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THE EUROPEAN UNION**

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**EVAL 18
ELARG 151**

NOTE

From : the General Secretariat
To : the Collective Evaluation Working Party
No. prev. doc. : 10873/1/00 EVAL 45 ELARG 117 REV 1
Subject : Analysis of information on human rights in Bulgaria

Legislation

Bulgaria has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols 1-5 as well as the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Bulgaria has not yet signed Protocols 9 and 10, 12 to the ECHR¹.

Bulgaria has ratified the Framework Convention for the Protection of National Minorities. It is party to the UN Convention on the elimination of all forms of racial discrimination (New York, 1966) and to the UN Convention on the rights of the child (New York, 1989). The EC anti-discrimination *acquis* has not yet been transposed². Bulgarian law currently discriminates against homosexuals. There has been no further progress in adopting legislation on equal opportunities for women and men.

¹It should be noted that only Protocol 4, 6, 7 and 12 are part of the formal *acquis* under Title IV of the TEC and Title VI of the TEU (consolidated version, 2001)

² Commission Regular Report 2001

Bulgaria has not yet signed¹ the European Social Charter, the Additional Protocol to the European Social Charter, the Protocol amending the Social Charter or the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints.

According to the Member States², the Bulgarian Government has made continuous efforts in order to foster respect for Human Rights, even if the results have not always been as expected. Since 2000, progress has been made with regard to the legal framework for NGO's. The legal frameworks of the Ministries of Interior and Justice have been vastly improved during the last few years but the implementation of the new Human Rights related legislation has proved to be difficult and sometimes inefficient. Measures to curb violence and abuses during police routine operations have been enforced with some success and independence of the judiciary is in theory guaranteed by the Constitution and laws. Despite all efforts, Bulgarian standards on Human Rights still remain far from EU standards.

³As regards pre-trial detention, after several amendments, Bulgarian criminal legislation is not essentially different from that existing in EU Member States even if, according to some, there are still serious problems related to their enforcement. These seem to be caused either by the lack of economic resources to ensure the conditions established by law or by the authoritarian ways still prevailing among some police agents.

In October 2000, the European Court of Human Rights delivered a judgement in the case of Varbanov v. Bulgaria. It established a violation of Art. 5 of the ECHR, the right to liberty and security, by ruling that his detention in a psychiatric hospital was arbitrary. Deficiencies in Bulgarian legislation were identified. The government has announced its intention to make changes to the Public Health Law or through a new law on Mental Health, but has not yet done so⁴.

¹It should be noted that the European Social Charter and its Protocols are not part of the formal acquis under Title IV of the TEC and Title VI of the TEU (consolidated version, 2001)

²Answers from the Member States to the questionnaire (February 2002)

³Answers from the Member States to the questionnaire (February 2002)

⁴Commission Regular Report 2001

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According to Human Rights Watch¹, in 2001 women's human rights activists continued to press for state action to protect women from domestic violence, advocating for changes in the criminal code to criminalize domestic violence.

Administrative capacity

Ombudsman

This institution does not yet exist, but the political will to create it in the near future is strong. At present, there are Ombudsman-type activities in a number of municipalities in the country and in Sofia².

Non-Governmental Organisations³

The Non-profit Legal Entities Act entered into force in January 2001. It provides a new legal framework for NGO's in Bulgaria, and established clear rules for the registration of associations of citizens and foundations. The new Act also increases transparency, through a public register of organisations and the obligation to provide annual reports on activities and finances. However, the tax environment for NGO's and donations remains rather restrictive. The National Assembly has established a parliamentary committee on civil society issues.

Child protection⁴

In 2001, the institutional framework for child protection was reinforced. Eventhough the Child Protection Act aims to reduce the number of children in institutions through placement in foster families, at the end of 2000 there was no significant change in the number of children in institutions. Conditions in social institutions for children are mixed and indicate that some orphanages offer relatively high standards of care, but in many the living conditions are very poor. The situation is particularly serious in some of the homes for severely handicapped children⁵.

¹ World Report 2002: Bulgaria

² Commission Regular Report 2001

³ Commission Regular Report 2001

⁴ Commission Regular Report 2001

⁵ According to the AI report, virtually all the handicapped children in permanent care in state institutions, who numbered at least 2,200, lived in conditions of extreme neglect. They were frequently deprived of food and basic care, as well as lacking attention to medical and educational needs.

