

Bulgaria

Ombudsman of the Republic of Bulgaria

International accreditation status and SCA recommendations

ENNHRI has two members in Bulgaria: the Bulgarian Ombudsman (Bulgarian NHRI) and the Bulgarian Commission for Protection Against Discrimination.

The Bulgarian NHRI was last [re-accredited](#) with A status in March 2019. 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.

The Bulgarian Commission for Protection Against Discrimination was [accredited](#) with B-status in October 2011. The SCA noted that the Commission's mandate was limited to preventing and protecting against discrimination, and to promoting equality of opportunity, thus falling short of fully satisfying the broad human rights mandate required under the UN Paris Principles. The SCA also encourage the Commission to amend its legislation in order to provide a clear, transparent and participatory selection and appointment process of its decision-making body.

Impact of 2020 rule of law reporting

Follow-up by State authorities

The 2020 ENNHRI Rule of law Report was not specifically discussed among the general public or public authorities. The limited impact could be explained by the persistence of other issues of concern for both civil society and public authorities: the COVID-19 pandemic, the summer 2020 mass protests and other *force majeure* cases.

Impact on the Institution's work

In general, the 2020 ENNHRI Rule of law Report had effects on the work of the Ombudsman of Bulgaria' institution: it has served the strategic planning of the institution at two levels: first, it has informed the strategic priorities of the candidate for the election of the Ombudsman in both the

Standing Parliamentary Committee on Human Rights and the political groups of the National Assembly; second, it served as a background for the development of the strategic program 2020 – 2025 of the institution.

References

- Public hearing of the candidate for the election of the Ombudsman of the Republic of Bulgaria - <https://www.ombudsman.bg/news/5344?page=10#middleWrapper>

Independence and effectiveness of NHRIs

Changes in the regulatory framework applicable to the Institution

No changes of the legal framework concerning the work of the ombudsman institution have been discussed or adopted. 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.

Enabling space

No significant changes impacted the enabling environment since March 2019, when the Ombudsman of Bulgaria was accredited A Status under the Paris Principles. The Ombudsman's institution as a public defender does not receive any instructions from Parliament, the Government or any other authority or institution, and its work is public. The Ombudsman's immunity is equal to that of members of parliament as a guarantee of his/her independence.

In 2020 the institution got an increase in its budget with up to 10% as regards staff development and remuneration.

The Ombudsman was involved in the processes of public discussion of all issues that relate to human rights and fundamental freedoms protection – all in total more than 150 recommendations have been sent to respective parliamentary committees, ministries and state agencies, and a greater part of the Ombudsman concerns and proposals were taken into account.

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

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. The Ombudsman raised several issues related to the need for a better protection of fundamental rights in the state of emergency.

The situation also greatly impacted the Ombudsman's functioning, however it managed to carry on its activities to support at best the citizens: in 2020 the institution has examined 13 794 complaints of citizens for violations of their rights, and carried out inspections in 49 sites (more detailed information in Covid-19 section below).

References

- Summary of the 2020 Annual Report of the Ombudsman of Bulgaria – to be published by March 31st 2021

Human rights defenders and civil society space

In view of the mass anti-government protests in the country in the summer of 2020, the ombudsman received complaints and signals from citizens and NGOs about serious violations of the rights of protesters detained by the police in Sofia on 10 July and 2 September 2020. There are indications that, with respect to detainees, there was a failure to respect a fundamental guarantee of protection – ensuring access to a lawyer, including in cases when lawyers engaged by relatives of the detainees appeared at the police and demanded to see their clients. It is noted that the conditions at the detention premises were unsatisfactory and they were overcrowded.

There are also claims that the police authorities detained people who had not disturbed the public order. The media published a series of images of violence and unauthorised use of force against protesters and reporters. In addition, media content showed police officers carrying brass knuckles and wearing stickers on their uniforms in English reading *"One hit. One kill. My decision. No remorse."* The Ombudsman took a public stance on the issue emphasising the need to examine if there is proportionality in the use of physical force and auxiliary means by the law-enforcement authorities as a fundamental principle set out in international acts, the Bulgarian law

and the case-law of the European Court of Human Rights in Strasbourg. In line with this principle, any force used must correspond strictly to the attaining a legitimate aim.

