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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 a fact-finding visit to Sofia (8-9 June 2016)**

Co-rapporteurs: Mr Frank Schwabe, Germany, SOC, and Mr Zsolt Németh, Hungary, EPP/CD

#### **I. Introduction**

1. Mr Németh was appointed co-rapporteur for Bulgaria on 28 January 2016. A co-rapporteurs' visit was organised in Brussels shortly after, on 1 March 2016, for an exchange of views with European Commission officials dealing with matters relating to Bulgaria. The issues discussed on that occasion are covered in the present note. A co-rapporteurs' fact-finding visit to Sofia was organised on 8-9 June 2016, shortly after the end of the Bulgarian Chairmanship of the Committee of Ministers of the Council of Europe (10 November 2015 – 18 May 2016).

2. We would like to recall that Resolution 1915 (2013)<sup>2</sup> makes a number of recommendations in the areas of the judiciary, corruption, abuses by law enforcement officials, media, national minorities and the electoral law. In its last paragraph, the resolution provides that: "Against this background, the Assembly resolves to continue the post-monitoring dialogue with the Bulgarian authorities in respect of reform of the judiciary, media freedom and transparency of ownership, as well as the revision of the electoral code, and, in accordance with its internal procedures, to closely follow the developments in this country." We wish to emphasise that this paragraph does not intend to narrow the range of subjects that are part of the post-monitoring dialogue. On the contrary, the last part of the phrase was added to ensure that the above-mentioned paragraph, which sets the focus for the future work, could not be interpreted as a limitation on the issues the rapporteurs could raise. Our role as co-rapporteurs is to look into the commitments and obligations of the country and to follow up on any and all recommendations made by the Assembly in its previous resolution, which concern all the areas mentioned above.

3. The previous co-rapporteurs' visit to Bulgaria focused mainly on the local elections, judicial reform, anti-corruption, freedom of expression and of the media, treatment and conditions of persons deprived of their liberty and minorities' rights, including Roma. During our June 2016 visit, we looked into the recent political developments, including the preparation of the forthcoming presidential election. We focused on the judicial reform and the fight against corruption. We also discussed human rights issues such as minorities, migrants, asylum-seekers and refugees. Additional topics were also raised during the discussions as mentioned in the present note, notably media freedom, on which we will focus more attention during our next visit.

4. We met with the Prime Minister, the Foreign Minister, the Minister of the Interior, the Minister of Education and Science, and the Deputy Justice Minister. In the parliament, we met the Speaker of the Parliament, the Bulgarian parliamentary delegation to PACE and representatives of different parliamentary groups. We also had discussions with Bulgaria's Ombudsperson, representatives of civil society organisations as well as representatives of the international community. We would like to thank the

<sup>1</sup> Document declassified by the Monitoring Committee at its meeting on 10 October 2016.

<sup>2</sup> <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=19402&lang=en>.

Parliament of Bulgaria and notably the Chairperson of the Bulgarian delegation to the Assembly for the programme and kind assistance given to our delegation.

5. Bulgaria – like Romania – remains under the European Commission's Cooperation and Verification Mechanism (CVM) in the areas of judicial reform, the fight against corruption and tackling organised crime. The last European Commission report was issued on 27 January 2016. The European Council adopted its conclusions<sup>3</sup> on the CVM on 15 March 2016, in which it acknowledged that encouraging steps have been taken to put the reform process back on track although overall efforts needed to be accelerated urgently. While the Council welcomed the political commitment to reforms expressed by the government, a broader and unequivocal political consensus in support of the reform process was required to ensure a stronger boost to concrete and sustainable reform efforts and make tangible progress, *inter alia*, by improving and safeguarding the independence, accountability and integrity of the judiciary; intensifying the fight against corruption, in particular at high level, and adopting a new anti-corruption law; accelerating efforts as regards combating organised crime.

## II. Political developments

### **Background information**

6. A centre-right coalition government came to power in Bulgaria after the early elections of October 2014. The party Citizens for European Development of Bulgaria (GERB), that had been in power from 2009 to 2013, won the elections but did not get the full majority to rule by itself. A coalition agreement was signed with the Reformist Bloc (including the Bulgarian Agrarian National Union, the Union of Democratic Forces, the Democrats for a Strong Bulgaria;<sup>4</sup> the Bulgaria for Citizens Movement, the People's Party Freedom and Dignity). The Patriotic Front (including the Bulgarian National Movement (IMRO) and the National Front for the Salvation of Bulgaria (NFSB)) and Alternative for Bulgarian Revival (ABV) party, although not officially part of the minority government, had a partnership agreement with the GERB-led government.<sup>5</sup> The opposition was then composed of the Bulgarian Socialist Party (BSP), the Movement for Rights and Freedoms (DPS), the Bulgarian Democratic Center and Ataka.

7. The Bulgarian Parliament is fragmented with eight parliamentary groups and 12 independent MPs. GERB has 84 MPs in the 240-seat Parliament, while 121 votes are needed for a minimum majority. In this situation, Prime Minister Boyko Borissov has the difficult task of holding together the minority government, and getting the support of divergent political movements. Given the distribution of the political forces in the parliament, there have been floating majorities to pass legislation through *ad hoc* agreements. Despite its apparent fragility, the coalition cabinet has so far managed to overcome important obstacles and to push forward the adoption of important legislation in parliament.

8. A new Chairperson of the Socialist Party, Korneliya Ninova, was appointed in May 2016. Over recent months the socialist opposition tried to form new alliances. In August 2016, the negotiations on the establishment of a joint coalition for the forthcoming presidential elections between BSP and ABV were reportedly<sup>6</sup> discontinued.

### **Forthcoming presidential elections**

9. The forthcoming presidential elections are scheduled for 6 November 2016. The President and the Vice-President will be elected for a five-year term. The incumbent President, Rosen Plevneliev, stated he would not run in the upcoming election.

