

Bulgaria

Ombudsman of the Republic of Bulgaria

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

In March 2019, the Bulgarian NHRI was re-accredited with A status. The SCA noted that the law on the NHRI could be strengthened by explicitly requiring the advertisement of vacancies and describing how broad consultation or participation of civil society is to be achieved. It encouraged the NHRI to advocate for sufficient funding in view of its expanded mandate as National Preventive Mechanism (under the UN CAT) and National Monitoring Mechanism (under the UN CRPD). The SCA also encouraged public authorities to follow-up to recommendations from the NHRI in a timely manner.

No significant changes as regards the enabling environment are to be reported since March 2019, when the Ombudsman of Bulgaria was accredited A Status under the Paris Principles.

The Ombudsman is an independent constitutional authority and its status is set out in the Constitution (Article 91a), as well in the special Ombudsman Act and the Rules of Procedure, both adopted by the National Assembly. The institution is legally mandated to promote and protect human rights – latest amendments of the Ombudsman Act as of March 2018 provide for a comprehensive set of rules on the role, functions, powers, appointment mechanism and terms of office, funding and accountability of the NHRI. The Rules of Procedure of the Ombudsman Institution explicitly include the rule of law among the guiding principles for his/her work.

The Ombudsman's legally assigned mandate includes, without any limitation, all violations of the rights of citizens, that is, economic, social, cultural, political and civil rights plus the rights that are set in the EU Charter of Fundamental Rights as related to EU membership. In 2019 the institution has examined 13 762 complaints of citizens for violations of their rights. The ombudsman is also vested with the power to examine existing and draft legislation and make recommendations to ensure human rights compliance – in 2019 Ombudsman has issued 13 legislative initiatives and opinions, addressed 5 referrals to the Constitutional

Court and 4 requests for interpretative rulings to the two supreme courts in Bulgaria. The ombudsman of Bulgaria has also the mandate to inspect and examine public premises, documents, equipment and assets – in 2019 were organized 55 inspection visits that ended with a set of recommendations to public authorities. In 2019 alone the Ombudsman institution reached 96% of its recommendations being implemented by public authorities. The Ombudsman is also vested with the responsibility to conduct assessments of domestic compliance with and reporting on international human rights obligations – since March 2019 the institution submitted parallel or shadow reports to EU and UN monitoring bodies on several issues. The Ombudsman is also monitoring the implementation of recommendations originating from international human rights monitoring bodies and devotes a special part within its Annual report on the findings and the recommendations thereof.

The Ombudsman's institution as a public defender does not receive any instructions from Parliament, the Government or any other authority or institution, and his or her work is public. The Ombudsman's immunity is equal to that of members of parliament and thus it guarantees his or her independence.

References

- Constitution of the Republic of Bulgaria - <https://www.parliament.bg/en/const>
- Ombudsman Act - Chapter 3 "Legal Capacity"/www.ombudsman.bg/pictures/Ombudsman%20Act%20EN.pdf
- Rules of Procedure of the Ombudsman - <https://www.ombudsman.bg/pictures/Rules%20of%20Procedure%20of%20the%20Ombudsman%20EN.pdf>
- Summary of the 2019 Annual Report of the Ombudsman of Bulgaria - [https://www.ombudsman.bg/pictures/SUMMARY_%202020%20_ENG\(1\).pdf](https://www.ombudsman.bg/pictures/SUMMARY_%202020%20_ENG(1).pdf)

Human rights defenders and civil society space

Worrying trends affecting **freedom of expression and civic space** in Bulgaria has emerged around the ratification of the Istanbul Convention. Over the last two years the issue has caused social tensions and manifestations of **hatred and threats to non-governmental organisations** working on gender equality and women rights, which have been portrayed as a form of evil that is funded by outside forces seeking to destroy Bulgarian society. This tense opposition got further escalation during pre-election periods. In several instances,

the Ombudsman institution has opposed all practices of instilling fear and hatred of non-governmental organisations that assist women and children affected by violence.

The need of better guarantees for **freedom of association** and prevention of potential breaches to **freedom of thought, conscience and religion** remains a concern and is the object of monitoring by the Ombudsman institution under the scrutiny of the proper execution of the European Court of Human Rights judgments and the Council of Europe's Committee of Ministers recommendations.

In 2019 the Ombudsman and medical specialists put forward to the National Assembly a **Bill on Professional Organisations** which offers a possibility to set up professional organisations of regulated medical professions in healthcare which will protect the rights and interests of their members to the fullest extent possible.

