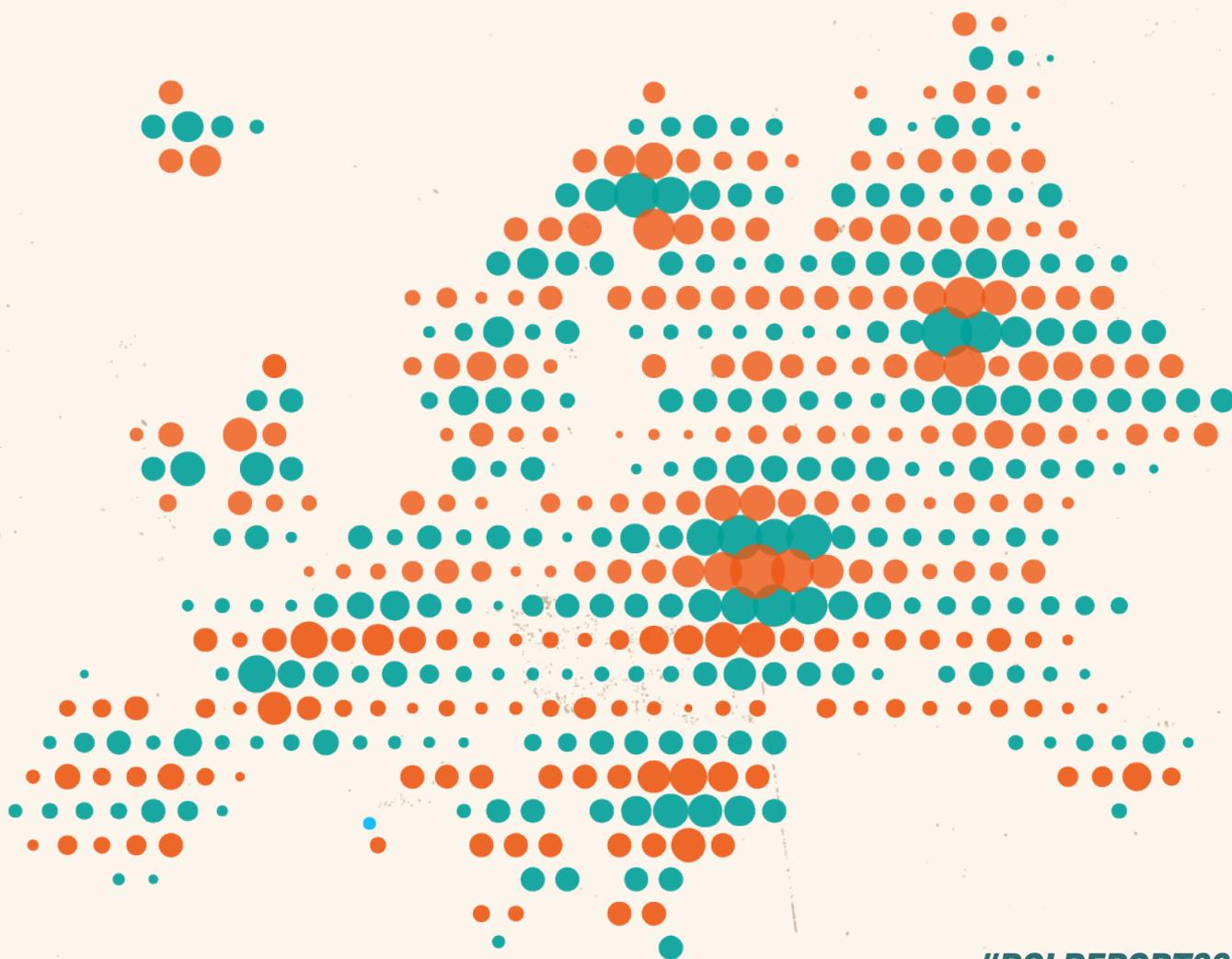


LIBERTIES

RULE OF LAW REPORT

2023

BULGARIA



#ROLREPORT2023

FOREWORD

This country report is part of the Liberties Rule of Law Report 2023, which is the fourth annual report on the state of rule of law in the European Union (EU) published by the Civil Liberties Union for Europe (Liberties). Liberties is a non-governmental organisation (NGO) promoting the civil liberties of everyone in the EU, and it is built on a network of national civil liberties NGOs from across the EU. Currently, we have member and partner organisations in Belgium, Bulgaria, the Czech Republic, Croatia, Estonia, France, Germany, Hungary, Ireland, Italy, Lithuania, the Netherlands, Poland, Romania, Slovakia, Slovenia, Spain and Sweden.

Liberties, together with its members and partner organisations, carries out advocacy, campaigning and public education activities to explain what the rule of law is, what the EU and national governments are doing to protect or harm it, and gathers public support to press leaders at EU and national level to fully respect, promote and protect our basic rights and values.

The 2023 Report was drafted by Liberties and its member and partner organisations, it and covers the situation during 2022. It is a ‘shadow report’ to the European Commission’s annual rule of law audit. As such, its purpose is to provide the European Commission with reliable information and analysis from the ground to feed its own rule of law reports, and to provide an independent analysis of the state of the rule of law in the EU in its own right.

Liberties’ report represents the most in-depth reporting exercise carried out to date by an NGO network to map developments in a wide range of areas connected to the rule of law in the EU. The 2023 Report includes 18 country reports that follow a common structure, mirroring and expanding on the priority areas and indicators identified by the European Commission for its annual rule of law monitoring cycle. Forty-five member and partner organisations across the EU contributed to the compilation of these country reports.

[Download the full Liberties Rule of Law Report 2023 here](#)

TABLE OF CONTENTS

About the authors	4
Key concerns	4
Justice system	5
Anti-corruption framework	7
Media environment and freedom of expression and of information	7
Checks and balances	8
Enabling framework for civil society	9
Disregard of human rights obligations and other systemic issues affecting the rule of law framework	11
Contacts	14

BULGARIA

About the authors



