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Post-monitoring dialogue with Bulgaria

Report
Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)
Rapporteur: Mr Serhiy HOLOVATY, Ukraine, Alliance of Liberals and Democrats for Europe

Summary

The Monitoring Committee recognises that, while moving steadily along the path of the implementation of the Parliamentary Assembly's recommendations, the whole reform process in Bulgaria has been directed towards the introduction of European standards which allowed it to join the European Union in January 2007. Regrettably, in order to meet the strict European Union accession deadlines, some of the reforms involved cosmetic changes that pushed them in an undesired direction. This was particularly the case of the amendments to the Judicial System Act, adopted in February 2007 and the 2007 constitutional amendments.

The committee welcomes the important steps taken by Bulgaria to fulfil its commitments as a Council of Europe member state and, at the same time, notes a number of concerns and worrying trends, in particular as regards the functioning of the judiciary, the fight against corruption, the independence of the media and the rights of people belonging to minorities. In order to remedy the situation, it calls on the Bulgarian authorities to take several steps in the near future, the implementation of which it will closely follow.

Contents **Page**

A. Draft resolution 3
B. Explanatory memorandum by Mr Holovaty, rapporteur 5
1. Introduction 5
2. Political context 6
2.1. Presidential elections 22 October 2006 6
2.2. 2009 parliamentary elections and the new government 6
3. Functioning of the judiciary 7
4. Independence of the media from the executive 9
5. Rights of persons belonging to national minorities 10
6. Office of ombudsperson 13
7. Efforts to combat corruption and police abuses 14
7.1. Anti-corruption measures 14
7.2. Police abuses 16
8. Defamation 17
9. Other outstanding questions 17
9.1. Execution of the judgments of the European Court of Human Rights 17
9.2. Claims of the former prisoners of Belene Island 18
10. Concluding remarks 19

A. Draft resolution

1. The Parliamentary Assembly recalls its Resolution 1211 (2000), on the honouring of obligations and commitments by Bulgaria in which it decided to close the monitoring procedure, and to initiate a dialogue with the Bulgarian authorities on a number of outstanding concerns included in the resolution, or any other issues arising from the obligations of Bulgaria as a member state of the Council of Europe, in the framework of the post-monitoring dialogue.

2. The Assembly welcomes the progress made by Bulgaria since the last debate in the Assembly, which was held in January 2000, recalling in this context that, on 29 March 2004, Bulgaria joined NATO, and, on 25 April 2005, it signed the Treaty of Accession to the European Union of which it became a full member on 1 January 2007. Indeed, the political components of the Copenhagen criteria for EU membership of 1993 largely coincide with Council of Europe membership obligations.

3. It should be recognised that, while moving steadily along the path of the implementation of the Assembly's recommendations, the whole reform process in Bulgaria has been directed towards the introduction of European standards which allowed it to join the EU. Regrettably, in order to meet the strict EU accession deadlines, some of the reforms involved cosmetic changes that pushed them in an undesired direction. This was particularly the case of the amendments to the Judicial System Act, adopted in February 2007, and the 2007 Constitutional amendments.

4. The Assembly notes with satisfaction that the governing majority of centre-right GERB (Citizens for a European Bulgaria) movement, elected on 5 July 2009, has set ambitious objectives and committed itself to continue democratic reforms, in particular to ensure the proper functioning of its judiciary and to fight corruption and organised crime.

5. The Assembly welcomes the important steps taken by Bulgaria to fulfil its commitments as a Council of Europe member state, which include:

5.1. the adoption, in 2007, of the new provisions in the Constitution relating to civil and criminal immunity in the judiciary, in line with the Assembly's recommendations;

5.2. the modification of the Criminal Procedure Code in December 2008, abolishing the obligation for civilians to file lawsuits against the police in military courts;

5.3. the amendment to the Criminal Code in April 2009, adding incitement in speech to ethnic hostility or hatred in printed or other mass media, or through electronic information systems, or through other means, to the provision on propaganda and incitement to racial or national hostility or hatred or to racial discrimination;

5.4. the amendment to the new Civil Procedure Code introduced in 2009, which allows for the possibility of reopening cases following a judgment by the European Court on Human Rights establishing a violation of the European Convention on Human Rights or one of its Protocols;

5.5. the creation of the institution of Ombudsman in 2005.

6. At the same time, the Assembly notes a number of concerns and worrying trends, in particular as regards the functioning of the judiciary, the fight against corruption, the independence of the media and the rights of people belonging to minorities. In order to remedy the situation, it calls on the Bulgarian authorities to take the following steps in the near future, the implementation of which it will closely follow:

6.1. consult systematically the European Commission for Democracy through Law (Venice Commission) on important draft laws, including the revision of the Penal Code, the Penal Procedure Code and the new Electoral Law, in order to take fully into account European standards;

6.2. address, from the point of view of the separation of powers and in line with the Venice Commission's recommendations, the structure of the Supreme Judicial Council with a view to ensuring the independence of the judiciary *vis-à-vis* the executive authorities, including:

6.2.1. reviewing the role of the Minister of Justice as Chair of the Supreme Judicial Council with the right of initiative;

6.2.2. ensuring that, within the Supreme Judicial Council, judges, prosecutors and investigating magistrates cannot interfere with each other's affairs;

6.2.3. providing for an election of the parliamentary component of the Supreme Judicial Council by a qualified majority to enable a certain representation from the opposition;

6.3. provide, in co-operation with the Council of Europe, initial training for judges before their appointment and set up a transparent system of evaluation of their competencies to help dispel the widespread perception of corruption and mistrust in the judiciary;

6.4. step up efforts to combat corruption with assistance from the Council of Europe and take measures which would provide for sufficient guarantees for an independent investigation into offences in respect of which the Chief Public Prosecutor or other high-ranking officials close to him may themselves be questioned and placed under investigation;

6.5. address human rights abuses by law enforcement officials by setting up systematic human rights training in particular at the police academy and in officers' schools and by taking concrete measures to eradicate impunity and the lack of accountability for such abuses;

6.6. amend Articles 146 to 148 of the Criminal Code to exclude defamation and insult from the criminal sphere;

6.7. guarantee a greater diversity of opinion on national television, and ensure independence of the media and, in particular, consider drafting a media law which would address the issue of media group concentration and set standards for media independence from any kind of political or financial influence, with the assistance of Council of Europe experts;

6.8. improve the rights of the persons belonging to minorities and ensure their respect, especially as regards teaching of and in the languages of persons belonging to minorities, as well as promoting knowledge of the culture and identity of minorities and fostering intercultural dialogue and tolerance through education. Minorities should be better represented in the police and the public services;

6.9. sign and ratify the European Charter for Regional and Minority Languages;

6.10. introduce within the National Assembly specific mechanisms and procedures for effective parliamentary oversight of the implementation of the judgments of the European Court of Human Rights on the basis of regular reports by the responsible ministries;

6.11. support the activities of the Commission for Protection against Discrimination while ensuring the monitoring of its use of public funds;

6.12. support the National Council for co-operation on Ethnic and Demographic Issues under the responsibility of the Council of Ministers and actively tackle the human rights problems of the Roma through a comprehensive approach;

6.13. take concrete actions to foster tolerance and mutual respect, encourage exemplary behaviour of the political leaders in this respect and ban openly racist language;

6.14. introduce transparent procedures for the appointment and dismissal of the Ombudsperson by the National Assembly by a qualified majority of votes;

6.15. consider the claims of the former prisoners of Belene Island in the framework of the Law on political and civil rehabilitation of people who suffered repression.

7. The Assembly calls on the Bulgarian National Assembly to hold a debate on the content of the present resolution and take account of its conclusions in its work.

B. Explanatory memorandum by Mr Holovaty, rapporteur

1. Introduction

1. In my capacity as chair of the Monitoring Committee, I paid fact-finding visits to Sofia from 5 to 7 November 2008 and from 7 to 9 December 2009, within the framework of the post-monitoring dialogue. My primary task was to collect information about the developments since the presentation of the last information note by my predecessor, Mrs Hanne Severinsen, in September 2006, and the comments by the Bulgarian authorities in February 2007,[1] and to prepare an updated document. This draft report on post-monitoring dialogue with Bulgaria was presented to the Monitoring Committee on 28 January 2010 and updated in the light of the written comments provided by the Bulgarian authorities on 5 March 2010.[2]

2. Following the revision of the Rules of Procedure of the Parliamentary Assembly, adopted by the Standing Committee in Bern on 20 November 2009, establishing the preparation of a report at least once every four years on countries involved in a post-monitoring dialogue,[3] I have prepared the present report on the post-monitoring dialogue with Bulgaria.

