

ACTIVIZENSHIP

CIVIC SPACE WATCH REPORT 2021 | STORIES OF HOPE IN DARK TIMES

BULGARIA

Civil society is characterized by weak capacities in the context of fragile democracy and rule of law. In 2021, civic space in Bulgaria was 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, the rule of law and democracy in Bulgaria has been limited. Nevertheless, following the visibility of NGOs positive actions during the pandemic, public trust in the sector has improved despite the anti-NGO campaigns by leading politicians, magnified by politically affiliated media outlets and Bulgaria's worsening freedom of press situation. The LGBTI+ community is under pressure after the surge of physical attacks and violent threats by far-right groups. Nevertheless, the story of baby Sara is an achievement for rights nationally and at the European level.

POLITICAL TURBULANCES AFFECTS CIVIC SPACE

Civil society resilience results in higher trust

By Zahari Iankov, lawyer and Nadia Shabani, director, Bulgarian Center for Not-for-Profit Law

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Bulgaria is a Member State of the European Union since 2007. However, it is still considered as a semi-consolidated democracy.¹ 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.² The sustainability of the civil society organisations is also still developing.³ 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 EU⁴ – despite the availability of

vaccines – and one of the countries with the highest mortality and infection rates.⁵ Bulgaria is also in a seemingly deepening political crisis awaiting its third parliamentary election in just a year. During the summer of 2020 protesters took to the streets of the capitol Sofia and some other major cities demanding the resignation of the ruling party GERB which had dominated the Bulgarian political landscape for the past 12 years. The parties who promoted themselves as “bringers of change,” however, failed to form a government and the civil society actors backing the 2020 protests did not manage to form a new political party with a substantial popular support.

In the turbulent political situation, it is not a surprise that during the past two years the advancement of human rights protection, civil society space, the rule of

law and democracy in Bulgaria has been limited. This analysis examines the main issues faced by the civic space, democracy and human rights in Bulgaria for the period 2020-2021 as well as the reasons for them and provides recommendation for further actions.

THE RULE OF LAW, POLITICAL LANDSCAPE AND SAFE SPACE

In 2021, civic space in Bulgaria was heavily influenced by the complicated political and public health situation. Since 2020 the country has been struggling to

MANY PEOPLE MANAGED TO PERSONALLY TAKE PART, OBSERVE OR BENEFIT FROM THE CSOS' WORK

¹ <https://freedomhouse.org/countries/nations-transit/scores>

² <https://rsf.org/en/ranking>

³ <https://www.fhi360.org/sites/default/files/media/documents/csosi-europe-eurasia-2019-report.pdf>

⁴ <https://www.statista.com/statistics/1196071/covid-19-vaccination-rate-in-europe-by-country/>

⁵ <https://www.ecdc.europa.eu/en/cases-2019-ncov-eueea>

implement effective measures against the negative health, economic and social effects of the COVID – 19 pandemic. Additionally, after a lengthy protest against the ruling majority and Government during the summer of 2020, the results of the regular parliamentary elections held in April 2021 did not provide any political party or a group of parties willing to form a coalition with a majority. This course of events led to snap elections in July 2021, which had a similar outcome, effectively creating a state of a political crisis. Another snap election for Parliament will

THIS POSITIVE EXPOSURE RESULTED IN INCREASED PUBLIC TRUST IN THE CIVIC ACTORS COMPARED TO PREVIOUS YEARS

be held together with a regular election for a President in November 2021.⁶ Despite this context, the 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 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.⁷ This positive exposure resulted in increased public trust in the civic actors 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).⁸ Contributing to the low level of public trust in civil society organisations is some political parties' ever expanding anti-NGO rhetoric in recent years. The so-called far-right parties are leading in the speech aiming to undermine NGOs image.⁹ However, in the past year, such

vilifying narratives¹⁰ 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.¹¹ The creation of a hostile environment is also aided by publications of politically affiliated media outlets and Bulgaria's worsening freedom of press situation.¹² The smear attacks are mainly targeting watchdog organisations (e.g. BCNL¹³) and human rights organisations, in particular those advocating for children (e.g. National Network for Children¹⁴) and minority rights. These groups are being framed as “organisations protecting foreign interests” or “Soros’ organisations.”

