

BULGARIA

By Bulgarian Center for Not-for-Profit Law¹

Summary:

*In 2021, civic space in Bulgaria has been heavily influenced by the complicated political and public health situation. In the current turbulent context, it is not surprising that - during the past two years - the advancement of human rights protection, civil society space, rule of law and democracy in Bulgaria has been limited. Civil society is characterized by **weak capacities** in the context of fragile democracy and rule of law. In the 2020 CSO sustainability Index,² Bulgarian civil society's overall sustainability is ranked third lowest in EU countries, following only Hungary and Croatia. Most CSOs struggle to have a stable income in order to secure their organisational capacity and, in particular, to maintain permanent paid staff. Most of the state funding is disbursed to religious institutions and sports clubs, and the remaining money is distributed without any clear criteria or public consultation. NGOs are also not mentioned in the Bulgarian Recovery and Resilience Plan. While the **legal framework for civic freedoms** and civil dialogue can be considered good and in line with international human rights standards, lack of implementation is often an issue. In particular, the establishment of the Council for the Development of the Civil Society, which is designed to act as a venue of cooperation between the government and CSOs and disburse funding to the sector, is stalled. During the **Covid-19 pandemic**, the authorities failed to adopt any specific measures that would ensure NGOs sustainability. Furthermore, lack of specific legislation to regulate NGOs' governmental bodies left the sector in a situation of legal uncertainty. Following the visibility of NGOs' positive actions during the pandemic, **public trust** in the sector has improved; nevertheless, it remains overall low, also due to anti-NGO campaigns by leading politicians, magnified by politically affiliated media outlets and Bulgaria's worsening freedom of press situation. Despite the unfavorable context, in recent years, few grassroots organisations have become increasingly active and vocal on issues of the rule of law in Bulgaria. Those organisations are advocating for a much-needed reform of the judiciary, leading a number of protests against the election of the highly controversial head of the prosecution.*

*The emerge of far-right groups and the lack of proper response by the authorities led to a surge of **physical attacks and violent threats against LGBT+** organisations, activists and mere - or perceived - members of the LGBT+ community, which is particularly visible since 2020. Several attacks were not adequately investigated by the authorities, and there is no publicly available information about any actions taken by the police or the prosecution office. Meanwhile, the main political actors have remained silent about these instances of harassment, and the only vocal group on the matter was composed by the far-right parties that supported the attacks, actively participating*

¹ The following document is an adapted version of the case study written by Zahari Iankov, lawyer of the Bulgarian Center for Not-for-Profit Law in October 2021, for the upcoming publication Activizenship #6.

² The CSO Sustainability Index Explorer, <https://csosi.org/?region=EUROPE>, rates CSO sustainability from 1 (high sustainability) to 5 (low sustainability). Bulgaria's sustainability is ranked 3.5.

in some of them. These events, together with the lack of legislation protecting LGBT+ people and recognising their rights, create a climate of fear and insecurity.

Institutional landscape and safe space (including state duty to protect and right to freedom from fear)

Bulgaria is a Member State of the European Union since 2007. However, it is still considered as semi-consolidated democracy.³ Additionally, the freedom of press in Bulgaria is ranked the lowest in the whole European Union, and second lowest after Turkey in the Balkan region.⁴ The sustainability of civil society organisations is also still developing.⁵

Since 2020, the Bulgarian authorities are struggling to find a proper response to the health, economic and social crisis triggered by the Covid-19 pandemic. As to October 2021, Bulgaria is the country with the lowest COVID-19 vaccination rates in the EU⁶ - despite the availability of vaccines - and one of the countries with the highest mortality and infection rates.⁷ In 2021, Bulgaria has also been characterised by a deep political crisis with three parliamentary and two presidential elections.