10. The OSCE/ODIHR carried out a Needs Assessment Mission (NAM) shortly prior to our visit (from 31 May to 3 June 2016) and issued its mission report on 27 June 2016.<sup>7</sup> Based on the findings of this report, the OSCE/ODIHR NAM recommended the deployment of a Limited Election Observation Mission (LEOM) to Bulgaria to assess the 2016 presidential elections, upon availability of resources. On 20 June 2016, the Bureau of the Parliamentary Assembly of the Council of Europe decided to set up a 13 member cross-party Ad Hoc Committee to observe the presidential election in Bulgaria.

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<sup>3</sup> <http://www.consilium.europa.eu/en/press/press-releases/2016/03/15-conclusions-cooperation-and-verification-mechanism/>.

<sup>4</sup> in December 2015, MPs from the Democrats for Strong Bulgaria left the coalition.

<sup>5</sup> At the beginning of May 2016 ABV withdrew its support for the government and went into opposition.

<sup>6</sup> <http://www.focus-fen.net/news/2016/08/23/410555/bulgarian-socialist-party-cuts-presidential-elections-coalition-talks-with-abv-party.html>.

<sup>7</sup> <http://www.osce.org/odihr/elections/bulgaria/248771?download=true>.

11. The upcoming presidential elections will be conducted based on the amended Electoral Code. We were informed that a number of amendments had been adopted after the last Venice Commission opinion on amendments to the Electoral Code of March 2014. We were also informed of the recent legislative processes related to the electoral legislation. Some of our interlocutors complained about the recent adoption of significant changes close to the election and without inclusive public consultation, contrary to good international practice.
12. The changes to the electoral law initiated in the context of past and forthcoming referenda seem to have created some confusion about the state of play of the electoral code and we hope that things will be clarified well before the elections take place.
13. Concerning the recent changes to the Electoral Code, the ruling coalition initiated an electoral reform after the referendum on 25 October 2015 to introduce remote electronic voting. In April 2016, the parliament set a clear timetable for conducting a pilot of remote electronic voting throughout 2018 and for the transfer of responsibilities relating to machine and remote voting to the Central Election Commission. This change in the electoral code triggered the process of further amendments to the Electoral Code by various political groups in parliament.
14. On 20 April 2016, the parliament approved Election Code revisions *inter alia* making voting compulsory, banning the simultaneous conduct of referenda and national elections, the transfer of most election-related responsibilities from the Council of Ministers to the central and local election commissions and limiting overseas voting to embassies and consulates. The amendments were approved by the votes of GERB, the Bulgarian Socialist Party, the Movement for Rights and Freedoms and the Patriotic Front. The Reformist Bloc voted against most revisions, and ABV were opposed to some of the proposed changes.
15. On 26 April 2016, the parliamentary groups of GERB, the Reformist Bloc (excluding the Democrats for Strong Bulgaria), the Patriotic Front and ABV reached an agreement on these amendments to the Election Code. Rather than restricting voting abroad to embassies and consulates, the government coalition agreed on the opening of a maximum of 50 polling stations in any one country. The government coalition also agreed that the President would set the date for referenda, regardless of whether they were held in the same year as the national election or not. Concerning compulsory voting, voters who had not voted at two successive national elections of the same kind without a valid reason would be struck off the electoral roll, active registration would then be necessary for those seeking to be restored on the voters list.
16. Based on this agreement, the amendments were passed by the parliament on 28 April 2016, but were then vetoed by the President. On 18 May 2016, the parliament overpassed the veto and adopted the amendments to the Electoral Code.
17. After our visit, on 13 July 2016, the parliament approved in second reading the amendment setting up rules for voting abroad. The bill provides for a limit of 35 polling stations in any country outside Bulgaria for voting in national elections and referenda. In order for a polling station to be opened in places where there is no diplomatic or consular mission, an application must be lodged by 60 citizens and the Central Election Commission will then take the decision whether to open a polling station.
18. During our meeting with MPs from the Movement for Rights and Freedoms, they expressed concern regarding the draft amendments submitted by the Patriotic Front with regard to the number of polling stations abroad. They claimed that the reason for this is the intention – overtly declared – to restrict in particular the voting rights of Bulgarian citizens of Turkish ethnic origin living in Turkey. They also complained about some other provisions of the Electoral Code which they consider discriminatory, including the minimum period of residence required to have the right to vote at local elections and the European Parliament elections and the ban on the use of minority languages in election campaigns. The recommendation of allowing the use of minority languages in election campaigns was made by the Venice Commission and the OSCE/ODIHR in their joint opinion on the Electoral Code of Bulgaria of March 2014.<sup>8</sup>
19. The BSP MPs we met expressed concern about the Electoral Code changes, notably regarding the expanded competences of the local elections commissions that allegedly do not have the competences and resources to carry out their new tasks.

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<sup>8</sup> Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) joint legal opinion on the new draft Election Code of March 2014: [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2014\)001-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2014)001-e).

20. On 26 July, the Bulgarian Ombudsperson seized the Constitutional Court on the provisions of the Electoral Code envisaging penalties on voters having not exercised their right to vote.

21. During our visit, we were informed of two pending initiatives for referenda. One is a six-question<sup>9</sup> referendum proposed by the TV producer and showman Slavi Trifonov, backed by 572 650 valid signatures.<sup>10</sup> After our visit, on 28 July 2016, the Constitutional Court (that had been seized by the President of the Republic) rejected three out of the six questions as unconstitutional. The three questions that will remain, to be asked in a national referendum to be held simultaneously with the presidential elections, are about: the introduction of a majoritarian system to elect Members of Parliament; the introduction of compulsory voting (although the parliament has already legislated on this), the introduction of State subsidies for political parties and coalitions of one Bulgarian Lev<sup>11</sup> per valid vote.

22. The petition for another five-point<sup>12</sup> referendum that was initiated before our visit by businessman Veselin Mareshki was rejected by the parliament on 29 July 2016 as it lacked the required number of valid signatures.