3. In its Resolution 1211 (2000), the Assembly decided to close the monitoring procedure for Bulgaria and initiate a dialogue with the Bulgarian authorities "on the issues referred to in paragraph 4, or any other issues arising from the obligations of Bulgaria as a member state of the Council of Europe, with a view to reopening the procedure in accordance with Resolution 1115 (1997), if further clarification or enhanced co-operation should seem desirable".

4. Meanwhile, Bulgaria became a full member of the European Union on 1 January 2007.[4] On joining the European Union in 2007, Bulgaria still faced serious challenges in ensuring the functioning of its judiciary and in fighting corruption and organised crime.

5. Therefore, my visits took place in the particular context of post-monitoring dialogue with a country which has already acceded to the EU and from which one can expect the highest standards in terms of fulfilment of Council of Europe commitments and obligations.

6. Moreover, the second visit took place after the parliamentary elections of July 2009 which brought a completely new majority into power. This new situation offers new perspectives to the country which needs further reforms. This report presents the situation as I assessed it during my visits and a tentative road map for the country to eventually meet Council of Europe standards.

7. I am grateful to the Bulgarian parliamentary delegation for the extensive programme and excellent organisation of the visits and also to Ms Teodora Kaleynska, Director of the Council of Europe Information Office in Sofia, for her assistance. I also received a valuable contribution from the representatives of NGOs and minority communities, whom I met separately.

8. I also wish to thank the Ambassador of Sweden, Mr Paul Beijer, who, in his capacity as representative of the country which held the chairmanship in the Committee of Ministers in November 2008, organised a briefing meeting for me with ambassadors, senior representatives of diplomatic missions of a number of Council of Europe member states and the representative of the European Commission in Bulgaria.

9. One of the main conclusions[5] of my visit to Sofia in November 2008 was that, while moving steadily along the path of the implementation of the Assembly recommendations contained in Resolution 1211 (2000), the whole reform process in Bulgaria has been directed towards the introduction, implementation and consolidation of European standards which allowed Bulgaria to join the European Union as from January 2007. This was the declared goal of all the political forces in the country and there has been an enormous amount of legislation reviewed under the European Union auspices to meet this goal.

10. Regrettably, it is my general impression that, in the haste to meet the strenuous accession deadlines, some of the reforms and, in particular, the reform of the judiciary, have undergone numerous cosmetic changes that have pushed the reforms in an undesired direction. This was particularly the case of the

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1. See document AS/Mon (2007) 26 of 22 September 2006 and document AS/Mon (2007) 13 of 19 February 2007.
2. See separate document AS/Mon (2010) 08.
3. See Resolution 1698 (2009) and Doc. 12071 and addendum, report of the Committee on Rules of Procedure, Immunities and institutional Affairs.
4. Bulgaria had joined NATO on 29 March 2004 and signed the European UnionTreaty of Accession on 25 April 2005.
5. See AS/Mon (2008) 34.

constitutional amendments and the amendments to the Judicial System Act adopted in February 2007. I have the impression that, having joined the EU, Bulgaria did not consider implementation of Council of Europe commitments and obligations as a priority. This impression was confirmed by my interlocutors.

11. During my last visit in December 2009 and after having met different interlocutors responsible for the new government, I noted a new positive trend in the relationship between the Assembly and the new Bulgarian authorities. Besides, all interlocutors expressed the will to move ahead with the implementation of the pending reforms.

12. I wish to recall that the political components of the Copenhagen criteria for EU membership[6] of 1993 largely coincide with Council of Europe membership obligations. Bulgaria has regrettably given priority to the economic requirements. In this context, a Co-operation and Verification Mechanism (CVM) has been set up by the European Commission to monitor progress and extend support in dealing with shortcomings in the fulfilment of the political criteria. The Commission and the other EU member states saw the need to closely co-operate with Bulgaria following accession, in particular to ensure that the necessary reforms were put in place to strengthen the judicial system and fight corruption and organised crime. I believe that such a procedure would not have been necessary if Bulgaria had concentrated efforts to fulfil its obligations and commitments as a Council of Europe member state.

13. This report summarises a number of key findings from my visits and the focus points of the post-monitoring dialogue with Bulgaria since the last resolution of the Assembly.

2. Political context

2.1. Presidential elections 22 October 2006

14. According to the OSCE/ODHIR (Office for Democratic Institutions and Human Rights) International Election Observation Mission, the October 2006 presidential elections confirmed the credibility of the election process in Bulgaria. Elections took place in a competitive environment, and the range of seven presidential candidates and their vice-presidential running mates permitted voters a genuine choice.

15. President Georgi Parvanov, the President of Bulgaria since 22 January 2002, was re-elected on 29 October 2006 with 75.95% in the second round and with a turnout of 38.97%.[7] The president serves as the head of state and commander-in-chief of the armed forces. He also chairs the Consultative Council for National Security. While unable to initiate legislation other than constitutional amendments, the president can return a bill for further debate, although the parliament can override the president's veto by a vote of a majority of all MPs.

2.2. 2009 parliamentary elections and the new government

16. The 5 July 2009 parliamentary elections in Bulgaria were the first national elections since the country joined the European Union in 2007.

17. The centre-right GERB (Citizens for a European Bulgaria) movement won 39.7% of the votes, while the formerly ruling Coalition for Bulgaria obtained 17.7%; the Movement for Rights and Freedoms (DPS, supported by Bulgarians of Turkish ethic origin) obtained 14.5% of the votes, the radical nationalistic ATAKA received 9.36%, the liberal Blue Coalition obtained 6.7%, and the centre-right Order, Law and Security, 4.13%.[8]

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6. "Membership requires that candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and, protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union. Membership presupposes the candidate's ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union", Presidency Conclusions, Copenhagen European Council 1993, 7.A.iii.

7. The President of the Republic of Bulgaria is elected directly by Bulgarian citizens, for a five-year term with the right to one re-election.

8. Repartition in the National Assembly: GERB 116 seats, Coalition for Bulgaria 40 seats, Movement for Rights and Freedoms 38 seats, ATAKA 21 seats, Blue Coalition 15 seats, Order, Law and Security 10 seats (the latter parliamentary group was dissolved just before my visit, following the dismissal of one of its members).

18. With 116 seats of 240 secured, including 50 women (that is, 20.8%), the results did not allow Prime Minister Boyko Borisov – previous Mayor of Sofia – to form an outright majority and thus an independent stable government. However, in this situation, he opted to form a minority government as opposed to entering into a coalition with other, small, right-wing parties.

19. On the other hand, all right-wing parties, including the extreme right nationalists, declared that they would support the government with a view to solving Bulgaria's problems.

20. In July 2009, Prime Minister Borisov outlined the new government's priorities:

– increasing people's income and providing for economic growth; fighting the crisis, attracting investment and increasing business activity; incorporating the latest technologies in all spheres;

– guaranteeing the rule of law, fighting corruption and crime;

– reforming the judicial system in order to restore the sense of justice in society;

– restoring the trust of the EU in Bulgaria in order to unfreeze the blocked EU funds which are expected to help Bulgaria overcome the crisis quickly;

– improving living conditions, including social policy and health, as well as sports and the physical development of Bulgarians;

– developing Bulgaria's human capital and providing for top quality education;

– turning Bulgaria into a main factor for stability in the region and the world, mainly in co-operation with NATO and the EU, focusing on the Balkans and the Black Sea regions.

21. Prime Minister Borisov made it clear that his party (GERB) had the necessary political will to achieve these objectives. He vowed to include all Bulgarian citizens of all ethnic and religious backgrounds, as well as those Bulgarians living abroad, in the goals of the new government.

3. Functioning of the judiciary

22. The problem of judicial independence has to be viewed within the wider context of the reform of the judicial system in Bulgaria. The latter has been a slow process, with the Bulgarian judiciary having made a pendulum swing from a strongly government-subordinated justice machinery, inherited from the totalitarian system, to a largely unaccountable and anarchist judiciary today, which is seen as inefficient, non-transparent and corrupt. This view is further accentuated by the executive and legislative bodies that show persistent and widespread mistrust towards the judiciary and are reluctant to concede the existence of a truly independent judicial branch.