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Research conducted by the Bulgarian Helsinki Committee revealed that the state budget for these institutions was so inadequate¹ that the children could only be fed with the help of charitable donations. According to AI, conditions in some institutions for mentally handicapped children amounted to cruel, inhuman or degrading treatment. There, the poor living conditions and inadequate care are said to have contributed to especially high mortality rates. Around 65% of children in residential accommodation come from minority groups. Staff caring for children rate amongst the country's lowest paid. An ordinance on terms and conditions of providing police protection to children has been adopted.

The Government has adopted a regulation for the establishment of the Child Protection Agency and appointed a Chairman. The Agency should improve co-ordination and implementation of policies at national and regional level, and provide guidance to and control of municipal services on child protection activities. Efforts are oriented towards preventing social exclusion and towards de-institutionalisation. Several steps are necessary if the Child Protection Agency is to become fully operational. Secondary legislation is still needed to clarify its precise role, as are adequate human and financial resources. The second central body envisaged in the Child Protection Act, the National Council for Child Protection (a consultative body) has also been set up. Members come from 8 government departments. Seven NGOs participate as associate members. Representatives of two international organisations are also invited as associate members. Bulgaria needs to ensure the full implementation of the UN Convention on the Rights of the Child and ensure the necessary administrative capacity is in place and is functioning efficiently.

Prison conditions

²By 1 January 2001, there were in total 8,971 prisoners, including 347 accused persons and 1,100 indicted persons in the country's 13 prisons and 23 labour correction hostels. There are around 1,000 persons in pre-trial detention centres³. There are 75 detention centres in the country. In fulfilment of the recommendation of the European Committee for the Prevention of Torture to place all accused persons in prison conditions in order to detract from the practice of keeping persons under preliminary investigation in conditions which are virtually the same as in police stations, 14 out of the (total) 29 pre-trial detention centres housed underground were closed.

¹ The conditions in the home for handicapped children in Fakia, in the Burgas region, were described by both its administrator and independent monitors as life-threatening. In August, three children died of dysentery in the home for handicapped children in Medven. An inquiry by independent monitors established serious deficiencies in hygiene, administration and medical services. (Source: Amnesty International Report 2001)

²Answers from the Member States to the questionnaire (February 2002)

³Note: these figures are lower than in previous years

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Some of the cases brought against Bulgaria in the European Court of Human Rights relate to damage sustained as a result of inhuman conditions in pre-trial detention facilities. The old housing and the relatively large share of persons confined to facilities of a closed type hinders the lasting solution of the problem of overcrowdedness which impedes individual and group re-socialisation and which creates a number of personal hygiene problems. There have been frequent complaints about the quality and quantity of food¹. Only one fourth of the prisoners have access to work which leads to a reduced sentence. Not all places have educational facilities and in those where they do exist, the facilities are in bad condition and poorly equipped. The organisation and standard of medical services is at an insufficient level. Toxicomania and dependence on medicines and drugs among inmates is growing and preventive measures are urgently needed. The Ministry of Justice received 72 complaints of violence from prisoners, 4 of which were judged as being justified. Disciplinary measures against 36 officials were taken in the Central Penitentiary Administration system as a whole. Orthodox religion regular services are conducted and other denominations started, although still facing difficulties. The visits of prosecutors in detention places rarely ended with findings and recommendations.

One positive development is that a number of applications for alternative service have been granted over 2001 in accordance with the law of 1999².

In order to improve prison conditions, Bulgaria has stated³ that re-constructions and repairs inside prisons and arrest premises are carried out, limited to Burgas Prison and Sofia Investigative Service. As regards regulations leading to the improvement of prison conditions, the Ministry of Justice has created a working group, which elaborated a draft Amending Act to the Execution of Punishments Act. The draft was to be finalised by the end of 2001 and submitted to the Council of Ministers for approval. More updated information is needed.

A Commission on Human Rights has been created within the Bulgarian Police Service. Its role is to align police practice with international law and organise training. Regional co-ordinators, who will organise activities at local level, have been appointed and are receiving periodical training on human rights issues. In 2001, the Ministry of Interior organised several seminars on the subject to 180 police agents⁴.