23. After our visit, the European Court of Human Rights issued a judgment in the case of *Kulinski and Sabev v. Bulgaria*<sup>13</sup> finding a violation of Article 3 of Protocol No. 1 (right to free elections) of the European Convention on Human Rights. The case concerned the constitutional ban on prisoners' voting rights in Bulgaria. The Court confirmed its earlier case-law that a general, automatic and indiscriminate restriction of the right to vote for prisoners was disproportionate to any legitimate aim pursued. This issue of the restriction of suffrage rights for citizens serving prison terms, regardless of the severity of the crime committed, was also raised by the Venice Commission in its opinion on the Electoral Code of Bulgaria in 2014.

24. We would like to reiterate the good electoral practice of stability of electoral legislation, especially with regard to fundamental elements of the legal framework. Fundamental changes should not be made during one year prior to the election process, as mentioned by the Venice Commission in its previous opinion on the Bulgarian Electoral Code.<sup>14</sup> We note that since 2014, the Venice Commission has not been seized for opinion on the changes to the electoral law. We encourage the authorities to make full use of the Venice Commission's expertise before introducing changes to the electoral legislation.

### III. Reform of the justice system

25. The issue of the judicial reform was one of the main focuses of our visit. In our meetings we welcomed the ongoing process and the encouraging steps that have been taken to put the judicial reform process back on track, notably with the amendment of the Constitution adopted by a broad majority of parliament in December 2015. We insisted on the need for the political will to pursue and continue to accelerate the reform process.

26. In its 2015 Fourth Evaluation Report<sup>15</sup> on "Corruption prevention in respect of members of parliament, judges and prosecutors" in Bulgaria, GRECO considered that the judicial system's vulnerability to undue political interference remained significant. Also, the effectiveness of enforcement of integrity standards within the judiciary was called into question. Furthermore, implementation of the principle of random case allocation

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<sup>9</sup> 1) Do you support the idea for the members of parliament to be elected through a majority system with absolute majority in two rounds? 2) Do you support cutting the number of members of the parliament [from 240] to 120? 3) Do you support the introduction of compulsory voting at elections and referenda? 4) Do you support the opportunity of distance electronic voting at elections and referenda? 5) Do you support the idea for the annual state subsidy allocated for financing the political parties and coalitions to be BGN 1 for each real vote received at the last elections? 6) Do you support the idea for the directors of the district directorates of the interior ministry and the heads of the regional departments in the district directorates of the ministry of interior to be elected through majority system with absolute majority in two rounds?

<sup>10</sup> Which is above the threshold of 400 000 signatures required for the holding of a referendum initiated by citizens.

<sup>11</sup> Approximately 0.50 €.

<sup>12</sup> The questions related to: 1) the introduction of state regulation in the fuels market to ensure lower end prices; 2) a removal of a restriction for a person to own more than four pharmacies across the country; 3) an end to state subsidies for parties and coalitions; 4) a reduction in the number of MPs; 5) a revocation of lawmakers' immunity from criminal prosecution.

<sup>13</sup> Application no. 63849/09; judgement of 21 July 2016 [not yet final].

<sup>14</sup> Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) joint legal opinion on the draft new Election Code of March 2014: [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2014\)001-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2014)001-e).

<sup>15</sup> GRECO [Evaluation report](#) on Bulgaria, Fourth Evaluation Round, Corruption prevention in respect of members of parliament, judges and prosecutors, adoption: 27 March 2015, publication: 13 May 2015.



in the courts and prosecution offices had to be realised in practice and made subject to more stringent controls. In its conclusions<sup>16</sup> on the Cooperation and Verification Mechanism, as adopted on 15 March 2016, the Council of the European Union insisted that Bulgaria should focus its efforts on removing controversy about political influence on the judicial system and integrity issues regarding appointments, as well as the need to improve the monitoring and the addressing of deficiencies, and the effective implementation of court judgements. Pursuing reforms of the Supreme Judicial Council (SJC) and the prosecution office, and strengthening the powers of the Judicial Inspectorate remain of key importance.

27. At the end of July 2015, the President of the National Assembly of Bulgaria requested the opinion of the Venice Commission on draft amendments to the Constitution of Bulgaria in the field of the judiciary, initiated by the Minister of Justice and registered with the National Assembly by the President of the National Assembly and a number of deputies. The proposed amendments covered several important issues in the field of the judiciary. They concerned in particular structural and organisational changes of the SJC, dividing it into two chambers (one for judges and one for prosecutors and investigators, with separate and independent career and disciplinary functions for judges and prosecutors). They also strengthened the inspectorate within the SJC through new functions that aim at ensuring the accountability and integrity of the judiciary (inspections for conflict of interests for judges and prosecutors, verification of property disclosure declarations, etc.). Finally they opened access for the Supreme Bar Council to the Constitutional Court (when a law infringes human rights and freedoms).

28. In its opinion<sup>17</sup> adopted in October 2015, the Venice Commission welcomed the efforts to reform the SJC as a self-governing body of the Bulgarian judiciary as an important step in the wider process of the judicial reform. It welcomed in particular the proposed division of the SJC into two separate chambers for judges and prosecutors with mixed compositions (judges/prosecutors elected by their peers and lay members elected by the National Assembly, and, as *ex officio* members, the chairpersons of the Supreme Court of Cassation and the Supreme Administrative Court and the Prosecutor General); it also welcomed the separate competence for each chamber to deal with matters concerning the respective professions. The strengthening of the Inspectorate of the SJC, as a way to address more efficiently problems of integrity and conflict of interests within the judiciary, and the introduction of indirect access by citizens to the Constitutional Court – through the Supreme Bar Council – were also welcomed as steps in the right direction.