23. In February 2007, a package of constitutional amendments relating mainly to the judiciary was adopted. Regrettably, no expertise from the Council of Europe was sought prior to this adoption.[9] Now, the ministers of justice and of the interior have announced their intention to join efforts to review and implement the reform of the Penal Code. I called on the authorities to consult the European Commission for Democracy through Law (Venice Commission) for such an important reform, already at the stage of drafting. Justice Minister Popova showed great interest in Council of Europe assistance during our meeting in December 2009 and expressed his intention to consult the Venice Commission on these reforms.

24. The current leadership of the Ministry of Justice has expressed its readiness and desire to maintain closer collaboration with the Council of Europe with respect to planned legislative changes. The Ministry of Justice has taken steps in this direction and sent the Draft Act on Forfeiture in Favour of the State of Illegally Acquired Assets to the Venice Commission for an expert opinion. Also, during the meeting between Minister Popova and Mr Holovaty, the Bulgarian side's preparedness and willingness for closer collaboration with experts from the Council of Europe was expressed in connection with the drafting of the new Penal Code (it is referred to in the draft report as a "Criminal Procedure Code").

25. Following an exchange of views in May 2007 with the Bulgarian delegation on an information note prepared by the first vice-chair in the framework of the post-monitoring dialogue with Bulgaria,[10] and the comments thereon submitted by the Bulgarian authorities,[11] the Monitoring Committee decided to ask the opinion of the Venice Commission on the Bulgarian Constitution, in particular with respect to the amendments adopted in February 2007.

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9. See Opinion No. 444/2007, CDL-AD(2008)009, Opinion on the Constitution of Bulgaria adopted by the Venice Commission at its 74th plenary session (Venice, 14 to 15 March 2008).

26. The Venice Commission held an exchange of views with the Minister of Justice of Bulgaria at its meeting of March 2008, during which the minister submitted both oral and written observations.[12] In its opinion, adopted at that meeting,[13] the Venice Commission concluded that the provisions of the Constitution of Bulgaria, including its amendments of February 2007, were generally in conformity with European standards and in line with constitutional practice in other European states.

27. However, the Venice Commission considered that this did not mean that there was no room for further improvements in the text with respect to both the chapter on human rights and the one on the judiciary. According to its opinion, from the angle of the separation of powers, the role of the minister of justice as chair of the Supreme Council, with the right of initiative, is problematic. The minister's right to propose the budget may contradict the constitutional principle of the budgetary independence of the judiciary and membership in the Judicial Council should be incompatible with any representative mandate or political function.

28. According to Minister of Justice Popova, the steps taken to amend the constitution to amend the role of the minister of justice in the supreme Judicial Council should not be undertaken at this stage because of the checks and monitoring by the European Commission. The entire government's efforts are now focused on the fight against corruption and organised crime. It is not, however, impossible that such amendments would be initiated by this cabinet at a later stage.

29. It should be ensured that, within the Supreme Judicial Council, judges, prosecutors and investigating magistrates cannot interfere with each other's affairs. Moreover, the probationary period of five years for new judges raises serious difficulties for judicial independence and the inspectors are given too broad powers, with the risk of interference in the administration of justice.

30. According to the Venice Commission, the 2007 provisions of the constitution relating to civil and criminal immunity in the judiciary are in line with previous recommendations and are to be welcomed.

31. On the other hand, the difficulties relating to the structure of the Supreme Judicial Council have not been addressed since the earlier Venice Commission opinions. The Commission, in its opinion, recognises that the permanent status of the members of the Supreme Judicial Council, its administrative and financial independence and the terms of office of the members, which are quite separate from that of parliament, enhance the conditions of independence also of the 11 members elected by parliament. Nonetheless, the following comment from the opinion of 22 to 23 March 1999[14] remains relevant:

> *"30. The composition of the Council as set out in the Act is not in itself objectionable. It could work perfectly well in an established democracy where the administration of justice is by and large above conflict of party politics and where the independence of the Judiciary is very pronounced and well established. In such a situation, one would not expect the representatives of Parliament on the Council to be elected strictly on party lines and in any event, even if that were to happen, those elected would not feel in any way committed to act under instructions or directives from the party that elected them.*
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> *31. The Venice Commission considers that even though the Supreme Judicial Council may not in fact have been politicised it is undesirable that there should even be the appearance of politicisation in the procedures for its election. In each of the two most recent elections for the parliamentary component of the Supreme Judicial Council, under two different Governments the respective opposition parties did not participate with the result that on each occasion the parliamentary component of the Supreme Judicial Council was elected exclusively by representatives of the governing parties.*
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> *32. A high degree of consensus in relation to the election of this component should be sought. The Bulgarian Parliament discusses nominations in advance of the vote in the plenary in a parliamentary committee. Such a mechanism should be capable of being used to ensure appropriate opposition involvement in elections to the Supreme Judicial Council."*

32. A previous key recommendation, which was to provide for an election of the parliamentary component of the Supreme Judicial Council by a qualified majority to enable a certain representation from the opposition, has not been implemented. During our meeting, Justice Minister Popova expressed her opinion and supported my conclusions that a qualified majority is always a symbol of a more democratic and non-politicised election.

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10. Document AS/Mon (2006) 26.
11. Document AS/Mon (2007) 13.
12. Document CDL(2008)035.
13. Document CDL(2008)009.
14. Document CDL-INF(1999)005e.

33. Eleven members are still elected by parliament while it remains possible for a simple majority in parliament to elect all of these members. One solution might be to have only one third of the members of the Council elected by parliament with a qualified majority.

34. The Venice Commission welcomed the constructive reaction of the Bulgarian authorities to its opinion and expressed its readiness for further co-operation with them as well as with the Parliamentary Assembly.

35. During my first visit in November 2008, I was surprised to find that legal proceedings involving the staff of the Ministry of the Interior and members of the police forces were brought before the military court system. The Sofia Military Appellate Court was the court of final appeal for such cases, which presented obvious problems in relation to the provision of fair trials. Therefore I warmly welcome the modification of the Criminal Procedure Code which came about in December 2008, abolishing the obligation for civilians to file lawsuits against police in military courts.

36. In its judgment of 5 November 2009 on the case *Kolevi v. Bulgaria,*[15] the European Court of Human Rights decided there were violations of Article 5.3 (to be brought promptly before a judge or other officer authorised by law to exercise judicial power), Article 5.1 and 5.3 (unlawful and lengthy deprivation of liberty), Article 5.4 (appeal against detention examined speedily) and Article 2 of the Convention (ineffective investigation and lack of the requisite independence). In the Court's opinion, the fact that the government have not shown that at least some of the numerous grave allegations made during the relevant period against Mr F., the Chief Public Prosecutor, were ever investigated, is highly relevant in the present case as it corroborates the applicant's allegation concerning the absence in Bulgarian law of sufficient guarantees for an independent investigation into offences of which the Chief Public Prosecutor or other high-ranking officials close to him may be suspected.

37. As regards judges' training, I was also surprised to find that judges are trained only after their appointment and that there is no system of evaluation of their competencies. Obviously, this, added to the widespread perception of corruption, gives rise to deep mistrust towards the judiciary. I can only but encourage co-operation with the Council of Europe for the training of judges.

38. As a matter of fact, the judiciary remains stigmatised by the lengthy preliminary proceedings in the criminal justice system, the low number of proceedings against high-level officials and civil servants involved in corruption cases and the non-execution of the Strasbourg Court judgments due to a low rate of reopening of criminal court cases following a judgment of the Strasbourg Court and to the absence of legal provisions enabling this to be done in civil cases until last June.

39. As regards the length of proceedings, in December 2009, the chairman of the Supreme Court informed me that, since our last meeting in 2008, a specific committee had been set up to examine this problem. It has come up with proposals for amending the legislation by establishing reserve lawyers, which would allow the problem of absenteeism in the Court to be eradicated, which is a major reason for delays in proceedings. In its comments of March 2010, the Supreme Court also pointed out its activities in issuing interpretative decisions through which it resolves contradictions in the application of substantive and adjective law and provides instructions for its uniform application by all [domestic] courts. Exercising this power, in 2009 the Supreme Court of Cassation issued its Interpretative Judgement No. 1, thereby instructing all courts on matters related to the Code of Civil Procedure provisions governing the "expedited procedure". This body of law is new to Bulgarian criminal jurisdiction and was introduced into the Code of Civil Procedure in 2006. It provides plaintiffs with an option to waive the collection of certain evidence or waive a judicial inquiry in its entirety. In this way, the court trial phase of criminal proceedings is considerably shorter which reduces the overall length of the criminal process. The initial difficulties courts had with the application of this new body of law following its introduction were overcome with the instructions issued by the Supreme Court of Cassation. This helped considerably increase the instances of its application which allows for many of the cases to be finalised within shorter deadlines.