BULGARIAN
HELSINKI
COMMITTEE

The Bulgarian Helsinki Committee (BHC)

is an independent, non-governmental organization for the protection of human rights in the Republic of Bulgaria. It was established in 1992. Among other things, the organization has a legal programme responsible for strategic litigation cases, and participates in consultations or as amicus curiae before national and international bodies and institutions.

Key concerns

New draft amendments to the Criminal Procedure Code and the Judicial System Act have the potential to improve the justice system if adopted. However, the key piece of legislation faced strong opposition from defenders of the status quo and did not progress significantly. Neither the functioning of the Inspectorate to the Supreme Judicial Council nor the problematic composition of the Supreme Judicial Council were addressed.

Despite the proposed new legislation, parliament failed to advance much of it before the end of the year. Parliamentary discussions on

the proposed legislation revealed insufficient expert discussions.

In 2022, there were no significant changes in the media market in Bulgaria, nor any serious initiatives to improve the media environment and pluralism. The most influential Bulgarian media remain those that supported the ruling GERB party until 2021, those opposed to judicial reform, as well as those that are softer on Russia's military aggression in Ukraine. The chairman of the media regulatory body publicly attacked a journalist with complete impunity.

The ongoing political crisis following a vote of no confidence against Prime Minister Kiril Petkov's regular government in mid-2022 and the continued rule of a caretaker government appointed by the president is delaying key reforms and putting the work of a fourth parliament formed in just two years at risk. The inability of the parliament to propose the composition of key state institutions emerges as a serious problem.

In 2022, there was no development regarding the cooperation of the authorities with non-governmental organizations. In the context of the possible future membership of North Macedonia in the European Union, the problem of the freedom of association of people self-identifying as ethnic Macedonians in Bulgaria has significantly emerged.

During 2022, Bulgaria failed again to implement key ECtHR judgments affecting serious systemic problems, including an independent investigation of the Chief Prosecutor and the disproportionate evictions of vulnerable people from their only homes.

