



OMBUDSMAN OF THE REPUBLIC OF BULGARIA

# **MONITORING THE EXECUTION OF THE ECtHR JUDGMENTS IN BULGARIA**

**STATE OF THE ART IN 2019**

# MONITORING THE EXECUTION OF ECtHR JUDGMENTS IN BULGARIA - 2019

- The monitoring of the implementation of the international acts in the area of human rights is carried out by the Ombudsman of the Republic of Bulgaria on the basis of the UN Paris Principles and the Ombudsman Act. Pursuant to Article 19, para 1, item 10 of the Ombudsman Act, the Ombudsman has express powers to monitor and encourage the effective applications of the human rights protection conventions to which the Republic of Bulgaria is a party.

## General findings regarding the execution of final judgments of the European Court of Human Rights in 2019 within the meaning of Article 46 of the European Convention on Human Rights

The greater part of the recommendations of the Ombudsman from previous years remains unchanged in the 2019 report.

As regards Bulgaria's **progress to execute the judgments** being monitored by the Committee of Ministers in 2019, the following main conclusions can be drawn:

First, the **total number of judgments** subject to execution being monitored by the Committee of Ministers declined significantly. The statistics show that, as of 31 December 2019, the total number of ECHR judgments at the stage of execution stood at 169 which is a decrease by 20% in comparison to the data as of 31 December 2018 and 31 December 2017 when the ECHR judgments which had not been executed were respectively 208 and 207.

In 2019, another 17 sentencing judgments were placed under monitoring by the Committee of Ministers; their number has halved in comparison to 2018 and 2017 when the number of new sentencing judgments placed under monitoring by the Committee of Ministers was respectively 36 and 33.

In 2019, there was also a positive trend with respect to the total number of cases completed with a final judgment – 56 compared to 36 completed cases in 2018. However, it is worth noting that the number of cases completed in 2019 was significantly lower than the cases completed in 2017 (116).

The data show a return to the 2017 positive trend of a significant decrease in the judgments remaining to be executed which should be strengthened in 2020.



# MONITORING THE EXECUTION OF ECtHR JUDGMENTS IN BULGARIA - 2019

Second, a positive trend was registered with respect to the **compensation** paid by Bulgaria. In 2019, their total amount (EUR 414,990) is almost twice smaller than the compensation paid in 2018 (EUR 794,968). Still, **Bulgaria's progress remains quite insufficient** in comparison to the progress of other States in the region – for example, the amount of compensation paid by Croatia in 2019 was EUR 74,188 which is a sharp decrease in comparison to the compensation paid in 2018 totalling EUR 453,537.

Third, as of 31 December 2019, the total number of **judgments in a supervision procedure** by the Committee of Ministers was 41, of which 18 new cases and 23 repetitive cases. For the sake of comparison, as of 31 December 2018, a total of 72 judgments were included in the heightened supervision procedure by the Committee of Ministers, of which 21 new cases and 51 repetitive cases.

The analysis of the Ombudsman shows that, in 2019, the **cases under heightened supervision** decreased almost by half which is due mainly to the closing of a significant number of repetitive cases as a result of the execution of the individual measures and the closing of three new cases. The overall trend continues to close the monitoring over sentencing judgments in the two monitoring procedures (standard and enhanced supervision).

*The data are up to date as of 31 December 2019, source: Country Factsheet, <https://rm.coe.int/1680709742>*



# MONITORING THE EXECUTION OF ECtHR JUDGMENTS IN BULGARIA - 2019

Despite the said positive trends, **Bulgaria continues to be on the list of the top ten states with the greatest number of judgments in an enhanced supervision procedure** by the Committee of Ministers.

**Chart:** *Judgments in an enhanced supervision procedure by the Committee of Ministers as of 31 December 2019 – total number and by categories of new cases and repetitive cases*

State	Total number of cases	New cases	Repetitive cases
1. Russia	974	58	916
2. Ukraine	414	52	362
3. Turkey	225	35	190
4. Romania	181	25	156
5. Azerbaijan	96	15	81
6. Italy	82	21	61
7. Hungary	77	10	67
8. Greece	72	9	63
9. Bulgaria	41	18	23
10. Poland	39	9	30

Source: <https://hudoc.exec.coe.int/>



Along with this, still valid is the finding that, in a regional aspect, the number of judgments which were not executed by Bulgaria and are monitored by the Committee of Ministers continues to be very high, especially on the background of countries such as: Serbia (24), Croatia (11), North Macedonia (5), Lithuania (3), Slovenia (1), Czech Republic (1), as well as countries such as Latvia, Estonia, Germany, Finland and Denmark which had no judgments in an enhanced supervision procedure in 2019.

# MONITORING THE EXECUTION OF ECtHR JUDGMENTS IN BULGARIA - 2019

**In this sense, the conclusions from previous years remain valid in 2019, namely:**

- A significant number of judgments which are under enhanced supervision for more than a decade – 7 of the 18 judgments under supervision;
- A trend for the sentencing judgments which are still under enhanced supervision to cover a large number of texts of the European Convention on Human Rights which makes it necessary to take a large number of complex measures;
- The number of leading judgments in which the general recommendations of the European Court of Human Rights have been implemented is still incomparably smaller than those where no satisfactory progress has been achieved;
- Bulgaria continues to pay exceptionally high amounts in compensation for rights breached.