29. The Venice Commission nevertheless noted that, in spite of its previous recommendations, with regard to certain important aspects of the organisation and the operation of the SJC, the draft amendments did not go far enough. The main unaddressed recommendations by the Venice Commission concerned the following points:

- introduction of a qualified majority requirement and anti-deadlock mechanisms for the election of SJC lay members by the National Assembly; to provide conditions, through specific election rules, for a proportional and fair representation, in the SJC Chambers, of all levels of courts/ the prosecution service;
- to reconsider the division of competencies between the SJC Plenum and the two Chambers with a view to ensuring full respect of the principle of independence of the different professions of the judiciary from each other;
- to provide for the adoption by open vote of decisions of the SJC Chambers and Plenum, including on disciplinary matters, while guaranteeing the judges' right to a fair hearing;
- to reconsider the role of the Minister of Justice in relation to the SJC in the light of the risk of an undue interference;
- to provide wider access to the Constitutional Court, by giving the power to raise questions of constitutionality to judges at all levels when they are called to apply laws deemed unconstitutional and by introducing direct individual complaints, selected by filters of admissibility.

30. The Venice Commission noted that further important steps were indispensable for an efficient and successful reform of the Bulgarian judiciary. In particular they should include, as a crucial component of the reform process, a thorough transformation of the State Prosecution Service so as to improve its efficiency and accountability, as well as the functional autonomy of individual prosecutors.

31. On 16 December 2015 the Bulgarian Parliament adopted in third (and final) reading the constitutional amendments. The proposal to split the SJC into separate judges' and prosecutors' chambers was approved, as well as the introduction of a qualified majority requirement for the election of lay members of the SJC by the National Assembly. There was some criticism of the re-distribution of quotas in the SJC, which would allegedly weaken the independence of the courts by increasing the number of political appointments in the judges' chamber, while at the same time strengthening the role of the Prosecutor General in the prosecutors'

<sup>16</sup> <http://data.consilium.europa.eu/doc/document/ST-7118-2016-INIT/en/pdf>.

<sup>17</sup> [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2015\)022-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2015)022-e).

chamber. The former Minister of Justice, Hristo Ivanov, one of the main promoters of the reform, submitted his resignation as he considered that the reform had been watered down too much.

32. According to the constitutional amendments, follow-up legislative amendments have to be adopted within 90 days. On 31 March 2016, the Bulgarian National Assembly adopted a first package of changes to the Bulgarian Judicial Act, implementing key provisions of the constitutional amendments, such as the separation of the SJC into separate colleges overseeing courts on the one hand, and the prosecutor's office on the other hand. A second package of amendments to the Judicial Act was pending before the Council of Ministers during our visit. These amendments reportedly relate to: the procedure for the election of jurors; courts' self-governance, in particular the reduction of the powers of the administrative heads of individual courts; the decentralisation of the prosecutor's office; provisions on the powers and competences granted to the SJC inspectorate.

33. Most of our interlocutors considered that the constitutional amendments were a step forward in reforming Bulgaria's judiciary, but we also heard criticism from representatives of the civil society and of the judiciary that the final version of the legislative changes had been diluted and constituted a missed opportunity. One of the main issues raised by a number of our interlocutors was the insufficient accountability of the Prosecutor's Office that remains neglected by the reform. The General Prosecutor is allegedly not integrated into the system of checks and balances, and he exerts influence over the whole prosecution service due to its hierarchical structure. In addition, the reform has allegedly failed to achieve its purpose of decreasing political influence on the judiciary and decreasing parliamentary scrutiny of the prosecutorial college, due to the distribution in the two chambers between peers and lay members.

34. During our meetings we regretted that the first package of amendments to the Judicial Act had not been sent to the Venice Commission for opinion, and we insisted that the second package should be sent to the Venice Commission. The Deputy Minister of Justice expressed her intention to do so. This would have allowed all the parliamentary forces to take the recommendations of the Venice Commission into account when discussing and adopting the changes to the Judicial Act. In the end, we learnt that the Venice Commission was not seized. On 26 July 2016, the second package was adopted in parliament. In view of the importance of the judicial reform for the country and in order to have a comprehensive assessment of the measures adopted, we suggest that the Monitoring Committee seizes the Venice Commission for opinion on the two packages of amendments to the Judicial Act.

35. In its judgement in the case *Kolevi v. Bulgaria*<sup>18</sup> in 2009 that is pending execution before the Committee of Ministers, the European Court of Human Rights concluded that there had been a lack of independent, objective and effective investigation into the killing of the first applicant due to 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.

36. We were informed during our visit that four prosecutors, coming from the United Kingdom, Germany, the Netherlands and Spain, were expected to conduct an independent analysis of the structural and functional model of the prosecution office – including with regard to its hierarchy, specialised structures, integrity, transparency and caseload. They started their work on 27 June 2016. Their report is due to be published at the end of the year and it is expected that it will be taken into account for the preparation of the next EC CVM report.

37. The broader issue of criminal proceedings and the inefficiency of criminal investigations were raised by civil society representatives. Ineffective criminal investigation, not only of ill-treatment by the police, but also bodily injury, murder or rape committed by private individuals, has been identified recently as a systemic problem by the Court, notably in its recent judgment *S.Z. v. Bulgaria* of 17 March 2015. To date, more than 55 judgements have been issued by the European Court of Human Rights on this issue.<sup>19</sup>

38. The issue of the length of judicial procedures was discussed in our meeting with the Ombudsperson. The Committee of Ministers closed the supervisions of the execution of the two pilot judgments of the European Court of Human Rights – *Dimitrov and Hamanov v. Bulgaria* (criminal proceedings) and *Finger v. Bulgaria* (civil proceedings) in September 2015 following the introduction by the Bulgarian authorities of a combination of domestic compensatory remedies, which was considered effective by the Court. Yet, the Bulgarian authorities still need to pursue their efforts in the area of length of proceedings, in particular in order to reduce the length of judicial proceedings before overburdened courts, avoid delays at the stage of

<sup>18</sup> European Court of Human Rights, application n° 1108/02, judgement of 5 November 2009

<sup>19</sup> The Court indicated that Bulgaria should address this problem in cooperation with the Committee of Ministers, the judgment is under enhanced supervision of the CM.

the pre-trial investigation and to put in place an effective acceleratory remedy for criminal cases. The jurisprudence of the European Court of Human Rights shows that difficulties with regard to length of civil proceedings persist in the overburdened courts.

