



## **BULGARIAN HELSINKI COMMITTEE**

### **BULGARIA**

#### **BHC Submission to the UN Universal Periodic Review**

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The Bulgarian Helsinki Committee (BHC) is the biggest non-governmental human rights organization in Bulgaria, established in 1992. Its mandate includes advocacy for civil and political, as well as for economic, social and cultural rights at the domestic and the international level. The organization has monitored Bulgaria's compliance with international human rights standards since 1992. The present document outlines some of the major human rights concerns of the BHC related to the developments in this country over the past five years. More information on these developments is available in the BHC annual reports, as well as in its special reports at: [www.bghelsinki.org](http://www.bghelsinki.org). The present submission is not intended to duplicate the submissions by other non-governmental stakeholders.

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## 1. Discrimination of ethnic minorities

The legal framework for protection against discrimination of ethnic minorities in Bulgaria is deficient and some ethnic minorities face widespread discrimination in practice. Art. 11, para. 4 of the Constitution prohibits political parties organized along ethnic and religious lines. Art. 166 of the Penal Code envisages up to three years of imprisonment for persons who form political organizations along religious lines. Although a number of parties explicitly promoting Christian religious values exist in Bulgaria, in December 2009 this provision was selectively enforced against a group of Muslims (the Yuzeirovi brothers) who were charged for their alleged attempt to form a political party.

Roma face exclusion and discrimination in education, housing, medical care, employment and the criminal justice system. In the period preceding Bulgaria's accession to the EU, several governments adopted programs on Romani education, housing, medical care and employment, but these remained by and large only on paper. Most of the Romani children are schooled in territorially segregated schools and some are placed in special schools for children with developmental disabilities, where they represent more than one half of the student body.<sup>1</sup> In 2006, the European Committee of Social Rights (ECSR) found discrimination of Roma in housing because of the inadequate housing conditions in the Romani neighborhoods and lack of legal security of tenure.<sup>2</sup> But evictions of Romani families from their only homes, which they inhabited for years, continued and even became more widespread after 2006. In 2009 alone more than 230 Roma from Burgas and Sofia lost their only homes, which were demolished by the local authorities with no alternative accommodation offered. In all these cases the demolitions were assisted by the police, which used disproportional force to chase away the inhabitants.<sup>3</sup> In December 2008, the ECSR found discrimination of Roma on account of the failure of the authorities to take appropriate measures to address the exclusion, marginalization and environmental hazards, which Romani communities are exposed to in Bulgaria and because of their exclusion from accessing health care services.<sup>4</sup> There have been no improvements in the situation of Roma in this regard since 2008. On the contrary, the combined effect of the exclusion of tens of thousands of persons from social assistance after 1 January 2008<sup>5</sup> and the rise of unemployment with the onset of the economic crisis, has resulted in an increase in the share of Roma who are not medically insured.

Macedonians are another group, which faces discrimination by the central and the local government authorities. The Bulgarian government denies the identity of those Bulgarian citizens who self-identify as Macedonians. Not only they, but also the Macedonians in the Republic of Macedonia are officially considered as Bulgarians. On this basis, central and local authorities often suppress any

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<sup>1</sup> For more on the scope and forms of educational discrimination against Roma cf.: OSI/EUMAP, *Equal Access to Quality Education for Roma*, Vol. 1, Budapest, 2007.

<sup>2</sup> Cf. ECSR, Decision on Collective Complaint 31/2005, *ERRC v. Bulgaria*, available at: [http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints\\_en.asp](http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints_en.asp).

<sup>3</sup> For more details cf.: BHC, *Human Rights in Bulgaria in 2009*, March 2010, available at: [www.bghelsinki.org](http://www.bghelsinki.org). Cf. also: Amnesty International, *Stop Forced Evictions of Roma in Europe*, EUR 01/005/2010, 8 April 2010.

<sup>4</sup> ECSR, Decision on Collective Complaint 46/2007, *ERRC v. Bulgaria*, 3 December 2008, available at: [http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints\\_en.asp](http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints_en.asp).