4. Independence of the media from the executive

40. After her last visit, my predecessor, Mrs Severinsen, had concluded that the problem of media independence *vis-à-vis* the executive or legislative authority seems to have been solved, at least at the legislative level, with the adoption and the subsequent coming into effect of the Television and Radio Act (TRA), in January 2005. The amended provisions have extended the independence of the Council of Electronic Media (CEM)[16] through a system of rotation (three of its nine members changing every two years)

15. Application No. 1108/2002.

and the irrevocability of its members, as well as by a clause according to which no member of the CEM can be recruited to managerial positions in other public radio and TV broadcasting entities. This independent body has also been given the authority to elect the heads of the Bulgarian national radio and the Bulgarian national television companies.

41. However, the fact that major media are ruled by persons with important political influence contributes to a climate of mistrust towards the media and the perception of their lack of independence from the executive, as well as from all spheres of influence. Furthermore, the recent reports of murders and of physical assaults of journalists raise major concern in Bulgaria.

42. Physical assaults, threats and harassment of investigative journalists are reported. Freedom of the press has to be guaranteed and cases of violence and harassment against journalists thoroughly investigated.

43. I was dismayed to hear that former Interior Minister Rumen Petkov publicly insulted journalist Jurgen Roth and called for violence against him on 11 November 2008, less than a month after Ognyan Stefanov, editor of the news website Frognews, was seriously injured in a murder attempt. On this case, it is regrettable that investigations have not yet led to any prosecution and I hope light will shortly be shed on this case and the perpetrators will be duly prosecuted.

44. During my first visit in November 2008, some representatives of the opposition regretted that there was no media law, thus leaving a number of pending questions open to corporate influence and criminal activities. They claimed that the recent law on electronic media only dealt with technical issues and did not guarantee the independence of the work of journalists in practice, even though it was enshrined in the constitution.

45. Most recently, members of the parliament and opposition group of the Coalition for Bulgaria and of the Monitoring Committee of the Parliamentary Assembly also informed the Monitoring Committee about attempts to influence media, both the regulatory bodies and the media themselves. According to them, the concentration of property in the media sector continues, making corporate interests of some media susceptible to political pressure and thus weakening the independence of the media in society.

46. Although a media law is not a common standard in all Council of Europe member states, I suggest that the National Assembly organise a debate on this issue and consider drafting a law which would address the issue of media group concentration and set standards for media independence from any kind of political or financial influence. The Bulgarian authorities should seek Council of Europe expertise in this field.

5. Rights of persons belonging to national minorities

47. Under the constitution, all citizens are equal before the law, irrespective of ethnic, religious and linguistic status.[17] At the beginning of 2004, a Protection from Discrimination Act came into force and, in 2005, a Commission for Protection from Discrimination was set up. This act was welcomed as a tool which offers protection for the victims of discrimination and allows transposition of EU directives into Bulgarian legislation.

48. The overall minority situation in the country is generally fairly satisfactory. Historically, ethnic Turks and Roma were the two biggest groups subjected to discrimination. Between 1984 and 1989, the Turkish minority living in Bulgaria was subject to human rights violations on an unprecedented scale. Since the 1990s, however, the situation of ethnic Turks has considerably improved. The Movement for Rights and Freedoms, a political party composed mostly of ethnic Turks, has been in two consecutive government coalitions now. The community is represented by 38 members out of 240 in the National Assembly and is also represented in local municipalities.

49. According to data for 2007 presented by the Max Planck Institute and the Institute of Sociology at the Bulgarian Academy of Sciences, the rate of unemployment stood at 7.6% among persons of Bulgarian ethnic origin, 26.8% for persons from the Turkish minority and at 48.3% among persons belonging to the Roma minority.

50. The Roma situation, on the contrary, continues to be of concern. On this specific issue, I refer to the report on the situation of Roma in Europe (Doc. 12174), prepared by the Committee on Legal Affairs and Human Rights, and which should be debated in the Assembly in April 2010. According to this report, in

16. Originally set up in 2002, this body is an independent specialised authority in charge of the regulation of radio and TV broadcasting in the country by registration and licensing of the radio and TV operators and by supervising exclusively whether the radio and TV operators abide to the regulations.
17. Article 6.2 of the Bulgarian Constitution.

Bulgaria, enrolment rates of Roma children in schools are significantly lower than those of children from the majority. Furthermore, segregated schools (with mostly Roma children), which are in charge of the education of 70% of Roma children, have poorer infrastructures and fewer resources and materials than the mainstream schools. According to the 2001 census, 18.1% of the Roma were illiterate.

51. The Decade of Roma Inclusion action plans (2005-2015), did lead to some improvements in recent years of the situation but efforts must be continued, namely in the field of housing conditions and access to education and employment[18] to which the new government should commit itself.

52. In *European Roma Rights Centre (ERRC) v. Bulgaria,*[19] the European Committee on Social Rights found a violation of Article 16 of the revised European Social Charter regarding the housing conditions and the circumstances of eviction of Roma families, together with a violation of Article E (non-discrimination). In its Resolution CM/ResChS(2007)2 on Collective Complaint No. 31/2005 by the European Roma Rights Centre against Bulgaria, the Committee of Ministers looks forward to Bulgaria reporting, on the occasion of the submission of the next report concerning the relevant provisions of the European Social Charter (revised), that the situation has improved, and keeping the Committee of Ministers regularly informed of all progress made. This country report should be published in spring 2010.[20]

53. In this context, I was dismayed to find out that the new government moved the National Council for co-operation on Ethnic and Demographic Issues which was set up 10 years ago under the responsibility of the Council of Ministers, thus abolishing the only proper institution dealing with Roma issues, transferring it to a unit of two persons in the Ministry of Labour. I am convinced that the human rights issues of Roma require a global approach and active support from the government.

54. The Bulgarian authorities are reluctant to recognise the distinct ethnic identity of the approximately 5 000 Macedonians living in Bulgaria. There have been reports of occasional infringements of the freedom of peaceful assembly and freedom of association of this ethnic group, but my tight programme did not allow me to meet their representatives. In their comments of March 2010, the Bulgarian authorities recalled that Bulgaria adheres to the principle that the affiliation of a person to one group or another is determined by the freely expressed will of the person concerned. Accordingly, they point out that the existence of Bulgarian citizens who identify themselves as “Macedonians” has been duly recorded in the official results of the population census: a total of 5 017 by 1 March 2001. However, only 3 109 of them declared that their mother tongue is Macedonian. The remaining 1 908 declared Bulgarian as their mother tongue. The data are in the public domain. This objective fact does not need any additional act of “recognition” whatsoever on the part of the Bulgarian authorities.

55. According to the Ministry of Foreign Affairs, in Bulgaria, persons belonging to religious, linguistic or ethnic groups, including those who identify themselves as “Macedonians”, are guaranteed all rights and freedoms enjoyed by all Bulgarian citizens, without any discrimination whatsoever.

56. As regards the execution of the judgment of the European Court of Human Rights in the case of the United Macedonian Organisation (UMO) Ilinden–Pirin and others, this has been pending for a long time. However, on 1 December 2009, the Committee of Ministers adopted the final resolution on the execution of the UMO Ilinden case.[21] In its comments of March 2010, the Ministry of Foreign Affairs wished to stress that the above judgment of the European Court of Human Rights does not give rise to an obligation for the Bulgarian side to automatically register UMO Ilinden–Pirin as a political party. The matter of registration of any party is entirely within the competence of the court, in accordance with the Political Parties Act. The Bulgarian authorities claim that all avenues for registration on the basis of the effective Political Parties Act were open – and remain open – to the applicants, regardless of their ethnic self-identification, without restrictions, on an equal footing with all Bulgarian citizens. The requirements of the Political Parties Act are clear and apply to everybody without exception.