State of play

-  Justice system
-  Anti-corruption framework
-  Media environment and freedom of expression and of information
-  Checks and balances
-  Enabling framework for civil society
-  Systemic human rights issues

Legend (versus 2022)

-  Regression
-  No progress
-  Progress

Justice system

Judicial independence

Allocation of cases in courts

In July the public became aware of a scandal involving the chairman of the Supreme

Administrative Court, Georgi Cholakov, under whose direction the system for the random distribution of cases was established. The new system was implemented in one day, and on the same day three cases related to a serious corruption scandal were allocated. Cholakov, who was operating the system that day, turned out to be in the panel hearing for all three cases. The cases concern petitions by Eurolab 2011—a private contractor that is operating many key and profitable activities in Kapitan Andreevo, a border checkpoint with Turkey. Earlier this year, the regular government of Kiril Petkov, formed in December 2021, publicly announced its suspicions of serious corruption at the border crossing and terminated the contract with the private company. The case was widely covered with many irregularities around it surfacing—including tapped phone recordings¹ and attempted physical impedance of inspecting authorities²—none of which led to criminal investigations or removal of the contractor. In regard to the suspicious presence of Cholakov in all three panel hearings of the company, the Supreme Administrative Court circulated a press release stating that this was a coincidence; that the chairman of the court was simultaneously assigning cases, while being included in the list of judges on duty, and serving on the bench that week.³ In October, another scandal arose around Cholakov. This time he bought a villa with

1 <https://news.bg/crime/zapisat-za-papkata-za-100-hil-chast-sas-signal-a-za-laboratoriyata-na-kapitan-andreevo.html>

2 <https://www.svobodnaevropa.bg/a/31976357.html>

3 <https://clubz.bg/125487>

a pool full of mineral water in the village of Pchelin for 10,000 leva (around 5,100 euro).⁴

Independence (including composition and nomination of its members), and powers of the body tasked with safeguarding the independence of the judiciary

In 2022, the problem of the ratio between professional members from the judicial quota and lay members from the parliamentary quota in the judicial chamber of the Supreme Judicial Council, which is enshrined in Article 130a § 3 of the Constitution, remained unaddressed.

As a partially positive development, it can be pointed out that the draft amendments to the Criminal Procedure Code and the Judicial System Act provided for a restriction on Parliament to elect, as lay members in both chambers of the Supreme Judicial Council, people who are former judges, prosecutors, or investigators. This is in line with the recommendations in Opinion n° 1095/2022 of the Venice Commission.⁵ However, the bill was not reviewed at first reading in parliamentary committees until the end of the reporting period in mid-January 2023.

Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal liability of judges

The draft amendments in the Criminal Procedure Code provide for improvements in parliamentary oversight and the possibility of subjecting the Chief Prosecutor to investigation by an independent figure with a view to establishing criminal responsibility—issues key to the judgment of the ECtHR in the case of *Kolevi v. Bulgaria*.

The proposed revisions to the Code of Criminal Procedure are summarized and commented on in Opinion n° 1095/2022 of the Venice Commission,⁶ excluding minor subsequent changes after that opinion was published. The Commission notes the issues with the Bulgarian constitution.⁷ A meeting of the Parliamentary Legal Affairs Committee, held on 11 January 2023 to consider the bill, did not proceed to a vote, but was adjourned until 18 January to be attended by the Chief Prosecutor/until a hearing.

Thus, for the whole of 2022 progress on the issue of an independent investigation mechanism and accountability of the Chief Prosecutor has not made notable progress.

Independence/autonomy of the prosecution service

In 2022, the Prosecutor's Office's broad powers of general legality oversight went unchallenged.