Despite this context, Bulgarian NGOs were - and still are - very active. A lot of organisations quickly reorganised their work, after the announcement of the first and strictest lockdown in March 2020, to face the multifaced challenges linked with the Covid-19 pandemic. As a result, many people managed to personally take part, observe or benefit from the CSOs' work. The traditional media sources also gave more visibility to the CSOs by promoting good practices, initiatives and charity campaigns.⁸ This positive exposure resulted in increased public trust in the civic actors,⁹ compared to previous years. However, according to public opinion research, only about a third of the Bulgarians trust the NGOs (31,3 % in 2020 compared to 24,7% in 2018), and half of the Bulgarians see the NGOs as helpful (49,7 % in 2020 compared to 44,7 % in 2018). Contributing to the low level of public trust in CSOs is some political parties' anti-NGOs rhetoric, ever expanding in recent years. The far-right parties are leading this speech aiming to undermine NGOs image.¹⁰ However, in the past year, such vilifying narratives¹¹ were also embraced by a major Bulgarian party, that identifies itself as liberal and is a member of the liberal party of the EU Parliament - Renew Europe.¹² The creation of a hostile environment is also aided

³ <https://freedomhouse.org/countries/nations-transit/scores>

⁴ <https://rsf.org/en/ranking>

⁵ <https://www.fhi360.org/sites/default/files/media/documents/csosi-europe-eurasia-2019-report.pdf>

⁶ <https://www.statista.com/statistics/1196071/covid-19-vaccination-rate-in-europe-by-country/>

⁷ <https://www.ecdc.europa.eu/en/cases-2019-ncov-eueea>

⁸ The 2020 Civil Society Sustainability Index for Bulgaria, p. 12,

<http://bcnl.org/uploadfiles/documents/%D0%98%D0%BD%D0%B4%D0%B5%D0%BA%D1%81%20%D0%B7%D0%B0%20%D1%83%D1%81%D1%82%D0%BE%D0%B9%D1%87%D0%B8%D0%B2%D0%BE%D1%81%D1%82%20%D0%BD%D0%B0%20%D0%9D%D0%BF%D0%BE%20%D0%B2%20%D0%91%D1%8A%D0%BB%D0%B3%D0%B0%D1%80%D0%B8%D1%8F%20%D0%B7%D0%B0%202020%20%D0%B3.pdf.pdf?fbclid=IwAR2LMaQasPBQbbOLqKkrh7THFzZ1Iaboxg6oI0UEd79xqUp54--h6y-PHUI>

⁹ <http://bcnl.org/analyses/obshtestveni-naglasii-kam-grazhdanskite-organizatsii-2020.html>

¹⁰ <https://offnews.bg/analizi-i-komentari/npo-to-mi-e-po-dobro-ot-npo-to-ti-748766.html>

¹¹ <https://bnr.bg/post/101511428/dps-partiite-da-zabravat-za-politicheskia-revansh>

¹² https://www.aldeparty.eu/tags/update_movement_for_rights_and_freedoms

by publications of politically affiliated media outlets and Bulgaria's worsening freedom of press situation.¹³ The smear attacks are mainly targeting watchdog organisations (e.g., BCNL)¹⁴ and human rights organisations, in particular those advocating for children (e.g., National Network for Children)¹⁵ and minority rights. These groups are being framed as "organisations protecting foreign interests" or "Soros' organisations."

The emergence of anti-rights groups and the harassment of the LGBT+ community

In 2018, a heated public debate was instigated around the ratification of the so-called Istanbul Convention. During this debate many groups, identifying themselves as Christian, conservative and/or patriotic, gained traction and continued their activities well after the Istanbul Convention was proclaimed to contradict the Bulgarian Constitution by the country's Constitutional Court.¹⁶ These groups claim to fight against the "gender ideology" imposed by the European Union and the Western democracies. There is no widespread common understanding of what the "gender ideology" is, as it serves as an umbrella term which includes some aspects of children rights, women rights, LGBT+ rights, multiculturalism, reproductive rights and others.

Seen as a showcase of far-right extremism,¹⁷ these groups are spreading fake news which can be tracked to Russian sources,¹⁸ praising

the homophobic and anti-NGOs policies propagated by the ruling parties in Russia, Hungary and Poland. They also oppose legal documents meant to advance human rights protection and social state - such as the proposed Strategy for the Child 2019-2030, amendments to the Protection Against Domestic Violence Act, the Social Service Act - as well as the anti-Covid-19 measures and vaccination.

