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FOLLOW UP REPORT ON BULGARIA (2001-2005)

Assessment of the progress made in implementing the recommendations of the Council of Europe Commissioner for Human Rights

For the attention of the Committee of Ministers
and the Parliamentary Assembly

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Introduction

1. The Commissioner for Human Rights, Mr M. Alvaro Gil-Robles, visited Bulgaria in December 2001 at the invitation of the Bulgarian Government. In his visit report,¹ the Commissioner had raised a number of questions concerning the legislation and effective respect for human rights in Bulgaria. The purpose of the present report is to evaluate the changes that have come about following the conclusions and recommendations made by the Commissioner in 2001. It follows the order of the recommendations and deals only with the problems raised in the first report.

2. This report is based on the documents and information provided by the Bulgarian authorities relating to developments in respect for human rights since the first report and also the findings and conclusions of the follow-up visit by members of his Office² between 22 and 25 March 2004.³ The members of the Office wish to thank all those whom they met and also the Information Office of the Council of Europe in Sofia for its logistical assistance.

1. The justice system

3. In his report, the Commissioner recommended speeding up the reform of the justice system and ensuring access to a lawyer during criminal proceedings.

The development of the situation and measures taken

4. Bulgaria has since made remarkable efforts to reform its justice system and to comply with the Community *acquis*. The Bulgarian authorities regard this as one of the main priorities and it benefits from a very broad political consensus, reflected in the Declaration of the parliamentary political forces of 2 April 2003.⁴ The reform entails structural and functional changes in the justice machinery, in particular: a clear definition of the functions of the Supreme Judicial Council (SJC); improvement of the mechanisms for coordination and cooperation of the prosecution; improvement in the trial capacity of the judiciary and improvement in the activity of its administration; and increased technical and material resources.

5. The two key texts in this reform – which also covers amendments to Chapter VI of the Constitution, adopted in September 2003 – are the Strategy for reforms of the Bulgarian justice system and its Implementing Programme. By virtue of those two texts, the Government intends to bring about a thorough reform of the justice system involving the improvement of its structure, increased efficiency of justice, the use of information technology through the Strategy for the computerisation of the justice system and harmonisation of Bulgarian legislation with that of the European Union. In that context, mention should also be made of the amendments to the Law on the justice system, adopted in July 2002, which reflect the new constitutional principles and guarantee the increased independence of the courts vis-à-vis the Executive and the Legislature. The Supreme Judicial Council is now the predominant decision-taking body. In addition, the law provides the following measures: the Supreme Judicial Council has the power to supervise the courts and the Prosecutors; it has introduced a number of monitoring systems to prevent and combat corruption within the justice system, in particular declarations of assets and income, the adoption by the Supreme Judicial Council of professional codes of conduct for judges and administrative staff, the recruitment of judges by means of competitions and promotion based on objective criteria and, finally, the creation of a public body – the National Institute of Justice – responsible for training the future members of the justice system. These amendments confer

greater autonomy on the budget of the justice service. A Commission for combating corruption was established within the SJC as well as a complaints' mechanism to register cases of alleged corruption within the judicial bodies.

6. Furthermore, the amendments to the provisions on the judiciary, adopted in July and December 2003, transformed the status of judges. Their immunity is now limited to service-related immunity, which they can invoke solely in respect of acts committed in the exercise of their duties. Judicial appointments now become irrevocable after five years' service, and judicial performance will be evaluated. The five-year duration of the mandate is limited to judges who hold managerial posts (with the exception of the President of the Supreme Court, the President of the Supreme Administrative Court and the Senior Prosecutor).

7. Finally, with the cooperation of the European Union and the PHARE Programme in particular, new procedural provisions and the computerisation of the justice system are in the process of being put in place. On 14 October 2005, the Bulgarian Parliament thus adopted a new Code of Criminal Procedure. This, to a large extent, corresponds to the need to modernise the criminal justice system and to make it more efficient. On 1st January 2006, a new Law on legal aid entered into force offering lawyer assistance to individuals (when they cannot afford to hire a legal counsel) in civil, administrative and criminal cases at national level and in civil and commercial matters for international disputes⁵.