4 <https://www.svobodnaevropa.bg/a/32101530.html>

5 See §§ 15 – 21 of the Opinion: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2022\)032-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2022)032-e)

6 Ibid., § 24.

7 Ibid., § 26 – 28.

In September, the Ministry of Justice requested the Constitutional Court to (a) interpret the concept of legality oversight—a core power of the Chief Prosecutor provided for in Article 127 of the Constitution, and (b) declare unconstitutional the provision of Article 145(1)(3) of the Judicial System Act in respect of the words “and actions” and “and revisions” and of Article 145(1)(6) in respect of the words “or other offence” as contrary to Article 127(5) of the Constitution of the Republic of Bulgaria. The first of those two the Constitutional Court found inadmissible, as there is no ambiguity or conflicting interpretation of this provision of the Constitution.⁸ The remainder of the request was admitted, but was not adjudicated by the end of the reporting period.

Anti-corruption framework 🟡

Key recommendations

- Quicker and more timely organisation of pluralistic expert discussions on key anti-corruption legislation.

Framework to prevent corruption

Measures in place to ensure whistleblower protection and encourage reporting of corruption

In October 2022, two almost identical whistleblower protection bills were introduced in Parliament. This was one of the key legislative amendments envisaged under the Recovery and Resilience Plan, which was due to be passed by the end of the year. Both bills implement the requirements of a European directive on the protection of whistleblowers. Both bills were rejected at first reading in Parliament’s plenary due to numerous general criticisms of the legislative technique. On 12 January 2023 another bill, prepared by GERB political party, was introduced in Parliament.⁹

Media environment and freedom of expression and of information 🟡

Media and telecommunications authorities and bodies

In December 2022, Sonya Momchilova, chairperson of the Council for Electronic Media, attacked the journalist Maria Cheresheva for her participation in an international investigation into violence against migrants at

⁸ <https://www.constcourt.bg/bg/Acts/GetHtmlContent/eec47f52-a429-47f2-80a1-60dcb36eb49a>

⁹ <https://www.parliament.bg/bg/bills/ID/164632>

the Bulgarian border. The investigation¹⁰ by a consortium of eight media organisations from different countries—Sky News, ARD, Times, Le Monde, the Swiss public radio and television SRF, Lighthouse Reports, Domani and the Bulgarian service of Radio Free Europe—according to Momchilova, does not meet basic journalistic standards and is the result of “incompetent efforts to undermine everything that our country does to defend its territory.” Two non-governmental organisations—the Bulgarian Helsinki Committee and the Association of European Journalists in Bulgaria—publicly demanded Momchilova’s resignation, and two members of the regulatory body submitted such a proposal for a vote. The proposal was rejected by 3 to 2 votes, where Momchilova herself voted with the majority.¹¹

Freedom of expression and of information

Censorship and self-censorship, including online

On 7 January 2022, the Sofia City Court, acting as court of first-instance, granted the claims of Svetlin Mihaylov, a judge in civil matters in the Sofia Appellate Court, against a journalist and the media who published

his impugned article, awarding the claimant 60,000 leva (approximately 30,670 euro).¹² The article describes the financial situation of the judge, alleges that he is a millionaire, and cites a number of cases in which his name has been involved in scandals related to a political party, the Movement for Rights and Freedoms (an ALDE member), who discussed at one point judge Mihaylov being a potential nominee to the Supreme Judicial Council. These statements of fact were described by the first instance court as “offensive.” The judge who heard this case was seconded from the Sofia Appellate Court, where the plaintiff in the case is also a judge. Moreover, the two judges are both members of the same small judicial NGO. The second instance court, the Sofia Appellate Court, reduced the granted claim to 4,000 leva (approximately 2,045 euro).¹³

Checks and balances

Key recommendations

- The parliament should come up with an action plan regarding the selection of new members for key institutions where the term of office of a current member is passed.

