

DEYANA MARCHEVA \*

## **Protection of Human Rights under the European Convention on Human Rights: Bulgaria\*\***

**ABSTRACT:** Bulgaria's accession to the Council of Europe in 1992 was a pivotal moment in the reaffirmation of constitutional democracy, the rule of law, and the protection of human rights in the country, following the collapse of the communist regime. The 1991 Constitution established a comprehensive framework of fundamental rights for citizens, aligning with the European Convention on Human Rights. However, it was the ECHR's framework and the progressive jurisprudence of the Strasbourg Court – renowned for its broad interpretation – that significantly bolstered human rights protections and advanced the Bulgarian legal system.

Despite facing challenges related to contentious issues and the prolonged non-implementation of various European Court of Human Rights rulings against Bulgaria for over a decade, the Convention has profoundly influenced the nation's legal landscape. Over time, the rights enshrined in the Convention have prompted nuanced changes in legal and policy outcomes, fostering a more rights-oriented approach in legislation and judicial decisions. This shift has contributed to a culture of governmental accountability and respect for individual rights. Nevertheless, progress has been hindered by societal attitudes, political resistance, and gaps in legal scholarship and education.

Today, the ECtHR serves as a crucial and independent authority on fundamental rights in Bulgaria, establishing standards for rights protection, adjudicating individual cases, and highlighting systemic deficiencies in Bulgarian legislation and practices. The country continues to struggle with implementation issues concerning contentious human rights matters, including privacy rights related to secret surveillance, voting rights for prisoners, LGBTQI rights, the rights of incapacitated persons, and the rights of the Macedonian minority. Tensions have also emerged between the ECtHR's jurisprudence and the rulings of the Constitutional Court,

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\* Ph.D., Associate Professor, Department of Law, New Bulgarian University, Sofia, Bulgaria. <https://orcid.org/0009-0000-1806-8028>, [deyana.marcheva@gmail.com](mailto:deyana.marcheva@gmail.com).

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particularly regarding the unconstitutionality of the Istanbul Convention. This discord has led to a growing disconnection between Bulgarian jurisprudence and supranational legal standards.

**KEYWORDS:** Bulgaria, implementation of the ECHR, systemic deficiencies, tensions between national courts and ECtHR.

## 1. Introduction

After World War II, Bulgaria aligned with the Soviet Union, adopting a totalitarian regime that claimed to champion superior human rights while suppressing genuine freedoms. During the Cold War, both the Eastern and Western blocs used human rights for propaganda, with Bulgaria promoting a narrative that socialist states provided true rights, contrasting with the alleged superficial liberties of the West. The socialist doctrine regarded international and domestic law as two independent legal orders without primacy for either system,<sup>1</sup> leading to ambiguities in the application of international law, especially concerning human rights. The position of the individual was determined by domestic law, not by international law,<sup>2</sup> and international human rights norms did not provide direct rights to individuals.<sup>3</sup>

After the collapse of the communist regime and adoption of the new democratic Constitution of the Republic of Bulgaria in 1991, human rights assumed renewed importance as a cornerstone for establishing the rule of law. A new principle regarding the relationship between international and domestic law was introduced in Article 5, paragraph 4, of the Constitution, stipulating that all ratified, promulgated, and enforced international instruments were incorporated into domestic law, taking precedence over parliamentary legislation. Furthermore, the Constitution emphasised the significance of international human rights treaties by empowering the Constitutional Court to evaluate the compatibility of national laws with generally recognised international norms and treaties to which Bulgaria is a party.

Integrating self-executing international norms into the domestic legal framework represented a significant paradigm shift in Bulgaria's approach

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<sup>1</sup> Радойнов, [Radoynov] 1971, p. 72.

<sup>2</sup> Przetacznik, 1971, p. 269.

<sup>3</sup> Векилов [Vekilov] et al., 1982, p. 266.

to human rights, marking a new era in their protection, especially following the country's ratification of the European Convention on Human Rights (ECHR).

## 2. Council of Europe Human Rights Treaties Signed and Ratified by Bulgaria

Bulgaria became a member of the Council of Europe on 7 May 1992, and has since signed and/or ratified several Council of Europe human rights treaties, as outlined in the table below.

**Table 1** Council of Europe Human Rights Treaties signed and ratified by Bulgaria

Council of Europe Human Rights Treaties	Bulgaria's Signature	Bulgaria's Ratification	Entry Into Force for Bulgaria
1950 Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and Protocol Nos.1, 2, 3, 5, and 8 <ul style="list-style-type: none"> <li>• Protocol No. 4 (free movement, expulsion, etc.)</li> <li>• Protocol No. 6 (restriction of death penalty)</li> <li>• Protocol No. 7 (free movement, expulsion, etc.)</li> <li>• Protocol No. 11 (restructuring the control machinery)<sup>4</sup></li> </ul>	7 May 1992	7 Sept 1992	7 Sept 1992
	3 Nov 1993	4 Nov 2000	4 Nov 2000
	7 May 1999	29 Sept 1999	1 Oct 1999
	3 Nov 1993	4 Nov 2000	1 Feb 2001
	11 May 1994	3 Nov 1994	1 Nov 1998
	21 Nov 2002	13 Feb 2003	1 July 2003
	23 Sept 2005	17 Nov 2005	1 June 2010
	5 Nov 2013	11 Jan 2016	1 Aug 2021

<sup>4</sup> Protocol No. 11 introduced significant modifications to enhance the efficiency of the control system, thereby improving access to the ECtHR. Prior to this protocol, states had

<ul style="list-style-type: none"> <li>• Protocol No. 13 (complete abolition of death penalty)</li> <li>• Protocol No. 14 (amending the control system)</li> <li>• Protocol No. 15 (amending the convention, including reference to the principle of subsidiarity and the doctrine of margin of appreciation in the preamble, shortening the time limits of the application to the ECtHR, etc.)</li> </ul>			
1981 Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data	2 June 1998  2 June 2010 10 Oct 2018	18 Sept 2002  8 July 2010 10 Dec 2019	1 Jan 2003  1 Nov 2010

the option to ratify the Convention without acknowledging the jurisdiction of the Court. Complaints were initially reviewed by the Commission, which determined their admissibility and sought amicable resolutions. If no settlement was reached, the Commission would compile a report and could refer the case to the European Court of Human Rights. Protocol No. 11 allowed for direct applications to the Court and made its jurisdiction compulsory. Furthermore, this protocol restructured the Court into a full-time institution. By the time Bulgaria joined the Council of Europe, it was evident that there was no necessity for the country to sign or ratify Protocol Nos. 9 and 10, as these protocols had become obsolete following the implementation of Protocol No. 11 on 1 November 1998.

<ul style="list-style-type: none"> <li>• 2001 Additional Protocol (regarding supervisory authorities and transborder data flows)</li> <li>• 2018 Protocol amending the Convention</li> </ul>			
1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment	30 Sep 1993	3 May 1994	1 Sept 1994
1992 European Convention on the Protection of the Archaeological Heritage	16 Jan 1992	2 June 1993	25 May 1995
1995 Framework Convention for the Protection of National Minorities	9 Oct 1997	7 May 1999	1 Sept 1999
1996 European Social Charter (revised)	21 Sep 1998	7 June 2000	1 Aug 2000
1997 Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (Convention on Human Rights and Biomedicine)	31 May 2001	23 Apr 2003	1 Aug 2003
<ul style="list-style-type: none"> <li>• 2002 Additional</li> </ul>	23 Sept 2005	30 Oct 2006	1 Feb 2007
	23 Sept 2005	30 Oct 2006	1 Sept 2007

Protocol (concerning Transplantation of Organs and Tissues of Human Origin) • 2005 Additional Protocol (concerning Biomedical Research)			
2003 Convention on Contact Concerning Children	15 May 2003		
2005 Council of Europe Convention on Action against Trafficking in Human Beings	22 Nov 2006	17 Apr 2007	1 Feb 2008
2007 Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse	25 Oct 2007	15 Dec 2011	1 Apr 2012
2011 Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)	21 Apr 2016		

Source: Author's own edition.

Bulgaria has yet to sign and ratify the following Council of Europe instruments: 1992 European Charter for Regional or Minority Languages, 1992 Convention on the Participation of Foreigners in Public Life at the Local Level, Protocol Nos. 12 and 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Additional Protocol to the

Convention on Human Rights and Biomedicine concerning Genetic Testing for Health Purposes, 2006 European Convention on the Exercise of Children's Rights, and 2008 European Convention on the Adoption of Children (revised).

The Istanbul Convention became a highly divisive political issue in Bulgaria in the process of its ratification, with the ultra-nationalist party "United Patriots" and the Bulgarian Socialist Party framing it as a gateway to recognising a "third gender" and legalising same-sex marriages.<sup>5</sup> Consequently, 75 Members of Parliament submitted the Convention for preliminary constitutional review, leading the Constitutional Court to rule it unconstitutional, citing the terms "gender" and "gender identity" as ambiguous and unacceptable.<sup>6</sup> In its decision, the Constitutional Court departed from its prior practice of cautiously interpreting rights by strictly adhering to the text of the Constitution, instead adopting an ideologically driven activist stance in defence of "traditional values".<sup>7</sup> Political and academic debates surrounding the Istanbul Convention persist across various humanitarian fields, including linguistics, media, and more.<sup>8</sup> However, legal scholars in Bulgaria seldom engage<sup>9</sup> with this highly controversial topic, as it would require them to critique the rulings of the Constitutional Court.