8. New Codes of Administrative Procedure and Civil Procedure should be adopted in the near future. As certain NGOs indicate,⁶ improvements remain to be made as regards the length of proceedings. These normative amendments should be accompanied by an increase in the number of judges and in their remuneration, which remains low⁷ which will also allow strengthening the fight against corruption.

Conclusions

9. The Commissioner recommends continuing to implement the reform of the justice system, in particular by improving its structure and its efficiency. Further efforts remain to be made as regards the fight against corruption as well as the status, the selection, the training and the wages of judges. The adoption of the new Codes of Administrative Procedure and Civil Procedure should be a priority, as should unrestricted access to counsel by accused persons.

2. The police

10. In his report, the Commissioner recommended continued reform of the police. The Commissioner was concerned to note the conduct of certain police officers towards vulnerable groups such as the Roma and homosexual communities. He also identified legislative lacunae concerning the punishment of racist acts and the excessive use of weapons by the police.

The development of the situation and measures taken

11. As the Deputy Minister for the Interior promised during his meeting with the Commissioner, legislative reforms were undertaken to improve respect for fundamental rights by the police. Thus, in 2002 two working groups were set up, one concerned with human rights within the Ministry of the Interior and the other with drafting a code of conduct for the police. Following reflection and drafting with the support of the technical programmes of the Council of Europe, a code of conduct for the police was adopted in November 2003.

12. Convinced of the need to improve the conditions of arrest, the Ministry of the Interior also adopted a decree setting out the rights and obligations of police officers when making arrests. Any police officer failing to comply with that decree will be subject to disciplinary measures. The implementation of that decree would appear to have had some success, as the number of complaints has fallen.

13. As regards the excessive use of weapons by the police, restrictions on the conditions of their use have been adopted. The code of conduct contains a section on the use of weapons. Any police officer who has used his weapon, even unintentionally, is required to report the matter to his superiors, who may take disciplinary measures. Where anyone was injured or killed as a result of the use of a weapon, the police officer must then appear before the judicial authorities. Section 80 of the Law on the Ministry of the Interior, which allows police officers to use their weapons, even in the case of petty offences or attempted flight, has been strengthened and now requires the existence of an actual threat.

14. On this point, the authorities recognise that it is necessary to go even further and to introduce stricter regulation of the use of service weapons. In practice, the NGOs continue to report the existence of cases of the excessive use of firearms by the police where the sanctions do not appear to be commensurate with the acts committed.⁸ In that area, the Grand Chamber of the European Court of Human Rights recalls that "... the representatives of the law must be trained to be capable of assessing whether or not it is absolutely necessary to use firearms, not only by following the letter of the relevant regulations but also by taking due account of the pre-eminence of respect for human life as a fundamental value."⁹

15. Alongside the police are forest warders, under the authority of the Ministry of Agriculture, who also carry weapons. The Ministry of the Interior has no authority over those agents and monitors only the type of weapon used and their licence to possess such a weapon. According to Bulgarian authorities, the regime for issuing licences for possession of weapons was tightened in February 2005. Forest warders are therefore subject to different rules as regards the control, the security and the use of their weapons. The NGOs have reported cases of persons, mostly of Roma origin, being killed while unlawfully cutting wood.

16. Last, as regards the conditions of custody in police stations, the Ministry of the Interior drew up rules¹⁰ in July 2003 on the equipment and the operation of custody cells. Police stations had two years within which to comply with those texts. Owing to lack of resources, most cells did not comply with the conditions of detention required by

the Ministry's instructions at the time of the visit. Thus the members of the Office of the Commissioner found that the custody cells at police station number 3 in Sofia-Faculteta consisted of a single room of less than 8 m² without direct light or proper ventilation. To the worrying situation of the material circumstances of detention, it is unfortunately necessary to add the continuing complaints, either individual or from NGOs,¹¹ concerning violence suffered while in custody.