#### IV. Fight against corruption

39. During our meetings with the Prime Minister and the Minister for Foreign Affairs, we were told that the fight against corruption was a major priority of the government and that measures have been adopted which have led to progress in this field. The Prime Minister referred in particular to the good results of the Anti-Smuggling Interdepartmental Coordination Center and the Control of High Risk Goods and Cargos, whose main purpose is to ensure the coordination and interaction of anti-smuggling actions among the relevant authorities, including the various police departments, national revenue agency, customs, and the state agency for national security. He also mentioned the amended Public Procurement Act and the improvements in public procurement procedures.

40. In its 2015 Fourth Evaluation Report<sup>20</sup> on “Corruption prevention in respect of members of parliament, judges and prosecutors in Bulgaria”, GRECO acknowledged that the prevention of and fight against corruption have been long-standing priorities in Bulgaria. Yet, the complex regulations and the abundance of reporting instruments and oversight bodies have failed to bring about the desired cumulative effect or help attain qualitative changes in corruption prevention efforts. GRECO noted the absence of results in detecting and punishing violations of conflicts of interest and asset disclosure rules. The conclusion of the Cooperation and Verification Mechanism, as adopted by the Council (General Affairs) on 15 March 2016,<sup>21</sup> notes the difficulties in establishing track records in the areas of combating corruption and organised crime. It states that the fight against corruption, in particular at high level, needs to be intensified, to bring about concrete and sustained results. An urgent priority should be to adopt a new anti-corruption law, which consolidates the intentions set out in the anti-corruption strategy.

41. As part of the latest reform strategy, the government has sought to merge the cabinet’s anti-corruption office BORKOR and the conflict of interest commission, as well as parts of the National Audit Office that investigate elected officials’ asset declarations. In September 2015, a draft Law on Preventing Corruption among Persons Occupying High Public Offices had already been submitted to Parliament and had been rejected at first reading. In 2016, there was a second attempt to initiate a new debate on an amended version of the draft law. This was still under discussions at the time of our visit. The draft Act on prevention of corruption and confiscation of illegally acquired property provides for the establishment of a single anti-corruption body – the National Bureau of Preventing Corruption and Forfeiture of Illegally Acquired Assets – that should unite four existing bodies: the Commission for Prevention and Ascertainment of Conflict of Interest, the Asset Forfeiture Commission, the Center for Prevention and Combating Corruption and Organised Crime (BORKOR) and the unit of the National Audit Office. The bureau’s director and his four deputies would be elected by the parliament. We were informed during our visit that the draft law was expected to be submitted to the National Assembly plenary in first reading before the summer recess.

42. We noted a controversy amongst our interlocutors, mainly those from opposition parties and civil society organisations, with regard to the creation of a single body in charge of a number of different questions. The necessary safeguards for its independence have allegedly not been put in place, notably concerning the appointments procedures, and there is a lack of checks and balances. Merging several existing bodies with different functions into a single institution would create certain risks, in particular concerning its efficiency. In addition, according to them, it could become an instrument of external influence. The bill received criticism, notably with regard to the type of majority required for electing the new body’s management, and the extensive provisions on anonymous corruption reports. It was also criticised for reducing the number of public officials required to submit annual property declarations compared to the current regulations.

43. The bill was supported by representatives of GERB and its junior coalition partner the Reformist Bloc. In our meeting with Meglena Kouneva, the initiator of the law, we were told that the lessons from the experience in 2015 had been learnt and that the bill had been drafted accordingly: the body would have more authority, it would be elected by parliament and revocable by parliament and would thus be accountable. Concerning appointments, one of the safeguards was the requirement not to have been in the party apparatus for the two previous years and to be a lawyer. According to her, it was important that the bill be adopted in first reading. It could then still be changed between the two readings in parliament as long as

<sup>20</sup> GRECO [Evaluation report](#) on Bulgaria, Fourth Evaluation Round, Corruption prevention in respect of members of parliament, judges and prosecutors, Adoption: 27 March 2015, Publication: 13 May 2015

<sup>21</sup> <http://data.consilium.europa.eu/doc/document/ST-7118-2016-INIT/en/pdf>.

the spirit of the law remained the same. After our visit, on 30 June 2016, the parliament adopted the bill in first reading.

44. During our meetings, civil society representatives recalled that Bulgaria scores as the most corrupt amongst EU member states in the Transparency International corruption perception index. They denounced persistently high levels of corruption impunity. According to them, few new cases are opened and even fewer cases end with a conviction. Sanctions are lenient and no high-profile case has been successfully completed. They mentioned a number of high-profile cases with significant political impact that had been launched and heavily advertised but none of which had ended in convictions against senior politicians or public officials. According to them, one of the reasons for this is the lack of accountability of the General Prosecutor, as well as the functioning of the Prosecutor's Office. They questioned in particular the efficiency of the specialised courts and prosecutors that had been established for high-profile corruption.

45. Some other issues related to the prevention of corruption were discussed during our meetings. Civil society representatives stressed the need to regulate lobbies and further develop transparency measures. The question of campaign financing in the context of the preparation of the presidential election was also discussed. In an Addendum to the Second Compliance Report on Bulgaria, published on 1 February 2016,<sup>22</sup> the Council of Europe Group of States against Corruption (GRECO) considered that the new arrangements for the transparency of political financing needed some stability and serenity to become progressively effective, and should be spared the overhauls which the legislation and institutions underwent far too often in Bulgaria.