### 3. Bulgaria's Accession to the Council of Europe

In August 1949, during the inaugural session of the Consultative Assembly of the Council of Europe,<sup>10</sup> parliamentarians from the founding Member States<sup>11</sup> debated on how to reconstruct Europe. Amid these discussions, they decided to reserve several empty seats as a symbolic gesture to those

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<sup>5</sup> Марчева and Стайкова, [Marcheva and Staykova] 2024.

<sup>6</sup> Decision No. 13, issued on 27 July 2018 by the Constitutional Court of the Republic of Bulgaria in Case No. 3/2018.

<sup>7</sup> Smilova, 2020.

<sup>8</sup> Slavova, 2022; Kovacheva, 2023.

<sup>9</sup> Марчева, [Marcheva] 2021; Тодорова, [Todorova] 2023.

<sup>10</sup> The previous name of the Parliamentary Assembly of the Council of Europe was used until 1974.

<sup>11</sup> Belgium, Denmark, France, Ireland, Italy, Luxembourg, the Netherlands, Norway, Sweden, and the United Kingdom, with Turkey and Greece.

European nations that could not be represented at that time.<sup>12</sup> This gesture uniquely addressed the growing East–West divide, marking one of the early political responses to the emerging tensions of the Cold War. It was an act of inclusion and hope for the reunification of the divided European family that carried significant weight, particularly from the perspective of Central and Eastern countries under Soviet influence. In retrospect, the reserved seats were interpreted in Bulgaria as a signal that the path to democracy and membership in the Council of Europe was open to any nation struggling with a totalitarian regime and striving to embrace the principles of democracy, the rule of law, and human rights.<sup>13</sup>

In September 1989, the Council of Europe established special guest status with the Parliamentary Assembly (PACE) to support and encourage democratisation in Central and Eastern European countries. Bulgaria promptly took advantage of this opportunity, submitting its application on 4 December 1989, to establish a framework for cooperation as soon as possible.<sup>14</sup>

The Bulgarian Communist Party relinquished its monopoly on power, initiating the country's transition to a multi-party democracy through the Round Table negotiations (3 January–14 May 1990).<sup>15</sup>

In June 1990, Bulgaria held its first free elections in over four decades, leading to the establishment of the Seventh Grand National Assembly, which adopted the new democratic Constitution in 1991. The PACE observer mission concluded that 'in the circumstances, the conduct of the elections was reasonably free and fair'.<sup>16</sup>

On 3 July 1990, PACE granted Bulgaria special guest status at both

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<sup>12</sup> Consultative Assembly, Council of Europe, Motion for a resolution, Doc. 7, 21 August 1949.

<sup>13</sup> Тошев, [Toshev] 2022.

<sup>14</sup> See point 1.3. in PACE Doc. 6598/16 April 1992. Opinion on the application of the Republic of Bulgaria for membership of the Council of Europe (Rapporteur: Mr. Columberg, Switzerland, Christian Democrat), [Online]. Available at: <https://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=6925&lang=EN> (Accessed: 7 August 2024).

<sup>15</sup> Bulgaria's Round Table provided a framework for political negotiations between the Communist government and the emerging democratic opposition following the fall of the communist regime. It was inspired by similar models in other Central and Eastern European countries, including Poland (February–April 1989), Hungary (March–October 1989), Czechoslovakia (November–December 1989), and East Germany (December 1989–February 1990).

<sup>16</sup> See point 3.1 in PACE Doc. 6598/16 April 1992.



parliamentary and intergovernmental levels. The first democratically elected parliament, the Grand National Assembly, sent a Bulgarian delegation to the Parliamentary Assembly of the Council of Europe.<sup>17</sup>

On 31 January 1991, Bulgarian President Zhelyu Zhelev delivered a speech to the PACE, outlining Bulgaria's significant strides towards democracy and the enhancement of human rights. He emphasised the country's willingness and readiness to collaborate closely with the institutions of the Council of Europe.<sup>18</sup> Bulgarian institutions began preparing for the country's accession to the Council of Europe, holding numerous productive meetings, which resulted in Bulgaria signing several European Conventions in 1991.<sup>19</sup>

PACE delegations observed the parliamentary and local elections held in October 1991, as well as the presidential elections in January 1992. They reported no significant instances of fraud or malpractice favouring any political party, confirming that Bulgaria had met one of the conditions for its accession to the Council of Europe.

The Parliamentary Assembly of the Council of Europe evaluated Bulgaria's application, monitoring its progress in judicial independence and human rights protections. In its Opinion dated 16 April 1992, the Committee on Legal Affairs and Human Rights emphasised that Article 5, paragraph 4, of the 1991 Constitution provided the means to enforce the rule of law by prioritising international law over conflicting provisions of domestic legislation. Acknowledging the challenges of transitioning from a totalitarian state to a democratic system, the Committee confirmed that Bulgaria fulfilled all the conditions required for membership in the Council of Europe.<sup>20</sup>

In another Opinion dated 4 May 1992, the Political Affairs Committee recognised Bulgaria's significant economic problems and lagging economic

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<sup>17</sup> Тошев, [Toshev] 2022, pp. 20-21.

<sup>18</sup> Zhelyu Zhelev's Speech made to the Assembly, 31 January 1991, [Online]. Available at: <https://assembly.coe.int/nw/xml/Speeches/Speech-XML2HTML-EN.asp?SpeechID=255> (Accessed: 7 August 2024).

<sup>19</sup> On 31 January 1991, Bulgaria signed the European Convention on Information on Foreign Law, the European Convention on the Protection of the Archaeological Heritage, the Additional Protocol to the European Convention on Information on Foreign Law, the Convention on the Conservation of European Wildlife and Natural Habitats, and the Convention for the Protection of the Architectural Heritage of Europe, and on 2 September 1991, the European Cultural Convention.

<sup>20</sup> See Conclusion in PACE Doc. 6598/16 April 1992.

reform.<sup>21</sup> However, it highlighted the positive aspects of Bulgaria's pluralist democracy, including the depoliticisation of the army, police, courts, and civil service; the establishment of a free press; and new freedoms of movement and choice of religion. The Committee concluded that as encouragement for further political and economic improvement, and as a crucial step towards joining the community of European nations, PACE should endorse Bulgaria's acceptance as a full member of the Council of Europe at the earliest opportunity.

As a result of demonstrating sufficient progress, Bulgaria was invited to join the Council of Europe and officially became a member on 7 May 1992. On that day, the country signed the ECHR and Stefan Savov, the President of the Bulgarian National Assembly, addressed the Parliamentary Assembly, expressing his confidence that Bulgaria's membership would significantly bolster the country's future democratic development and the protection of human rights.

On 31 July 1992, the National Assembly ratified the ECHR, with the act published in State Gazette No. 66 on 14 August 1992. During parliamentary debates on the ratification, a proposal was made to postpone the ECHR's entry into force by six months to allow institutions time to prepare for their new roles in upholding the Convention's rights and obligations. However, the debate quickly evolved into a political contest, with parties vying to demonstrate greater support for the swift implementation of the ECHR in Bulgaria.<sup>22</sup> This shift redirected the focus from practical preparations to a symbolic commitment to human rights. Consequently, the proponents of the standstill period withdrew their proposal, leading to the ratification law taking immediate effect upon promulgation. Nonetheless, a technicality delayed the entry into force of the ECHR until 7 September 1992, because the initial publication of the ratification act in the State Gazette did not include an official translation into Bulgarian.

Bulgaria's entry into the Council of Europe marked a significant milestone in its overall integration into European and transatlantic frameworks, which subsequently encompassed its accession to the North

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<sup>21</sup> PACE Doc. 6597/4 May 1992. Opinion on the application of the Republic of Bulgaria for membership of the Council of Europe (Rapporteur: Mr. Rathbone, United Kingdom, Conservative), [Online]. Available at: <https://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=6924&lang=EN> (Accessed: 7 August 2024).

<sup>22</sup> Михайлова, [Mihaylova], 2022, p. 103.

Atlantic Treaty Organization (NATO) in 2004 and the European Union in 2007. Following its accession, the Council of Europe continued to oversee Bulgaria's commitment to upholding democratic principles and the rule of law. The European Court of Human Rights (ECtHR) has been instrumental in shaping Bulgaria's legal framework and judicial decisions regarding human rights protection.

#### **4. Implementation of the ECHR in Bulgaria**

The Constitution of the Republic of Bulgaria was adopted on 12 July 1991, a year before the country ratified the ECHR. In a documentary interview, Emilia Drumeva, a professor of constitutional law and an expert involved in drafting the Constitution – particularly the second chapter, “Fundamental Rights and Duties of Citizens” – noted that these constitutional provisions were closely aligned with the ECHR.<sup>23</sup>

However, the human rights catalogue in the new democratic Constitution was not substantially different from those in the socialist Constitutions of 1947 and 1971. What truly advanced the protection of human rights and propelled the Bulgarian legal system forward was the framework of the ECHR and the sophisticated jurisprudence of the Strasbourg Court, renowned for its broad scope and progressive approach.<sup>24</sup> Today, the ECtHR functions as a vital and independent authority on fundamental rights in Bulgaria, setting standards for rights protection, delivering justice in individual cases, and exposing systemic deficiencies in Bulgarian legislation and practices.