Conclusions

17. The Commissioner welcomes the efforts and the reforms relating to the police, in particular the legislative reforms. It is now necessary to establish a culture which respects those norms. Furthermore, it is essential that those norms apply to the police and to forest wardens, in particular as regards the use of firearms. Last, it remains necessary to improve the conditions of custody in police stations.

3. The situation of minorities

18. In his report, the Commissioner recommended implementing the framework programme for integrating Roma and establishing a coordinated policy for all minorities. The Commissioner considered that the question of the rights of the Roma minority is indisputably of primary importance. He also recommended approving the law against racial discrimination.

The development of the situation and measures taken

3.1 The Roma community

19. The Roma community, which is estimated at 800,000 persons¹², continues to encounter significant problems in integrating into Bulgarian society. The main problem lies in the "ghettoisation" of some Roma districts, where the inhabitants frequently lack even basic essentials. Essential services like drinking water, electricity or sewage are not provided. Owing to electricity cuts, there was disorder in towns such as Sofia, Vidin, Plovdiv, Shoumen, Silven, Montana, Lom and Peroushtitsa in 2004.

20. The members of the Office of the Commissioner visited the Roma district of Samokov – 100 km east of Sofia – and were struck by the extremely difficult conditions facing the inhabitants. The majority of persons live in small buildings constructed of salvaged materials unsuitable for that use,¹³ which let in water, wind and cold and have only rudimentary electricity supply. For drinking water, these families rely on a few outside taps at various points in the district. For most of the 6,000 Roma living in the district, the lavatories are nothing more than a hole in the ground inside a small hut. According to the Bulgarian authorities, living conditions have improved in this settlement since the delegation visit of the Office of the Commissioner; several new brick houses have been built and access to electricity has been facilitated.

21. The Roma continue to suffer discrimination in areas such as employment, health, education, housing and justice. Thus, persons of Roma origin are frequently refused entry to certain public places such as bars or shops. This was also emphasised during the visit to Samokov, where Roma representatives described a *de facto* curfew which prevents them from going about in the town after nightfall.

22. The question of education remains of particular concern owing to a *de facto* segregation in the education system. According to some estimates, approximately 70% of Roma children are educated in schools in which they are the only pupils. The Bulgarian authorities have indicated that this is a consequence of the administrative allocation of schools to particular neighbourhoods. As already pointed out in the Commissioner's visit report, the education provided to Roma children is generally of a lower quality owing to a lack of financial and human investment in these schools. Most of these schools are overcrowded and do not have the essential equipment. Young Romas find it much more difficult to be accepted for university entry competitions owing to the level of education which they have previously received. This situation favours the creation of real educational ghettos and leads to unacceptable discrimination.

23. The Ministry of Education and Science has begun to redress the situation. Thus, in April 2002, a Council on the education of children and pupils belonging to minorities was set up. A strategy on this issue was also adopted by the Bulgarian Government. Furthermore, a Centre on the integration of children and pupils belonging to minorities was established in September 2005. Finally, the Ministry set up a strategy for the integration of those children which should achieve its objectives in 2009. The Ministry of Finance has also allocated funds to provide transport, books and canteen facilities for children in need. In 2005, that allocation to the municipalities represents approximately 25 million euros.

24. As early as 1999, Bulgaria adopted a Framework programme for the integration of the Roma into Bulgarian society. It was followed by the setting up of a national action plan in 2003-2004. Bulgaria has adopted a new 10-year action plan (2005-2010), drawing lessons from previous actions. With the help of Roma organisations, this programme establishes reliable and objective progress indicators in the four priority areas of education, health, housing conditions and employment for members of the Roma community. A ten year programme for the improvement of Roma housing conditions was launched in order to enhance the coordination among central and local authorities and stimulate private initiatives. With the same aim, local housing construction programmes have been implemented for the benefit of the Roma community, some of which were financed by the Council of Europe Development Bank¹⁴.

25. Taking stock of the National Action Plan 2003-2004, many Roma and NGOs have the feeling that to a large extent the Plan remained a dead letter and that the measures taken are for the most part the result of isolated initiatives taken by the NGOs. In addition, the budgetary allocations were quite inadequate.