The emerge of these far-right groups and the lack of proper response by the authorities led to a surge of physical attacks and violent threats against LGBT+ organisations and activists, which is particularly visible since 2020¹⁹ (such as the violent threats written on the walls of LGBT+ activists' headquarters and houses in Plovdiv).²⁰

The harassment of LGBT+ activists and organisations continued in 2021, in the months preceding the annual Sofia Pride. The episodes of violence were many in May 2021:

- In May 2021, a Pride was held in Burgas,²¹ one of the major cities of Bulgaria, for the first time. Although the event gathered a small number of people, it was met with a counter-demonstration and bottles and other objects were tossed towards the participants of the Pride;
- Later the same month, a group claiming to "protect the motherland" - and affiliated to a far-right political party - disrupted the presentation of

¹³ <https://rsf.org/en/bulgaria>

¹⁴ https://blitz.bg/obshtestvo/ogromen-skandal-ministr-zakharieva-buta-grantovozavisimata-shabani-za-klyuchov-post-v-es_news747036.html

¹⁵

<http://skandalno.net/%D0%BD%D0%B8%D0%BA%D0%BE%D0%BB%D0%B0%D0%B9-%D0%B4%D1%80%D0%B5%D0%BD%D1%87%D0%B5%D0%B2-%D0%B1%D1%8A%D0%BB%D0%B3%D0%B0%D1%80%D0%B8%D1%8F-%D1%81%D0%B5-%D1%84%D0%B0%D1%88%D0%B8%D0%B7%D0%B8%D1%80%D0%B0-183210/>

¹⁶ <https://balkaninsight.com/2018/07/27/bulgaria-s-constitutional-court-says-istanbul-convention-not-in-line-with-basic-law-07-27-2018/>

¹⁷ https://h2020connekt.eu/wp-content/uploads/2021/09/Bulgaria_CONNEKT_Macro_Drivers.pdf

¹⁸ Ibid.

¹⁹ <https://www.clubz.bg/114411-koy-tormozi-lgbt-obshtnostta-predi-prayda>

²⁰ <https://www.svobodnaevropa.bg/a/30890741.html>

²¹ With 226,179 population, <https://bg.wikipedia.org/wiki/%D0%91%D1%83%D1%80%D0%B3%D0%B0%D1%81>

an LGBT+-friendly children's book held in a private property in Sofia;

- Just two days after this episode, a group of individuals managed to enter the building of Radio Plovdiv - a local station of the Bulgarian National Radio in the second biggest city in the country - where members of the LGBT+ NGO Dejstvie were giving an interview about a book on the problems faced by members of the LGBT+ community in Bulgaria. Although the police managed to bring the intruders outside of the building, they remained in front of the entrance blocking the access for members of Dejstvie and intimidating any supporter of the NGO;
- The end of May saw yet another accident, when an event organised by an LGBT+ organisation was disrupted. This time a group of far-righters entered the screening of a short movie, intimidating the audience and putting posters saying "STOP THE LGBT+ VIRUS" on the building of the event;
- On 1 June, upon the official opening of the Rainbow Hub - the first LGBT+ community centre in Bulgaria - a big group made yet another intimidation attack on an event organised by an LGBT+ organisation. A couple of days before, an online smear campaign disseminated the false information that a pro-paedophilia movie was about to be screened in Sofia.

These numerous attacks were not adequately investigated by the authorities, and there is no publicly available information about any actions taken by the police or the prosecution office. Meanwhile, the main political actors

remained silent about these instances of harassment, and the only vocal group on the matter was composed by the far-right parties that supported the attacks, actively participating in some of them.²²

The regulatory environment for and implementation of civic freedoms

The 2000 Non-Profit Legal Persons Act regulates the establishment and operation of NGOs in Bulgaria. The Act sets a relatively simple procedure for the registration of NGOs, with limited powers for the administration (previously the court) to refuse registration based on the goals and the means of an organisation. The law is in general applied as intended and, thus, it guarantees the freedom of association.

The main exception of this trend is the case of UMO Ilinden²³ and similar, which have been denied formal recognition as legal persons organisations. Organisations aiming to achieve recognition and protection of the interests of the Macedonian minority in Bulgaria have been frequently denied registration by various Bulgarian courts and administrative bodies since the late 90s. Despite several decisions of the European Court of Human Rights (ECtHR) in the past 20 years ruled that Bulgaria violates the freedom of association in those cases, the Bulgarian judiciary, the public authorities and the government at large are constantly refusing to comply with the ECtHR decisions and the Bulgarian Constitution, laws and established practice applied to other NGOs.