## **V. Human rights issues**

### ***Hate speech, discrimination and intolerance***

46. Opposition political groups and civil society have denounced the increasingly frequent, overtly extreme racist speech at political level, including in the Bulgarian Parliament itself, along with the failure to enforce the appropriate sanctions by the Prosecutor's Office and apparent refusal to apply the Penal Code, which prohibits hate speech of an ethnic or religious nature. Hate speech against ethnic, religious and sexual minorities is, according to them, also strongly present in the media without being prosecuted or penalised, and the Bulgarian media's attitude to marginalised groups is stereotypical and negative.

47. In its 2014 opinion on the implementation of the Framework Convention for the Protection of National Minorities, the Council of Europe Advisory Committee stated that the overall climate as regards inter-ethnic tolerance in Bulgaria has deteriorated. Racism has become increasingly widespread in political discourse and the media and extremist political parties have proliferated. There has also been a worrying rise of physical attacks on refugees and asylum-seekers, as well as attacks on Roma and on places of worship used by persons belonging to national minorities, notably mosques. Legal remedies in cases of hate speech and hate crimes are reportedly ineffective in practice. In its 2014 report, ECRI stated that racist and intolerant hate speech in political discourse is escalating with the main target now being refugees. In the media and on Internet, expressions of racism and xenophobia, mainly against ethnic Turks and Muslims, are commonplace, as is abusive language when referring to Roma. The authorities rarely voice any counter-hate speech message to the public. Few cases of hate speech have reached court and the conviction rate is low. In its recent correspondence with the Bulgarian authorities,<sup>23</sup> the Commissioner for Human Rights expressed concern over the use of anti-Roma rhetoric as a campaigning tool by various politicians during the run-up to the municipal elections held in October-November 2015.

### ***Minorities (including Roma)***

48. In its Third Opinion on Bulgaria, adopted on 11 February 2014,<sup>24</sup> the Advisory Committee on implementation of the Framework Convention for the Protection of National Minorities (FCNM) noted that the Bulgarian authorities had taken some useful steps towards better protecting the rights of persons belonging to national minorities. The Advisory Committee made recommendations on measures that needed to be taken with regard to the integration strategies and action plans for Roma, hate crime and hate speech, minority language, participation of minorities in decision-making and minorities' socio-economic problems.

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<sup>22</sup> GRECO [Addendum](#) to the Second Compliance Report on Bulgaria in the framework of the Third Evaluation Round on Incriminations and "Transparency of Party Funding" published on 1 February 2016, Greco RC-III (2015) 10E.

<sup>23</sup> [Letter](#) of 20 January 2016 from the Council of Europe Commissioner, Nils Muižnieks, to Mr Boyko Borissov, Prime Minister of Bulgaria concerning evictions of Roma.

<sup>24</sup> <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008c669>.



49. Civil society representatives told us about shortcomings in the minority language education policy in the Bulgarian education system and about the absence of a legal education framework ensuring quality teaching of minority languages in schools. The FCNM Advisory Committee indeed noted in its last opinion that while a variety of minority languages are taught in schools, the number of pupils studying their minority language is low and there is a general downward trend in this area. We were also told that there is an absence of adequate education programmes, methods and approaches for teaching Bulgarian as a foreign language to children and pupils with insufficient or non-existent communication skills in this language when they enroll in kindergartens or schools. We raised these questions with the Minister of Education.

50. The 2014 Advisory Committee's Third Opinion on Bulgaria<sup>25</sup> acknowledged that a number of programmes, strategies and action plans had recently been adopted in order to improve the situation of the Roma in Bulgaria. However, the relevant action plans were not currently funded and many Roma in Bulgaria remained in a situation of significant socio-economic disadvantage. In its fifth monitoring cycle Report on Bulgaria of 2014,<sup>26</sup> ECRI noted that Roma continue to live in spatial isolation, which results in social isolation, and there are high levels of unemployment in the Roma population. Despite efforts, low achievement in education persists and drop-out rates continue to be disproportionately high among Roma pupils.

51. We were told by civil society representatives that the continuing segregation of Roma pupils in schools in Roma neighborhoods is a crucial problem. According to them, a related issue is the secondary segregation of schools with Roma pupils when non-Roma pupils desert them, which is notably caused by the widespread anti-Roma attitudes among the general public, maintained on a political level and facilitated by the lack of educational integration.

52. We were also informed by NGO representatives that housing evictions of Roma have continued and that the legal framework remains problematic. In January 2016,<sup>27</sup> the Commissioner for Human Rights wrote a letter to Prime Minister Borisov expressing concern over reports of forced eviction of Roma families and the demolition of houses in different localities in Bulgaria, including Garmen and Varna. The Commissioner recalled that any eviction without due process and without the offer of adequate alternative housing is a violation of Bulgaria's international obligations. He noted that alternatives proposed to evicted persons have included the placement of children in institutions for social care, which should not be considered a compliant alternative solution. In his answer, the Minister for Foreign Affairs provided information, in particular with regard to existing final decisions of the regional courts concerning the removal of unlawful constructions and to measures taken by the authorities to secure accommodation for vulnerable individuals, including support provided by social workers.

### ***Migrants, asylum-seekers, refugees***

53. Having borders both with Turkey and Greece, Bulgaria has been very much affected by the recent migration flows. Bulgaria experienced a considerable increase in arrivals of migrants and asylum applications in mid-2013. In December 2015, the UNHCR estimated that in 2015 34 000 refugees and migrants had crossed from Turkey into Bulgaria and Greece by land. In the first quarter of 2016, detected crossings between Turkey and Bulgaria had fallen by 20% compared to the previous year, despite the gradual closure of other routes and the decision to deport most asylum-seekers arriving in Greece by sea. Just over 2 800 irregular crossings were detected in the first three months of 2016, compared to about 3 500 for the equivalent period in 2015. Interior Minister Romyana Bachvarova said that the number of illegal migrants detained in Bulgaria in 2016 had decreased by nearly 30% compared to 2015.

54. Most of our interlocutors stated that Bulgaria remained a transit country and that most asylum-seekers disappeared before their procedure was closed. Despite increasing requests for Dublin Regulation transfers, only a few were returned to Bulgaria.