From the outset of parliamentary debates on ratifying the ECHR, it was evident that effective implementation would require substantial reforms in domestic legislation, as well as restructuring and training within the justice system and public administration.<sup>25</sup> In 2003, the National Assembly amended the constitution and adopted new legislation to establish the Ombudsman institution, aligning its human rights protection framework with earlier recommendations from the Committee of Ministers of the Council of Europe.<sup>26</sup> In 2012, this legislation was further strengthened by

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<sup>23</sup> Марчева, [Marcheva], 2024, p. 108.

<sup>24</sup> Keller and Stone, 2008, p. 3; Christoffersen and Madsen, 2011.

<sup>25</sup> Михайлова, [Mihaylova] 2022, p. 102.

<sup>26</sup> CM/Rec (85)13 on the Institution of the Ombudsman, [Online]. Available at: <https://rm.coe.int/0900001680506bee> (Accessed: 10 August 2024).

designating the Ombudsman as the National Preventive Mechanism, thereby enhancing the legal safeguards for prisoners and detainees against torture and inhumane or degrading treatment.

Over time, the rights enshrined in the Convention have driven numerous subtle changes in legal and policy outcomes. The jurisprudence of the ECtHR has significantly shaped Bulgaria's legislative, executive, and judicial branches, with varying degrees of impact across different legal domains. Its effects continue to deepen and evolve, sometimes resulting in tensions between Bulgarian authorities and the Council of Europe institutions. In the last decade, legal education and scholarship have also progressed in ways that will help consolidate the domestic presence and legitimacy of the ECHR regime. Building on the concept of "mechanisms of reception" coined by Keller and Stone,<sup>27</sup> I outline the key aspects of the complex social process through which the ECHR has influenced Bulgaria's national legal system and examine the progress and setbacks in its reception within the country.

#### ***4.1. Impact of the ECHR on Legislation***

##### **4.1.1. Supra-Legislative Rank of the ECHR in Bulgarian Law**

Following the establishment of a new constitutional framework that integrated international agreements into national law and prioritised them over parliamentary legislation, the ECHR has been conferred supra-legislative status within the national legal system. This new paradigm enabled public administration and judges to enforce it directly. Furthermore, the Constitutional Court was empowered to ensure that national laws align with ratified international treaties, underscoring the importance of human rights in the newly established democratic system. This integration of self-executing international norms marked a major shift in Bulgaria's approach to human rights.

Consequently, the 1991 Constitution allowed for "a more monist approach"<sup>28</sup> to the ECHR, paving the way for more robust mechanisms to integrate the Convention into the national legal order. However, more than two and a half decades after the ratification of the ECHR, the country still had not reformed its legislative process to ensure full compliance with

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<sup>27</sup> Keller and Stone, 2008, p. 4.

<sup>28</sup> Ibid, p. 20.

human rights standards. During this time, the ECtHR issued numerous judgments against Bulgaria.

In late 2016, the legislative process in Parliament underwent reform. The Council of Ministers was mandated to include an ECHR compliance review, prepared by the Ministry of Justice when submitting draft laws. Consequently, all draft laws from Government Ministries are now systematically evaluated for conformity with the ECHR and the case law of the ECtHR. However, this safeguard does not extend to draft laws introduced by Members of Parliament, creating a significant loophole. This gap has been exploited on several occasions, particularly with controversial legislation. The most recent instance occurred on 7 August 2024, when amendments to the Pre-School and School Education Act were adopted. These amendments imposed a ban on ‘propaganda, popularization, and incitement, in any form, directly or indirectly, of ideas and views related to non-traditional homosexual orientation or gender identity determination other than biological’.<sup>29</sup>

In recent years, ECHR compliance reviews of government-proposed draft laws have not generated significant public debates in Parliament. Consequently, important discussions regarding the alignment of the proposals with human rights standards have largely taken place within the executive branch during the drafting phase, before being made public. It is noteworthy that public administration seldom references ratified international instruments in its legislative and law enforcement practices.

After ratifying the ECHR in 1992, Bulgaria initiated major legislative reforms in the mid-1990s to enhance judicial independence and ensure the right to an independent and impartial court. Despite several constitutional reforms<sup>30</sup> and numerous legislative amendments, this area has continued to be the Achilles’ heel of Bulgaria’s constitutional and legal system.

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<sup>29</sup> Article 11, paragraph 2, point 3 in conjunction with § 1, point 16 of the Additional Provisions of the Pre-School and School Education Act (Prom, SG 69/16.08.2024).

<sup>30</sup> Five of the six amendments to the Bulgarian Constitution pertain to the judiciary. The amendments in 2003 and 2015 focused exclusively on the status of judges, prosecutors, and the Supreme Judicial Council. The amendments in 2006, 2007, and 2023, while primarily centred on judicial reform, also addressed broader issues such as the status of the members of parliament and the powers of the parliament (2006, 2007), local authorities (2007), and the caretaker government (2023), among others.

#### 4.1.2. Death Penalty Abolishment

The ECHR was crucial in Bulgaria's decision to abolish the death penalty. The last executions of individuals sentenced to capital punishment took place in November 1989. Following a *de facto* moratorium on executions, the Grand National Assembly formally decided on 20 July 1990 to suspend the execution of death sentences. On 10 January 1991, a group of parliament members introduced a bill proposing an amendment to the constitution to abolish the death penalty.<sup>31</sup> However, the bill was not adopted, and capital punishment remained in the legislation. Courts continued to impose death sentences and uphold existing ones on appeal, although the execution of these sentences was suspended.

Although Bulgaria did not formally pledge to eliminate the death penalty when it became a member of the Council of Europe, such a commitment was implied in the broader obligation to adhere to Article 3 of the Statute of the Council of Europe.

On 10 December 1998, the Parliament officially abolished the death penalty, replacing it with life imprisonment without the possibility of parole. Subsequently, on 29 September 1999, Bulgaria ratified Protocol No. 6 to the Convention.

#### 4.1.3. Minority Rights Reforms

In 1998, Bulgaria implemented reforms in educational laws aimed at ensuring that minority children could receive instruction in their mother tongue, thereby facilitating the integration of minority groups into the Bulgarian education system. Additionally, a new Radio and Television Act was enacted that year, allowing media operators to broadcast programs specifically tailored for Bulgarian citizens whose first language was not Bulgarian.

In 1999, Bulgaria ratified the Council of Europe's Framework Convention for the Protection of National Minorities, thus committing to uphold the rights of national minorities. This ratification sparked significant political controversies, the effects of which continue to resonate in judicial practices, policy developments, and societal attitudes. Despite these challenges, the convention is regarded as a vital instrument for promoting and protecting minority rights.

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<sup>31</sup> Гръев, [Gruev], 1998, p. 178.

In 2002, the Bulgarian Parliament adopted the Religion Act, which replaced the 1949 Religious Denominations Act. This new legislation established a legal framework for religious freedom, ensuring individuals the right to practice their religion freely – a provision that was particularly significant for the Muslim minority.

In 2003, Bulgaria made a notable advancement in aligning with European human rights standards by enacting the Protection Against Discrimination Act. This law expanded the definition of discrimination to include indirect discrimination, and established the Commission for Protection Against Discrimination, a dedicated state body responsible for enforcing the law. This legislation underscored Bulgaria's commitment to the principles of equality and non-discrimination as outlined in the ECHR.

#### 4.1.4. Reforms in Proceedings to Reflect ECtHR Judgments

Bulgaria reformed its legislative frameworks for civil, criminal, and administrative proceedings to align with the ECtHR judgments against the country. In 1997, the Civil Procedure Code was amended to include a provision allowing for the revocation of a final civil court judgment if the ECtHR found a violation of the ECHR.<sup>32</sup> The following year, the Criminal Procedure Code was revised to permit the reopening of closed criminal cases in response to “critically significant” violations identified by the ECtHR.<sup>33</sup> These provisions were reaffirmed in the revised Criminal Procedure Code of 2005 and the Civil Procedure Code of 2007, ensuring the ongoing ability to revive closed cases based on ECtHR decisions.<sup>34</sup> Additionally, the first Bulgarian Administrative Procedure Code of 2006 established that an ECtHR judgment confirming a violation of the Convention served as grounds for reopening closed administrative cases involving final administrative acts or court judgments.<sup>35</sup>

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<sup>32</sup> Article 231, letter “h” [in Cyrillic “з”] of Civil Procedure Code (Prom. OG. 12/8.02.1952, repealed).

Article 303, paragraph 1, point 7 of the Civil Procedure Code (Prom. SG. 59/20.07.2007).

<sup>33</sup> Article 362, paragraph 1, point 4 of Criminal Procedure Code (Prom. SG. 89/15.11.1974, repealed).

<sup>34</sup> See Article 422, paragraph 1, point 5 of Criminal Procedure Code (Prom. SG. 86/28.10.2005) and Article 303, paragraph 1, point 7 of Civil Procedure Code (Prom. SG. 59/20.07.2007).

<sup>35</sup> See Article 99, point 7 of Administrative Procedure Code (Prom. SG. 30/11.04.2006).

#### 4.1.5. Revision in the Criminal Procedure to Align with ECtHR Rulings

Bulgaria has undertaken several reforms to align its criminal proceedings with the standards set by the ECtHR. The Criminal Procedure Code has undergone several revisions since the 1990s, demonstrating a dedication to improving the fairness and integrity of the criminal justice system.