References

- Summary of the 2020 Annual Report of the Ombudsman of Bulgaria acting as National Preventive Mechanism - <https://www.ombudsman.bg/national-prevention/>
- Official statement of the Ombudsman on the issue of proportionality of police used forces - <https://www.ombudsman.bg/news/5388?page=6#middleWrapper> ; <https://www.ombudsman.bg/news/5369?page=8#middleWrapper>

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 2020, following consultations and discussions with the Consultative Constitutional Council with the Ombudsman, the Public Advocate submitted one request to the Constitutional Court to assess the constitutionality of legislative provisions which the Advocate deemed violating the citizens' rights and freedoms. The Constitutional court decision is still pending.

A specific observation as regards a possible limitation of rights holders' participation in 2020 was related to the use of expedited legislative processes while preparing a draft for a new Constitution (August – September 2020). The ombudsman stood in defense of the existing constitutional regulations that fully guarantee human rights and democratic freedoms.

A shortcoming in the legislative process during the declared state of emergency was the lack of consultation with civil society stakeholders on the issues, related to the adoption of epidemic measures, in particular to protection of the most vulnerable members of the society.

Therefore, the Ombudsman made use of its right, on the basis of the complaints received, to address the members of the National Assembly on issues related to specific legislative amendments needed in order to protect the fundamental rights of citizens. The most important interventions included:

- The rights of people with disabilities to have access to public parks during the lockdown;
- The right of equal access to financial compensation for COVID-19 related closed businesses;
- The right of parents and relatives that take care for a child to equal access to social services and financial assistance during the lockdown, etc.

Finally, the Ombudsman institution has emphasised in its 2020 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 are needed in order not to deprive Bulgarian citizens with COVID-19 and those under quarantine from their right to vote on the ground of lack of proper regulation.

According to the Annual report of the Ombudsman, around 40% of all complaints filed are related to the functions of state authorities at central level, and some more 20% of complaints are related to bad administration at local level.

All in total the Ombudsman received 800 requests from citizens to use its right for addressing the national Assembly with pending issues for legislative amendments, which represents 6% of all complaints filed with the institution.

The Ombudsman is also invested with the responsibility to conduct assessments of domestic compliance with and reporting on international human rights obligations – in 2020 the institution submitted parallel or shadow reports to EU and UN monitoring bodies on several issues and one alternative report within the third cycle of UPR process. 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. In 2020 the Annual report of the Ombudsman stressed again the need for **the establishment of an inter-institutional coordination council**, including representatives of all national institutions which should be directly engaged in the process of coordinating and monitoring the implementation of the measures to execute the sentencing judgments of the European Court of Human Rights.

References

- 2020 Annual Report of the Ombudsman of Bulgaria (in Bulgarian)
[https://www.ombudsman.bg/pictures/ANNUAL%20REPORT%202020\(1\).pdf](https://www.ombudsman.bg/pictures/ANNUAL%20REPORT%202020(1).pdf)

Functioning of justice systems

While the Ombudsman's powers do not include the 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 which can contribute to improve respect for fair trial standards. Indeed, the Ombudsman is free to approach the Supreme Court of Cassation and/or the Supreme Administrative Court to seek interpretative decisions or interpretative rulings.

In 2020, one referral was made to the Supreme Court of Cassation for interpretative judgments and the Supreme Administrative Court initiated two interpretative cases upon the Ombudsman's requests.