3.2 Other minorities

26. Significant progress has been made in implementing a genuine Government strategy for the protection of minorities. The adoption of a Law on protection against discrimination in September 2003 (in force since 1 January 2004) creates at national level a legal framework for protection against ethnic discrimination. This text defines "protection" quite broadly and establishes a special authority with specific powers to adjudicate on cases of discrimination. The law, moreover, was quickly applied by the courts.¹⁵

27. As already stated in the Commissioner's report, the question of Bulgarians of Macedonian origin ought to be addressed in greater detail. While it is true that significant progress has been made as regards restrictions on the right of assembly, difficulties remain as regards the right of association. In March 2003 the Municipal Council of Sofia refused to register the United Macedonian Communist Party shortly after the local elections.

Conclusions

28. The Commissioner recognises that efforts have been made to improve the living conditions of the Roma, particularly in normative and organisational terms. However, he urges Bulgaria to increase the resources allocated to programmes for the Roma community, to provide good-quality education to Roma children by ensuring social mixing in schools and greater investment in underachieving schools, and actively to combat prejudice and discrimination. The Commissioner further recommends that the appropriate measures be taken to allow the unrestricted exercise of the right of association by all minorities.

4. The institution of the Ombudsman

29. During his visit, the Commissioner had noted that discussions were in progress concerning the adoption of legislation establishing a national Ombudsman. In his report, the Commissioner therefore recommended that the law should be approved and the institution of the Ombudsman set up.

The development of the situation and measures taken

30. The Law establishing a national Ombudsman was adopted in May 2003 and entered into force on 1 January 2004. Generally, that law satisfies the legal conditions established by the Council of Europe. However, a number of NGOs expressed their regret that not all the recommendations and proposals were taken into account in order to reinforce the full independence of the institution of the Ombudsman,¹⁶ particularly as regards the mode of election (which does not require a majority of two thirds of Parliament) or the lack of clarity in the law as to which public authorities the supervisory powers of the Ombudsman extend.

31. Although the Ombudsman is elected by a simple majority, the Bulgarian Parliament had significant problems in making an appointment. A number of votes had to be taken before, on 13 April 2005, Mr Ginyo Ganev was elected Ombudsman of Bulgaria for a term of five years, renewable once.

Conclusions

32. The Commissioner welcomes the adoption of the Law establishing the terms of reference of the Ombudsman and his election. He expresses the desire that the new Ombudsman will have the necessary means for the proper functioning of his institution and that his work will dispel the doubts raised by certain parties concerning the letter of the law.

5. The rights of persons with mental disorders

33. In his report, the Commissioner recommended improving living conditions in institutions for the mentally ill in general and the institution in Podgumer, which he had visited, in particular. In doing so, he emphasised the need to call upon national and international solidarity to ensure that those confined in such institutions have decent living conditions. Finally, he recommended that steps be taken as soon as possible to ensure that a decision to confine a person against his will could be challenged before a court.

The development of the situation and measures taken

34. Since the Commissioner's visit, Bulgaria has indisputably made progress in restructuring these mental institutions. In the light of the country's limited capacity for investment, the authorities decided to renovate or rebuild 3 to 4 centres per year with the support of the European Union PHARE Programme. In order to determine precisely what progress had been made and the efforts still to be completed, an inspection of all centres for the mentally ill was undertaken jointly by the Ministry of Health and the Ministry of Social Affairs, with the participation of the NGOs. It should be noted that there is already an effective body competent to carry out inspections at the centres, namely the Social Assistance Agency.¹⁷

35. The Bulgarian authorities have demonstrated their firm intention to build, so far as they are able, new institutions near the large towns of the country. For the moment, the great majority of adult centres inherited from the Communist regime are in sparsely inhabited and inaccessible areas, which complicates family visits and *de facto* severs the link between patients and their close families.