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18. Human rights NGOs regretted that the GERB party campaign promising to allocate posts in the administration to Roma has not yet been held.

19. Complaint No. 31/2005, decision on the merits, 18 October 2006.

20. In a subsequent complaint also lodged by the European Roma Rights Centre against Bulgaria (Complaint No. 46/2007), the ECSR found further violations of the rights of Roma under the Charter. In this case the Committee held, *inter alia*, that the failure of the authorities to take appropriate measures to address the exclusion, marginalisation and environmental hazards which Romani communities are exposed to in Bulgaria, as well as the problems encountered by many Roma in accessing health care services, constituted a breach of Article 11.1- 3 of the revised Charter in conjunction with Article E. The Committee of Ministers is scheduled to decide on the follow-up to this decision in early 2010.

21. For further details on this case, please see AS/Jur (2008) 24 on implementation of judgments of the European Court of Human Rights, introductory memorandum by the rapporteur, Mr Christos Pourgourides, Cyprus, EPP/CD.

57. The case concerned the dissolution of a political party aimed at achieving "the recognition of the Macedonian minority in Bulgaria" and relates to freedom of association of groups of people standing for such recognition. In its judgment of 20 October 2005, the Strasbourg Court found that the dissolution of the political party UMO IlindennPirin in 2000 violated Article 11 of the Convention as nothing in the party's programme or in the declarations of its leaders had challenged the principles of democracy. Two re-registration attempts by the political party – with the same name and statutes as that unjustifiably dissolved – have failed since the Court's judgment. A third is under consideration.

58. In its final resolution, the Committee of Ministers concludes: "underlying in this context that the Political Parties Act, as modified in January 2009, reduced from 5 000 to 2 500 the level of members required to form a political party and that this new level seems, in addition, likely to resolve the problems encountered by the applicants in forming their party in conformity with the requirement of the 2005 Political Parties Act … it seems that the applicants can at present apply for the registration of their party in proceedings which are in conformity with Article 11 of the Convention. … the general measures [taken],and in particular the awareness-raising measures taken by the Bulgarian authorities to ensure that applicable domestic law [are] interpreted in conformity with the Convention and thus [should] prevent violations similar to that found by the European Court.[22]

59. Moreover, the Venice Commission, in its opinion on the Constitution of Bulgaria from 2008,[23] expressed its concern "that […] provisions [in the constitution] could be used to prevent minority linguistic, ethnic or religious groups from organising themselves at all" and suggested "to amend some of the above mentioned provisions in the constitution by softening their wording in order to convey an open attitude towards minorities also in the language used in the constitution".

60. According to the information presented in the opinion of the Advisory Committee on the Framework Convention for the Protection of National Minorities[24] "teaching of the languages of persons belonging to minorities within the compulsory curriculum remains limited, and their use as languages of instruction is virtually non-existent". In its resolution on the implementation of the Framework Convention for the Protection of National Minorities by Bulgaria,[25] the Committee of Ministers concluded that "additional efforts are expected from the state as regards teaching of and in the languages of persons belonging to minorities as well as in order to promote knowledge of the culture and identity of minorities and foster intercultural dialogue and tolerance through education". In its comments of March 2010, the Ministry of Foreign Affairs noted that Bulgaria has taken a number of measures and has made substantial progress in this respect, including the creation, within the Ministry of Education and Science, of a special department, charged with the development of mechanisms for instruction and teaching of children and pupils with intercultural elements; overcoming the negative stereotypes and prejudice in respect of persons who are different; sensitising children and pupils and cultivating skills to strengthen solidarity in a multi-cultural environment; raising the self-esteem of children and pupils in respect of their cultural identity.

61. According to the same report, the implementation of the Framework Convention remains problematic, as is the use of languages of persons belonging to minorities, be it in dealings with the administrative authorities or in criminal proceedings. It is regrettable that no changes to the legislative provisions have been made.

62. Bulgaria has neither signed nor ratified the European Charter for Regional and Minority Languages. This question was raised with the national authorities but answers remained vague or evasive. I therefore have to ask the Bulgarian delegation to provide me with more information on the obstacles that impede the signing and ratification of the above-mentioned Council of Europe Charter. According to their written comments of March 2010, the existing lack of correspondence in respect of essential terms is a serious impediment to a possible signature and ratification of the Charter by Bulgaria. At the same time, it should be noted that Bulgaria is party to the Framework Convention for the Protection of National Minorities of the Council of Europe, which covers in more general terms a large part of the issues treated in the Charter. At

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22. Resolution CM/ResDH(2009)1201 adopted by the Committee of Ministers on 3 December 2009 at the 1072nd meeting of the Ministers' Deputies on the execution of the judgment of the European Court of Human Rights, United Macedonian Organisation Ilinden–Pirin and others against Bulgaria (Application No. 59489/00), judgment of 20 October 2005, final on 20 January 2006.
23. Opinion on the constitution of Bulgaria No. 444/2007CDL-AD(2008)009 Or. Engl. adopted at the 74th Plenary Session of the Venice Commission on 14 and 15 March 2008.
24. Opinion on Bulgaria, adopted on 27 May 2004, and made public on 5 April 2006, Doc. ACFC/OP/I(2006)001.
25. ResCMN(2006)3, adopted by the Committee of Ministers on 5 April 2006 at the 961st meeting of the Ministers' Deputies.

present Bulgaria prioritises the effective application of the principles enshrined in the Framework Convention, including a further improvement of national legislation and the taking of the practical measures necessary to this end.

63. A delegation of the Advisory Committee on the Framework Convention for the Protection of National Minorities visited Bulgaria from 28 September to 2 October 2009 in the context of the monitoring of the implementation of this convention in Bulgaria. Bulgaria submitted its second state report under the Framework Convention in November 2007. Following its visit, the Advisory Committee will adopt its own report (opinion) in Spring 2010, which will be sent to the Bulgarian Government for comments. The Committee of Ministers of the Council of Europe will then adopt conclusions and recommendations in respect of Bulgaria.

64. Furthermore, hate speech towards the representatives of the Roma and Muslim communities in the last elections and later have been reported.[26] Openly racist language has been used with impunity in the printed media,[27] which stereotype Roma and attack the dignity of the Roma. Actions are to be taken by government to foster tolerance and mutual respect, including an exemplary attitude from political leaders. Public statements of members of the government attacking minorities or their religious practices or even against the outgoing majority from the Bulgarian Socialist Party (BSP) are regularly reported. This creates a bad rhetoric to say the least and exposes society to division. This is intolerable in a Council of Europe and EU member state.

65. The Criminal Code was amended in April 2009 to add incitement in speech to ethnic hostility or hatred, print or other mass media, or through electronic information systems, or through other means to the provision on propaganda and incitement to racial or national hostility or hatred or to racial discrimination. The penalty was also increased to imprisonment of up to four years (from a maximum penalty of three years' imprisonment) and the maximum fine was increased to 10 000 leva (~€5 000). This development is welcome and I must stress that systematic prosecution of perpetrators of acts of violence or discrimination or speech – be they from law enforcement bodies or non-state actors – can only lead to their eradication.

66. Furthermore, it is to be noted that the Council for Electronic Media (CEM), in its capacity as an independent regulator, has been given the task of supervising the activities of radio and television and should use its right to sanction in this regard.[28]

67. I was informed during my last visit that the Bulgarian Parliament rejected the 2008 activity report of the Commission for Protection against Discrimination, contesting the use of public funds and asking for detailed information, arguing that the Commission had spent millions but had only taken action on cases of discrimination four times in 2008. The BSP MPs and the ethnic Turkish Movement for Rights and Freedoms (DPS) both defended the Commission for Protection against Discrimination while the governing centre-right Citizens for European Development of Bulgaria, the nationalist party ATAKA and the rightist Blue Coalition strongly criticised the report before it was finally rejected.

68. I can only regret the putting into question of this institution and I invite the government to support it, even if its funding should be monitored more closely as all public funds in a country weakened by corruption. It is furthermore regrettable that the debate on this institution has been politicised.

69. During his visit to Bulgaria from 3 to 5 November 2009, the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, assessed progress in the protection of the rights of minorities and disadvantaged children in Bulgaria. Bulgaria is expected to take into consideration the recommendations of the Council of Europe Human Rights Commissioner presented in his report from February 2010.