SAFE SPACE

In 2018, a heated public debate was instigated around the ratification of the 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.¹⁵ 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 extremism¹⁶, these groups are spreading false news which can be



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⁶ Update: the party “We Continue the Change” won the most seats and the elected president was the incumbent Rumen Radev. A coalition formed in December 2021 with PP BSP ITN and DB. Bulgaria's Rumen Radev wins presidential re-election: Exit polls | Euronews
⁷ The 2020 Civil Society Sustainability Index for Bulgaria, p. 12, <https://bit.ly/3t4emUO>
⁸ <http://bcnl.org/analyses/obshtestveni-naglasikam-grazhdanskite-organizatsii-2020.html>
⁹ <https://offnews.bg/analizi-i-komentari/npo-to-mi-epo-dobro-ot-npo-to-ti-748766.html>

¹⁰ <https://bnr.bg/post/101511428/dps-partiite-da-zabravat-za-politicheskia-revansh>
¹¹ https://www.aldeparty.eu/tags/update_movement_for_rights_and_freedoms
¹² <https://rsf.org/en/bulgaria>
¹³ https://blitz.bg/obshtestvo/ogromen-skandal-ministr-zakharieva-but-a-grantovozavisimata-shabani-za-klyuchov-post-v-es_news747036.html
¹⁴ <https://bit.ly/3hYbCCf>
¹⁵ <https://balkaninsight.com/2018/07/27/bulgaria-constitutional-court-says-istanbul-convention-not-in-line-with-basic-law-07-27-2018/>
¹⁶ https://h2o2oconnect.eu/wp-content/uploads/2021/09/Bulgaria_CONNEKT_Macro_Drivers.pdf



THE AUTHORS

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tracked to Russian sources,¹⁷ praise the homophobic and anti-NGO policies propagated by the ruling parties in Russia, Hungary and Poland and frequently target NGOs (mainly LGBT and human rights organizations as well as providers of social services for children and women), LGBT people (or people considered falsely or not to be members of the LGBT community), LGBT Pride events and any group or political party which they see as having a liberal agenda. They also oppose legal documents meant to advance the human rights protection and the social state, such

A HEATED PUBLIC DEBATE WAS INSTIGATED AROUND THE RATIFICATION OF THE ISTANBUL CONVENTION

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 measures and vaccination.

The emergence 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 and activists which is particularly visible since 2020.¹⁸

At the end of 2020 in Plovdiv, violent threats citing the names of two LGBT activists were written on the walls of buildings where the activists live or work.¹⁹ The threats were likely connected to the activists' response to a violent attack in a public park against children who, according to the attackers – also minors, looked gay.

¹⁷ Ibid.

¹⁸ https://www.clubz.bg/114411-koy_tormozi_lgbt_obshtnostta_predi_prayda

¹⁹ <https://www.svobodnaevropa.bg/a/30890741.html>

The harassment of LGBTQ activists and organisations continued in 2021 in the months preceding the annual Sofia Pride. In May 2021, a Pride was held in Burgas,²⁰ one of the major cities in Bulgaria, for the first time. Although the event gathered a small number of people, it was met with a counterdemonstration and some minor accidents: 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 an LGBTQ-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 members of “Dejstvie” from entering 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. Similarly, 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 LGBT organisation. A couple of days before, an online campaign disseminated the false information that a pro-pedophilia movie was about to be screened in Sofia

²⁰ With 226 179 population, <https://bg.wikipedia.org/wiki/%D0%91%D1%83%D1%80%D0%B3%D0%B0%D1%81>

ORGANISATION

The Bulgarian Center for Not-for-Profit Law (BCNL)

was founded in 2001 as public-benefit foundation. Its mission is providing support for the drafting and implementation of legislation and policies with the aim to advance the civil society, civil participation and good governance in Bulgaria.

The numerous attacks on LGBT organisations, activists and mere members or perceived members of the LGBT community in Bulgaria 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 were the far-right parties that supported the attacks and actively participated in some of them.²¹

THE REGULATORY ENVIRONMENT FOR AND IMPLEMENTATION OF CIVIC FREEDOMS OF ASSOCIATION, ASSEMBLY, EXPRESSION AND PRIVACY ONLINE AND OFFLINE

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 of the administration (previously the court) to refuse registration based on the goals and means of archiving those goals. The law is in general applied as intended and, thus, it guarantees freedom of association.