36. Since the Commissioner's visit to the centre in Podgumer in 2001, a new building has been made available to the least affected patients.¹⁸ According to the findings of the delegation of the Office of the Commissioner, living conditions in that structure are perfectly acceptable. The building houses 117 patients and has spacious rooms, bathrooms and refurbished showers in sufficient number and also brand new kitchens. However, owing to the extremely low budget allocated to patients' food,¹⁹ they do not receive a sufficiently balanced diet and are therefore likely to suffer vitamin deficiencies or to contract certain diseases, in spite of the special and dedicated attention of the Director and his team.

37. Nonetheless, the investment has not benefited all the patients at Podgumer. In fact, when the delegation visited the centre in March 2004, the living conditions provided for the most severely affected patients had not changed by reference to 2001. These persons were housed in a separate building, in wholly unacceptable conditions. They were living five to a damp, dilapidated room which should have housed two patients at the most. In spite of the efforts of the supervisory staff, the sanitary conditions remained unacceptable²⁰ and the living conditions in that part of the Podgumer centre continued to be well below the minimum standards.

38. It is also apparent that the daytime activities provided for patients are very limited owing to a lack of material and human resources. A small investment in educational material could undoubtedly be of assistance in improving patients' personal development.

39. From a more general viewpoint, the conditions in the Podgumer centre seem to be emblematic of living conditions in many psychiatric establishments in Bulgaria. Although a number of refurbished or rebuilt centres offer decent facilities, the rest of the structures remain obsolete and wholly unsuitable for providing decent accommodation for sick people.²¹

40. In addition to the problems of living conditions, there are other problems affecting the care of these persons. First of all, the mentally handicapped continue to be placed in the same centres as persons with behavioural or personality problems, in spite of the legislation in force. Next, and above all, a problem remains as regards the decision to confine a person in such an establishment. The request for admission is made either by the person himself or, where he is incapable of doing so, by his legal guardian. The decision to have him confined is taken not by a judicial authority but by the director of the establishment or the mayor of the town in which the centre is situated. As Bulgarian law makes no provision for a decision of that type to be challenged before a court, patients therefore have no guarantee enabling them to challenge their confinement.

Conclusions

41. As regards the protection of persons with mental disorders, the size of the task remains great. The Commissioner therefore welcomes the efforts made by Bulgaria to improve living conditions in psychiatric institutions. However, he recommends that decent living conditions in the centres which have not yet been refurbished, where conditions remain worrying, be ensured as quickly as possible. He also recommends increasing the funds allocated to feed patients confined so that balanced meals can be provided and introducing a system of judicial review of decisions to confine persons in such establishments.

6. Trafficking in human beings

42. Concerned by the protection of victims of trafficking in human beings, in his report the Commissioner recommended creating a new criminal offence of trafficking in human beings.

The development of the situation and measures taken

43. As regards trafficking in human beings, Bulgaria is essentially a country of origin and transit and, to a lesser extent, destination for the traffic in human beings. In particular, the trafficking of women and children for sexual purposes is a great cause for concern. According to the figures supplied by the International Organisation for Migration (IOM), a high percentage of young Bulgarian women are offered jobs abroad which put them at risk. In the particular case of children, international adoption, organ donation and child labour are also at the origin of the trafficking networks. In 2005, the State Agency for Child Protection received 26 allegations concerning trafficked Bulgarian children²².

44. In 2002, Bulgaria adopted amendments to the Penal Code to reinforce the sanctions relating to trafficking offences particularly when children are victims or when committed by an organised criminal group. Further amendments were adopted in 2004 on trafficking in new-born babies. In May 2003 a Law against trafficking in human beings, put the emphasis on preventing trafficking and providing assistance to victims and also on cooperation between the authorities and NGOs. In response to that law, a National Commission and Local Commissions were set up to combat this scourge. The Criminal Code was also amended and contains a special section on trafficking.

45. The Law establishes two types of regime for the protection of victims. The first is the "special protection status" granted to victims who have agreed to cooperate in the investigation and the criminal prosecution of offenders. Victims of foreign nationality receive a long-term residence permit. The second regime applies to children, who receive special protection. According to the Law, the Child Protection Agency must act immediately when a case of trafficking in children occurs and must take the necessary protective measures. It should be noted that child victims of trafficking who are received in the centres are housed separately from the adults.

