



## International Covenant on Civil and Political Rights

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### Human Rights Committee

102nd session

Geneva, 11–29 July 2011

## Consideration of reports submitted by States parties under article 40 of the Covenant

### Concluding observations of the Human Rights Committee

#### Bulgaria

1. The Committee considered the third periodic report submitted by Bulgaria (CCPR/C/BGR/3) at its 2808th and 2809th meetings (CCPR/C/SR.2808 and 2809), held on 13 and 14 July 2011, and adopted at its 2823rd meeting (CCPR/C/SR.2823), held on 25 July 2011, the following concluding observations.

#### A. Introduction

2. The Committee welcomes the submission of the third periodic report of Bulgaria and the information presented therein, but regrets that it was submitted late. It expresses appreciation for the opportunity to renew constructive dialogue with the high level delegation on the measures taken by the State party during the reporting period to implement the provisions of the Covenant. The Committee also appreciates the written replies (CCPR/C/BGR/Q/3/Add.1) to the list of issues which were supplemented by the oral responses provided by the delegation, as well as the additional information provided to it in writing.

#### B. Positive aspects

3. The Committee welcomes the following legislative and institutional steps taken by the State party:

- (a) The adoption of the Law on Alternate Military Service, in 1999;
- (b) The amendment of the Law on Defense and the Armed Forces of the Republic of Bulgaria, in 2007;
- (c) The abolition of military service as of 1 January 2008;
- (d) The adoption of the Law on Combating Trafficking in Human Beings, in 2003, and the creation of the National Anti-Trafficking Commission;
- (e) The amendment to the Constitution, in 2007, establishing the Supreme Judicial Council and limiting judicial immunity;

(f) The adoption of an Integrated Strategy for Combating Crime and Corruption, in 2010.

4. The Committee welcomes the ratification by the State party of the following international instruments:

(a) The Second Optional Protocol to the International Covenant on Civil and Political Rights, in 1999;

(b) The United Nations Convention against Transnational Organized Crime, in 2001;

(c) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, in 2001;

(d) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, in 2006;

(e) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, in 2001;

(f) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in 2001.

### **C. Principal matters of concern and recommendations**

5. While taking note of article 5, paragraph 4, of the Constitution, according to which the provisions of the Covenant take precedence over domestic law, and welcoming the existence of mechanisms whereby the victims of violations of the Covenant can access remedies, the Committee is concerned that domestic courts do not systematically consider the Covenant as part of the legal framework to which they should refer, and that the Supreme Judicial Council has no record of cases where the provisions of the Covenant have been directly invoked (art. 2 of the Covenant).

**The State party should take all the necessary measures to ensure that judges, prosecutors and lawyers have knowledge of the provisions of the Covenant, so as to enable them to invoke and apply the Covenant in relevant cases. The State party should include in its next periodic report detailed examples of the application of the Covenant by the domestic courts and access to remedies provided for in the legislation by individuals claiming a violation of the rights contained in the Covenant.**

6. While welcoming the implementation of the National Strategy to Encourage Equality between Sexes (2009-2015), the Committee is concerned that discriminatory practices and messages remain widespread, including in the media, and that no specific legislation has been adopted on equal opportunities for women and men (arts. 2, 3 and 26).

**The State party should develop additional policies for effective gender equality and adopt and implement specific legislation on equality between men and women, thereby officially recognizing the particular nature of discrimination against women and adequately addressing it. In addition, the State party should adopt the necessary measures to monitor and put an end to gender stereotypes in society.**

7. While taking note of the Framework Programme for Integration of Roma in Bulgarian Society (2010-2020), the Committee is concerned at the on-going widespread discrimination suffered by the Roma population, especially in terms of access to education, justice, employment, housing and commercial establishments. The Committee is also concerned at the low number of related cases investigated, tried and sanctioned (arts. 2, 25, 26 and 27).