References

- 2019 Annual Report of the Ombudsman of Bulgaria (Bulgarian only, pp. 231 - 257) - https://www.ombudsman.bg/pictures/file/REPORT-BG%20mart_2020.pdf
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Checks and balances

The Ombudsman of the Republic of Bulgaria plays a role in the system of checks and balances as set up by the Constitution. According to Article 150 (3) of the Constitution, in particular, the Ombudsman enjoys the power to address referrals to the Constitutional Court asking that laws be declared anti-constitutional on the grounds they are breaching human rights and freedoms. The Ombudsman of the Republic of Bulgaria has no mandate to examine the work of the Parliament, the President, the Constitutional court, the Supreme Judicial Council and the National Audit Office.

In 2019, following consultation and discussion with the Consultative Constitutional Council with the Ombudsman, the Public Advocate submitted five requests to the Constitutional Court to establish the **anti-constitutionality of legislative provisions violating the citizens' rights and freedoms**. On two of them the Constitutional court has confirmed a violation of the Constitution– the first one is related to imposing limitations on the right of people who have retired to be hired in public administration as civil servants, and the

second one refers to the disproportionate increase of taxes for administrative cases brought to courts for review that would limit the rights of citizens for fair trial.

Protection and participation of right holders is a central part of the Ombudsman's work – in 2019 after a consultation with different civil society and professional organisations, the Ombudsman sent 13 proposals for legislative amendments, opinions and recommendations.

The Ombudsman institution has recalled in its 2019 Annual report the persistent problems related to the **proper implementation of citizens' electoral rights**– the public advocate has issued an opinion on legislative proposals that had the potential to deprive Bulgarian citizens with disabilities from their right to vote on the ground of inconsistent administrative procedures.

References

- Constitution of the Republic of Bulgaria - <https://www.parliament.bg/en/const>
- 2019 Annual Report of the Ombudsman of Bulgaria (Bulgarian only, pp. 231 - 257) - https://www.ombudsman.bg/pictures/file/REPORT-BG%20mart_2020.pdf
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Functioning of justice systems

While the Ombudsman's powers do not include monitoring of justice administration by the courts, the prosecutor's offices and the investigation services, the Ombudsman of the Republic of Bulgaria has some instruments to provide for the improvement of trial standards as he/she is free to approach the Supreme Court of Cassation and/or the Supreme Administrative Court to seek interpretative decisions or interpretative rulings.

In 2019, two referrals were made to the Supreme Court of Cassation for interpretative judgments and the Supreme Administrative Court initiated two interpretative cases upon the Ombudsman's requests. The Supreme Court of Cassation was approached with requests to **streamline the diverse case-law** related to the right of property and the right of citizens to submit claims against the actions of a private enforcement Agent. The Supreme Administrative Court issued interpretative judgments with respect to the rights of

unaccompanied minors and to inequitable treatment of owners with regard to the taxes they owe on real estate.

In many cases, citizens turn to the Ombudsman during pending judicial proceedings or after their completion (in 2019 those represented 2% of all complaints filed for Ombudsman examination). Although it is inadmissible for the Ombudsman to review such complaints, they demonstrate the existence of **numerous and repeated allegations of violations and concerns from citizens as regards the administration of justice**, as equally shown by the cases on this matter referred to the European Court of Human Rights.

A major persisting problem is the improvement of access to justice through the effective implementation of **e-justice tools** – the first package of laws, introducing the e-justice system in Bulgaria has been initiated back in 2012, it was adopted and came into force in 2016, but at present only magistrates have use of the electronic facilities, while ordinary citizens cannot take advantage of such services. The negative impact of such delay in introducing all functionalities of the e-justice became evident in the context of the present COVID-19 crisis, whereby courts stopped their work for three weeks.

As regards Bulgaria's **progress in 2019 to execute ECtHR judgments** being monitored by the Council of Europe Committee of Ministers, the following main conclusions can be drawn: the total number of judgments subject to execution being monitored by the Committee of Ministers declined significantly. The statistics show that, as of 31 December 2019, the total number of ECHR judgments at the stage of execution stood at 169 which is a decrease by 20% in comparison to the data as of 31 December 2018 and 31 December 2017 when the ECHR judgments which had not been executed were respectively 208 and 207. Despite the said positive trends, Bulgaria continues to be on the list of the top ten states with the greatest number of judgments in an enhanced supervision procedure by the Committee of Ministers.

References

- Rules of Procedure of the Ombudsman - <https://www.ombudsman.bg/pictures/Rules%20of%20Procedure%20of%20the%20Ombudsman%20EN.pdf>
- Summary of the 2019 Annual Report of the Ombudsman of Bulgaria - [https://www.ombudsman.bg/pictures/SUMMARY_%202020%20_ENG\(1\).pdf](https://www.ombudsman.bg/pictures/SUMMARY_%202020%20_ENG(1).pdf)

Media pluralism

Freedom of expression and media pluralism are fundamental rights granted to Bulgarian citizens pursuant to the Constitution (Art. 38 to 41).

