights of the persons belonging to minorities, especially as regards education and broadcasting in their mother tongue; minorities should be better represented in the police and the public services;
- efforts to combat corruption and police brutality should be stepped up with assistance from the Council of Europe; the constitution should be amended to bring the immunity of members of parliament, magistrates and senior officials in line with European standards;
- sanctions for defamation 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.

110. In the light of the above considerations, I believe the post-monitoring dialogue is a good tool for accompanying and supporting the new government in living up to the very high expectations of the population and fulfilling its promises and Bulgaria's commitments as Council of Europe member state.