**The State party should pursue its efforts to eradicate stereotypes and widespread discrimination against Roma by, inter alia, increasing awareness-raising campaigns**

**that promote tolerance and respect for diversity. The State party should adopt measures to promote equal access to opportunities and services in all fields and at all levels through appropriate actions in order to address existing inequalities. Finally, the State party should ensure that discrimination cases are systematically investigated, that those responsible are brought to justice and punished, and that adequate compensation is provided to the victims.**

8. The Committee is concerned at the large number of cases of torture and other inhuman and degrading treatment, including failure to provide lifesaving medical assistance, and racially-motivated discrimination, especially against persons of Roma origin, at the hands of law enforcement officers. The Committee is also concerned that on prosecution, none of these cases has resulted in sanctions against the police officers involved, and that remedies have not been provided to the victims. The Committee is concerned that the present system shows a possible lack of objectivity and credibility, and facilitates impunity for police officers involved in human rights violations (arts. 2, 7, 9 and 14).

**The State party should take the necessary measures to eradicate all forms of harassment by the police and ill-treatment during police investigations, including prompt investigations, the prosecution of perpetrators and the adoption of provisions for effective protection and remedies to the victims. The requisite level of independence of the judicial investigations involving law enforcement officials should be guaranteed. The State party should ensure the creation and implementation of an independent oversight mechanism on prosecution and convictions in the cases of complaints against criminal conduct by members of the police.**

9. The Committee regrets the recent manifestations of intolerance towards religious minorities and non-traditional religious groups in Bulgaria (110 cases of reported vandalism against mosques in the last two decades, and assault of Muslims praying in front of the Banya Bashi mosque in downtown Sofia on 20 May 2011). Taking note of the existing legal framework on anti-discrimination and hate speech, the Committee regrets the poor enforcement of the related legislation (arts. 18, 20 and 26).

**The State party should take all necessary measures to promote the prevention, investigation and sanction of acts of hate crime, hate speech and harassment against minorities and religious communities, especially Roma and Muslims, through the full implementation of the existing legislation and nationwide awareness-raising campaigns targeting minorities, religious groups and the population at large.**

10. The Committee is concerned at information about violent and discriminatory practices against children and adults with disabilities in medical institutional settings, including deprivation of liberty, the use of restraints and the enforced administration of intrusive and irreversible treatments such as neuroleptic drugs. The Committee is also concerned at the difficulties faced by institutionalized persons to reintegrate into society, and at the absence of psychosocial rehabilitation programmes for them (arts. 2, 6, 7, 9, 10 and 26).

**The State party should implement a policy of zero tolerance with regard to violent and discriminatory practices against children and adults with disabilities in medical settings, and take the necessary measures to guarantee effective and thorough investigation of all allegations of torture and ill-treatment, as well as the adequate prosecution and sanction of the alleged perpetrators. The State party should also set up and implement psychosocial rehabilitation programmes for institutionalized persons.**

11. The Committee is concerned that, as the State party has acknowledged, its legislation relating to the conditions under which law enforcement officials may use potentially lethal force seems to be inconsistent with relevant international standards, which

may entail a serious risk to the right to life. The Committee notes that the State Party's present rules, adopted through the Ministry of Interior Act (now under review), does not seem to clearly lay down conditions in full compliance with international standards on the use of lethal force (art. 6).

**The State party should ensure, as a matter of urgency, the conformity of its legislation and regulations with the exigencies of the right to life, in particular as reflected in the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.**

12. The Committee regrets the low number of cases of domestic violence, in particular against women, that are actually brought to justice and sanctioned. In that regard, the Committee regrets that the criminal prosecution of such cases is generally limited to those where the offender violates the administrative order for protection, and that, under article 161(1) of the Penal Code, allegations of domestic violence must be initiated upon a complaint of the aggrieved in cases of light or average bodily harm (arts. 2, 3, 6 and 26).

**The State party should vigorously pursue its efforts to prevent domestic violence, in particular domestic violence against women, and encourage the victims to report the cases to the authorities. The State party should initiate gender-sensitive monitoring of these cases and analyse the reasons why they are rarely reported. The State party should also secure the criminal investigation, prosecution and sanction of all cases of domestic violence.**

13. While taking note of the amendments made to the Criminal Code since 2004, the Committee regrets that national legislation still does not criminalize torture and inhumane and degrading treatment in accordance with international standards, whereas articles 287 and 143 of the Criminal Code do not comprehensively cover these crimes (art. 7).