During a meeting of the Committee of Ministers of the Council of Europe held on 7-9 June 2021, Bulgaria was once again invited to

²² <https://www.monitor.bg/bg/a/view/vmro-iska-anti-gej-merki-i-trudovo-obuchenie-za-negramotni-275482>

²³ <http://bcnl.org/en/news/two-decades-of-violation-of-the-right-of-association-the-case-of-united-macedonian-organisation-ilinden-and-others-against-bulgaria.html>

comply with the decisions of the ECtHR in connection with the refusal to register the UMO Ilinden Association and similar organisations. Still, there are no signs that there is any willingness to resolve the issue.²⁴

Although the Bulgarian legal framework regulating freedom of association and the NGOs, in particular, is compliant with the applicable standards, there were several attempts to adopt restrictive new rules in 2020, such as a Bill to amend the Non-Profit Legal Entities Act as reported in the 2021 Rule of law report of the European Commission on Bulgaria. None of these restrictive bills were passed, nor properly discussed during a public consultation procedure. Nevertheless, they served as an intimidation for NGOs²⁵ and consumed time and resources of watchdog organisations, which had to oppose the bills at the earliest possible stage of the legislative process.

The impact of the Covid-19 pandemic on civic freedoms

As nearly every sphere of life, the work and operation of CSOs were also affected by the anti-Covid-19 pandemic restrictions. Firstly, an *ad hoc* law regulated the restrictions in Bulgaria. Subsequently, an amendment to the Health Act gave the Minister of Health the power to issue ordinances for specific restrictions when an emergency epidemic state is announced. To date,²⁶ Bulgaria is under emergency epidemic state and the Minister of Health issues ordinances regulating different restrictions on uneven time intervals, with no prior official and open public consultations.

Although during the pandemic some administrative deadlines (e.g., the deadline for

filing an annual financial report in the respective administration) were postponed for all legal entities, including NGOs, the authorities failed to adopt any specific measures that would ensure NGOs sustainability during the pandemic. Furthermore, amendments were introduced to regulate the possibility for governmental bodies and other collective bodies to conduct their meetings online, but the NGOs were “forgotten”. This means, for example, that there is still a legal uncertainty whether a meeting of a general assembly of an organisation, in which some or all members are participating via online communication means, is legal or not. The question is of great concern, since NGOs’ governing bodies have the obligation to approve certain documents (e.g., the annual financial reports) which need to be made publicly available and filed with the respective administration. Since the Covid-19 restrictions were effectively forbidding in-person meetings in certain periods, some NGOs were forced to face an unreasonable choice: either to breach the anti-pandemic measures or falsify their assembly protocols in order to comply with their administrative duties. A bill resolving this issue has been proposed in the parliament, but due to the political crisis in the country, it seems unlikely for it to be adopted any time soon.

Soon after the announcement of the first lockdown in March 2020, the chairwoman of the Bulgarian Pharmaceutical Union voiced her concerns that there might be a shortage of medical supplies. This led to formal charges against her on the accusation of instigating panic in the public.²⁷ After a public outcry, the charges were dropped, and no similar cases of breach of freedom of expression were

²⁴ https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a29ae6

²⁵ <http://bcnl.org/en/news/a-dangerous-attack-against-independent-civil-society-in-bulgaria.html>

²⁶ Report dating October 2021.

²⁷ https://www.capital.bg/politika_i_ikonomika/zdrave_opazvane/2020/04/13/4054000_farmaceutite_protest_iraha_sreshtu_absurdno_obvinenie/?fbclid=IwAR3sAExE5BR0nQoq0W-VxRT81eOpU_5EI9e12bgF4wEwJHOesZdOJ5hE61w

observed. There were no restrictions on access to the internet, nor similar forms of censorship during the pandemic.