A major persisting problem is the need for improved access to justice through the effective implementation of information and communication technology (ICT). In 2020, the suspension of court sittings for a period of two months during the lockdown situation exposed the consequences of the under-development of the e-justice system. The Ombudsman addressed a recommendation to the President of the Supreme Judicial Council. The Ombudsman expressed the position that the human right to access to justice could be damaged in the future unless measures are taken to ensure a real functioning of the e-justice system. While the first package of laws, introducing the e-justice system in Bulgaria was initiated back in 2012, and was adopted and came into force in 2016, at present only magistrates have use of the electronic facilities, while ordinary citizens cannot take advantage of such tools. The negative impact of such delay in introducing all the functionalities of the e-justice became evident in the context of the present COVID-19 crisis, when courts had to halt their work for three weeks.

In many cases, citizens turn to the Ombudsman during pending judicial proceedings or after their completion (in 2020 those represented 1% 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.

As regards Bulgaria's progress in 2020 to execute the 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 2020, the total number of ECHR judgments at the stage of execution stood at 165, which is a decrease by 2% in comparison to the data as of 31 December 2019. Despite such positive development, 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. Moreover, during the last year alone, 4 Interim Resolutions were adopted by the Committee of Ministers on leading cases on which there are still problems in adopting general measures that will remedy the situation.

References

- Public statement of the Ombudsman on legislative amendments that will temporarily limit the right of access to justice - <https://www.ombudsman.bg/news/5410?page=4#middleWrapper>
- 2020 Annual Report of the Ombudsman of Bulgaria (in Bulgarian) [https://www.ombudsman.bg/pictures/ANNUAL%20REPORT%202020\(1\).pdf](https://www.ombudsman.bg/pictures/ANNUAL%20REPORT%202020(1).pdf)

Media pluralism and freedom of expression

The Ombudsman is constantly advocating for the protection of the fundamental right to freedom of expression.

The latest statement of the Ombudsman on the issue of media pluralism is dated September 2020 and concerned the limited access of journalists to the premises of the National Assembly. In the fall 2020, the National Assembly moved its plenary sittings in a renewed building, where the access for journalists to meet MPs was reduced. On the basis of complaints sent by the Media Freedom Rapid Response, the European Center for Press and Media Freedom, the European Federation of Journalists and the Free Press Institute, the Ombudsman addressed the President of

the National on the spot Assembly a recommendation to organise a meeting with journalists in order to remedy to the situation. The Ombudsman recalled the standards set in Article 11 of the Charter of Fundamental Rights of the EU.

Other statements by the Ombudsman concerned the issue of hate speech and included specific recommendations to public authorities to set in place more effective instruments for monitoring and reporting hate speech offences.

The Ombudsman institution is closely monitoring the execution by Bulgarian authorities of the European Court of Human Rights final judgment related to violations of Article 10 of the ECHR under the *Bozhkov v. Bulgaria* case. In this respect, the 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, remains an issue of concern. In its 2019 Annual Report, the Ombudsman has underlined the need for completing the work on the draft amendments to the Criminal Code prepared by the special inter-ministerial working group. Such amendments aim to introduce an exemption from criminal liability and the imposition of an administrative sanction where defamation concerns a public authority or official and to remove or reduce the lower thresholds of fines.

References

- Public statement of Ombudsman on access of journalists to National Assembly premises - <https://www.ombudsman.bg/news/5396?page=6#middleWrapper>
- *Bozhkov v. Bulgaria* case - <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

In 2020 the Ombudsman institution received 30 complaints (out of a total of 13 244 complaints and signals received) that were related to suspected corruption practices. After a careful examination, none of those turned to be effectively related to criminal actions or irregularities. In all cases citizens suspected corruption either because of a protracted administrative procedure, or because of the lack of knowledge on the relevant procedure.

Nevertheless, in 2020 the Ombudsman institution registered 982 complaints in relation to the right to good governance and good administration – a decrease by 13 % in comparison to 2019.

In 295 cases, the Ombudsman gave recommendations and proposals to administrative authorities and the majority of them were taken into account. In 120 cases, a solution was found through mediation between citizens and the administration.

The **protection of whistle blowers** is still not implemented 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. Such a recommendation will be brought to the attention of the newly elected National Assembly after the general elections of April 2021.