55. In January 2014, Bulgaria started construction of a 33 km-long security fence along its border with Turkey. At the beginning of 2015, the government announced a 133 km extension to the barbed wire border fence in order to completely secure the land border. The length of the fence is now over 132 km, and another 119 km is expected to be completed this autumn. According to the authorities, the fence helps reduce the risks of illegal crossings by channelling migrants through the 22 gates.

<sup>25</sup> Op. cit.

<sup>26</sup> <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Bulgaria/BGR-CbC-V-2014-036-ENG.pdf>.

<sup>27</sup> [letter](#) of 20 January 2016 from the Council of Europe Commissioner, Nils Muižnieks, to Mr Boyko BORISSOV, Prime Minister of Bulgaria concerning evictions of Roma.

56. In attempts to halt the refugee and migrant flow through the Bulgarian-Turkish and Bulgarian-Greek borders, the authorities have deployed additional police to boost its border guards and allowed the army to participate in border patrols.

57. On 5 May 2016, Bulgaria and Turkey signed a readmission agreement setting out the procedures to send back so-called irregular migrants to Turkey (to be implemented as of 1 June 2016).

58. During our meetings, the authorities reiterated their commitment to the worldwide and regional efforts concerning the so-called migrant crisis and reminded us that Bulgaria was among the few countries that registers every migrant crossing the state borders. They considered that Bulgaria has done a good job of protecting the EU's external border. They insisted that the EU had only allocated 50 million euros to Bulgaria for border protection over the last seven years and 5 million euros extra to the border police and to the state agency for refugees (against 700 million for Turkey). They stressed that the massive influx had fuelled radical and xenophobic trends, and insisted on the need to differentiate between asylum-seekers and illegal migrants. They stressed the need for common efforts, notably though the reinforcement of Frontex, and the need for more integration between Interpol and countries' prosecutors' offices. We were informed of the setting up of Joint Contact Centres between Bulgaria, Greece and Turkey.

59. NGO representatives denounced human rights violations against asylum-seekers and migrants and the lack of investigations into violations. In its report of February 2015, the Commissioner for Human Rights was seriously concerned at consistent reports of push-backs of migrants, in some cases accompanied by excessive use of force, carried out by the Bulgarian law enforcement authorities at the Bulgarian-Turkish border. As regards the asylum procedure, the Commissioner called on the Bulgarian authorities to address current shortcomings in the system for the early identification, assessment and referral of vulnerable asylum-seekers with specific needs, including unaccompanied children, and the lack of specific support for these persons. The situation whereby asylum-seekers are subjected to administrative detention until their asylum claim is formally registered was a matter of concern, especially as registration can take a considerable amount of time. The Commissioner was concerned about the inadequate material conditions in administrative detention centres and at the numerous reports of ill-treatment in these centres. As regards detention for deportation, one of the main concerns was that the law allows for the detention of children accompanied by their families for a period of up to three months. The Commissioner called upon the Bulgarian authorities to ensure that, in law and in practice, the detention of asylum-seekers is only used as a last resort, for the shortest possible period of time and on the basis of individual assessments. Children should not be subjected to immigration detention, whether with or without their families.

### **Media freedom**

60. Although the area of media freedom was not a focus for our visit, it was mentioned in most of our meetings as an area of concern. The Minister for Foreign Affairs updated us on the recent changes, notably the new legal framework to manage media outlets. He insisted on the need to increase transparency of media ownership in the print media. According to the Prime Minister, the government has no influence over the media, and the problem comes from media owners who are foreign businessmen and exert influence over the media. In our meeting with the international community, we were told that the situation of the media in Bulgaria has worsened over the last seven years.

61. Bulgaria is ranked at the lowest position of Reporters without Borders' World Press Freedom Index inside the European Union "due to an environment dominated by corruption and collusion between media, politicians and oligarchs". The report notes that "the Commission for Financial Supervision acts as a 'media cop', imposing fines, ordering journalists to reveal their sources and deterring them from shedding light on problems with the country's banks and the banking regulatory system".<sup>28</sup> According to the Freedom House report 2015,<sup>29</sup> media concentration remains problematic, and ownership transparency rules are weak and poorly enforced

62. In his report of June 2015,<sup>30</sup> the Commissioner noted the lack of pluralism, opaque media ownership and financing, and editorial control exerted by political figures through advertisement and information contracts, as the main concerns. He recommended that the authorities establish independent monitoring of media ownership and financing, as well as rules aimed at limiting excessive concentration of media ownership and favouring media pluralism. He also recommended better protection of journalists, effective

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<sup>28</sup> <https://rsf.org/en/bulgaria>.

<sup>29</sup> <https://freedomhouse.org/report/freedom-press/2015/bulgaria>.

<sup>30</sup> [Report](#) by Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his visit to Bulgaria, from 9 to 11 February 2015.

investigation of all attacks and intimidation against them and reviewing current media legislation in order to better shield journalistic sources from undue pressure. He also recommended reducing the risk of censorship or self-censorship by fully decriminalising defamation and ensuring that no fines are imposed by the Financial Supervision Commission for journalistic work, as well as by guaranteeing the efficiency of media regulatory and ethical bodies.

63. We will further look into the issue of media freedom during our next visit.

### **Other human right issues**

64. We welcome the signature by Bulgaria in April 2016 of the Council of Europe Convention on preventing and combating violence against women and domestic violence, known as the Istanbul Convention. The Speaker of Parliament informed us that it would be ratified soon as there was a consensus amongst political forces and that the ratification procedure was underway.