**The State party should adopt a definition of torture that fully complies with articles 1 and 4 of the Convention against Torture, and with article 7 of the Covenant.**

14. While welcoming the fact that corporal punishment is unlawful in the home, schools, penal system, alternative care settings and situations of employment, the Committee is concerned that children are still victims of such practices and that no information is available on the judicial prosecution of such practices (arts. 7 and 24).

**The State party should take practical measures to put an end to corporal punishment in all settings. It should encourage non-violent forms of discipline as alternatives to corporal punishment and should continue with public information campaigns to raise awareness about its harmful effects.**

15. The Committee is concerned about the widespread practice of informal marriage arrangements in the Roma community, especially for girls under the age of 14, despite the minimum age for marriage of 18 years (arts. 7 and 23).

**The State party should adopt and implement a countrywide preventive mechanism for girls under the legal age for marriage through community awareness-raising strategies focusing on the consequences of early and informal marriage arrangements and the rights and duties of the persons involved.**

16. The Committee is concerned at the insufficient procedural safeguards in the Refugee Status Determination (RSD) procedure, particularly with regard to the delay between the initial registration of the request and access to RSD, and the lack of provisions in the Law on Asylum and Refugees guaranteeing and audio recording of the RSD interviews and access to personal files by the applicants and their legal representatives before a decision is taken (arts. 7, 10 and 13).

**The State party should review the asylum procedure and the decisions on applications for international protection by the State Agency for Refugees (SAR) with a view to ensuring that all asylum-seekers have access to a fair and efficient asylum system.**

17. The Committee remains concerned that persons with mental disabilities do not have access to adequate procedural and substantive safeguards to protect themselves from disproportionate restrictions in their enjoyment of rights guaranteed under the Covenant. In particular, the Committee is concerned that persons deprived of their legal capacity have no recourse to means to challenge violations of their rights, that there is no independent inspection mechanism of mental health institutions and that the system of guardianship often includes the involvement of officials of the same institution as the confined individual (arts. 2, 9, 10, 25 and 26).

**The State party should:**

(a) **Review its policy of depriving persons with mental disabilities of their legal capacity and establish the necessity and proportionality of any measure on an individual basis with effective procedural safeguards, ensuring in any event that all persons deprived of their legal capacity have prompt access to an effective judicial review of the decisions;**

(b) **Ensure that persons with mental disabilities or their legal representatives are able to exercise the right to effective remedy against violations of their rights, and consider providing less restrictive alternatives to forcible confinement and treatment of persons with mental disabilities;**

(c) **Take appropriate measures to prevent all forms of ill-treatment in psychiatric institutions, including through the establishment of inspection mechanisms that take into account the United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care (adopted by the General Assembly in resolution 46/119).**

18. The Committee remains concerned at the overcrowding of prisons and at the sanitary conditions of detention facilities, including the lack of access to drinking water, and regular water and electricity cuts. The Committee is also concerned at the deficient medical services, limited accessibility to specialized assistance and lack of trained penitentiary officers. In addition, the Committee is concerned at alleged practices of corruption within the penitentiary institutions by which some detainees have access to privileges (art. 10).

**The State party should guarantee full respect for the Standard Minimum Rules for the Treatment of Prisoners and implement its projects for the construction of new prisons. The State party should also ensure independent and prompt investigation and the prosecution of State officials and private actors responsible for corruption in the penitentiary. In addition, the State party should enhance its efforts to introduce non-incarceration alternatives in the penal sanction system.**

19. The Committee notes the adoption of the plan Vision for Children's De-institutionalization in the Republic of Bulgaria on 24 February 2010, which envisages closing down all child-care institutions over the next 15 years and eliminating the institutionalization of children under the age of 3. Nonetheless, the Committee remains concerned at the number of children who will remain in these institutions for the next 15 years. In addition, the Committee regrets the lack of concrete measures, under the plan, to set up a community-based system of care and the absence of a monitoring procedure to assess the implementation and results of the plan (arts. 24 and 10).