²¹ <https://www.monitor.bg/bg/a/view/vmro-iska-anti-gej-merki-i-trudovo-obuchenie-za-ne-gromotni-275482>

The main exception of this trend is the case of UMO Ilinden²² and similar, which were 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 ECtHR in the past 20 years which ruled that Bulgaria violates freedom of association in those cases, the Bulgarian judicial authorities and Government at large are constantly refusing to comply with the ECtHR decisions, Bulgarian laws, Constitution 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 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 for the issue to be resolved.²³

²² <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>

²³ https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a29ae6

THE EMERGENCE 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 AND ACTIVISTS

Although the Bulgarian legal framework regulating the freedom of association and the NGOs is compliant with the applicable standards, there were several attempts to adopt restrictive new rules in 2020. As an example, in July 2020, just two weeks after the ECJ announced that the Hungarian Transparency Act is discriminatory, a Bill to amend the Non-Profit Legal Entities Act (the Bill) was filed in the Bulgarian National Assembly, containing proposals similar to the Hungarian law. These measures included an obligation to report all income from foreign sources (foreign states, individuals, or companies) above 1000 BGN (500 EUR), the creation of a register of non-profit legal entities financed from abroad (intended to serve as a *blacklist*) and other restrictions and disproportionate administrative duties.²⁴ None of these restrictive bills were passed nor properly discussed during a public consultation procedure. Nevertheless, they served as an intimidation of the NGOs and consumed time and resources of watchdog organisations that had to oppose the bills at the earliest possible stage of the legislative procedure.

THE IMPACT OF THE COVID-19 PANDEMIC

As nearly every sphere of life, the work and operation of CSOs were also affected by the anti-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, Bulgaria is under emergency epidemic state and the Minister of Health issues ordinances regulating different restrictions on uneven time intervals and with no prior official and opened public consultations. Although during the pandemic some administrative deadlines (e.g. the deadline

²⁴ <http://bcnl.org/en/news/a-dangerous-attack-against-independent-civil-society-in-bulgaria.html>

for filing an annual financial report in the respective administration) were postponed for all legal entities, including the NGOs, the authorities failed to adopt any specific measures that would ensure the 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 that, up to date, there is still a legal uncertainty whether or not a meeting of a general assembly of an association, for example, in which some or all members are participating via online communication means, is legal or not. The question is of great concern since the collective supreme bodies of the NGOs have the obligation to approve certain documents (e.g. the annual narrative and financial reports) which need to be made publicly available and filed with the respective administration. Since the 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 was 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.²⁵ After a public outcry, the charges were dropped, and no similar cases of breaches of the freedom of expression

were observed. There were no restrictions on access to the internet or similar forms of censorship during the pandemic. Freedom of assembly, and freedom to protest in particular, was generally unaffected by the COVID-19 restrictions. Many protests took place in 2020 – 2021, none of which were dispersed due to anti-pandemic restrictions. Despite this, there were multiple cases of infringement of the right to protest during a nearly four months continuous anti-government protest in Sofia during the summer of 2020.²⁶ 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 were 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, the financial sustainability of the Bulgarian CSOs remained unchanged compared to 2019.²⁷ 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. particular 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 Euro). 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 consultations.

The Government implemented different support schemes, and, in principle, NGOs were covered by some of the 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, NGOs are not mentioned in any of the Bulgarian Recovery and Resilience Plan drafts, which will ensure sizable funding from the EU.²⁸

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

THE RIGHT TO PARTICIPATION AND DIALOGUE BETWEEN THE CIVIC SECTOR AND GOVERNING BODIES

The 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

²⁵ https://www.capital.bg/politika_i_ikonika/zdraveopazvane/2020/04/13/4054000_farmaceutite_protestiraha_sreshthu_absurdno_obvine/7fbclid=IwAR3sAExE5BRonQoqoW-VxRT81eOpU_5El9e12bgF4wEwJHOesZdOJ5hE61w

²⁶ <https://civicspacewatch.eu/bulgaria-protests-continue-peacefully-after-tension-escalated-in-sofia-on-the-second-of-september/>

²⁷ <https://bit.ly/35QxaOK>

²⁸ https://ec.europa.eu/info/strategy/recovery-plan-europe_en

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 was never created, although the respective legislation has been in force since 2018. Another example is the procedure for elections for new NGO members of the National Council for Equality Between Men and Women.²⁹ The elections process for this Council was successfully concluded in July 2021, but the elected NGOs have not been formally included in the Council.