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>

Impact of measures taken in response to COVID-19 on the national rule of law environment

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 were 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.

In 2020 the institution has examined 13 794 complaints of citizens for violations of their rights. The ombudsman of Bulgaria has also the mandate to inspect and examine public premises, documents, equipment and assets – in 2020, despite the difficult epidemic situation and the state of emergency⁴, the **Ombudsman as the NPM** carried out inspections in 49 sites (see section below).

Access to courts has been initially suspended for three weeks (between 13 of March until 4th of 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 scope of such limitation to some civil law proceedings only. Cases such as those on undertaking victim protection measures and child protection measures are not affected by the 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 an opinion and addressed public authorities on a variety of other issues, related to citizen's rights, including on the impact of measures on 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 resulted in an increase by 25% 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 (NPM).

2020 posed a substantial challenge to the efforts of the Ombudsman's team to exercise effectively and fully its powers as NPM. The global COVID-19 pandemic forced the Bulgarian government authorities to declare a **state of emergency** on 13 March 2020 in the entire country for one month; on 3 April, it was extended until 13 May 2020. An **emergency epidemic situation** was declared from 14 May till 14 June which was then extended repeatedly until the very end of 2020.

In 2020, despite the difficult epidemic situation and the state of emergency, the Ombudsman as the NPM carried out inspections in **49** sites. The main goal of the inspections was related to, first, assessing the anti-epidemic measures taken in closed institutions and monitoring the implementation of recommendations issued during previous visits.

The main activities of the Ombudsman acting as the NPM are focused on the places accommodating persons deprived of liberty, detainees or persons placed there as a result of an act or with the consent of a government authority and these persons may not leave these places of their own accord. The annual monitoring group of the NPM includes the places to serve the punishment of deprivation of liberty with the Ministry of Justice, detention centres at the Ministry of the Interior structures, special homes for temporary accommodation of foreigners with the Migration Directorate and registration and reception centres of the State Agency for Refugees at the Council of Ministers, residential social care for children and adults, state psychiatric hospitals. For some of the said groups of persons affected, the monitoring performed by the Ombudsman is the only form of independent control of the observance of their rights.

In 2020, a total of **3,848** persons received protection from the NPM. Throughout the period of state of emergency and emergency epidemic situation, the Ombudsman ensured immediate public access to the cell phones of the NPM experts to provide effective protection of the rights of all citizens residing in closed institutions. As a result of the inspections carried out in 2020, a total of 39 recommendations were issued to specific institutions.

The Ombudsman has always expressed concern for the respect for the rights of people at closed institutions but the protection of these people's rights proved to be a serious challenge during the COVID-19 outbreak. The pandemic seriously affects vulnerable persons given the nature of the restrictions imposed on them and the difficulties to ensure adequate protection and anti-epidemic measures at institutions and facilities. It is important to note that international human

rights standards allow for restrictions of almost all human rights if certain statutory conditions are in place and the interference in these fundamental rights is carried out within the margins of discretion recognised to the State. **Only the prohibition of torture is absolute in nature – it may not be derogated or restricted in any way.**

Against this background, the Ombudsman drew attention to the necessary measures to guarantee the rights of persons placed in closed institutions in the conditions of a pandemic situation. **The Ombudsman’s official opinion in this regard, including a demand that key international and European law protection standards be applied, was sent as early as the state of emergency was declared to all competent institutions, including the Minister of Justice, the Minister of the Interior, the Minister of Labour and Social Policy, the Director of the State Agency for Refugees.** NPM representatives were later instructed to check the implementation of the recommendations issued during their inspections.

The state of emergency and the emergency epidemic situation resulted in significant changes in the organisation of the work of the Ombudsman acting as the NPM.

References

- Summary of the 2020 Annual Report of the Ombudsman of Bulgaria acting as National Preventive Mechanism - <https://www.ombudsman.bg/national-prevention/>