6. Office of ombudsperson

70. The parliamentary ombudsman institution in Bulgaria was established by the Law on the Ombudsman which came into force on 1 January 2004. After a one-year delay and two failed attempts, the National Assembly elected Mr Ginyo Ganev, MP from the Coalition for Bulgaria, as the country's first national ombudsman, in April 2005. The ombudsman is to submit an annual report on his activities to the National Assembly by 31 March every year and publish an annual bulletin on his activities.

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26. SKAT TV continues to broadcast intolerant and discriminatory views against persons belonging to Roma and Turkish ethnic minorities and other private broadcasters (BBT cable TV) are also notorious for their use of extremely aggressive and abusive language against Roma and other minorities.
27. In particular in newspapers such as *Ataka*, *Nova Zora*, and *Novinar*.
28. Sanctions can range from fines against the broadcasters in breach of the law to revocation of the broadcasting licence.

71. During our meetings, Mr Ganev raised some issues regarding the independent functioning of the institution, such as the need to envisage an enhanced parliamentary majority for election and removal from office of the ombudsman. According to the law, legal persons can't apply. Constitutional amendments are needed in order to allow legal persons to file complaints.

72. Moreover, the ombudsman noted that there was a lack of independence from local self-government authorities of local ombudsmen or public mediators, whose establishment was allowed by amendments to the law on local self-government adopted in 2003. He suggested that the legal framework for local ombudspersons and public mediators be modified in order to strengthen their independence, providing at the same time for co-operation and support from the national ombudsman.

73. In its comments, the ombudsman institution considered that over the past four years the ombudsman has become an influential, authoritative and independent institution which built the needed administrative capacity and exercised systemic civil control on the authorities and on the administrations at all levels from the perspective of citizens' rights. The amendments to the Bulgarian Constitution in 2006 gave a constitutional dimension to the ombudsman's status and thus further strengthened its independence. The amendments expanded the scope of prerogatives to effectively intervene to protect the rights of citizens with the provision that makes the ombudsman free to directly approach the Constitutional Court whenever laws breach fundamental rights and freedoms.[29]

74. I recommend, as was already done by the Assembly in its Recommendation 1615 (2003), that "exclusive and transparent procedures for appointment and dismissal [of the ombudsperson] by parliament by a qualified majority of votes" be applied. I further recommend, along the lines with repeated recommendation from the Venice Commission, that the parliamentary ombudsperson's office be considered within the framework of a future constitutional revision so as to further consolidate and reinforce the efficiency of the ombudsperson's institution.

7. Efforts to combat corruption and police abuses

7.1. Anti-corruption measures

75. Bulgaria remains a country with endemic corruption that has gained the ranks of the administration and the judiciary. In the past, the broad immunity enjoyed by judges was the cause of corruption within the judiciary. However, although such immunity has been reduced to a mere functional one, this has not solved the problem of judicial corruption.

76. On 26 November 2008, the European Commission decided to cut Bulgaria's access to €220 million in EU funding as a sanction for its persistent failure to tackle corruption and organised crime. It had already frozen nearly €500 million in aid to Bulgaria last summer for the continuing weaknesses in the country's control system and the cases of fraud and irregularities.

77. Upon accession to the EU, the Bulgarian authorities and the other EU member states recognised that far-reaching judicial reform and a "concerted effort to fight corruption and organised crime were necessary if Bulgarians were to be able to exercise their rights as EU citizens and benefit from all the opportunities, including financial support that EU membership would bring. More broadly, they recognised that principles which are at the heart of the EU – respect for the rule of law, mutual recognition and co-operating on the basis of a fundamental bargain of trust – could only be put into practice if these problems were tackled at source".[30]

78. Against this background, the European Commission and the other EU member states saw the need to closely co-operate with Bulgaria following accession to ensure that the necessary reforms were put in place to strengthen the judicial system and to fight corruption and organised crime.[31]

79. The Cooperation and Verification Mechanism (CVM) was set up by the European Commission to monitor progress and extend support in dealing with these shortcomings.

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29. Statistical data on the ombudsman activities are available in AS/Mon (2010) 08.
30. Report from the Commission to the European Parliament and the Council on progress in Bulgaria under the co-operation and verification mechanism, Brussels, 23 July 2008, COM(2008) 495 final.
31. See final report from the Commission to the European Parliament and the Council on progress in Bulgaria under the co-operation and verification mechanism (SEC(2009) 1074), Brussels 22 July 2009 (COM(2009) 402).

80. An inter-ministerial anti-corruption committee was set up in charge of co-ordinating government efforts to fight public corruption and organise public awareness campaigns. In January 2006, a Council to improve co-ordination between the anti-corruption committees of the National Assembly, the Council of Ministers and the Supreme Judicial Council was established.

81. During 2006, the Ministry of Interior reported 451 complaints of police corruption, 179 of which were submitted to its hotline or website. The complaints resulted in 57 officers being fired and 81 officers being administratively sanctioned.[32] In its written comments of March 2010, the Ministry of the Interior recalled that the Act on Conflict of Interest entered into force on 1 January 2009, leading to the drafting of methodological guidelines on the prevention and elimination of conflicts of interest to the attention of all Ministry of Interior employees. Moreover, a methodology for assessment of corruption risks at Ministry of Interior units has been adopted as an administrative tool in the Ministry's efforts to prevent corruption. It comprises a complex multi-component indicator to analyse and provide an objective evaluation of the situation of any given unit. On this basis, proposals and recommendations are formulated to support and optimise the efforts of senior police officers to prevent and control corruption.

82. In 2009, the Ministry of Interior received a total of 473 alerts for corruption behaviour and misconduct by Ministry of Interior's staff, out of which 68 on the anonymous phone line, 254 through the Internet site of the Ministry of Interior Inspection Directorate, and 151 by mail.[33]

83. Over the years, the Council of Europe has accompanied Bulgaria in its efforts to fight against corruption through its Group of States against Corruption (GRECO). In its compliance report, adopted on 1 June 2007,[34] GRECO concluded that, during the second evaluation round, the Bulgarian authorities had implemented satisfactorily or dealt with in a satisfactory manner over half of the 11 recommendations GRECO had addressed to them. Three recommendations had been partly implemented and one had not been implemented. I wish to reiterate in particular the recommendation "to establish an adequate system of protection for those who, in good faith, report suspicions of corruption within the public administration, as well as to introduce training for public officials to report such suspicions" (partly implemented). GRECO also recommended to "introduce clear rules/guidelines for situations where civil servants move to the private sector, in order to avoid situations of conflict of interests" (not implemented).[35] These recommendations were reported as implemented in 2009.[36]

84. As concerns the fight against organised crime, the National Assembly adopted at first reading amendments to the Penal Code and Criminal Procedure Code, the aim of which is to ensure expeditiousness and efficiency in criminal proceedings and avoid unnecessary technicalities. According to information provided by the Ministry of Interior in 2008 and 2009, there is a certain improvement. The number of registered crimes has dropped by 9% as compared to the same period of last year (13% for crimes against property, 15% for robberies and 14% for thefts). During 2008, the operations of 137 organised crime groups with 234 participants were uncovered wholly or partially. Some 110 persons were indicted of whom 12 were foreigners.

85. According to preliminary estimates from police statistics as at 7 January 2010, provided by the Ministry of Interior in March 2010, in the area of the fight against organised crime, in 2009 there was an improvement of 39.1% as compared to 2008. In 2009, a total of 176 organised criminal groups were detected in the country; these were engaged in criminal activities throughout the territory of the country, EU member states and countries from outside the EU. The number of reported crimes in 2009 has increased by 6.42% as compared to 2008 (in crimes against property there was a 4.41% increase, 13.8% for robberies, 5.8% for theft; there was a decrease in the number of crimes against the person – 2.8%, and murders by 5.2%).

86. The endemic corruption and perception of lack of action by the government is believed to be one of the reasons for failure of the Socialist government to win the 2009 elections again. The GERB party based its electoral campaign on this topic and its will to crack down on corruption in a considerable way. During our meetings, representatives of the government confirmed their commitments and stressed the very high expectations of the people in this regard.

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32. Idem.
33. For further statistics, see comments by Ministry of Interior, in AS/Mon (2010) 08.
34. Greco RC-II (2007) 4.
35. Idem.
36. Addendum to the Compliance Report on Bulgaria adopted by GRECO at its meeting, 29 June-2 July 2009, Greco RC-II (2007) 4E.