Some councils, such as the Economic and Social Council,³⁰ are granted significant state funding; however, it is unclear if they serve the intended purpose since it is nearly impossible to find mention of their work or media presence of their representatives.

CIVIL SOCIETY'S RESPONSES TO CHALLENGES TO DEMOCRACY, THE RULE OF LAW AND FUNDAMENTAL RIGHTS

In 2021, a Bulgarian was elected³¹ as one of the four new members of the quota of civil society organisations in the Steering Committee of the Open Government Partnership.³² Bulgaria is currently implementing 37 commitments from their 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.

²⁹ https://www.mlsp.government.bg/novini-11?fbclid=IwAR1_PdVbov-yc74YmwhoqZ-SS9X9KCvAzpkrurtwmsStqRwGQJpCUnni82c

³⁰ <https://esc.bg/>

³¹ <http://bcnl.org/en/news/luben-panov-and-douglas-rutzen-are-elected-as-members-of-the-open-government-partnership-initiatives-steering-committee.html>

³² <https://www.opengovpartnership.org/about/who-we-are/steering-committee/2021-civil-society-steering-committee-selection/>

In recent years a couple of grassroots organisations, such as BOEC³³ and the Justice for Everyone Initiative,³⁴ have become increasingly active and vocal on issues of the rule of law in Bulgaria. Those organisations are actively 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.³⁵ The Venice Commission frequently criticises Bulgaria concerning the judiciary and, especially, the prosecution. The Bulgarian prosecution is structured in a strict hierarchy.³⁶

IN RECENT YEARS A COUPLE OF GRASSROOT ORGANISATIONS HAVE BECOME INCREASINGLY ACTIVE AND VOCAL ON ISSUES OF THE RULE OF LAW IN BULGARIA.

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

RECOMMENDATIONS

Political landscape and safe space: Authorities should refrain from smear campaigns and hate speech and condemn any act motivated by hate or propagating

hate. The Bulgarian Penal Code should be amended in order to criminalise hate crimes.³⁷ 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 speech by Members of the Parliament and for the European parliamentary groups to condemn such speech 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 and serve as a basis for a reform in the police structures 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)³⁸ of the Human Rights Committee need to be applied.

³³ <https://www.boec-bg.com/>

³⁴ <https://pravosadiezvseki.com/>

³⁵ <https://bntnews.bg/news/protest-pred-vss-iskane-za-ostavkata-na-ivan-geshev-1163175news.html>

³⁶ <https://balkaninsight.com/2020/11/23/venice-commission-criticizes-bulgarias-rush-to-change-constitution/>

³⁷ <https://bilitis.org/2021/02/22/kriminalizirane-na-prestapleniyata-ot-omraza-v-balgariya/>

³⁸ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f37&Lang=en

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 participation of members of the supreme collective bodies of NGOs. This could be achieved either by passing the bill of amendments already filed in the Parliament or by adopting internal policies of the administrative bodies concerned for them 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 need to guide and insist on the inclusion of NGOs in the Member state’s Recovery and Resilience Plans.

The right to participation and dialogue

The Bulgarian Council of Ministers should comply with the law and establish the 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. ■

The NGO Deystvie operates a legal defence programme providing support to LGBTI couples in Bulgaria. The award recognises the tireless commitment of Denitsa Lyubenova and Deystvie to LGBTI rights in the context of a complex cross-border family case and a hostile environment for the LGBTI community in Bulgaria. Baby Sara's mothers came to Deystvie for help as their child born to British and Bulgarian mothers in Spain is at risk of statelessness. Sara's story brings to light the outstanding work of lawyer Denitsa Lyubenova and the NGO Deystvie in their dedication to improve the rights of LGBTI people in Bulgaria. Following the refusal of the Bulgarian authorities to recognise baby Sara's Spanish birth certificate recording both her mothers' names, Lyubenova has taken the case to the Court of Justice of the European Union (ECJ). In December 2021, a landmark judgement paved the way for other EU member states, as the ECJ has ruled that a child and its same-sex parents must be recognised as a family, therefore, the child should be issued a Bulgarian passport, and the family should have free movement in all Member States of the European Union".¹

¹ Top EU Court Recognises Relationship of Same-sex Parents and their Children Under EU Law | ILGA-Europe

SAME-SEX FAMILIES ARE EUROPEAN FAMILIES

Baby Sara's case sets a crucial precedent for the EU

Interview with Denitsa Lyubenova, lawyer, Deystvie

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What are the goals and types of actions of Deystvie?