In 1993, reforms were initiated to strengthen the position of the defence, ensuring fairer trials. The following year, 1994, clearer regulations regarding pre-trial detention were established, aimed at safeguarding individual rights. By 1997, the rights of the accused were further enhanced, notably through the introduction of plea bargaining, which allowed for expedited trials and reduced sentences in exchange for guilty pleas. These changes were largely influenced by early ECtHR cases involving Bulgaria, particularly the landmark case *Lukanov v. Bulgaria*,<sup>36</sup> where the court found that the detention of a former Prime Minister lacked a sufficient legal basis, rendering it arbitrary and devoid of necessary safeguards.

In response to the ECtHR ruling in *Assenov and Others v. Bulgaria*,<sup>37</sup> the Bulgarian Parliament enacted reforms to rectify identified violations. The 1999 amendments to the Code of Criminal Procedure instituted judicial oversight for pre-trial detention, ensuring that only a court could authorise such measures, thereby addressing the issues that contributed to previous violations.

Following the judgment in *Velikova v. Bulgaria*,<sup>38</sup> significant reforms were implemented to enhance police oversight and accountability, particularly in relation to police brutality. The Ministry of Interior revised its regulations to establish clearer guidelines on the use of force, emphasising the principles of necessity and proportionality. These reforms aimed to improve the investigation and prosecution of police misconduct cases. Additionally, measures were introduced to ensure thorough and independent investigations into deaths occurring in police custody, which included stricter protocols for documenting injuries and circumstances surrounding such deaths, as well as the involvement of independent bodies in the investigation process to enhance transparency and accountability.

Despite modifications to the legal framework, violations of the ECHR continued in similar cases, leading to ongoing enhanced supervision of the

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<sup>36</sup> *Case of Lukanov v. Bulgaria*, App. No. 21915/93, 20 March 1997, § 42.

<sup>37</sup> *Case of Assenov and Others v. Bulgaria*, App. No. 24760/94, 28 October 1998, § 102.

<sup>38</sup> *Case of Velikova v. Bulgaria*, App. No. 41488/98, 18 May 2000.



Velikova group, which remains in effect today. In the decisions from December 2023, the Committee of Ministers commended the significant legislative reforms introduced that year, particularly the right to appeal a refusal to open a criminal investigation, while noting that the practical application of these reforms still needed assessment.<sup>39</sup>

Bulgarian authorities were urged to criminalise the extortion of confessions from suspects who have not yet been formally charged. Furthermore, there was a recommendation for the systematic use of video recordings during interrogations.<sup>40</sup> There remains an ongoing necessity for specific actions that guarantee detainees receive prompt access to legal counsel; notification of a third party; as well as timely, confidential, and precise medical examinations.<sup>41</sup> The Committee of Ministers has urged the Government to consider various tangible measures to ensure that detainees are evaluated by appropriately trained medical professionals who possess both formal qualifications and practical independence. It is also imperative that doctors in correctional facilities are mandated to report any injuries discovered directly to a prosecutor, among other responsibilities. The 2023 legislative reforms in Bulgaria marked a significant progress, resulting in the closure of supervision on the Velikova case.<sup>42</sup> The group of cases under enhanced supervision has been renamed to the new leading case “Dimitrov and Others”. This group continues to address issues related to deaths; ill-treatment; and the lack of timely medical assistance during arrest, police detention, or in places of deprivation of liberty; as well as the absence of effective investigations into these matters.<sup>43</sup>

#### ***4.2. Impact of the ECHR on the Executive Branch***

The Directorate for Legal Representation of the Republic of Bulgaria before the ECtHR is a specialised administrative unit within the Ministry of Justice, established to oversee the state’s legal representation in proceedings before the Court. Its primary responsibilities include preparing and defending Bulgaria’s position in cases concerning allegations of human rights violations, negotiating amicable settlements with opposing parties,

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<sup>39</sup> CM/Del/Dec(2023)1483/H46-11, point 4.

<sup>40</sup> Ibid, point 5.

<sup>41</sup> Ibid, point 6.

<sup>42</sup> See 17 Annual Report of the Committee of Ministers “Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights 2023,” p. 13. [Online]. Available at <https://rm.coe.int/annual-report-2023/1680af6e81> (Accessed: 12 August 2024).

<sup>43</sup> CM/Del/Dec(2025)1531/H46-10, point 1.

and drafting agreements for approval by the Council of Ministers.

The Directorate is also tasked with implementing finalised ECtHR decisions. Over the years, it has played an important role in coordinating the execution of these judgments, ensuring that necessary reforms – such as legislative changes and administrative improvements – are enacted to comply with the Court’s rulings. The Directorate also analyses violations of the ECHR and formulates proposals for specific measures, including legislative changes, to address these violations. Its advisory role is critical in shaping legislative initiatives aimed at preventing future human rights infringements and aligning national laws with European standards. The Directorate’s staff actively study and disseminate ECtHR case law, fostering a deeper understanding and application of these legal principles.

In 2012, the Parliament mandated the Council of Ministers to present an annual summary report on the implementation of ECtHR judgments against Bulgaria.<sup>44</sup> Since then, the Directorate has initiated several projects focused on capacity building and establishing a clear legal framework for fulfilling Bulgaria’s positive obligations under the ECHR, including delineating responsibilities within the government and setting clear procedures for their execution.

In 2020, the Directorate launched a project titled “Enhancing the National Capacity for Effective Implementation of the Judgments of the European Court of Human Rights”.<sup>45</sup> As part of this initiative, it developed a campaign to promote human rights education in Bulgarian universities. In 2022, the Council of Ministers adopted a regulation making “Human Rights Protection” a compulsory subject in higher legal education.<sup>46</sup> Another key aspect of the 2020 project involved analysing the barriers to effective implementation of ECtHR judgments, with the goal of improving mechanisms through engagement with relevant institutions. In April 2024, the Ministry of Justice announced the preparation of a draft regulation to establish a National Coordination Mechanism for the effective implementation of ECtHR judgments.

To enhance access to human rights law materials, the Directorate also

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<sup>44</sup> Resolution of the National Assembly, adopted on 21 September 2012, Prom. SG. 74/2012.

<sup>45</sup> See: <https://eeagrants.org/archive/2014-2021/projects/BG-JUSTICE-0005> (Accessed: 11 August 2024).

<sup>46</sup> Regulation on the Unified State Requirements for the Acquisition of Higher Education in the Specialty “Law” and the Professional Qualification “Lawyer”, adopted by Decree of the Council of Ministers No. 165 of 12.07.2022 (Prom. SG 55/15.07.2022).

launched an online platform featuring translated ECtHR judgments in cases against Bulgaria.<sup>47</sup> It has also begun translating ECHR law textbooks and commentaries<sup>48</sup> into Bulgarian, distributing these resources to judges, lawyers, and academics.

### ***4.3. Impact of the ECHR on the Judiciary***

The 1991 Constitution granted the judiciary a fundamental role in human rights protection.<sup>49</sup> However, Bulgaria's legal framework has always lacked a key mechanism: the individual constitutional complaint. In parallel, the ECHR has enhanced judicial authority vis-à-vis the legislative and executive branches across all Member States of the Council of Europe.<sup>50</sup>

#### **4.3.1. How the Absence of Individual Constitutional Complaints Has Driven Reliance on the ECtHR**

The 1991 Constitution restricted access to the Constitutional Court to a limited number of institutions, including one-fifth of the Members of Parliament, the President, the Council of Ministers, the Supreme Court of Cassation, the Supreme Administrative Court, and the Chief Prosecutor. In 2006, the Ombudsman was granted the right to challenge laws before the Constitutional Court, followed by the Supreme Bar Council in 2015, but only on the grounds that such laws violated citizens' constitutional rights and freedoms. Notably, they were not allowed to contest parliamentary legislation based on inconsistencies with human rights instruments ratified by Bulgaria.

The constitutional reform enacted in 2023 expanded the capacity of all courts to refer cases to the Constitutional Court if they found that relevant parliamentary legislation was unconstitutional.<sup>51</sup> While this development holds promise for strengthening human rights protections, it remains

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<sup>47</sup> See: <https://mjs.bg/home/index/48312690-3f31-497b-88ba-3ee5e458e500> (Accessed: 11 August 2024).

<sup>48</sup> For instance, in 2015, the Bulgarian translation of the third edition of Harris, O'Boyle, and Warbrick's "Law of the European Convention on Human Rights" (2014) was published. Similarly, in 2024, the Bulgarian translation of the eighth edition of Jacobs, White, and Ovey's "The European Convention on Human Rights" (2020) was released.

<sup>49</sup> Article 117, paragraph 1 of the Constitution of the Republic of Bulgaria.

<sup>50</sup> Keller and Stone, 2008, p. 21.

<sup>51</sup> Before the 2023 constitutional reform, only panels of the Supreme Court of Cassation and the Supreme Administrative Court could refer such matters to the Constitutional Court.

uncertain how national judges will implement this new avenue.

Prior to 2023, Bulgarian judges had to rely primarily on the ECHR and its superior legal status to safeguard human rights against conflicting national laws. However, this approach proved inadequate for overturning problematic legislation.

The lack of individual constitutional complaints has significantly limited the ability of citizens and legal entities to directly challenge the constitutionality of laws and actions affecting them, thereby restricting their access to constitutional remedies. Without this mechanism, Bulgarians have to navigate other, often more complex and indirect, legal routes to address potential human rights violations. These alternatives can lead to protracted judicial processes that may not provide timely or satisfactory relief.