<sup>5</sup> In 2006 and 2007, parliament adopted legislative measures limiting social assistance to up to one year. These measures entered into force on 1 January 2008. With a decision from March 2009, the ECSR found them incompatible with Art. 13.1 of the ESC(r) – see its decision on Collective Complaint 48/2008.

expression of Macedonian identity, especially peaceful assemblies, citizens' associations and political parties of ethnic Macedonians. So far, the European Court of Human Rights (ECtHR) has ruled on five cases involving violations of freedom of assembly and freedom of association of ethnic Macedonians.<sup>6</sup> Several others are pending for decision. The Court clearly stated that the suppression of the freedom of assembly and of association of the Macedonian groups is a violation of fundamental human rights. This however did not have a serious effect on the subsequent practice in Bulgaria. In 2009, Bulgarian courts refused to register several organizations of Macedonians. In some cases the courts stated grounds that revealed openly discriminatory attitudes to the Macedonian minority. On 29 May, the political party OMO Ilinden – PIRIN received a final refusal of its application for registration by the Supreme Court of Cassation. On 7 May, the Sofia Court of Appeals sustained the decision of the Blagoevgrad District Court to deny registration to the Nikola Vaptsarov Macedonian Cultural and Educational Society. The court held that “there is no distinctive Macedonian ethnos in Bulgaria, while some of the goals listed in the association's by-laws imply the existence of such an ethnos.”<sup>7</sup>

## **2. Lack of prosecution of bias motivated crimes**

The legal framework for protection against racially and other bias motivated crimes in Bulgaria is very narrow and does not allow taking into account the racist and other discriminatory motives of the perpetrators of serious crimes, such as murder, severe bodily harm, robbery, rape, etc. These deficiencies were identified by the ECtHR in several cases against Bulgaria where the Court found discrimination in the investigation of racially motivated killings of Roma by both law enforcement officials and private individuals.<sup>8</sup> These judgments are now opened for execution of general measures by the CoE Committee of Ministers because the government failed to adopt legislation aiming at the punishment of serious hate crimes. Bias motivated crimes continue to be widespread, especially against Roma, foreigners and Muslim houses of prayer. According to information from the Office of the Chief Mufti from June 2009, more than 110 Muslim properties had been vandalized over the past several years. Since October 2009, at least two mosques, in Nikopol and in Karlovo, were burned out entirely.

Hate speech against ethnic and religious minorities and persons with different sexual orientation is widespread in Bulgaria. Its sources include some media, but also political parties, such as the extremist Ataka, which is part of the ruling majority. The leader of Ataka is a Holocaust denier and led several virulent hate campaigns against Roma and the Muslims.<sup>9</sup> His hate speech remained unpunished despite complaints.

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<sup>6</sup> ECtHR, *Stankov and the United Macedonian Organization Ilinden v. Bulgaria*, Appl. nos. 29221/95 and 29225/95, Judgment from 2 October 2001; ECtHR, *United Macedonian Organization Ilinden and Ivanov v. Bulgaria*, Appl. no. 44079/98, Judgment from 20 October 2005; ECtHR, *United Macedonian Organization Ilinden – PIRIN and others v. Bulgaria*, Appl. no. 59489/00, Judgment from 20 October 2005; ECtHR, *Ivanov and others v. Bulgaria*, Appl. no. 46336/99, Judgment from 24 November 2005; ECtHR, *United Macedonian Organization Ilinden and others v. Bulgaria*, Appl. no. 59491/00, Judgment from 19 January 2006. Violations in 2004-2008 are subject of another case pending before the ECtHR in its final phase (Appl. Nos.: 41561/07, 20972/08, 37586/04, 48284/07, 34960/04). The Court may issue its judgments before the upcoming UPR on Bulgaria.

<sup>7</sup> BHC, *Human Rights in Bulgaria in 2009*, March 2010, available at: [www.bghelsinki.org](http://www.bghelsinki.org).

<sup>8</sup> ECtHR, *Nachova and others v. Bulgaria*, Appl. no. 43577/98, 43579/98, Grand Chamber Judgment of 6 July 2005; ECtHR, *Angelova and Iliev v. Bulgaria*, Appl. no. 55523/00, Judgment of 26 July 2007.

<sup>9</sup> See more on hate speech and the government's failure to contain it through prosecution in the joint BHC/ERRC submission to the CERD from December 2008, available at: [http://www2.ohchr.org/english/bodies/cerd/docs/ngo/BHC\\_ERRC\\_Bulgaria\\_CERD74.pdf](http://www2.ohchr.org/english/bodies/cerd/docs/ngo/BHC_ERRC_Bulgaria_CERD74.pdf).