Conclusions

46. The Commissioner is pleased to note that legislative reforms in the area of trafficking in human beings have been adopted, with a view to strengthening the penalisation of trafficking and the protection of victims, which is consistent with the Council of Europe Convention on the fight against trafficking in human beings. He encourages the Bulgarian authorities to continue their efforts to prevent and combat this scourge.

7. The protection of religious and national minorities

47. In his visit report, the Commissioner recommended facilitating access to the broadcast media by national and religious minorities.

The development of the situation and measures taken

48. The Law on radio and television, and its Section 49(1), allows radio and television stations to broadcast programmes in languages other than Bulgarian where those programmes are aimed at "Bulgarian citizens whose mother tongue is not Bulgarian". Some radio stations, and in particular the public radio service, are beginning to broadcast programmes in Turkish and Roma. Also, under Section 53, at the request of the Orthodox Church of Bulgaria or another registered religion, airtime may be dedicated to religious programmes. The relevant conditions are set out in the regulation of the Bulgarian National Radio and the Bulgarian National Television.

Conclusions

49. The Commissioner is pleased with the progress made both from a legislative point of view and in practice to allow national and religious minorities wider access to the broadcast media, and in particular the public broadcast media.

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¹ Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, 10 April 2002, CommDH (2002)1, on his visit to Bulgaria 17-20 December 2001, for the Committee of Ministers and the Parliamentary Assembly. ² The delegation of the Office of the Commissioner was composed of Mr Ignacio Pérez Caldentey and Mr Julien Attuil. ³ This included meetings with the Ministry of Foreign Affairs, the Ministry of Justice, the Ministry of the Interior, the Minister of Labour and Social Policy, the Committee for Human Rights and Religious Questions of the National Assembly, the Department for Religious Affairs, the Judicial Service Commission, the Agency for Refugees and the National Council for Ethnic and Demographic Questions and also a meeting with representatives of the NGOs. The Centre for the Mentally Ill in Podgumer, a Roma community in the town of Samokov, and two police stations, in Ljulin and Faculteta – in the suburbs of Sofia – were also visited. ⁴ Declaration on the reform of the Bulgarian justice system. ⁵ Information provided by the Bulgarian authorities to the Commissioner for Human Rights, 15 February 2006. ⁶ 2003 Report of the Bulgarian Helsinki Committee. ⁷ Between 500 and 800 leva, or 250/400 euros. ⁸ See, in particular, 2003 Report of the Bulgarian Helsinki Committee. ⁹ ECHR, *Natchova and Others v. Bulgaria*, Grand Chamber, judgment of 6 July 2005, § 97. ¹⁰ Instructions of the Ministry of the Interior No I-167. ¹¹ See the Amnesty International report on Bulgaria, June – December 2003 (EUR 01/01/2004). ¹² According to the 2001 population census, 370 907 persons identified themselves as Roma. ¹³ Pieces of wood, plastic sheets, salvaged bricks, corrugated iron. ¹⁴ Project "Roma Housing Construction" in the municipalities of Sofia and Plovdiv of almost 18 millions dollars was partly founded (8.4 millions) by the Council of Europe Development Bank. ¹⁵ Case of Vally S.A., Sofia Municipal Court, 9 July 2004. ¹⁶ Centre for the study of democracy, "The long way of the emerging Ombudsman institution in Bulgaria: six months later", October 2004. ¹⁷ The Inspection Service of the Agency for Social Assistance, which inspects, in particular, hygiene measures, accounts, living conditions or social work. ¹⁸ The building was already in existence at the time of the visit in 2001 but was not in use, owing to the absence of equipment. ¹⁹ 52 leva per month per patient. ²⁰ Thus, the 27 patients in this section had access to only 2 unsanitary toilets without doors. ²¹ See, on this point, Amnesty International report, June – December 2003 (EUR 01/01/2004). ²² Information provided by the Bulgarian authorities to the Commissioner for Human Rights, 15 February 2006.