

Resolution 2296 (2019)¹

Post-monitoring dialogue with Bulgaria

Parliamentary Assembly

1. Bulgaria joined the Council of Europe in 1992. It was subject to the full monitoring procedure until 2000. The Parliamentary Assembly refers to its [Resolution 1211 \(2000\)](#) on the honouring of obligations and commitments by Bulgaria, in which it decided to close the monitoring procedure and to open a post-monitoring dialogue on a number of outstanding concerns and on any other issue arising from the obligations incumbent upon every member State of the Council of Europe under Article 3 of the Statute of the Council of Europe (ETS No. 1) with regard to democracy, the rule of law and human rights.
2. Furthermore, the Assembly refers to its [Resolution 1915 \(2013\)](#) on post-monitoring dialogue with Bulgaria, in which it recognised the important progress achieved by Bulgaria in terms of the crucial reforms and legislative framework put in place since the closure of the monitoring procedure, in particular since Bulgaria's accession to the European Union in 2007, as confirmed by the annual European Commission reports prepared under the Co-operation and Verification Mechanism.
3. The Assembly commends the Bulgarian authorities for demonstrating their sustained political will and commitment to fully respect their obligations, as confirmed by their continued co-operation with Council of Europe monitoring mechanisms, legal experts and the European Commission for Democracy through Law (Venice Commission).
4. The Assembly welcomes Bulgaria's substantial progress towards establishing judicial independence, in line with the Assembly's recommendations. Overall, the reforms adopted between 2015 and 2018 to the Judicial System Act and subsequent regulations with regard to the functioning of the Supreme Judicial Council and the judiciary as a whole have constituted a major step towards full accomplishment of Bulgaria's commitments and obligations in this field.
5. The division of the Supreme Judicial Council into chambers of judges and prosecutors independently exercising appointment and disciplinary powers with regard to the judges, prosecutors and investigating magistrates has addressed long-standing concerns formulated by the Assembly and the Venice Commission.
6. The procedure of election of members of the Supreme Judicial Council has been significantly improved in line with Assembly recommendations. The Assembly notes with satisfaction that since its election in 2017, the Supreme Judicial Council has appointed a number of heads of judicial bodies following a transparent procedure without giving rise to controversy.
7. The Assembly's long-standing concerns relating to the deficiencies in the system of appraisals and career development of magistrates were addressed by the adoption by the Supreme Judicial Council, in 2016, of the Regulation of the Indicators, the Methodology and the Procedure for Appraisal of a Judge, Chairperson and Deputy Chairperson of a Court and, in 2017, of the Regulation of the Competitions of the Magistrates and on the Election of Administrative Heads in Judicial Bodies.

1. *Assembly debate* on 27 June 2019 (26th Sitting) (see [Doc. 14904](#), report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: Mr Frank Schwabe and Mr Zsolt Németh). *Text adopted by the Assembly* on 27 June 2019 (26th Sitting).



8. The Assembly notes with satisfaction that its recommendations relating to the distribution of the workload and the question of delays have been dealt with in a satisfactory way by the establishment of a single, effective system of random, nationwide allocation of cases and clear criteria for the assessment of the complexity of cases and their impact on the distribution of the workload. Complementary measures introduced to redistribute the workload of the busiest courts, including the Court of Sofia, are also to be commended.

9. The Assembly commends the authorities for the establishment of the Supreme Judicial Council Inspectorate tasked with increasing accountability of the judiciary and, in particular, with the prevention of corruption within the judiciary and disciplinary proceedings.

10. The Assembly recognises that the 2017 amendments to the Criminal Procedure Code and the Criminal Code have, in general, been in line with the Assembly's recommendations and notes with satisfaction that they have addressed the delays in criminal proceedings and enabled better enforcement of sentences.

11. With regard to high-level corruption and organised crime, the Assembly welcomes the adoption by the Bulgarian Parliament, in January 2018, of a new Anti-corruption and Forfeiture of Assets Act, in line with its earlier recommendations. The law establishes a new unified anti-corruption agency which is in charge of verifying the absence of conflicts of interest and the private assets of high officials, investigating allegations of corruption, establishing safeguards for the prevention of corruption and setting up procedures for the seizure and confiscation of illicit assets.