Freedom of assembly, and freedom to protest, was generally unaffected by the Covid-19 restrictions. Many protests took place between 2020 and 2021, none of which were dispersed due to anti-pandemic rules. Despite this, there were multiple cases of infringement of the right to protest during a nearly 4-month anti-government protest in Sofia in Summer 2020.²⁸ The breaches included police brutality, unlawful detentions, alleged unlawful surveillance of protest's leaders and others. The newly elected parliaments in 2021 formed commissions to investigate the police brutality during the 2020 protests, but due to the political crisis and the short life of those parliaments, the results of the work of the commissions have been limited. So far, there is publicly available information about a few police officers who received disciplinary punishments, but no criminal proceedings were initiated.

The framework for civic organisations' financial viability and sustainability

According to the 2020 Civil Society Sustainability Index for Bulgaria,²⁹ the financial sustainability of the Bulgarian CSOs remained unchanged compared to 2019. Still, the financial resources are very limited and mainly provided by foreign donors. Although donations have increased in recent year, they are mainly directed towards specific causes

(e.g., particularly sick children in need of money for medication), rather than organisations and broader goals.

The Bulgarian government provides funding for NGOs through the annual budget. The sum for 2020 was nearly 100 million BGN (around 50 million EUR). However, most of this funding is disbursed to religious institutions and sports clubs, and the remaining money is distributed without any clear criteria or public consultation.

The government implemented different support schemes and, in principle, NGOs were covered by some of these general measures. However, the conditions to apply for this support left many NGOs ineligible to apply, while no aid was specifically aimed to support the civic sector. Furthermore, the NGOs are not mentioned in any of the Bulgarian Recovery and Resilience Facility plan drafts, which will ensure sizable funding from the EU.³⁰

Additionally, the government is also delaying the implementation of an already adopted support mechanism for NGOs. Since 2018, according to the Non-Profit Legal Persons Act, a Council for the Development of the Civil Society (CDCS) to the Council of Ministers has to be created. The CDCS has to be composed of NGOs elected by other NGOs and, among its duties, it should distribute state funding to NGOs. However, after two years of law drafting for the functioning of the CDCS and successful elections of its members held at the beginning of 2020, the CDCS has never been formally established.

²⁸ <https://civicspacewatch.eu/bulgaria-protests-continue-peacefully-after-tension-escalated-in-sofia-on-the-second-of-september/>

²⁹ <http://bcnl.org/uploadfiles/documents/%D0%98%D0%BD%D0%B4%D0%B5%D0%BA%D1%81%20%D0%B7%D0%B0%20%D1%83%D1%81%D1%82%D0%BE%D0%B9%D1%87%D0%B8%D0%B2%D0%BE%D1%81%D1%82%20%D0%BD%D0%B0%20%D0%9D%D0%BF%D0%BE%20%D0%B2%20%D0%91%D1%8A%D0%BB%D0%B3%D0%B0%D1%80%D0%B8%D1%8F%20%D0%B7%D0%B0%202020%20%D0%B3.pdf>

https://ec.europa.eu/info/strategy/recovery-plan-europe_en

³⁰ https://ec.europa.eu/info/strategy/recovery-plan-europe_en

The right to participation and dialogue between the civic sector and governing bodies

Bulgarian laws regulate a multitude of different consultative councils which, in theory, should ensure a civil dialogue. However, some of them do not function properly, or the results of their work are generally not adequately disseminated, thus leaving the public either completely uninformed about the existence of such councils or with low trust in them.

For example, the Council for the Development of the Civil Society (CDCS) to the Council of Ministers has never been created, although the respective legislation has been in force since 2018. Another example is the procedure for the election of new NGO members of the National Council for Equality Between Men and Women.³¹ The election process for this Council was successfully concluded in July 2021, but the elected NGOs have not been formally included in the Council yet.

Some councils, such as the Economic and Social Council,³² are granted significant state funding; however, it is unclear if they serve their intended purpose, since it is nearly impossible to find mention of their work or presence of their representatives in the media.