10 <https://news.sky.com/story/refugee-trying-to-reach-europe-shot-near-bulgaria-turkey-border-12762033>

11 <https://www.svobodnaevropa.bg/a/32177957.html>

12 <https://www.mediapool.bg/preduprezhdenie-ako-zhurnalist-nareche-sadiya-svetlin-mihailov-skandalen-tova-struva-60-000-lv-news330817.htm>

13 <https://www.mediapool.bg/smrazyavasht-efekt-spomenavane-za-blizost-s-dps-struva-4000-lv-na-zhurnalisti-news343552.html>

Independent authorities

In plenary, on 26 October 2022, the Speaker of the National Assembly read out a list¹⁴ of state bodies and their members whose terms have expired, but who remain in their position until they are replaced, and for whom Parliament must hold elections. The list includes, among others, 11 members of the Supreme Judicial Council, the entire inspectorate of the council, two judges of the Constitutional Court, the Commission for Personal Data Protection, the Commission for Protection against Discrimination, the governor of the Bulgarian National Bank, the chairman of the Court of Auditors, the chairman of the Financial Supervision Commission, the chairman of the Anti-Corruption Commission, and a member of the National Bureau for Control of Special Means of Surveillance. This short list alone makes clear the serious erosion of the principle of term of office in Bulgaria, and stemming from that—of legitimacy in the governance of the country.

In September, the Constitutional Court delivered a judgment on whether the term of office of members of the Supreme Judicial Council and the Inspectorate to the Supreme Judicial Council is terminated upon expiry of the period that is set for it.¹⁵ The court reached the decision that, “[w]here no other legal remedy is provided against the blockage

of the functioning of a constitutionally established institution of state, the continuation of the performance of the functions of that institution through its personnel until a new election/appointment [...] is a constitutionally permissible means of restraining a de facto alteration of the constitutionally prescribed balance of powers and institutions of the state [...]” With this judgment, the court made lifetime tenure legal.

Enabling framework for civil society –

Key recommendations

- The Bulgarian government should review and comply with the recommendations of the Council of Europe’s Committee of Minister’s Decision CM/Del/Dec(2022)1451/H46-8 of 8 December 2022.

Regulatory framework

Formation and registration of associations, including those with a cross-border nature

In 2022, there have been no positive developments in guaranteeing the rights of people

14 The list is available in the verbatim records of the plenary session at <https://www.parliament.bg/bg/plenary/ns/55/ID/10698>.

15 Judgment no. 12 of 27 September 2022 in constitutional case no. 7/2022. See, <https://www.constcourt.bg/bg/Acts/GetHtmlContent/2ddbc14c-bcdc-4e8c-afb6-f2442517228a>

self-identifying as ethnic Macedonians in Bulgaria. These include the recognition of the Macedonian minority, the right to freedom of association and the right to freedom of assembly. No progress has been registered in the execution of the *UMO Ilinden* group of cases of the ECtHR, which are under the supervision of the Committee of Ministers of the Council of Europe since 2006.

The denial of the Macedonian ethnic identity continued in 2022 at a high political level. Already in the beginning of 2022, the then Prime Minister and the President of the Republic¹⁶ set the tone by denying the existence of a Macedonian minority in Bulgaria.

In the course of 2022, officials from the Registry Agency and courts routinely denied the registration of Macedonian organizations upon application. In many cases, such refusals were motivated by manifestly discriminatory reasons. For example, in February with a final decision, the Sofia Court of Appeal refused registration of the “Union of Macedonians from Bulgaria who experienced repression, victims of the communist terror”, finding that the goals of the applying association contradict the Bulgarian constitution because they are protecting the rights and interests of an ethnic minority on the territory of Bulgaria, “[...] which objectively does not exist as a separate and established group of people possessing

religious, linguistic, cultural or other distinguishing characteristics.”¹⁷

In a number of other cases, the Registry Agency and the courts tried to find formal reasons to refuse registration to Macedonian groups. In 2022 alone, five new applications of people identifying as ethnic Macedonians were lodged in the ECtHR claiming violations of Article 11 of the European Convention of Human Rights (ECHR) in conjunction with Article 14. Thus, the number of pending cases on this subject before this court is now more than twice the number of judgments, which are currently under review before the Committee of Ministers.