¹ Although some prisons have good subsidiary farms that facilitate product supplies

² Commission Regular Report 2001

³ 11/03/02 (doc 7037/02, limite, elarg 60 accession negotiations with Bulgaria, chapter 24)

⁴ Answers from the Member States to the questionnaire (February 2002)

Implementing performance

Pre-trial detention, access to justice

Pre-trial detention has somewhat improved as there has been a trend towards shorter preliminary proceedings, which means few defendants are detained for more than 6 months¹. However, concerns have been raised that over a third of criminal case defendants do not have access to a lawyer during trial before a court of first instance.

Assessment of the police from a Human Rights perspective²

Human rights organisations continue to make critical reports on police violence. According to AI, ill-treatment and torture by the police continued to be widespread. Most incidents occurred during police investigations into complaints, when criminal suspects were apprehended or within the first few hours of custody.

Ethnic minorities in Bulgaria have often suffered from police brutality and abuse. The situation of the large Turkish minority has much improved since they are politically organised (actually, there are some ethnic Turks in the current Bulgarian Government as well as in many high-ranking administrative posts). The situation of the Romas is not so promising, given that they don't have a powerful political party to support their claims and to defend them from abuse.

The Amnesty International Annual Report 2000 lists Bulgaria among the countries where religious and social minorities such as homosexuals and prostitutes are subjected to police ill treatment which involves discriminatory treatment by the police of these social groups, use of force against their members and police actions creating unequal conditions in the criminal process. No changes were introduced in the legislation and policy to make punishment and prevention more effective. As in previous years, Roma continued to constitute a disproportionate number of the victims of this violence.

¹ Commission Regular Report 2001

² Answers from the Member States to the questionnaire (February 2002), Commission Regular Report 2001, Amnesty International Report 2001, Human Rights Watch World Report

Complaint procedures

Amendments to the Criminal Procedure Code which included the possibility of judicial review of refusals by prosecutors to initiate investigations, and an open court process for termination of criminal investigations by prosecutors, entered into force in 2000.

Although a complaint procedure on possible abuse by the police exists, the procedure is slow and not very efficient. Issuing a medical certificate is still denied to citizens if the perpetrator of ill-treatment against them is a police officer. Several officers were sentenced for illegal use of force and firearms, although the sentences were inadequate to the severity of the offences and are a small share of the total number of cases requiring criminal prosecution. According to AI, no attempts were made to reform the Law on National Police which permits the use of firearms in circumstances prohibited by international standards. Investigations into police shootings were usually terminated as a result of police actions being deemed lawful.

Allegations of criminal offences by a police agent are investigated, prosecuted and tried by military investigators, prosecutors and judges. However, investigations¹ into police abuse remain rare and a very small number of cases come to court. Civil damages cases against the police are not very common. The authorities did not provide AI with reports of investigations into cases of torture and ill-treatment

Right to privacy

Concerning the right to privacy, concerns have been expressed by human rights organisations at the high number of permits granted for wiretapping and the need to ensure proper judicial controls on the issuing of these².

National minorities

Today, 4.6% of the population identifies itself as Roma and 9.4% of them as of Turkish ethnic origin.

¹ Amnesty International had asked the authorities to provide it with reports of investigations into cases of torture and ill-treatment, but without result.

² Commission Regular Report 2001

¹Romas' living standards are poor when compared to the rest of the Bulgarian people. Many Roma live in very poor conditions in illegally built housing. According to a survey, +/- 70% of houses in Roma neighbourhoods are built illegally, which means that there is very limited access and no right to public services. Very few municipalities have acted on the call in the Framework Programme to legalise such homes.

According to Amnesty International, incidents of police brutality against Roma were reported against a background of extreme poverty for many Romani communities, as well as rising social tensions frequently incited by racist discrimination.

The Government, the municipal authorities and various NGO's make continuous efforts as regards education of Roma children and young university students. The Ministry of the Interior already started to engage Romas. However, the European Commission considers that Bulgaria must focus more attention to the integration of Roma into Bulgarian society. An Agency on minorities is planned to be established during 2002 and a law against racial discrimination is expected to be voted. These two initiatives, when concluded and applied, should mark a significant progress as far as Roma integration is concerned.