Although actions were taken to execute almost all sentencing judgments in the years after their issuance, they are still insufficient to close the supervision despite the efforts of different institutions and working groups.

Due to this circumstance, the recommendations of the Committee of Ministers regarding the execution of such judgments stay almost the same.

In 2019, Bulgaria continued to be sentenced in similar cases and, hence, will continue to pay high amounts in compensation in the future while, at the same time, there is still ineffective protection of the citizens' rights.

This situation is unacceptable and decisive actions should be taken to resolve it.

As in previous years, the Ombudsman is committed to assisting and supporting the Minister of Justice by making recommendations to the responsible institutions to take specific actions with respect to the sentencing judgments against Bulgaria.



# MONITORING THE EXECUTION OF ECtHR JUDGMENTS IN BULGARIA - 2019

## Main recommendations:

In 2019, the recommendations given in the 2018 report remained valid, namely:

Strengthen the coordination mechanisms among the institutions responsible for the execution of the sentencing judgments of the European Court of Human Rights against Bulgaria. The lack of progress in 2019 in this respect shows yet again that overall measures of prevention are needed and the State should take such measures.

The monitoring carried out by the Ombudsman in 2019 showed again that measures need to be taken to strengthen the role of the Ministry of Justice and the Procedural Representation of the Republic of Bulgaria before the European Court of Human Rights Directorate in the process of aligning the national legislation and institutional practice to the judgments of the European Court of Human Rights.

It is logical for the coordination in the execution process to continue to be carried out by the Procedural Representation of the Republic of Bulgaria before the European Court of Human Rights Directorate but a new form should also be considered for its realisation to ensure that it is more effective and actual progress would be achieved. This holds true especially of the cases where it is necessary for executive authorities to take action and where measures are needed which can be implemented only through changes in the judicial or administrative practices or through legislative amendments.

This is why the **Ombudsman suggests that an interinstitutional coordination council should be set up**, including representatives (experts) of all national institutions which should be directly engaged in the process of coordinating and monitoring the implementation of the measures to execute the sentencing judgments of the European Court of Human Rights.

Such a mechanism could ensure the effective execution of the judgments of the European Court of Human Rights and productive cooperation among the competent authorities and institutions in this area.

Along with this, such an authority could significantly boost the awareness of the case-law of the European Court of Human Rights and the standards of respect for the fundamental human rights. In practice, this will result in a decrease in the sentencing judgments which have been in an enhanced supervision procedure by the Committee of Ministers for many years.



Furthermore, **Bulgaria has not yet ratified Protocol No. 16 to the European Convention on Human Rights which ensures the possibility for a cooperation mechanism between the national court and the European Court of Human Rights** in a similar way to preliminary requests to the Court of Justice of the European Union. This mechanism will significantly facilitate the streamlining of the case-law of the Bulgarian court with that of the European Court of Human Rights and will contribute to a smaller number of sentencing judgments.

# MONITORING THE EXECUTION OF ECtHR JUDGMENTS IN BULGARIA - 2019

Align the national legislation and case-law to the European Convention on Human Rights and the case-law of the European Court of Human Rights in order to ensure and guarantee more effectively the observance of the Bulgarian citizens' fundamental rights and freedoms.

It would be appropriate for such an interinstitutional coordination council to involve mainly representatives of the executive.

However, the mechanism would be effective only if representatives of the judiciary and the legislature attend its meetings.

It would be appropriate for the council to get together for periodic meetings (at least four meetings in a year) so that its members could discuss the measures to be taken, to commit to their implementation, to ensure coordination of the implementation in their own institution and to provide information about the progress.

A part of this coordination process should be the National Ombudsman in the role of a Public Advocate encouraging the implementation of the conventions for the protection of fundamental human rights and freedoms as well as independent experts and representatives of non-governmental organisations.

## **Other recommendations:**

The Ombudsman reminds for yet another year that, after the entry into force of the provision of Article 28, para 3 of the Statutory Instruments Act in the end of 2016, the national mechanism for a compliance review of statutory instruments with the European Convention on Human Rights must be applied both by the executive and the legislature.

A practice where the bills put forward by Members of Parliament are not reviewed for compliance with the European Convention on Human Rights and the case-law of the European Court of Human Rights may result in a violation of the international standards of respect for human rights and new sentences against Bulgaria in Strasbourg.

In this sense, it would be appropriate to consider legislative amendments setting out a preliminary compliance review of legislative proposals made by Members of Parliament with the European Convention on Human Rights when they concern citizens' fundamental rights and freedoms.

The obligation to review the draft statutory instruments for compliance with the European Convention on Human Rights is laid down in (9)(c)(ii) of the Brighton Declaration of 2012 and reconfirmed in the Declaration adopted by the High Level Conference of Member States of the Council of Europe in Brussels in 2015 ((B)(1)9d) of the Action Plan to the Declaration).