87. I encourage the new Bulgarian Government and competent authorities to closely follow up and implement the recommendations made by both the European Commission and GRECO with a view to speeding up the implementation of the anti-corruption reform and adopting a more proactive approach in tackling organised crime networks.

7.2. Police abuses

88. Although human rights training is mandatory at the police academy and officers' schools, human rights abuses by the police continue. Impunity remains a problem, as the lack of accountability inhibits government attempts to address such abuses. According to the Ministry of Interior, one of the objectives included every year in the working plan of the Standing Committee on Human Rights and Police Ethics with the Ministry of Interior is to study European Court of Human Rights judgments on Ministry of Interior-related Bulgarian cases and the planning of measures not to allow new violations. This subject is also included in the curricula of the Ministry of Interior Academy.

89. According to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its 2006 visit to Bulgaria,[37] 94% of the cases of police violence into which the Military Prosecutor's Office had carried out preliminary inquiries had been notified by the victims or their relatives. This suggests that prosecutors rarely use their *ex officio* powers to open preliminary investigations at their own initiative, which is surprising taking into account the existence of the system of unannounced visits to police establishments and investigation detention facilities by prosecutors, during which they are supposed to check all documentation and speak in private with detained persons.

90. In its report, the CPT highlighted the important role played by judges and prosecutors, but also by staff working at investigation detention facilities and other competent authorities, in preventing ill-treatment by law enforcement officials through the diligent examination of all relevant information regarding possible ill-treatment which may come to their attention, whether or not that information takes the form of a formal complaint.

91. As recommended by the CPT, an instruction should be issued for the attention of all prosecutors in Bulgaria making it clear that, even in the absence of a formal complaint, the prosecutorial authorities are under a legal obligation to undertake an investigation whenever they come across credible information that ill-treatment of persons deprived of their liberty may have occurred.

92. The CPT carried out an ad hoc visit to Bulgaria from 15 to 19 December 2008, but authorities have not yet allowed the publication of the report and their comments. I encourage the authorisation of the publication of the CPT report on its 2008 visit to the country without further delay.

93. Human rights groups claim that medical examinations in cases of police abuses are not properly documented, that allegations of police abuse are seldom investigated thoroughly and that offending officers are very rarely punished. Impunity of police officers should be tackled.

94. The Ministry of Interior noted in its comments of March 2010 that it has clear and specific mechanisms to seek and ensure the accountability of offending employees. For each tip-off of human rights abuses, a disciplinary inspection is carried out, together with a check under the provisions of the Administrative Procedure Code, and in cases where the allegations are confirmed, steps are taken to impose disciplinary sanctions. Where the abuse constitutes a criminal offence, the file compiled as part of the investigation is lodged with the Prosecution Office to initiate criminal proceedings against the offenders.

95. The Ministry of Interior provided the following statistical data. During the period from 1 January 2005 to 31 December 2009, the Human Resources Directorate with the Ministry of Interior received reports of about 73 cases of police abuse recorded and where allegations were considered to be substantiated. Incidents of abuse were committed by 102 civil servants, of which 26 had higher education and 76 had secondary education. Following investigation, various disciplinary sanctions were imposed on the officers, including 27 civil servants who were dismissed as a disciplinary sanction and their civil-service relationship with the Ministry of Interior was severed. As per its level of competence, files on 34 of the cases were referred to the Prosecution Office, for which 9 investigation files were initiated. For 2 of the cases pre-trial proceedings were not initiated.

37. Report to the Bulgarian Government on the visit to Bulgaria carried out by the CPT from 10 to 21 September 2006, Doc. CPT/Inf (2008) 11.

96. The law entitles the ombudsman to examine human rights violations following the filing of a complaint or at his own initiative.

97. As concerns the situation in prisons, NGO prison monitors report that brutality by prison guards against inmates, as well as brutality among inmates, continues to be a serious problem. Corruption also continues to plague the system.

98. Prison overcrowding remains a problem, although the Ministry of Justice reported a slight decrease in 2008 in the prison population following the introduction of a probation system. There were 11 165 prisoners in the country's 13 prisons.[38] According to the Ministry of Justice, this figure exceeded by three times the capacity of the prison system.

99. I believe the Ministry of Justice will provide us with statistics and updated information for the final report on the prison situation and the information on the efforts undertaken to overcome prison overcrowding.

8. Defamation

100. Insult and libel are punishable under Articles 146 to 148 of the Criminal Code. The law provides only for financial penalties (fines) and excludes imprisonment. However, those convicted acquire a criminal record. This can be a great hindrance in their professional life.

101. In accordance with Resolution 1211 (2000) of the Assembly, "sanctions against journalists should be brought out of the sphere of criminal law and awards for damages limited to reasonable amounts, taking into account that journalists should abide by the principle of respect for privacy, in conformity with Article 8 of the European Convention on Human Rights."[39]

102. I raised this issue with most of my interlocutors, including previous and current ministers of justice, who could not give me any convincing argument for justifying the fact that these sanctions remain in the sphere of criminal law. The new Minister of Justice, Mrs Margarita Popova, even expressed her opinion that the population was probably ready for this change and committed herself to put defamation on the agenda of the working group of the human rights directorate to seek its advice on the issue.

103. I believe it is not enough that imprisonment is excluded from the Criminal Code and that defamation as such should once and for all be excluded from it. During our meeting in December 2009, Minister Popova expressed her position that this issue requires careful consideration in the context of the drafting of a new Penal Code which has already started.

104. I expect Bulgaria to decriminalise defamation rapidly.

9. Other outstanding questions

9.1. Execution of the judgments of the European Court of Human Rights

105. The Court passed 60 judgments including 51 findings against the country in 2008 as compared to 51 findings out of 53 judgments in 2007.

106. The number of complaints submitted to the Court is growing year after year. However, according to the Bulgarian Helsinki Committee, as well as the Bulgarian Lawyers for Human Rights, the government has done little to hold to account the institutions and officials who committed the violations.

107. The non-execution of judgments of the Court has been partly due to the absence of legal provisions allowing the re-opening of a civil court case following a judgment of the Strasbourg Court. Re-opening of proceedings for criminal cases was provided for in the legislation in Article 422.1.4 of the Bulgarian Criminal Procedure Code in 2006. As always, implementation remains to be seen in practice.

108. In this regard, according to Professor Lasar Gruev, President of the Supreme Court, since the entry into force of the Code in 2006, five cases have been lodged before the Supreme Court, four cases in 2007 and one in 2009, which all have been re-opened. According to the written comments submitted by the Supreme Court of Cassation on 2 March 2010, the Supreme Court of Cassation is solely and exclusively responsible in situations where the violation of the Convention's provisions can be rectified by the re-opening of court cases.

38. Including Boychinovtsi juvenile prison.
39. Resolution 1211 (2000), paragraph 4.ix.

The majority of judgments against Bulgaria concern compensations due to complainants, however, the Supreme Court of Cassation has no competence whatsoever to deal with these cases. In situations where it was possible for the violations to be rectified by re-opening proceedings, a procedure was initiated to re-open the criminal cases and this was done. This also explains the relatively small number of cases where re-opening was sought and granted.

109. In a number of cases[40] and some others currently pending before the Court, breaches of the right to life and of the prohibition of ill-treatment have been found, as the authorities either used excessive force (by killing people with fire-arms) or failed to account for the deaths or injuries of people detained in police custody (violations of Articles 2 and 3 of the European Convention on Human Rights). For instance, although the facts occurred in the 1990s, the first judgments on these issues were delivered by the Court as early as 2000 (and continued until 2007) and are still pending for execution both as regards individual measures (that is, to erase as much as possible the consequences of the violation for the victim) and general measures (the adoption of measures which will prevent future similar violations, such as legislative changes, administrative and judicial practice changes, etc.).

110. As regards the re-opening of civil proceedings, the Bulgarian Code of Civil Procedure had first envisaged the re-opening of civil proceedings, but this possibility was excluded from the code in March 2008.[41] However, in June 2009, the new Civil Procedure Code was amended (new Article 303, paragraph 7) to eventually allow for the possibility of re-opening cases following a judgment by the Strasbourg Court establishing a violation of the European Convention on Human Rights or one of its protocols. I hope this positive development will remain in the legislation.

111. I welcome the introduction of legal provisions allowing the re-opening of a court case in civil cases. Now practice has to be developed in penal and civil cases which should help address the question of non-execution of the Strasbourg Court's judgments. Council of Europe assistance is currently provided in this respect and co-operation should be further strengthened.