12. The Assembly welcomes the fact that the recommendations of the Group of States against Corruption (GRECO) concerning incrimination have been implemented satisfactorily. It also welcomes the fact that Bulgaria has invested considerable resources in the training and awareness-raising of a large number of judges, prosecutors and law-enforcement officers on issues pertaining to bribery and trading in influence and the criminalisation of accepting undue non-material advantages.

13. Furthermore, the Parliament of Bulgaria is to be commended for the introduction of specific measures to fight corruption at parliamentary level, which follow GRECO's recommendations; in particular, the parliamentary Rules of Procedure were amended in 2016 with a view to ensuring transparency in the legislative process.

14. With regard to the Electoral Code, the Assembly welcomes the series of amendments introduced between 2014 and 2016 which addressed a number of concerns formulated by the Venice Commission in 2013 and 2014, improving, *inter alia*, campaign finance provisions and their oversight, voter registration and provisions on media coverage.

15. The Assembly recognises the progress accomplished in Bulgaria with regard to the implementation of judgments of the European Court of Human Rights in connection with the excessive length of judicial proceedings and the lack of effective remedy in that regard. Progress has also been noted in implementing the groups of cases relating to poor conditions of detention and to ill-treatment by law-enforcement officials.

16. The Assembly commends Bulgaria for the adoption, following the recommendation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), of amendments to the Law on Executing Punishments and Arrests in 2017. The changes addressed material conditions, regimes, early release and judicial control over the prison administration; furthermore, the Assembly recognises that significant progress has been made in recent years to improve prison conditions.

17. With regard to the Roma minority, the Assembly acknowledges that a number of programmes, strategies and action plans have been adopted in recent years to improve the situation of Roma, including the National Roma Integration Strategy (2012-2020) which resulted, *inter alia*, in an increase in the number of Roma with higher education, including university education.

18. While the overall progress in the fulfilment of Bulgaria's commitments and obligations is not questioned, a number of outstanding concerns still exist, in particular:

18.1. in the field of the judiciary:

18.1.1. although the reform of the structure and functioning of the Supreme Judicial Council has addressed the majority of the Assembly's concerns, its composition does not fully comply with Committee of Ministers Recommendation CM/Rec(2010)12 on judges: independence, efficiency and responsibilities, which specifies that "[n]ot less than half the members of such councils should be judges chosen by their peers from all levels of the judiciary". In the present

Supreme Judicial Council, judges chosen by their peers constitute 6 out of 25 members. This parameter raises some concern as the plenary Supreme Judicial Council still keeps some important powers with regard to the judiciary;

18.1.2. the degree to which prosecutors, and the Prosecutor General in particular, are still involved in the governance of judges within the Supreme Judicial Council is perceived by the Venice Commission as a concern;

18.1.3. the Assembly's long-standing recommendation concerning the abolition or shortening of the five-year probationary period for judges has not been addressed;

18.1.4. some concerns have been raised about the extensive disciplinary powers of the Inspectorate to the Supreme Judicial Council, particularly in the light of the present method of election of its members. Regrettably, the Venice Commission's recommendations for the nomination and dismissal of inspectors and on the division of competences between the Inspectorate and the Supreme Judicial Council have not been followed;

18.1.5. important legislative initiatives are not subject to broad public debate and all stakeholders are not sufficiently consulted. It should be stressed that the sustainability and irreversibility of reforms lies, *inter alia*, in a properly conducted legislative process involving all stakeholders and broad public debate;

18.2. with regard to high-level corruption:

18.2.1. while the establishment of a new unified anti-corruption agency constitutes a positive development, a key challenge will be to effectively manage the broad remit of its responsibilities, including prevention, investigation and forfeiture of assets. The final criteria of its efficiency will be the number of cases brought to the courts and number of convictions delivered. The ongoing investigation into the scandal of purchases of luxury properties at favourable prices by senior politicians and officials may be perceived as a litmus paper test of the authorities' sincerity in combating corruption;

18.2.2. GRECO's recommendation to establish clear, objective and transparent criteria with regard to supplementary remuneration within the judiciary has not been fulfilled. There is still a worrying practice whereby court presidents use their discretion in awarding year-end bonuses to judges under their responsibility and allegations that this has been used to secure loyalties in the courts;

18.3. with regard to the media:

18.3.1. the situation concerning media freedom in Bulgaria has been deteriorating systematically over recent years, the main concerns being concentration of ownership and lack of transparency, political interference in the media, State influence over media outlets exerted through the advertising budgets of European Union operational programmes, and intimidation of and violence against journalists. The Assembly regrets the lack of appropriate data on media ownership. The Assembly commends the adoption of appropriate legislation on transparency of media ownership which reflects Committee of Ministers Recommendation CM/Rec(2018)1 on media pluralism and transparency of media ownership. Violence against journalists must be met with decisive, prompt condemnation and thorough investigation by the Bulgarian authorities;

18.4. with regard to human rights:

18.4.1. the Assembly welcomes the important changes to the Penal Code of 16 January 2019 and notes that according to the CPT there has been a slight improvement with regard to the treatment of people in police custody, especially as regards the severity of alleged ill-treatment since 2015; it regrets, however, the absence of any real progress in the application of safeguards against ill-treatment, namely the right to notify detention to a third party, the right of access to a lawyer and to a doctor, and the right to be informed about the above-mentioned rights;

18.4.2. racist and intolerant hate speech in political discourse targeting Roma, Muslims, Jews, Turks and Macedonians continues to be a serious problem in Bulgaria. Serious efforts need to be made on the part of the Bulgarian authorities to systematically and unconditionally condemn hate speech, including by following the recommendations of the latest report of the European Commission against Racism and Intolerance (ECRI) on Bulgaria;

18.4.3. despite the Bulgarian authorities' efforts, the situation of the Roma population has not tangibly improved. Roma representatives are excluded from the democratic process, they do not make use of any democratic instruments already in place and are not present at any level of decision-making processes. There is no meaningful dialogue between the Roma representatives and the authorities. Their material and social situation is in general very poor and discrimination in the labour market remains an obstacle for integration. The recent flare-up of interethnic violence by ethnic Bulgarians against Roma in Gabrovo, which included the demolition of and setting fire to houses belonging to Roma, exemplifies the magnitude of this problem;

18.4.4. the Macedonian minority is not recognised by the Bulgarian authorities as such due to the strict application of formal criteria, although this group has repeatedly expressed its wish to benefit from the protection of the Framework Convention for the Protection of National Minorities (ETS No. 157);

18.4.5. Bulgaria signed (in 2016) the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (STCE No. 210, "Istanbul Convention"), but has not yet ratified it, which is deeply regrettable. While the recently adopted amendments to the Penal Code providing for additional legal protection against domestic violence and violence against women constitute a step in the right direction, they must be followed by the provision of adequate resources, including in the fields of education and prevention, as well as psychological support, which would enable real protection of victims.

19. In conclusion, the Assembly recognises that Bulgaria has made substantial progress since the adoption of the last report on the post-monitoring dialogue in 2013. It has partly introduced legislation which, with several exceptions, complies with Council of Europe standards and has addressed several concerns formulated by the Assembly and other Council of Europe monitoring mechanisms. However, the question of the sustainability and irreversibility of the reforms, as well as of the effectiveness of measures aimed at combating high-level corruption, remain subject to proper implementation of the legislation.

20. Regrettably, due to a period of political instability from 2013 to 2016 and repeated elections, a number of reforms were the subject of hasty legislative procedure in 2016 and 2017 without proper consultation or involvement of all stakeholders. It remains to be seen whether they will bring about sustainable improvements. The present political situation, marked, since February 2019, by the boycott of the parliament by the Bulgarian Socialist Party (BSP) may have a negative impact on progress and may weaken democratic processes in the country.

21. The Assembly notes that in order to ensure sustainability and irreversibility of reforms, some steps, including, where relevant, legislative changes, still need to be undertaken.

22. Against this background, the Assembly resolves to continue a post-monitoring dialogue with Bulgaria and to assess, in June 2020, the progress made in the following areas:

22.1. the judiciary: Bulgaria should demonstrate that the remarkable steps taken towards a better judicial system are sustainable and effective;

22.2. high-level corruption: the new anti-corruption agency started operating just a few months ago. In the next months, tangible progress in the fight against high-level corruption needs to be seen. This has so far not been visible;

22.3. the media: a main challenge is the transparency of media ownership. Bulgaria has to take legislative steps to guarantee this transparency;

22.4. human rights of minorities: Bulgaria must improve the integration of Roma and other minority groups. The rights of refugees have to be fully respected according to European standards;

22.5. hate speech: hate speech should not be a matter of political discussion. Members of the government especially have a particular obligation in this respect;

22.6. violence against women: the Assembly calls on Bulgaria to make every possible effort to ratify the Istanbul Convention.