In Bulgarian, Deystvie means “action”. We started our work as an informal group of friends in 2010. The organisation was founded officially in 2012, and in 2014 organisation’s Legal Program was created. The legal program is really at the heart of the organisation now. Since 2014, we provide pro bono legal services and engage in strategic litigation. Our long-term goal is to change the Bulgarian legislation in three main areas: First, we want to achieve recognition for same-sex partnerships and/or marriage equality for LGBT+ couples. Then, we are working towards changing the criminal code so that it recognises hate crime against LGBT+ people. Finally, we want the state to put in place a procedure for legal gender recognition.



We also organise many community and human rights events. For instance, we co-organised Sofia Pride and organise the Sofia Pride Film fest, an annual film festival. We also publish books to facilitate our legal program and stories to show people who might become victims of discrimination what their rights are. We want to raise awareness about their rights and empower them to speak up if they are violated. Then, our role is also to defend their rights with legal consultation and representation before courts.

Could you give us an overview of the legislative and political landscape in regards to LGBT+ rights in Bulgaria?

The key issues of the Bulgarian legislation are the ones I mentioned above. As a post-communist country, Bulgaria has a

very patriarchal and chauvinistic society. There is a lot of domestic violence and phobia not only against LGBT+ people but also against Roma, refugees, Jews... against everyone who differs from the norm as understood by the general public. In the past 10 years, the work on LGBT+ rights has been difficult. At the same time, we saw a lot of improvements and acceptance both in society and at the administration level. Nevertheless, this year especially around our Pride events, many attacks took place against LGBT+ people. Neo-Nazi groups

WE SAW A LOT OF IMPROVEMENTS AND ACCEPTANCE BOTH IN SOCIETY AND AT THE ADMINISTRATION LEVEL

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surrounded us, and we had to pay additional private security to do extra checks and protect each event. One of the events was especially terrifying for me. We had organised a movie night during Sofia Pride film fest where around 150 LGBT+ people gathered to watch a movie. During this occasion, we found ourselves surrounded by between 200 and 300 violent hooligans. They were screaming during the whole event, holding hands around us to create human chains to trap and threaten us. This year, it was extremely challenging for me to stay in the public eye around Pride events. However, we should not let fear prevail! We are on the right side of history, and we do our job with all the love we are capable of.

Have there been being physical injuries as a result of these attacks around pride events?

Yes, there were several. During one of our events, we were raided by a far-right group and our chairperson was attacked; she was pushed, and they tried to take her out. The police took measures to take these people outside of the venue. In May 2021, we co-organised a Pride event in Burgas, the first-ever Pride outside of Sofia. The people who gathered around this event were very violent; they were throwing stones, glass bottles, and a type of Molotov cocktail. We were evacuated, and we personally paid for taxis in order to escape the place. This is one of the events where the police did not take



enough measures to secure people's lives and health. They were expecting this kind of attack, but they were unprepared. Otherwise, during the Sofia Pride, the police forces took all the necessary protective measures. We have a good and close cooperation with the police in Sofia. We work very closely together to prepare our events beforehand. We always have a contact person present on the day responsible for the security during the event itself. However, in smaller cities outside of the capital of Bulgaria, the situation is different. We need to work more closely with these police officers.

We often receive reports from people who suffered violent attacks. The striking thing is that these attacks started happening during the day as well. This is another crucial area of work for our organisation: we are very proud that since 2019, we have trained between 100 and 200 police officers on how to tackle hate crimes and help LGBT+ communities.

Let's take a step back: when did these attacks start happening?

I will start with a small retrospective. Before the elections in April 2021, our government was composed of a centre-right political party in a coalition with a far-right political party. For almost 12

years, it was a difficult political context to operate in. In 2017 and 2018, a big debate in Bulgaria took place regarding the ratification of the Istanbul convention. This is where the term "gender ideology" was invented. There was a serious backlash from politicians, the Bulgarian Church, the media, and the general public against the Istanbul Convention, and LGBT+ people were targeted as scapegoats. This was when several negative developments started happening to the LGBT+ community in the country: violent attacks against LGBT+ people started raising, Courts, including the Constitutional court, started targeting trans people and