9.2. Claims of the former prisoners of Belene Island

112. As previous rapporteurs on the post-monitoring dialogue with Bulgaria, I have been approached on several occasions by the Association of Justice, Rights, Culture and Co-operation in the Balkans (hereafter "the association"), which represents 517 former prisoners of the Belene Island concentration camp and other victims of the forced assimilation in Bulgaria between 1984 and 1989. During those years, nearly one million ethnic Turks were subjected to forced "Bulgarisation" and about 850-900 ethnic Turks were sent to prisons or concentration camps arbitrarily and without due process. Between May and September 1989, 350 000 ethnic Turks were forcibly deported to Turkey in order to make Bulgaria a mono-ethnic country. Mr Loutfi, the then Head of the Bulgarian parliamentary delegation, during the debate on the need for international condemnation of the crimes of totalitarian communist regimes at the Assembly's January 2006 part-session, considered that this was an "ethnic genocide, aimed at undermining the religious, political and ethnic identity of a minority". The former prisoners of Belene Island have the following claims:

– proper investigation of the crimes committed between 1984 and 1989 and bringing those guilty before a court;

– compensation from the state that would adequately compensate them for their physical, moral and material damage;

– counting the years spent in prison for calculating retirement age or pension due for service to the state.

113. The former prisoners' representatives claim that their case could not be brought before the Strasbourg Court since the national remedies could not be exhausted, as the authorities refused to take responsibility for what happened in communist times. According to the comments provided by the parliamentary faction of the Blue Coalition, in 1991, the Bulgarian Parliament adopted the law on political and civil rehabilitation of people who suffered repression. It was amended several times; the last amendment was in 2009. The applications' deadline was extended until the end of 2011.

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40. *Velikova v. Bulgaria,* Application No. 41488/98, *Nachovav.Bulgaria*, Application Nos. 43577/98 and 43579/98.

41. In this regard, the Committee of Ministers of the Council of Europe had, in 2000, adopted Recommendation No. R(2000)2 to member states on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights, which invites all contracting parties to the ECHR to ensure that their legal systems provide adequate possibilities for re-examining cases, including re-opening of proceedings.

114. As these people are not represented politically, I would like to ask the authorities to consider their requests, which appear to me to be legitimate.

10. Concluding remarks

115. The weaknesses of the judiciary in Bulgaria have repercussions on most spheres of society which hampers the proper functioning of all democratic institutions.

116. I encourage Bulgaria to take all necessary measures to implement Assembly Resolution 1211 (2000), in close co-operation with the Venice Commission and other relevant Council of Europe mechanisms and bodies with a view to strengthening the rule of law and eventually fulfilling its obligations and commitments as a Council of Europe member state, but also as an EU member state.

117. During my visits to Sofia, the newly elected Bulgarian authorities demonstrated their intention to actively co-operate with the Council of Europe and promised to request Venice Commission assistance before adopting important legislation. I can stress that most interlocutors had well prepared our meetings and showed readiness to improve the situation in their field. In this regard, I recommend that the Monitoring Committee invites the Bulgarian authorities to request without delay the opinion of the Venice Commission on the draft law amending and supplementing the Penal Procedure Code recently submitted by the government to the National Assembly, in order to ensure its compliance with the European Convention on Human Rights.

118. The new government has to seize the momentum and the strong support of the population to set Bulgaria on the right track of a modern democracy. Some outstanding concerns and worrying trends listed in Resolution 1211 (2000) and mentioned in this report remain to be addressed promptly by the new government, which should take concrete steps to:

– take greater account of European standards and the opinions of Council of Europe experts on the draft laws it examines;

– ensure the independence of the judiciary and of the media is guaranteed with regard to the executive authorities and that there is a greater diversity of opinion on national television;

– improve the rights of the persons belonging to minorities, especially as regards education and broadcasting in their mother tongue; minorities should be better represented in the police and the public services;

– step up efforts to combat corruption and police brutality with assistance from the Council of Europe; the constitution should be amended to bring the immunity of members of parliament, magistrates and senior officials in line with European standards;

– bring sanctions for defamation against journalists out of the sphere of criminal law and limit awards for damages to reasonable amounts, taking into account that journalists should abide by the principle of respect for privacy, in conformity with Article 8 of the European Convention on Human Rights.

119. The Bulgarian Parliament held a debate on Resolution 1211 (2000) in December 2000 as recommended in paragraph 4.i. However, considering that nine years have gone by and that some shortcomings are still noticeable in the fields mentioned above, the Bulgarian National Assembly should take into account the present report and hold a debate on its conclusions.

120. In the light of the above considerations, I believe the post-monitoring dialogue is a good tool for accompanying and supporting the new government in living up to the very high expectations of the population and fulfilling its promises and Bulgaria's commitments as a Council of Europe member state.

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Reporting committee: Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

Reference to committee: Resolution 1115 (1997) and Resolution 1211 (2000)

Draft resolution adopted unanimously by the committee on 17 March 2010

Members of the committee: Mr Dick **Marty** (Chairperson), Mrs Josette **Durrieu** (1st Vice-Chairperson), Mr Pedro **Agramunt Font de Mora** (2nd Vice-Chairperson), Mrs Karin S. **Woldseth** (3rd Vice-Chairperson), Mr Aydin Abbasov, Mr Francis Agius, Mr Miloš Aligrudić, Mrs Meritxell Batet Lamaña, Mr Ryszard Bender, Mr József Berényi, Mrs Anne **Brasseur**, Mr Patrick Breen, Ms Lise Christoffersen, Mr Boriss **Cilevičs**,

Mr Georges **Colombier**, Mr Telmo Correia, Mr Joseph **Debono Grech**, Mr Juris Dobelis, Mr Mátyás **Eörsi**, Mrs Mirjana Ferić-Vac, Mr Axel Fischer, Mrs Pernille Frahm, Mr György **Frunda**, Mr Giuseppe Galati, Mr Jean-Charles **Gardetto**, Mr Andreas **Gross**, Mr Michael Hagberg, Mr Michael **Hancock**, Mr Davit **Harutyunyan**, Mrs Olha Herasym'yuk, Mr Andres **Herkel**, Mr Serhiy **Holovaty**, Mr Michel Hunault, Mrs Sinikka **Hurskainen**, Mr Kastriot Islami, Mr Mladen **Ivanić**, Mr Zmago Jelinčič Plemeniti, Mr Michael Aastrup Jensen, Mr Miloš **Jevtić**, Mr Tomáš Jirsa, Mrs Corien W.A. **Jonker**, Mr Guiorgui **Kandelaki**, Mr Haluk **Koç**, Ms Katerina Konečná, Mr Jaakko **Laakso**, Mr Terry **Leyden**, Mr Göran **Lindblad**, Mrs Kerstin **Lundgren**, Mr Pietro **Marcenaro**, Mr Bernard Marquet, Mr Frano Matušić, Mr Miloš **Melčák**, Mrs Nursuna **Memecan**, Mr Jean-Claude **Mignon**, Mr João Bosco Mota Amaral, Mr Adrian **Năstase**, Mrs Elsa **Papadimitriou**, Mr Dimitrios Papadimoulis, Ms Vassiliki Papandreou, Mr Alexander Pochinok, Mrs Marietta **de Pourbaix-Lundin**, Mr Christos Pourgourides, Mr John Prescott, Mrs Mailis **Reps**, Mr Andrea Rigoni, Mr Ilir **Rusmali**, Mr Armen **Rustamyan**, Mr Indrek **Saar**, Mr Kimmo **Sasi**, Mr Samad Seyidov, Mr Leonid **Slutsky**, Mr Yanaki **Stoilov**, Mr Christoph Strässer, Mr Björn von Sydow, Mrs Chiora **Taktakishvili**, Mr Zhivko **Todorov**, Mr Øyvind **Vaksdal**, Mr Egidijus **Vareikis**, Mr José Vera Jardim, Mr Piotr **Wach**, Mr Robert Walter, Mr David **Wilshire**, Mrs Renate Wohlwend, Mrs Gisela Wurm, Mr Andrej Zernovski.

NB: The names of the members who took part in the meeting are printed **in bold**

Secretariat of the committee: Mrs Nachilo, Mr Klein, Ms Trévisan, Mr Karpenko