#### 4.3.2. Increased References to the ECHR in Bulgarian Case Law

Over the past two decades, significant efforts have been made to enhance Bulgarian judges' awareness and understanding of the ECHR and the jurisprudence of the ECtHR. Judicial training programs, workshops, and seminars focused on human rights have equipped judges with the knowledge to apply the ECHR more effectively in their rulings. Established in 2003, the National Institute of Justice, which is responsible for the professional training of judges and prosecutors,<sup>52</sup> has collaborated closely with the Ministry of Justice, particularly the Directorate for Legal Representation of Bulgaria before the ECtHR, to develop a comprehensive training approach.<sup>53</sup> This approach includes not only occasional workshops and training sessions<sup>54</sup> but also a mandatory ECHR law course for junior judges. To further demonstrate its commitment to human rights education, the National Institute of Justice has created the Human Rights Forum – a

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<sup>52</sup> See <https://nij.bg/en> (Accessed: 10 August 2024).

<sup>53</sup> For example, the project “Enhancing the Capacity of the Judiciary and Training on the European Convention for the Protection of Human Rights and Fundamental Freedoms at the NIJ”, which began in February 2013 and spanned three years, aimed to strengthen the competencies of national courts and the Prosecution Office of the Republic of Bulgaria. The project focused on improving the interpretation and application of national legislation in alignment with the principles and standards set by the ECHR and the case law of the ECtHR. [Online]. Available at: <https://www.nfm7-nij.bg/en/continuity/> (Accessed: 10 August 2024)-

<sup>54</sup> For instance, the National Institute of Justice conducted three sessions of the Human Rights Forum on 3 May 2023, 26 June 2023, and 5 April 2024.

platform for exchanging up-to-date information, professional knowledge, and experience in these areas.

As Bulgarian courts lack the authority to directly overturn unconstitutional legislation, they often resort to an alternative method for protecting fundamental rights through a form of “conventionality” control.<sup>55</sup> As Bulgarian citizens have become increasingly aware of their rights under the ECHR, there has been a rise in human rights-related litigation, prompting the judiciary to engage more deeply with the Convention and reference it more frequently in case law. In the absence of a robust system of rights and judicial review, the ECHR has effectively filled the gap, serving as a substitute for constitutional rights.

Over the years, references to the ECHR in Bulgarian case law have significantly increased, with a growing number of decisions grounded in ECtHR jurisprudence. Adverse rulings against Bulgaria by the ECtHR have highlighted the need for better integration of ECHR principles into national law, encouraging judges to consistently reference the Convention to avoid similar outcomes.

Bulgarian judges have begun to shift their approach to interpreting and enforcing human rights, placing greater emphasis on the availability of effective remedies. Some judges have even invoked the well-known phrase from ECtHR case law,<sup>56</sup> emphasising that the Convention is intended to guarantee ‘not theoretical or illusory rights, but rights that are practical and effective’.<sup>57</sup>

The term “effective remedies” first gained prominence in Bulgarian case law following a series of ECtHR judgments that underscored the excessive length of procedures and other deficiencies within the legal system.<sup>58</sup> The pilot judgment in *Neshkov v. Bulgaria*<sup>59</sup> was particularly

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<sup>55</sup> Ibid, p. 144.

<sup>56</sup> See *Case of Airey v. Ireland*, App. No. 6289/73, 09 October 1979. This case is one of the earliest instances where the Court articulated this principle, emphasising that the rights guaranteed by the ECHR must be effective in practice, not just in theory.

<sup>57</sup> This phrase was first cited in the case law of the Supreme Cassation Court - Decision No. 548 of 4 March 2009 r., Criminal Case No. 553/2008, Supreme Cassation Court, Second Criminal Division, Criminal College. It gained popularity and was subsequently cited in case law by the Supreme Administrative Court and numerous first-instance courts in Bulgaria.

<sup>58</sup> For example, *Case of Anguelova v. Bulgaria*, App. No. 38361/97, 13 June 2002; *Case of Vachev v. Bulgaria*, App. No. 42987/98, 08 July 2004; *Case of Djangozov v. Bulgaria*, App. No. 45950/99, 08 July 2004; *Case of Dimitrov v. Bulgaria*, App. No. 47829/99, 23 September 2004; *Case of Rachevi v. Bulgaria*, App. No. 47877/99, 23 December 2004;

significant, highlighting systemic issues in Bulgarian prisons, including inhuman and degrading treatment due to poor conditions, overcrowding, and the absence of effective legal remedies. The lack of such remedies was also a major concern in the *S.Z. group/Kolevi* group of cases under enhanced supervision, addressing the broader structural problem of ineffective criminal investigations in Bulgaria.<sup>60</sup>

In the past 15 years, references to the presence or absence of effective remedies have increased substantially in Bulgarian case law. However, the proportionality test of the ECtHR, which is applied in cases involving a state's margin of appreciation, has yet to be fully integrated into Bulgarian jurisprudence. Judges rarely use this standard when addressing *ultra vires* claims, typically referencing it only when citing ECtHR judgments. Incorporating the proportionality test into case law would enhance the judges' authority over state actions, by requiring more rigorous justification and assessment. Experience in other Member States suggests that thus "Europeanised", the powers of domestic judges could be enriched,<sup>61</sup> making them more effective in protecting human rights.

#### 4.3.3. Tensions between Bulgarian Courts and the ECtHR on Contentious Issues

As national judges accumulate experience in human rights adjudication, the Convention tends to gain stronger traction within the national legal framework. However, in some contentious cases in Bulgaria, particularly those related to LGBTQI rights, a contrary trend seems to emerge.

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*Case of Kolev v. Bulgaria*, App. No. 50326/99, 28 April 2005; *Case of Ivanovi and others v. Bulgaria*, App. No. 46336/99, 24 November 2005; *Case of Radoslav Popov v. Bulgaria*, App. No. 48137/99, 01 December 2005, among others.

<sup>59</sup> *Case of Neshkov and Others v. Bulgaria*, App. Nos. 36925/10, 21487/12, 72893/12, 50297/12, 53363/13, 18923/14, 27 January 2015.

<sup>60</sup> *S.Z. group / Case of Kolevi v. Bulgaria*, App. Nos. 29263/12 and 1108/02, 05 November 2009. See CM/Del/Dec(2018)1310/H46-5; CM/Del/Dec(2019)1340/H46-5; CM/Del/Dec(2020)1377bis/H46-9; CM/Del/Dec(2021)1419/H46-8; CM/Del/Dec(2022)1436/H46-6; CM/Del/Dec(2023)1459/H46-5; M/Del/Dec(2023)1475/H46-12; CM/Del/Dec(2023)1483/H46-10; CM/Del/Dec(2024)1501/H46-10.

<sup>61</sup> Keller and Stone, 2008, p. 148.

### A) Reversal of Long-Standing Human Rights Protections

A notable example of this tension is Interpretative Decision No. 2/2023 by the General Assembly of the Civil College of the Supreme Cassation Court. In this decision, the majority of civil judges<sup>62</sup> concluded that the incorporation of the ECHR, particularly Article 8, into the national legal order does not imply that all provisions of the Convention are directly applicable or “self-executing”.

In essence, this means that the Convention does not automatically create rights for citizens or impose obligations on the Republic of Bulgaria without corresponding national legislation.

Although such judicial interpretations that limit the scope of the Convention’s norms and deny their inherent direct effect are rare, they highlight the tension between national courts and the ECtHR on controversial issues. The Supreme Cassation Court ultimately ruled that current Bulgarian law did not permit judicial authorisation for changes to the sex, name, or uniform civil number in the civil status records of applicants who identify as transgender.

This interpretative decision marked a significant reversal of over 30 years of Bulgarian case law that had previously allowed transgender and intersex individuals to legally change their sex on ID documents upon presenting sufficient medical evidence. The shift was notably opposed by 21 dissenting judges, who cited two ECtHR cases – *Y.T. v. Bulgaria*<sup>63</sup> and *P.H. v. Bulgaria*<sup>64</sup> – which are under enhanced supervision. During its meeting from 19 to 21 September 2023, the Committee of Ministers discussed the developments in Bulgaria regarding these cases and expressed deep concern over the 2023 Interpretative decision by the Supreme Court of Cassation. The Committee remarked that this ruling has significantly heightened uncertainty for affected individuals and could lead to further human rights violations.

### B) Selective and Formal Reference to ECtHR Case Law Against Its Spirit

A troubling pattern is emerging in Bulgarian courts, where judges formally reference ECtHR jurisprudence to demonstrate familiarity but ultimately issue rulings that contradict its logic and spirit. A notable example is the

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<sup>62</sup> The majority of 28 civil judges prevailed over 21 who remained in the minority and signed the dissenting opinion.

<sup>63</sup> *Case of Y.T. v. Bulgaria*, App. No. 41701/16, 09 July 2020.

<sup>64</sup> *Case of P.H. v. Bulgaria*, App. No. 46509/20, 27 September 2022.

Supreme Administrative Court's final decision in an anti-discrimination case involving rock singer Milena Slavova. In June 2021, Slavova posted about "Sofia Pride 2021" on her widely followed Facebook profile, referring to participants in gay parades as "perverts" and contrasting them with "people". She was subsequently sued for discriminatory harassment. The first-instance administrative court ruled against her, emphasising that her statements deliberately stigmatised gay individuals and cited the ECHR to discuss the balance between the right to free expression and the right to respect for individual dignity.