For the last three years, the Ombudsman institution has been approached with just 3 complaints on violation of freedom of expression. This might be related to the fact, that there are two more independent state bodies that have competencies to deal either with the issues related to media pluralism (the Council for electronic media) or with some infringements of the freedom of expression, i.e. hate speech, (the Commission for Protection against Discrimination). Nevertheless, the Ombudsman is constantly advocating the freedom of expression as a fundamental right. Latest statements of the Ombudsman against **hate speech** include specific recommendations to public authorities to put more effective instruments for monitoring and reporting hate speech crimes.

The Ombudsman institution is closely monitoring the execution by Bulgarian authorities of the European Court of Human Rights final judgments related to violations of Article 10 of the ECHR under the *Bozhkov v. Bulgaria* case– still an issue of concern is related to **disproportionate interference with the freedom of expression of journalists**, as a result of their convictions to administrative penalty in criminal proceedings between 2003 and 2008 for defamation of public servants. In its 2019 Annual Report the Ombudsman of the Republic of Bulgaria has underlined the need for completing the work of the special inter-ministerial working group which has prepared draft amendments to the Criminal Code with the aim to include the exemption from criminal liability and the imposition of an administrative sanction where the defamation concerns a public authority or official and the removal or reducing of the lower limits of fines.

References

- Council for electronic media - www.cem.bg/
- Commission for Protection against Discrimination, established in 2005 by a special Act. The Commission also acts as a national contact point on hate crimes with the Organisation for Security and Cooperation in Europe.
- Bozhkov v. Bulgariacase - <https://hudoc.exec.coe.int/eng#%7B%22EXECIdentifier%22:%5B%22004-1909%22%5D%7D>
- Speeches of the Ombudsman
<https://www.ombudsman.bg/news/5211?page=10#middleWrapper>
- Statement of the Ombudsman
<https://www.ombudsman.bg/news/5287?page=4#middleWrapper>

Corruption

During 2019 the Ombudsman institution received 7 **complaints** (out of a total of 12 926 complaints and signals received) that were related to suspected corruption practices. Nevertheless, during the same year, the Ombudsman institution registered 1,118 complaints in relation to the right to good governance and good administration – an increase by 35.5% in comparison to 2018.

In 319 cases, the Ombudsman gave recommendations and proposals to administrative authorities and the majority of them were taken into account. In 238 cases, a solution was found through mediation between citizens and the administration.

The **protection of whistle blowers** is still a deficit in Bulgarian law. The Ombudsman has invited state authorities to consider with special attention the need for addressing this gap. A special focus should be put on prohibition of retaliation and support measures including comprehensive and independent information and advice, which is easily accessible to the public and free of charge, on procedures and remedies available, on protection against retaliation, and on the rights of the person concerned. In a statement the Ombudsman has underlined the need for timely and effective transposition of the Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law.

References

- Speeches of the Ombudsman
<https://www.ombudsman.bg/news/5223?page=9#middleWrapper>
- Statement of the Ombudsman
<https://www.ombudsman.bg/news/5259?page=6#middleWrapper>

In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

On 13 March 2020, the parliament declared a state of emergency for a period of one month, authorising the government to adopt all necessary measures to address the COVID-19 pandemic. The parliament passed special legislation and adopted amendments to existing laws as well. All measures adopted by the government are time-limited and meant to be in force until the state of emergency is revoked. The Ombudsman has raised several issues related to the need for a better protection of fundamental rights in the state of emergency.

In particular, the Ombudsman issued an opinion against a possible request of the government for **derogation of the European Convention on Human Rights** according to Article 15 thereof.

Access to courts has been initially suspended for three weeks (between 13 March until 4 April) upon decision of the Supreme Judicial Council, thus depriving citizens of their right of access to justice, before an amendment of the special legislation reduced the limitations only regarding some civil law issues. Cases such as those on undertaking victim protection measures and child protection measures are not affected by suspension. The Ombudsman nonetheless sent to the parliament an opinion on the need for statutory extensions and suspensions of time limits, related to judiciary procedural regulations during the state of emergency.

The Ombudsman issued opinion and addressed public authorities on a variety of other issues, related to citizen's rights, including on the impact of measures on children, and working parents responsible for childcare, the delivery of services to disabled people, the right to privacy, personal life and free movement, public sales and entries in possession

scheduled by public and private enforcement agents, enforcement measures on movable property and real estate owned by individuals, etc.

Most important challenges due to COVID-19 for the NHRI's functioning

With the establishment of the state of emergency and the need for distance working, the Ombudsman of the Republic of Bulgaria organised free of charge access to the mobile contacts of all experts, working in the institution, thus providing for a total of 35 **hot-lines for citizen's concerns**. This approach resulted in an increase by 10% of complaints received and services delivered to citizens during the emergency period as compared to the same period one year earlier.

The most important challenge remains the **reduced on the spot monitoring** capacity of the Ombudsman acting as National Preventive Mechanism.

References

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