Nevertheless, little has been done for the implementation of the Framework Programme for Roma integration² at central level and for strengthening the capacity of the National Council on Ethnic and Demographic Issues (NCEDI). The funds allocated for the programme's implementation are limited. The Parliament has not yet adopted legislation of any kind to prevent discrimination against Roma in education, health care, regional, urban planning, or other areas, although such changes were envisaged by the Framework Programme³. Roma are socially and economically excluded; they have difficulties in accessing social and health services, education and capital and are often subject to hidden discrimination. Over 90% is unemployed. Access to healthcare and public services has slightly improved, but is still far from what it should be. However, the programme to appoint Roma as experts in the administration referred to last year continued; Roma experts were appointed in the State and Municipal administration and in police stations. Roma tutors and teachers have been appointed in bilingual schools, but further steps should be made in order to ensure access of Roma children to the educational system.

¹Answers from the Member States to the questionnaire (February 2002)

² adopted in 1999

³ Human Rights Watch World Report 2002

There are some projects in municipalities. Sofie and Plovdiv, for example, have started projects for Roma to build homes and generate employment. Some funding comes from international donors to support this. Sofia Municipal Council has also adopted a medium-term programme for the development of the Roma community in Sofia, which should be completed by 2005.

In the general elections in June 2001, an increased political participation by Roma was observed and there are Roma National Assembly members. The Turkish minority is better integrated into political life through elected representation at national and local levels. The Movement for Rights and Freedom, which has a large representation amongst ethnic Turks, is part of the ruling coalition in the National Assembly. Further efforts are needed for the socio-economic integration of those ethnic Turks who live in economically underdeveloped regions.

The Parliament passed amendments to the Civil Registration Act simplifying the procedure which ethnic Turks in Bulgaria, coercively renamed under the communist regime, should follow to get their names back. This is now done through an administrative rather than court procedure which, whilst free of charge, was rather slow.

As reported in 2000, minorities have a low level of representation in senior appointments in the administration or as officers in the military and police. Some steps are being taken to tackle this, for example through a programme to encourage police recruits.

Independence of the media

¹Since the recent reform of the Radio and Television Act, independence of the media in Bulgaria is sufficiently guaranteed. However, the heavy fines established by the Criminal Code to prevent libel are still the main threat to media's freedom.

¹Answers from the Member States to the questionnaire (February 2002)

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There is still debate going on to what extent the public/state National TV and Radio are independent due to the fact that the regulatory body of the sector the Council on Electronic Media is electing the managers of these media. This Council is constituted of two quotas of the President and the Parliament. It also issues licences to all the electronic media and is supposed to give prescriptions according to the Radio and TV act.

According to Amnesty International, restrictions on the right to freedom of expression continued to be imposed. The part on insult and libel in the Criminal Code was reformed, i.e. the punishment of imprisonment which was a possible under the old provisions, was revoked, leaving only criminal fines. The possibility to criminally prosecute insult and libel of 'public officials' through the prosecutor's office was also done away with. At present, the Code provides that insult and libel may only be prosecuted by private complaints of the aggrieved party. The fines vary between 1.000 - 20.000 leva. Journalists and private individuals have been sentenced for insult and libel by politicians.

¹In almost all electronic media, minorities participate through specialised programmes. Bulgarian National TV broadcasts news in Turkish and has two programmes addressing minority issues and produced by minorities' representatives. Roma Cable TV from Vidin has received a license to broadcast nationwide. Some local radio stations also broadcast programmes directed at the Roma population. There are a number of regular Roma newspapers and magazines.

¹Commission Regular Report 2001, Answers from the Member States to the questionnaire (February 2002)

Sources:

- ◆ Council of Europe Website Main Framework Conventions Status on 19/03/02
- ◆ UN Conventions Websites
- ◆ Answers from the Member States to the questionnaire (February 2002)
- ◆ 11/03/02 (doc 7037/02, limite, elarg 60 accession negotiations with Bulgaria, chapter 24)
- ◆ Commission Regular Report 2001 on Bulgaria
- ◆ Amnesty International report 2001 Bulgaria
- ◆ Human Rights Watch World Report 2002 Bulgaria

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