However, the Supreme Administrative Court overturned this judgment, arguing that Slavova's remarks targeted "individual participants" in Sofia Pride 2021 rather than "all people who self-identify as having a homosexual orientation". This reasoning obscured and dismissed the first-instance court's finding that she intended to "stigmatise", "belittle", and "incite a negative societal attitude" towards those with a homosexual orientation. The Supreme Administrative Court contended that Slavova's social standing did not imply any official public power that could influence the regulation or prohibition of Sofia Pride. This argument was based on ECtHR case law concerning the mayors of Moscow and Warsaw, who also made public statements against gay parades.<sup>65</sup> The Court asserted that only statements made by individuals in positions of power, or those aspiring to such roles, could be deemed relevant to discriminatory harassment. This perspective overlooked the significant influence public figures can have on societal perceptions and stereotypes. By selectively and narrowly interpreting ECtHR jurisprudence, the Supreme Administrative Court concluded that the singer's statements were not discriminatory.

In summary, while Bulgarian judges have made strides in their understanding of ECHR law and ECtHR jurisprudence, the domestic legal system still falls short of providing human rights protection that aligns with international standards. Many Bulgarians view the Strasbourg Court as their only hope for adequate protection and redress against human rights violations. However, this process can be time-consuming and may not effectively address issues within the national context.

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<sup>65</sup> See *Case of Alekseyev v. Russia*, App. Nos. 4916/07, 25924/08, 14599/09, 21 October 2010; *Case of Bączkowski and Others v. Poland*, App. No. 1543/06, 03 May 2007.



#### ***4.4. ECHR Law and Bulgarian Legal Education and Scholarship***

In Bulgaria, the principles upheld by the ECtHR have recently come under considerable pressure due to various challenges, including a crisis of liberal democracy, the Constitutional Court's ideological shift towards "traditional values", widespread anti-gender propaganda, and reactionary responses across all branches of power. Despite the progress made over the past 30 years, it is evident that the rights and obligations safeguarded by the ECHR remain vulnerable.

In this context, the contributions of Bulgarian legal scholarship have been insufficient in establishing a conceptual framework for institutions aimed at upholding the principles of democracy, rule of law, and human rights. Although the Ministry of Justice has made efforts to engage legal academics in promoting and developing human rights protection courses, particularly those focusing on ECHR law, most universities have not introduced substantial research initiatives or made significant changes to their curricula.

At many universities, the newly mandated legal education course has been designed as a lecture-only program, lacking accompanying seminars.<sup>66</sup> The course content is divided among lecturers specialising in legal theory, constitutional law, EU law, and international law, allowing them to merely extend their existing lectures on horizontal human rights education, supplemented with select ECtHR case law on specific rights.<sup>67</sup> The first published textbooks have also adhered to this structure.<sup>68</sup> However, this approach fails to provide students with a comprehensive understanding of the interaction between various human rights protection mechanisms or to deepen their knowledge and competencies in ECHR law and ECtHR jurisprudence.

Most legal academic approaches to human rights in Bulgaria predominantly focus on the formal interpretation of statutory provisions and case law, with limited engagement in critical analysis.<sup>69</sup> This tendency is rooted in the legacy of legal scholarship and education during the totalitarian regime from 1944 to 1989, and Bulgaria has made only modest progress in adopting advanced methodologies and contemporary legal

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<sup>66</sup> Except for New Bulgarian University, Sofia.

<sup>67</sup> For example, in Sofia University "St. Kliment Ohridski".

<sup>68</sup> Чернева et al., [Cherneva et al.] 2023.

<sup>69</sup> Христов, [Hristev], 2023; Вучков, [Vuchkov], 2023.

research practices.<sup>70</sup> Few human rights studies in individual articles move beyond uncritical reproduction to engage in conceptual analysis, such as the horizontal effect of fundamental rights in private-party relations.<sup>71</sup>

The narrow focus is further exacerbated by a prevailing absence of interdisciplinary research,<sup>72</sup> which limits the exploration of human rights issues from diverse perspectives such as political science, history, social work, and psychology. Consequently, legal scholarship in Bulgaria remains doctrinal, restricting critical analysis and innovation, particularly in the field of human rights. This approach has ultimately produced generations of legal professionals who are skilled in applying the law literally but are less equipped to critically assess and enhance the legal system's response to evolving human rights challenges.

## **5. Landmarks Cases against Bulgaria before the ECtHR**

By the end of 2023, Bulgaria had 166 cases pending execution of ECtHR judgments or decisions, a decrease from 182 in 2022 and an increase from 164 in 2021. Among these, 32 were leading cases classified under enhanced procedure (compared with 30 in 2022 and 20 in 2021), and 56 were leading cases classified under standard procedure.<sup>73</sup>

The pending cases notably encompass issues related to prison conditions, living conditions in social care homes, the lack of independent investigations against the Chief Prosecutor, ineffective investigations, freedom of association, and police misconduct.

In 2023, the Court identified new violations, including instances of ethnically motivated expulsions of Roma from their homes, inadequate protection for a minor victim of domestic violence, and the absence of legal recognition and protection for same-sex couples. Throughout the year, the Committee of Ministers reviewed and adopted decisions on 11 leading cases or groups of cases under the enhanced procedure.

As of 2024, Bulgaria ranks fifth in the number of cases under enhanced supervision by the Committee of Ministers, highlighting ongoing

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<sup>70</sup> For an in-depth analysis of the ideological framework and its impact on socialist legal science, see Марчева, [Marcheva], 2021, pp. 182-191, 211-224.

<sup>71</sup> Цонева, [Tsoneva], 2019.

<sup>72</sup> With some exceptions, such as the Interdisciplinary Human Rights Seminar series at New Bulgarian University, which began in 2016 and continues to this day.

<sup>73</sup> See 17 Annual Report of the Committee of Ministers "Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights 2023", p. 86.

challenges in implementing ECtHR decisions. The European Implementation Network assesses that there are 93 leading judgments pending implementation, with an average duration of six years and 10 months for these cases. Alarming, 55% of leading cases from the past decade remain unresolved.<sup>74</sup>

Identifying landmark ECtHR cases against Bulgaria involves selecting those that have prompted substantial reforms in national law, spotlighted systemic human rights issues, and elicited significant criticism for non-compliance. Some of these cases have already been discussed, but in this section, I explore additional cases that have defined Bulgaria's trajectory in human rights law and its ongoing dialogue with the ECtHR. These cases have left an indelible imprint on Bulgarian society and have shaped the human rights narrative within the country.

### ***5.1. Association for European Integration and Human Rights and Ekimdzhiev v. Bulgaria***

The case *Association for European Integration and Human Rights and Ekimdzhiev v. Bulgaria*<sup>75</sup> focused on the legality of Bulgaria's secret surveillance measures. The application was filed by Mihail Ekimdzhiev, a prominent human rights lawyer, in collaboration with a non-governmental organisation dedicated to human rights protection. They challenged the Bulgarian legislation, expressing concerns about the inadequate legal safeguards against the widespread interception of communications, which allowed for arbitrary and unnecessary intrusions into private lives.

The applicants argued that the Bulgarian legal framework for secret surveillance was vague and susceptible to abuse, violating individuals' privacy rights. They pointed out the lack of effective legal remedies for those who suspected their communications had been unlawfully intercepted.

In 2007, the ECtHR ruled that Bulgarian legislation did not meet the "quality of law" standard required by the Convention. The Court specifically criticised the absence of any external and independent review of the implementation of secret surveillance measures. There were no regulations outlining how collected intelligence should be screened, preserved, or destroyed. Control over the secret surveillance system was solely in the hands of the Minister of the Interior, without clear legal

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<sup>74</sup> See: <https://www.einnetwork.org/bulgaria-echr> (Accessed: 12 August 2024).

<sup>75</sup> *Case of Association for European Integration and Human Rights and Ekimdzhiev v. Bulgaria*, App. No. 62540/00, 28 June 2007.

guidelines on how this control should be exercised. Furthermore, individuals subjected to surveillance were not informed of it at any point. Consequently, the Strasbourg court found that Bulgarian law was incapable of limiting surveillance to what was strictly necessary, resulting in a violation of Article 8 of the ECHR, which protects the right to respect for private life and correspondence. The Court also ruled a violation of Article 13, as Bulgarian law did not provide an effective remedy to challenge the legality of surveillance measures or seek redress. This case set an important precedent for ensuring that state surveillance activities are governed by clear and detailed legal frameworks.

Despite the initial judgment, Bulgarian authorities did not adequately reform the laws. Although this case and similar ones were later placed under enhanced supervision,<sup>76</sup> the lack of substantial legal changes prompted a subsequent application by Mr. Ekimdzhiev and another lawyer, Mr. Aleksandar Kashamov. This expanded the complaints to include not only the incompatibility of domestic laws on secret surveillance but also the retention of electronic communications data by service providers and access to this data by law enforcement. In 2022, the Strasbourg court issued another judgment against Bulgaria,<sup>77</sup> identifying significant shortcomings in both systems, which failed to meet the “quality of law” standard, lacked effective safeguards against abuse, and were inadequate in restricting state interference to what was necessary in a democratic society.