### 3. Excessive use of force by law enforcement officers

The Bulgarian Penal Code does not provide for a specific crime of torture as required by the UN Convention against Torture and as recommended by the Committee against Torture on several occasions.<sup>10</sup> Excessive use of force by law enforcement officers continues to be a serious problem in the work of the Bulgarian police. It is practiced by and large with impunity. Since 2005, the BHC has conducted surveys in four Bulgarian prisons among newly-arrived prisoners on their conditions of preliminary detention. The responses on whether force was used against them during pre-trial proceedings reveal the following results over the past five years:

**Use of force by police by year**  
*% of interviewees responding that force was used against them*

	2005	2006	2007	2008	2009
At the time of the arrest	23.2	20.1	17.1	23.1	24
Inside police stations	23.2	20.8	22.9	23.1	22.3

The trend does not indicate any positive developments in the use of force at the pre-trial stage since 2005. The shares of respondents, who report use of force at the time of the arrest, when it can be legal under certain circumstances, are the same as those indicating use of force inside the police station, where it is illegal.

Bulgaria was condemned on numerous occasions by the ECtHR for excessive use of force or firearms by law enforcement officials.<sup>11</sup> 17 judgments of the Court involving excessive use of force or firearms are pending for execution of individual and the general measures, including where necessary reopening of the investigations. Some of the judgments remained in the docket of the CoE Committee of Ministers for execution since 2000 (e.g. the *Velikova* judgment) because the Bulgarian authorities refuse to reopen the investigations and to adopt the necessary legislative measures to ensure the independence of the investigations involving law enforcement officers.<sup>12</sup>

### 4. Inhuman and degrading conditions of detention in prisons, investigation detention facilities and social care institutions

The BHC monitors on a systematic basis prisons, investigation detention facilities (IDFs), psychiatric hospitals and social care institutions in Bulgaria, as well as in other countries of Europe.<sup>13</sup> Conditions in some of the country's prisons, in most of the IDFs and in some social care institutions are inhuman

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<sup>10</sup> See most recently: CAT, *Conclusions and recommendations on Bulgaria*, 11/06/2004, CAT/C/CR/32/6, § 6a.

<sup>11</sup> The cases, which resulted in death of the victims include: *Velikova v. Bulgaria*, Appl. No. 41488/98, Judgment of 18 May 2000; *Anguelova v. Bulgaria*, Appl. No. 38361/97, Judgment of 13 June 2002; *Nachova and Others v. Bulgaria*, Appl. No. 43577/98, Grand Chamber Judgment of 6 July 2005; *Ognyanova and Choban v. Bulgaria*, Appl. No. 46317/99, Judgment of 23 February 2006; *Nikolova and Velichkova*, Appl. No. 7888/03, Judgment of 20 December 2007. In several other cases, in which the ECtHR found violations of Art. 3 of the ECHR, excessive use of force or firearms by law enforcement officers resulted in serious injuries.

<sup>12</sup> Cf. the most recent list of cases pending for execution by the CoM at: [http://www.coe.int/t/DGHL/MONITORING/EXECUTION/Reports/Current/Bulgaria\\_en.pdf](http://www.coe.int/t/DGHL/MONITORING/EXECUTION/Reports/Current/Bulgaria_en.pdf). On per capita basis Bulgaria has one of the highest shares of cases that are not executed among the CoE member states.

<sup>13</sup> In addition to Bulgaria, BHC researchers monitored places of detention in Armenia, Azerbaijan, Georgia, Serbia, Poland, Hungary, the Russian Federation, Macedonia, Kazakhstan, Kyrgyzstan, as well as in several countries of Western Europe and the Middle East.

and degrading. In terms of material conditions, they are worse than the respective facilities in most neighboring countries. Most prisons and IDFs in Bulgaria are overcrowded. In some, detainees are locked for months and sometimes for years in cells that allow not more than 2 sq. m. space per inmate. Some IDFs do not allow for outdoor exercise of the detainee during his/her entire stay in the facility. The cells in many IDFs do not have windows and in some cases detainees never see natural light during their entire period of detention. Some IDFs are situated 100% underground. Detainees in some prisons and IDFs use buckets to relieve themselves at night. Almost without exception the hygiene in the prisons, IDFs and social care institutions for persons with mental disabilities is poor.

Bulgaria was condemned on numerous occasions by the ECtHR for inhuman and degrading conditions of detention in prisons and IDFs. At present, the CoE Committee of Ministers monitors 11 judgments of the ECtHR against Bulgaria involving such violations.<sup>14</sup>

##### **5. Punishment of “anti-social behavior” of juveniles**

Children between 8 and 18 years of age in Bulgaria can be sanctioned for “anti-social behavior.” This is in addition to criminal liability, the minimum age of which is 14 years. The Juvenile Delinquency Act does not provide for a precise definition of “anti-social behavior.” In practice children are sanctioned, including by deprivation of liberty, in special schools for delinquent children not only for crimes, but also for behavior, which is not criminal when committed by adults (e.g. truancy). Although the sanctioning procedure was reformed several times, it still lacks basic due process guarantees. On several occasions the UN Committee on the Rights of the Child (CRC) recommended abandoning the concept of “anti-social behavior,” setting up juvenile courts and ensuring that children under the age of fourteen years are totally treated outside of the criminal justice system on the basis of social and protective measures.<sup>15</sup> The government has not complied with these requirements.