In December 2022, the Committee of Ministers made strong statements and recommendations following the review of these cases. It deplored the fact that despite the adoption of the Interim Resolution CM/ResDH(2020)197 and subsequent decisions, more than 16 years after the first final judgment in this group, associations aiming to “achieve the recognition of the Macedonian minority” continue to be routinely refused registration mainly due to a wider problem of disapproval of their goals. Furthermore, they are confronted with a persistent practice of the authorities raising new grounds for refusal even though the registration documents have been repeatedly examined. It urged the authorities to take all the necessary outstanding measures

16 <https://www.president.bg/news6386/prezidentat-radev-nadyavam-se-darzhavnoto-rakovodstvo-na-rsm-da-proyavi-madrost-i-politicheska-smelost-za-reshavane-na-osnovnitate-vaproshi.html?lang=bg&skipMobile=1>

17 <https://legalacts.justice.bg/Search/GetActContentByActId?actId=un3ZHEDA%2BFM%3D>

to comply fully with its Interim Resolution CM/ResDH(2020)197 and subsequent decisions, in particular by ensuring that any new registration request of the applicant associations or associations similar to them is examined in full compliance with Article 11 of the ECHR and by extending the obligation of the Registry Agency to give instructions for the rectification of registration files.¹⁸

In October 2022, the ultra-nationalist and pro-Kremlin Revival party introduced a Russia-style foreign agent registration bill into parliament.¹⁹ The bill, which received numerous negative statements from NGOs and institutions, was not considered at first reading during the reporting period.

Attacks and harassment

Intimidation / negative narratives / smear campaigns / disinformation campaigns

In June 2022 the Sofia City Court delivered a first-instance judgment in the case of an anti-LGBTI attack committed in 2021 by well-known right-wing radical and then-presidential candidate Boyan Stankov-Rasate. On 29 October 2021, Rasate stormed into the Rainbow Hub community centre with a dozen other people and punched an activist working there in the face. During this time, an LGBTI community event was taking place in one of the centre's rooms. The mob

vandalised the community centre, smashing furniture and equipment. Given the absence of a hate crime penalty when the conduct is motivated by the sexual orientation or gender identity of the victim, Rasate was charged with “hooliganism.” The court however found him not guilty of charges of crime motivated by “hooliganism” and of causing slight bodily harm to the LGBTI activist. It also rejected the victim's civil claim.²⁰

Disregard of human rights obligations and other systemic issues affecting the rule of law framework 🟡

Key recommendations

- The Ministry of Justice should urgently review some of the longest-standing and most systemic cases of non-compliance with ECtHR rulings and decisively engage NGOs in drafting the necessary changes in legislation and administrative practice.
- Parliament should prioritise addressing the systemic human rights problems in Bulgaria.

18 [https://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2022\)1451/H46-8E](https://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2022)1451/H46-8E)

19 <https://www.parliament.bg/bg/bills/ID/164424>

20 <https://btvnovinite.bg/bulgaria/3000-lv-globa-za-bojan-rasate-za-nahluvaneto-v-ofis-na-resursen-centar.html>

- The academic community should also be involved in the processes of finding quick and meaningful solutions to long-standing problems.

Systemic human rights violations

Widespread human rights violations and/or persistent protection failures

In October 2022 the ECtHR delivered its judgment in the case of *Paketova and Others v. Bulgaria* (Applications nos. 17808/19 and 36972/19)²¹ concerning the applicants' complaint that they were forced to leave their homes in the small village of Voyvodinovo in January 2019, following a fight in the village between a Roma and a non-Roma man and the gathering of angry members of the local non-Roma population, joined by radical extremist groups, shouting anti-Roma slogans and threatening violence. The Court found a violation of Article 8 in conjunction with Article 14 of the ECHR. In July, the national equality body, the Commission for Protection against Discrimination, delivered a decision, finding discrimination by the mayor of the village, Dimitar Toskov, who convinced the Roma population of the village to voluntarily leave their homes on the night of the mob gathering.²²

After June 2021, the Supreme Administrative Court, a court of last instance, overturned a decision of the Commission for Protection against Discrimination, which found no discrimination in public statements of the then defence minister from the right-wing political party, Krassimir Karakachanov, in the Voyvodinovo case. Throughout 2022 the national equality body did not reopen the case. The impugned statements referred to events that took place in the village, regarding them as proof that "Gypsies in Bulgaria became extremely brazen" and of evidencing their criminal nature as an ethnic group.