³¹ https://www.mlsp.government.bg/novini-11?fbclid=IwAR1_PdVb0v-yc74YmwhoqZ-SS9X9KCvAzpkrurtwmsStqRwGOlpCUnn182c

³² <https://esc.bg/>

³³ <http://bcnl.org/en/news/luben-panov-and-douglas-rutzen-are-elected-as-members-of-the-open-government-partnership-initiatives-steering-committee.html>

³⁴ <https://www.opengovpartnership.org/about/who-we-are/steering-committee/2021-civil-society-steering-committee-selection/>

Civil society's responses to challenges to democracy, the rule of law and fundamental rights

In 2021, a Bulgarian was elected³³ as one of the four new members of the quota of civil society organisations in the Steering Committee of the Open Government Partnership.³⁴ Bulgaria is currently implementing 37 commitments from its 2016-2018 action plan in the scope of the Open Government Partnership. This action plan features commitments related to e-government, access to information, open cities, open data, and public integrity. Currently, Bulgaria is in the process of adopting its fourth national action plan.

In recent years, a couple of grassroots organisations, such as BOEC³⁵ and the Justice for Everyone Initiative,³⁶ are becoming increasingly active and vocal on issues of the rule of law in Bulgaria. These organisations are advocating for a much-needed reform of the judiciary and are leading a number of protests against the election of the highly controversial head of the prosecution.³⁷ The Venice Commission frequently criticised Bulgaria concerning the judiciary and, especially, the prosecution procedure. The Bulgarian prosecution is structured in a strict hierarchy.³⁸ This means that the head of the prosecution, who serves a 7-year mandate, has the power to retract any act of any other prosecutor, to change the leading prosecutor

³⁵ <https://www.boec-bg.com/>

³⁶ <https://pravosadiezvavseki.com/>

³⁷ <https://bntnews.bg/news/protest-pred-vss-s-iskane-za-ostavkata-na-ivan-geshev-1163175news.html>

³⁸ <https://balkaninsight.com/2020/11/23/venice-commission-criticizes-bulgarias-rush-to-change-constitution/>

of any case and, in general, to personally control the actions of any other prosecutor without any proper mechanism for checks and balances.

Recommendations

Political landscape and safe space

Authorities should refrain from smear campaign and hate speech and condemn any acts which are motivated by hate, or propagating hate. The Bulgarian Penal Code should be amended in order to criminalise hate speeches and acts.³⁹ Police officers should be trained to engage with LGBT+ people and other minorities, and provide appropriate support against violence based on sexual and gender identity. Individuals and groups inciting, or involved, in these crimes should be duly prosecuted.

EU institutions should stand up for associations targeted by smear campaigns. In particular, it is recommendable for the European Parliament to take a firm stand on anti-NGO speeches by its Members, and for the European parliamentary groups to condemn such speeches by representatives of their member-parties.

The regulatory environment for and implementation of civic freedoms of association and assembly

Authorities should take into account the Committee of Ministers of the Council of Europe recommendations regarding the UMO Ilinden case. This case is setting a dangerous precedent which reaffirms a faulty and overly broad interpretation of the legal restrictions to freedom of association.

The incidents during the anti-government protests in 2020 need to be thoroughly examined, to serve as a basis for a reform in

the police structure which will ensure the respect for the right of peaceful assembly. Good practices and standards, as set in General Comment No. 37 (2020) on the Right of Peaceful Assembly (Article 21)⁴⁰ of the Human Rights Committee, need to be applied.

Covid-19 response measures and financial sustainability of NGOs

The Bulgarian authorities need to urgently develop sector-specific recovery and support measures for the NGOs in Bulgaria. Additionally, a solution needs to be found to resolve the legality issue of the online meetings participation of members of NGOs' governing bodies. This could be resolved either by passing the bill of amendments already filed in the parliament, or by adopting an internal policy for the administrative bodies to implement a broader interpretation of the term 'present'. The second approach seems a possible solution, since there is already some court practice in that sense.

The European Commission needs to insist on the inclusion of NGOs in the Member State's Recovery and Resilience Facility plans.

The right to participation and dialogue

The Bulgarian Council of Ministers should comply with the law and establish the Council for the Development of the Civil Society (CDCS). The Bulgarian authorities need to ensure the effective work of all established consultative councils, by providing them with operational and administrative resources and taking into an account and promoting the results of their work.

³⁹ <https://bilitis.org/2021/02/22/kriminalizirane-na-prestapleniyata-ot-omraza-v-balgariya/>

⁴⁰ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FGC%2f37&Lang=en