##### **6. Freedom of religion and belief**

The Religious Denominations Act, adopted in 2002, is restrictive and discriminatory in violation of international religious freedom standards. It envisages recognition of the majority church, the Bulgarian Orthodox Church (BOC), *ex lege* while all other religious denominations have to register in court. The law allows for compulsory unification of a split religious community under one leadership and discriminates against minority religious denominations in a variety of ways.<sup>16</sup> In 2004, the government applied the law to forcefully unite the BOC by expelling from the churches with the help of the police the adherents of the so-called “Alternative Synod.” This is a group within the church, which since the start of the democratic changes has opposed the officially recognized wing of Patriarch Maxim, accusing him of collaborating with the communist authorities. On 21 January 2009, the ECtHR announced its judgment in the case of *The Holy Synod of the Bulgarian Orthodox Church and Metropolitan Inokentii v. Bulgaria*. It concerns the 2004 actions of the government and their effect. The ECtHR condemned the way the authorities dealt with the “Alternative Synod”, finding a violation of Art. 9 of the ECHR. The Court once again stressed that in a democratic society the authorities may not compel religious communities to obey a single leadership. The Court also held that the Religions Denominations Act does not comply with the ECHR standards as it leaves a lot of room for discretion to the authorities in defining which is the legitimate leadership of a religious denomination. The Court also found that the law is formulated under a false pretense of neutrality.

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<sup>14</sup> Cf. the *Kehayov* group of judgments in the list at note 12 above. See also the CPT reports on Bulgaria.

<sup>15</sup> Cf. CRC, *Concluding Observations on Bulgaria*, CRC/C/BGR/CO/2, 23 June 2008, § 69.

<sup>16</sup> For more details cf.: Krassimir Kanev, “The New Bulgarian Religious Law: Restrictive and Discriminatory”, *European Yearbook of Minority Issues*, Vol. 2, 2002/2003, pp. 655-673.

The ECtHR judgment was met with strong opposition by wide circles in Bulgarian society and by the Bulgarian authorities. BOC's official wing came up with a special declaration, in which it denounced the judgment, calling it an interference in the country's internal affairs. The government took no action to meet the demands of the "alternative synod" and has not undertaken the necessary legislative reforms.

#### **7. Invasion of privacy through arbitrary surveillance by security forces**

The system of secret surveillance by security forces in Bulgaria allows for arbitrary invasion of privacy and lacks appropriate safeguards against abuse. In the judgment on case *Association for European Integration and Human Rights and Ekimdzhiev v. Bulgaria* from June 2007, the ECtHR criticized the system for its absence of sufficient guarantees in the framework of the law authorizing recourse to secret surveillance measures; that it does not allow for notification of those monitored at any point and that there is no external and independent body to review the implementation of secret surveillance.<sup>17</sup>

In 2008, parliament adopted legislation establishing an independent external body supervising the special surveillance means (SSM), which was established in December 2008. However, after the change of the government with the June 2007 elections, the legislative framework was changed and worsened. In early November, parliament adopted amendments to the *Special Surveillance Means Act*, with which it abolished the independent body. It was replaced by a parliamentary committee comprised of representatives of the major political parties. Its powers were reduced. By the amendments to Art. 34, para. 4 of the law, the competences of this control body "to issue compulsory instructions related to improving the use and the application of special surveillance means" were amended into "to make proposals on improving the procedures with regard to the use and the application of special surveillance means." The legal conditions with regard to notifying the citizens about the use of SSM against them were also worsened. In the old act, which too was inconsistent with the international human rights law, as it didn't contain a requirement for an unconditional notification of the persons under surveillance, such a requirement was imposed on the oversight body only with regard to cases in which the use of SSM was unlawful, and only if this wouldn't compromise the purpose of using SSM. With the new amendments, these grounds were expanded over cases where there is a risk to reveal operating methods or technical means of surveillance, and where this creates a risk to the life or the health of the undercover agent or his/her family and relatives. Expanded like this, the grounds for non-notification allow for notification in very rare cases.

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<sup>17</sup> ECtHR, *Association for European Integration and Human Rights and Ekimdzhiev v. Bulgaria*, Appl. No. 63540/00, Judgment of 28 June 2007.