Serious violations were found in the October 2022 report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).²³ During a visit in 2021, the delegation examined the treatment, conditions and legal safeguards offered to patients with psychiatric disorders and residents of social care institutions, as well as the treatment and conditions of detention of persons in police custody and penitentiary establishments. The most serious findings of the committee are repeated from previous visits and are related to psychiatric establishments and social care homes: ill-treatment of patients and residents by staff, lack of secure outdoor exercise areas, lack of medical and multidisciplinary clinical staff, lack of personalised care and attention, seclusion, mechanical and chemical restraint of patients,

21 <https://hudoc.echr.coe.int/eng?i=001-219776>

22 Decision no. 392 of 26 July 2022 in case no. 707/2019 of the Commission for Protection against Discrimination.

23 <https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-cpt-publishes-report-on-its-2021-visit-to-bulgaria>

detention of legally competent patients who initially were hospitalized voluntarily, and poor living conditions, among others.

Implementation of decisions by supranational courts, such as the Court of Justice of the EU and the European Court of Human Rights

In 2022, Bulgaria again failed to implement two key judgments of the ECtHR: in the case of *Kolevi v. Bulgaria*, discussed in detail above, and in the case of *Yordanova and Others v. Bulgaria*, concerning the attempted eviction of a Roma community from their illegal settlement in the city of Sofia, consisting of their only homes and without provision of alternative housing opportunities. Delivered in 2012, the *Yordanova* judgment requires as general measures that, *inter alia*, a proportionality test must be conducted before evicting people from public property. For some years now, the Bulgarian government has claimed before the Committee of Ministers that a draft law was prepared to implement the judgment. Neither was the draft law made public, nor did civil society organizations participate in the working group. Furthermore, 2022 was yet another year in which the draft did not advance to public consultation. In an addendum to their action plan for the execution of the judgment, which was published in September 2022,²⁴ the government cites a letter by the National Association of Municipalities in the Republic of Bulgaria which specifies that following the Association's and its members' active

participation in the working group tasked with proposing legislative amendments, and despite the lack of legislative framework, the municipalities introduced an administrative practice of inspecting illegal constructions in cooperation with the police and social services to check whether the persons concerned have been entered on the list of persons in need of municipal housing. Evidence in writing that this “administrative practice” has taken place (written recommendation, decision or so) are not provided. The government further submitted that ten years after the judgment was delivered “the options for the Bulgarian authorities to amend, where appropriate, the rules which currently make it particularly difficult for persons living in unlawful dwellings or not having a registered address or persons occupying unlawfully municipal dwellings to apply for municipal housing, is still subject to consideration.”

24 [https://hudoc.exec.coe.int/eng?i=DH-DD\(2022\)750E](https://hudoc.exec.coe.int/eng?i=DH-DD(2022)750E)

Contacts

Bulgarian Helsinki Committee

The Bulgarian Helsinki Committee (BHC) is an independent non-governmental organisation for the protection of human rights, established in Sofia, Bulgaria in 1992.

The objectives of the BHC are to promote respect for the human rights of every individual; to stimulate legislative reform to bring Bulgarian legislation in line with international human rights standards; to trigger public debate on human rights issues; to carry out advocacy for the protection of human rights; and to popularise and make widely available human rights instruments.

ulitsa “Varbitsa” 7
1504 Sofia
Bulgaria
bhc@bghelsinki.org
www.bghelsinki.org/en/home

The Civil Liberties Union for Europe

The Civil Liberties Union for Europe (Liberties) is a non-governmental organisation promoting the civil liberties of everyone in the European Union. We are headquartered in Berlin and have a presence in Brussels. Liberties is built on a network of 19 national civil liberties NGOs from across the EU.

Ringbahnstrasse 16-18-20
12099 Berlin
Germany
info@liberties.eu
www.liberties.eu