In September 2023, the Committee of Ministers decided to discontinue monitoring the *AEIHR and Ekimdzhiev* case but continued supervision of *Ekimdzhiev and others*.<sup>78</sup> Bulgaria has been urged to swiftly adopt the measures that were previously outlined.<sup>79</sup> These include permitting surveillance solely when it is essential; instituting legal standards for transparency and justification in the retrieval of communications data; enhancing regulations concerning data retention, destruction, and notification; as well as guaranteeing that effective remedies are accessible.

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<sup>76</sup> See the following: CM/Del/OJ/DH (2008)1043; DH-DD(2012)711E; DH-DD(2013)76F; CM/Inf/DH(2013)7; CM/Del/Dec(2013)1164/8; CM/Del/Dec(2017)1288/H46-7; and CM/Del/Dec(2019)1348/H46-5.

<sup>77</sup> *Case of Ekimdzhiev and Others v. Bulgaria*, App. No. 70078/12, 11 January 2022.

<sup>78</sup> CM/Del/Dec(2023)1475/H46-10.

<sup>79</sup> CM/Del/Dec(2022)1451/H46-7.

### 5.2. *Miroslava Todorova v. Bulgaria*

The case *Miroslava Todorova v. Bulgaria*<sup>80</sup> concerned disciplinary proceedings and sanctions imposed by the Supreme Judicial Council (SJC) against the applicant – a judge and president of Bulgaria's main professional association of judges.

Todorova publicly criticised the SJC regarding certain judicial appointments and government policies, arguing they undermined judicial independence. In response, the SJC accused her of delays in delivering judgments and reduced her salary in July 2011. A year later, the SJC dismissed her, but Todorova appealed. The Supreme Administrative Court overturned the dismissal and remanded the case to the SJC, which then demoted her to a lower court for two years.

The ECtHR later determined that these disciplinary actions were politically motivated and aimed at silencing Todorova's critical views, thus violating her freedom of expression. The sanctions were found to be excessively harsh and intended to intimidate her, serving as a form of retaliation for her criticism. The court emphasised that leaving the violation of Article 10 unaddressed could have a chilling effect on the entire national judiciary.

This case was placed under enhanced supervision, during which the Committee of Ministers noted ongoing reforms aimed at strengthening judicial independence in Bulgaria.<sup>81</sup> In June 2024, the Committee welcomed the 2023 constitutional amendments that established a new SJC – a body with no prosecutors and a majority of members elected by their peers, as recommended by the Venice Commission. However, in July 2024, the Constitutional Court ruled these amendments unconstitutional,<sup>82</sup> stating they fell under the jurisdiction of the Grand National Assembly.

### 5.3. *United Macedonian Organisation Ilinden and Others v. Bulgaria*

The case *United Macedonian Organisation Ilinden and others v. Bulgaria*<sup>83</sup> involved applicants who claimed that their request for organisational registration was unjustly denied. UMO Ilinden sought official recognition of

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<sup>80</sup> *Case of Miroslava Todorova v. Bulgaria*, App. No. 40072/13, 19 October 2021.

<sup>81</sup> CM/Del/Dec(2023)1468/H46-7; CM/Del/Dec(2024)1501/H46-9.

<sup>82</sup> Decision No. 13 issued on 26 July 2024 by the Constitutional Court of the Republic of Bulgaria in Case No. 1/2024.

<sup>83</sup> *Case of United Macedonian Organisation Ilinden and Others v. Bulgaria*, App. No. 59491/00, 19 January 2006.

the Macedonian minority in Bulgaria, but domestic courts argued that the organisation's objectives threatened national unity and could incite ethnic hatred. Concerns were expressed that UMO Ilinden's separatist stance posed a risk to Bulgaria's territorial integrity. The language and aims outlined in the organisation's founding documents were interpreted as undermining state sovereignty and potentially leading to societal unrest, thus representing a threat to national security and public order.

The ECtHR concluded that the refusal to register the organisation violated the applicant's rights to freedom of association as protected by Article 11 of the ECHR. The Court emphasised that while states may impose restrictions for legitimate purposes, such as national security, these restrictions must be necessary and proportionate. It asserted that the mere expression of separatist views did not automatically warrant a refusal to register an organisation. Ultimately, the Strasbourg court determined that the concerns raised by Bulgarian authorities did not sufficiently justify the refusal, underscoring the importance of protecting the rights of minority groups in a democratic society.

The case *United Macedonian Organisation Ilinden and others* marked the beginning of a series of applications and judgments against Bulgaria by the ECtHR,<sup>84</sup> all identifying violations stemming from the unjustified refusals of Bulgarian courts to register associations seeking recognition for the "Macedonian minority in Bulgaria". Courts based their decisions on national security concerns, the protection of public order, and the rights of others – alleging separatist intentions – and the constitutional prohibition against associations with political objectives, as well as failures to meet formal legal requirements.<sup>85</sup>

In September 2019, the Committee of Ministers urged Bulgarian authorities to provide updates on necessary individual and general measures to address the long-standing issues faced by UMO Ilinden and other similar organisations struggling for Convention-compliant registration. The Committee emphasised the need for legislative measures to enhance the

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<sup>84</sup> *Case of United Macedonian Organisation Ilinden and Others v. Bulgaria* (no. 2.), App. No. 34960/04, 18 October 2011; *Case of United Macedonian Organisation Ilinden and Others v. Bulgaria*, App. No. 29496/16, 11 January 2018; *Case of Yordan Ivanov and Others v. Bulgaria*, App. No. 70502/13, 11 January 2018; *Case of Vasilev and Society of the Repressed Macedonians in Bulgaria Victims of the Communist Terror v. Bulgaria*, App. No. 23702/15, 28 May 2020; *Macedonian Club for Ethnic Tolerance in Bulgaria and Radonov v. Bulgaria*, App. No. 67197/13, 28 May 2020.

<sup>85</sup> Thus summarised in CM/ResDH(2020)197.

Registration Agency's capacity to assist associations in rectifying registration issues and to ensure comprehensive identification of defects in registration files. Bulgaria has yet to align registration practices with the requirements of the Convention.<sup>86</sup>

Over 18 years after the first judgment in the group *United Macedonian Organisation Ilinden and others*, associations seeking recognition of the Macedonian minority continue to face routine refusals for registration. This ongoing issue is exacerbated by a broader opposition to their objectives, compounded by a persistent practice among authorities of citing new reasons for refusal during repeated reviews of registration documents. This group of cases continues to be one of the most contentious issues in the Bulgarian political landscape, particularly after the Constitutional Court's decision declaring the political party UMO – Ilinden – PIRIN unconstitutional.<sup>87</sup> This ruling has reinforced prevailing narratives that portray the UMO-Ilinden case as part of a long-standing “anti-Bulgarian campaign” in Macedonia,<sup>88</sup> which diverges significantly from the Strasbourg perspective on human rights protection.

#### **5.4. *Stanev v. Bulgaria***

The case *Stanev v. Bulgaria*<sup>89</sup> pertained to an applicant diagnosed with schizophrenia, who contested his indefinite and involuntary placement under partial guardianship in a psychiatric institution where he faced degrading conditions. In 2000, a court declared Mr. Stanev partially incapacitated without his knowledge. Consequently, in 2002, he was placed in a remote social care home for individuals with mental disorders, isolating him from his community and support networks.

Official visits by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in 2003 and 2004 revealed deplorable living conditions in the institution, marked by inadequate facilities and a lack of therapeutic activities. Independent psychiatric evaluations confirmed that the environment was harmful to his mental health, indicating that his placement contradicted his actual needs and constituted inhumane and degrading treatment.

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<sup>86</sup> See: CM/Del/Dec(2023)1475/H46-11, p. 2, and CM/Del/Dec(2024)1492/H46-7, p. 4.

<sup>87</sup> Decision No. 1, issued on 29 February 2000 by the Constitutional Court of the Republic of Bulgaria in Case No. 3/1999.

<sup>88</sup> Kojouharov, 2005; Ivanov, 2008.

<sup>89</sup> *Case of Stanev v. Bulgaria*, App. No. 36760/06, 17 January 2012.

Despite his desire to leave and regain his legal capacity, Stanev's requests were repeatedly denied based on medical assessments. A 2006 independent evaluation suggested that his diagnosis was inaccurate and that his confinement was detrimental to his mental well-being. His identity papers were withheld by the staff, and he was under constant supervision, severely limiting his autonomy and privacy. He could only leave home with explicit permission, effectively confining him against his will.

National legislation may impose restrictions to prevent excessive applications, but these should not result in automatic denial of access. Instead, alternative measures, such as limiting the frequency of applications or implementing prior admissibility reviews, could be considered.

In 2012, the ECtHR found that Bulgaria had violated Stanev's rights under the Convention by unlawfully depriving him of his liberty and subjecting him to degrading treatment. The Court highlighted significant deficiencies in Bulgarian law regarding the rights of incapacitated individuals, noting the absence of automatic periodic reviews of guardianship validity. While there may be valid limitations on access to the courts, the right to request a court review of incapacity is fundamental. Individuals should generally have direct access to courts, with the State determining the procedure. While national laws might establish limitations to curb an overabundance of applications, these should not lead to outright denial of access. Instead, alternative approaches such as restricting the frequency of applications or conducting preliminary admissibility assessments could be considered.