**The State party should urgently take action to close all children's institutions and establish practical alternatives to institutionalization with sufficient funds to create and maintain a sustainable system of care compatible with the rights of the Covenant.**

**The State party should also establish a monitoring procedure to assess the implementation and results of the plan of action to close all children's institutions and create new alternatives for child care.**

20. While noting the recent measures adopted in this regard, the Committee is concerned at the allegations of persistent corruption within the justice system in general and its negative impact on the full enjoyment of the rights guaranteed by the Covenant. In addition, the Committee is concerned at the lack of convincing results in the fight against high-level corruption and the resulting lack of public trust in the administration of justice (art. 14).

**The State party should strengthen its efforts to combat corruption in all spheres of society and guarantee prompt and thorough investigation of all incidents of suspected corruption and, in particular, give full effect to its Integrated Strategy for Combating Crime and Corruption (see. para. 3 (f) above).**

21. The Committee is concerned that the principle of independence of the judiciary is not fully respected by organs outside the judiciary, nor is it fully applied within the judiciary. The Committee is also concerned that this situation, in turn, leads to a lack of trust in the judiciary by the public at large (art. 14).

**The State party should make sure that the principle of independence of the judiciary is fully respected and understood, and should develop awareness-raising activities on the key values of an independent judiciary aimed at the judicial authorities, law enforcement officials and for the population at large.**

22. The Committee remains concerned at the widespread practice of telephone tapping under the Special Surveillance Means Act, amounting to interference by a public authority with the right to respect for correspondence and private life. The Committee is also concerned that individuals who have been subjected to unlawful surveillance are not systematically informed thereof, and therefore are not in a position to access legal remedies (arts. 14 and 17).

**The State party should take all the necessary measures to guarantee that monitored telephone conversations are considered only as complementary evidence in criminal cases and are practised strictly in relation to court proceedings. It should ensure that the persons who were wrongfully monitored are systematically informed thereof and have access to adequate remedies.**

23. The Committee regrets the State party's delay in reforming the juvenile justice system (see CRC/C/BGR/CO/2, paras. 6-7) (arts. 14 and 24).

**The State party should consider as a matter of priority the adoption and implementation of the reform of the juvenile justice system in compliance with the rights protected under the Covenant.**

24. The Committee is concerned at the increasing number of forced evictions of Roma from their homes, including through large-scale evictions such as the execution of the eviction order delivered on 23 June 2011 to the Dobri Jeliaskov Roma community in Sofia district. Such practices constitute potential gross violations of a wide range of internationally recognized human rights and may only be carried out under exceptional circumstances and in full accordance with international human rights law (arts. 17 and 26).

**The State party should strictly limit the use of forced eviction through the adoption of all feasible alternatives to eviction, and guarantee alternative housing for affected families.**

25. While taking note that religious freedom is recognized as a fundamental right under domestic law, the Committee is concerned at the ambiguity in the Religious Denominations Act of 2002 which incorporates a specific registration procedure for the Bulgarian Orthodox Church (arts. 2 and 18).

**The State party should revise the provisions of the Religious Denominations Act of 2002 in order to harmonize the registration procedure and modalities for all religious organizations. The State party should also ensure the training of local authorities and law enforcement officials to avoid unnecessary interference with the right to freedom of religion.**

26. The Committee is concerned at manifestations of hate speech and intolerance in the public domain, which are echoed by certain media (art. 19).

**The State party should strengthen measures to prevent and prohibit the advocacy of hate speech, intolerance and discrimination, in full compliance with the principles of article 19 of the Covenant.**

27. The State party should widely disseminate the Covenant, the Optional Protocols to the Covenant, the text of the third periodic report, the written responses it has provided to the list of issues drawn up by the Committee, and the present concluding observations among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, as well as the general public. The report and the concluding observations should be translated into the official language of the State party.

28. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations made in paragraphs 8, 11 and 21 above.

29. The Committee requests the State party to provide, in its fourth periodic report due for submission on 29 July 2015, specific, up-to-date information on the implementation of all its recommendations and on the Covenant as a whole. The Committee also requests the State party, when preparing its fourth periodic report, to broadly consult with and involve civil society and non-governmental organizations operating in the country.

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