65. One issue that was raised by the Ombudsperson is the detention of children within the social pedagogical boarding schools and correctional boarding schools in contradiction of the law. She recommended that these boarding institutions be closed down immediately and that the reform of the juvenile justice system be implemented. The Ombudsperson also informed us about recent developments in the framework of the execution of the European Court of Human Rights judgement in the case *Neshkov and others v. Bulgaria*.<sup>31</sup> According to her, the process has accelerated and a draft bill on the compensatory remedy has been prepared and should be submitted to parliament soon. At its 1250th meeting of March 2016, the Committee of Ministers<sup>32</sup> strongly encouraged the Bulgarian authorities to rapidly adopt the legislative amendments and other promising measures and invited the authorities to integrate these reforms into a long-term strategy aimed at combatting prison overcrowding and poor material conditions of detention.

## **VI. Conclusions**

66. During our visit we noted increased political stability since the last elections. This is a positive development, in particular in view of the past years that were characterised by successive political crises and repeated early elections, blocking progress in reforms. We welcome the recent acceleration in the reform processes and the political support to the ongoing important reforms.

67. The political climate during our visit was already influenced by the forthcoming November 2016 presidential elections and we were told that the ongoing reforms in the field of the judiciary and the fight against corruption needed to be rapidly carried out in order not to be delayed by the start of the election campaign. In this pre-electoral context, political discussions on the reform processes were already difficult and the minority government had had to seek a majority in parliament on an *ad hoc* basis. In this situation, compromise legislation has been adopted and we insisted in all our meetings that the reforms should be carried out meaningfully and in compliance with European standards in order to ensure genuine rule of law in Bulgaria.

68. It is essential for Bulgaria to move forward with the reform of the judiciary, which has wide-reaching and important consequences. Amendments that are negotiated between political forces and that are the result of political compromises still need to comply with European standards and consulting the Venice Commission is crucial from that point of view.

69. We welcome the fact that the judicial reform process has been put back on track, notably with the amendment of the Constitution, adopted by a broad majority of parliament in December 2015. As mentioned by the Venice Commission in its opinion on the constitutional amendments, these can only be effective in conjunction with subsequent related legislative processes, in particular the process of amendment of the Judiciary System Act. Their impact on the intended (overall) reform of the judiciary depends on how the implementation at the level of general legislation is intended and shaped. We regret that the authorities have not seized the Venice Commission for an opinion on the packages of amendments to the Judicial Act and we suggest that the Monitoring Committee does so.

70. Issues related to the fight against corruption and organised crime were also discussed during our meetings, as well as the need to ensure that the anti-corruption system is effective and produces tangible

<sup>31</sup> In its [judgment](#) of January 2015, the Court found structural problems affecting the entire penitentiary system in Bulgaria and emphasised the need for effective domestic preventive and compensatory remedies for such violations.

<sup>32</sup> [http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases\\_en.asp?CaseTitleOrNumber=neshkov&StateCode=&SectionCode=](http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=neshkov&StateCode=&SectionCode=)

results. In this context, we hope that the ongoing legislative reform will be completed soon, in line with the GRECO recommendations. At the same time, we reiterate that the legislative reform is only the beginning of the process – its implementation is the key to ensuring its sustainability.

71. The forthcoming presidential election is important for the country. While welcoming any proposals that would increase public trust in the conduct of the election, we also stressed during our meetings the importance of the stability of the electoral framework in the months before the presidential election. The electoral law has been amended several times since the last Venice Commission opinion of 2014, and some amendments were still under discussion at the time of our visit. Here again, we consider that the Bulgarian authorities should make use of the Venice Commission's expertise to ensure that the electoral law and practice comply with European standards and best practices. We invite the Monitoring Committee to ask the Venice Commission for an opinion on the amendments to the Electoral Code, adopted since the last Venice Commission opinion of 2014 (on the understanding that this opinion would not be made public until after the presidential election of 6 November 2016).

72. We will visit Bulgaria after the presidential election to look into political developments and follow up on the issues already discussed during our visit, in particular continuation of the judicial and the anti-corruption reforms. The next visit will also especially focus on freedom of the media.

## Appendix 1 – Programme of the fact-finding visit to Sofia (8-9 June 2016)

Co-rapporteurs: Mr Frank Schwabe, Germany, SOC and Mr Zsolt Németh, Hungary, EPP/CD

Secretariat: Ms Delphine Freymann, Secretary to the Monitoring Committee

<b>Wednesday 8 June 2016</b>
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- 08:30 – 10:50 Meeting with representatives of the Civil Society (\*)
- 11:00 – 11:40 Meeting with Mr Daniel Mitov, Minister of Foreign Affairs of the Republic of Bulgaria
- 12:00 – 13:00 Meeting with Mr Boyko Borissov, Prime Minister of the Republic of Bulgaria
- 14:00 – 14:30 Meeting with Ms Rumyana Bachvarova, Deputy Prime Minister for Coalition Policy and State Administration and Minister of Interior
- 14:40 – 15:20 Meeting with the President of the National Assembly, Ms Tsetska Tsacheva
- 15:30 – 16:20 Meeting with Ms Krasimira Filipova, Deputy Minister of Justice of the Republic of Bulgaria
- 16:30 – 17:30 Meeting with Ms Meglena Kuneva, Deputy Prime Minister for European Policies Coordination and Institutional Affairs and Minister of Education and Science
- 19:00 Dinner hosted by the Head of the Bulgarian Parliamentary Delegation to PACE

<b>Thursday 9 June 2016</b>
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- 09:00 – 10:50 Working breakfast with selected Ambassadors of the Council of Europe Member States (hosted by the Hungarian Ambassador to Sofia)
- 11:00 – 11:40 Meeting with the representatives of the parliamentary groups supporting the government
- 11:40 – 12:20 Meeting with representatives of the Parliamentary Group of BSP – Leftist Bulgaria
- 12:20 – 13:00 Meeting with representatives of the Parliamentary Group of MRF
- 13:20 – 14:50 Working lunch with the Members of the Bulgarian Parliamentary Delegation to PACE
- 15:00 – 16:00 Meeting with Ms Maya Manolova, Ombudsperson of the Republic of Bulgaria
- 16:10 – 18:30 Meeting with representatives of the Civil Society – continue (\*)

(\*) organised by the PACE Secretariat