The *Stanev v. Bulgaria* case has been pivotal in sparking significant policy and academic discussions in Bulgaria, advocating for comprehensive reform of the legal status of incapacitated individuals.<sup>90</sup> However, legislative reforms in 2017 only permitted partially incapacitated individuals to directly access courts to request the restoration of their legal capacity. The Committee of Ministers continued to urge Bulgarian authorities to establish additional safeguards regarding temporary placements and the procedures for placing individuals who cannot express their will.<sup>91</sup>

By 2021, the Committee acknowledged positive advancements within the *Stanev group*, particularly the implementation of new regulations that empower individuals under partial guardianship to make informed choices

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<sup>90</sup> Генцова et al., [Genova et al.] 2014. Тодорова, [Todorova] 2015;

<sup>91</sup> See point 2 of CM/Del/Dec(2017)1288/H46-8.



about residential services.<sup>92</sup> Simultaneously, Bulgarian authorities were urged to ensure that individuals under full guardianship were consistently heard in court and strengthen safeguards for the termination and review of placements. The Committee commended the country's commitment<sup>93</sup> to closing all social care homes and providing alternative care for individuals with mental health disorders by 2035. However, the Council of Europe continued to monitor living conditions closely, emphasising the urgent need for measures to address critical issues such as increasing staffing levels to prevent neglect and serious hygiene problems among vulnerable residents. The Bulgarian government was also encouraged to evaluate whether "family-type" homes, built on the same grounds as existing remote social care facilities, could serve as a viable solution given the ongoing risk of neglect due to insufficient qualified staff.

By 2024, the Committee of Ministers recognised improvements in the living conditions of social care homes in Bulgaria, as indicated by the latest CPT report, which found no significant hygiene issues.<sup>94</sup> However, further action is still needed to prevent neglect stemming from inadequate staffing levels. The Committee suggested establishing a national map of social services and an integrated system to monitor staff recruitment. Regarding legal safeguards, Bulgarian authorities are expected to ensure that individuals under partial guardianship are consulted about their placements and that those under full guardianship have their voices heard in court, along with appropriate evaluations of their mental health.

### **5.5. *Kulinski and Sabev v. Bulgaria***

In the case *Kulinski and Sabev v. Bulgaria*,<sup>95</sup> the ECtHR examined Bulgaria's constitutional and legislative ban that restricted voting rights for citizens serving prison sentences. The first applicant, Mr. Kulinski, was convicted of hooliganism and served over a year in Sofia Prison from November 2008 to December 2009. The second applicant, Mr. Sabev, received a whole-life sentence for robbery and murder, which was later commuted to a "simple-life" sentence. During their incarceration, both

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<sup>92</sup> CM/Del/Dec(2021)1406/H46-8.

<sup>93</sup> National Strategy for Long-Term Care, [Online]. Available at: <https://www.mlsp.government.bg/uploads/1/en-long-term-care-strategy-final.doc> (Accessed: 16 August 2024).

<sup>94</sup> CM/Del/Dec(2024)1492/H46-6.

<sup>95</sup> *Case of Kulinski and Sabev v. Bulgaria*, App. No. 63489/09, 21 July 2016.

applicants were denied the right to vote in the European Parliament elections on 7 June 2009, and the Bulgarian parliamentary elections on 5 July 2009.

A comparative law study conducted during related proceedings<sup>96</sup> revealed that as of 2012, seven Convention States – Armenia, Bulgaria, Estonia, Georgia, Hungary, Russia, and the United Kingdom – automatically revoked the right to vote for all convicted prisoners while they served their sentences. By contrast, 19 imposed no restrictions on voting rights for prisoners,<sup>97</sup> while 17 adopted an intermediate approach, where disenfranchisement depended on the nature of the offense or the length of the custodial sentence.<sup>98</sup>

The Strasbourg Court noted that the applicants were denied the right to vote due to a blanket prohibition applicable to all convicted individuals in detention – a restriction rooted in the Constitution and reflected in various laws. It was clarified that removing voting rights without a specific judicial decision did not inherently violate Article 3 of Protocol No. 1; however, states must ensure that any restrictions are not general, automatic, or indiscriminate. The ECtHR emphasised that Bulgaria's constitutional and legislative provisions failed to consider the individual circumstances of offenders, unlike other laws that allowed for more nuanced restrictions, and that resulted in a violation of Article 3 of Protocol No. 1 for both applicants.

The *Kulinski and Sabev* case, along with other cases concerning the blanket ban on voting rights for prisoners<sup>99</sup> or incapacitated persons<sup>100</sup> in Bulgaria, was grouped and placed under enhanced supervision. The Committee of Ministers noted that any general, automatic, and indiscriminate restriction of the right to vote applicable to all convicted persons is not compliant with the ECHR.

Consequently, it has been concluded that Bulgaria needs to undergo constitutional reform to create a framework that aligns with the Convention concerning the voting rights of individuals who are under partial

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<sup>96</sup> *Case of Coppola v. Italy (No. 3)*, App. No. 126/05, 22 May 2012, §§ 45-48.

<sup>97</sup> Albania, Azerbaijan, Croatia, Cyprus, the Czech Republic, Denmark, Finland, Ireland, Latvia, Lithuania, Moldova, Montenegro, Serbia, Slovenia, Spain, Sweden, Switzerland, North Macedonia, and Ukraine.

<sup>98</sup> Austria, Belgium, Bosnia and Herzegovina, France, Germany, Greece, Italy, Luxembourg, Malta, Monaco, the Netherlands, Poland, Portugal, Romania, San Marino, Slovakia, and Turkey.

<sup>99</sup> *Case of Dimov and others v. Bulgaria*, App. No. 45660/17, 8 June 2021.

<sup>100</sup> *Case of Anatoliy Marinov v. Bulgaria*, App. No. 26081/17, 15 February 2022.

guardianship and those who are incarcerated.<sup>101</sup>

### **5.6. *Koilova and Babulkova v. Bulgaria***

In a recent ruling, the ECtHR addressed the lack of legal recognition and protection for the family life of same-sex couples in Bulgaria in the case *Koilova and Babulkova v. Bulgaria*.<sup>102</sup> The applicants, who have been living together since 2009 and were married in the United Kingdom in 2016, sought to have their marital status updated in Bulgarian civil registration records. Despite possessing a valid UK marriage certificate, Bulgarian authorities, including domestic courts, refused to acknowledge their marriage, citing conflicts with Bulgarian public order and asserting that it threatened fundamental societal values.

The applicants argued that the absence of official recognition relegated their relationship to a mere de facto union under national law, severely limiting their ability to manage legal and administrative matters as a couple. This situation forced them to navigate private contracts as individuals rather than as a legally recognised couple, adversely affecting their legal status and personal identity, as they were denied the same respect and rights afforded to opposite-sex couples.

In its defence, the Bulgarian government claimed that societal attitudes towards same-sex unions were evolving and that there was growing acceptance of LGBTIQ rights within Bulgarian society.<sup>103</sup> The Strasbourg court noted that Bulgaria's position differed from that of Russia in the case *Fedotova and Others v. Russia*,<sup>104</sup> where the recognition of same-sex couples was framed as conflicting with traditional family values. Instead, the Bulgarian government focused on disputing the existence of a positive obligation under Article 8 to grant legal recognition to same-sex couples and urged the Court to allow for future social and legislative developments in Bulgaria.<sup>105</sup>

The ECtHR reaffirmed the evident trend among member states towards recognising same-sex family unions<sup>106</sup> and concluded that

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<sup>101</sup> CM/Del/Dec(2023)1459/H46-4, point 4.

<sup>102</sup> *Case of Koilova and Babulkova v. Bulgaria*, App. No. 40209/20, 05 September 2023.

<sup>103</sup> *Ibid*, § 32.

<sup>104</sup> *Case of Fedotova and others v. Russia*, App. Nos. 40792/10, 30538/14 and 43439/14, 17 January 2023.

<sup>105</sup> *Case of Koilova and Babulkova v. Bulgaria*, App. No. 40209/20, 05 September 2023., §§ 55-57.

<sup>106</sup> *Ibid*, § 56.

Bulgaria's lack of a legal framework failed to meet the fundamental needs of the applicants as a couple. Ultimately, the Court determined that Bulgaria had exceeded its margin of appreciation by not providing any legal recognition for same-sex couples, thereby violating individuals' rights to respect for private and family life under Article 8 of the ECHR.

## **7. Conclusion**

Over the past 30 years, the ECHR and the judgments from the Strasbourg court have significantly enhanced human rights protections in Bulgaria. Despite facing difficulties associated with controversial issues and the prolonged non-implementation of various ECtHR rulings against Bulgaria for over a decade, the Convention has had a significant impact on the nation's legal framework. This influence is particularly evident in legislation and judicial decisions that have embraced a more rights-focused perspective, promoting a culture of government accountability and respect for individual rights. However, this progress has not come without obstacles. Societal attitudes and prejudices, political resistance, and gaps in legal scholarship and education continue to pose challenges. Bulgaria still grapples with implementation issues concerning contentious human rights matters, such as privacy rights in the context of secret surveillance, voting rights for prisoners, LGBTQI rights, the rights of incapacitated persons, and the rights of the Macedonian minority, among others. The tension between the jurisprudence of the ECtHR and the rulings of the Constitutional Court – particularly regarding the unconstitutionality of the Istanbul Convention – has intensified discord within domestic case law, which has recently led to a growing disconnection between Bulgarian jurisprudence and supranational legal standards.

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