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refusing changes in the legal gender of trans people – it is shameful for the courts in Bulgaria. In 2018, the Constitutional Court of Bulgaria ruled that the Istanbul Convention is against the Bulgarian Constitution; hence, we could not ratify it. In early 2019 an official complaint was filed at the prosecution office against the LGBT NGO Deystvie by the leader of Revival Political Party – a far-right political group, with the Prosecutor’s Office. The group is not seated in the Parliament. However, the party has members in the Municipal councils in several cities across the country. Revival filed the complaint together with an Evangelistic NGO National Group – Parents United for Children” – ROD (“Национална група – Родители обединени за децата” – РОД) alleging a crime under Article 108 of the Bulgarian Penal Code:

“A person who preaches fascist or another anti-democratic ideology or forceful change of the social and state order as established by the Constitution of the Republic of Bulgaria, shall be punished by imprisonment for up to three years or a fine of up to BGN 5,000 (2,500 thousand euro)”.

This criminal investigation should be understood as a manifestation of shrinking space for human rights’ defenders, especially LGBT+ rights’ defenders, who were and still are being subjected to severe pressure. It also needs to be contextualised in the democracy backsliding and violations of human rights in the country. This landscape, together with the lack of legislation protecting LGBT+ people and lack of recognition of rights, created the fear of insecurity in us. Our main fear was that if the Prosecutor’s Office decided to open a prosecutorial investigation, our bank accounts would be immediately blocked, and people in charge of the organisation would be arrested. Fortunately, the Prosecution office decided not to open an investigation against Deystvie. Now, the situation has changed, and none of the far-right political parties is

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represented in Parliament. We are very happy because we did a lot of campaigns to achieve this result.

Did you experience disinformation or smear campaigns against LGBT+ people and organisations from the media or the government coalition? And how do you respond to this challenge?

We learned that we need to build strong civil society coalitions because the organisers of these anti-human rights campaigns, such as the ones against the adoption of a more liberal Family Code, the ratification of the Istanbul Convention and the Strategy of Children in Bulgaria, are loud and interconnected. “Agenda Europe” is a pan-European, Christian-extremist network committed to the “*restoration of natural order*”.¹ Agenda Europe members are the ones who wrote and promoted the draft laws on restricting abortion in Spain (2014) and complete ban on abortion in Poland (2016). They started the European Citizens’ Initiative “One of Us” asking the Commission to halt all EU funding that involved the “*destruction of the human embryo*”.² They also started the European Citizens Initiative “*Mum, Dad and Kids*” – a legislative effort to protect marriage and family, by defining marriage as “*a permanent and*

¹ <https://www.gwi-boell.de/en/2019/04/29/agenda-europe-extremist-christian-network-heart-europe>
² https://europa.eu/citizens-initiative/initiatives/details/2012/000005_en

faithful union of man and woman with the purpose of founding a family”.³

You were nominated for your legal work on baby Sara’s case, which reached the CJEU. Can you tell us more about this case and why it is so special?

Sara was born in December 2019 in a family of two women: a Bulgarian woman and a woman born in Gibraltar but whose descendant were from the United Kingdom. When the child was born, they realised that Sara could not gain Spanish citizenship because neither was a Spanish citizen. Therefore, they requested the UK to issue a birth certificate and passport. Indeed, they thought that the ancestry of one of them made Sarah eligible for a UK citizenship. However, the UK passport office stated in an official paper that since the mother was a UK citizen by descent, she could not transfer the UK citizenship to her child. The only possibility left for the couple was to request a Bulgarian birth certificate to get Bulgarian citizenship. The Bulgarian mother returned to Bulgaria and contacted us to provide legal support. She brought the Spanish birth certificate, on which both mothers were recognised as parents. In the process of getting the Bulgarian birth certificate of the child, she was asked to provide information on who the biological mother of the child was. We refused to give this information because we consider that it was a personal information that was not necessary for administrative bodies to have. Additionally, we consider this practice discriminatory because none of the heterosexual couples returning to Bulgaria with a birth certificate of their child issued from a European Union member state is asked to prove the biological connection with the child. The birth certificate issued from another EU member state should be considered proof of this connection. As we refused to give

³ https://europa.eu/citizens-initiative/initiatives/details/2015/000006_en



will become a priority for the European Commission and the Parliament. Additionally, the decisions of the Court of Justice are mandatory for all member states. Therefore, if the Court of Justice decision is positive for this case, other EU member states will be obliged to apply this decision. If they do not comply or are too slow, the European Commission can start infringement procedures against those countries. Once the decision is published, we will have to push countries to change their law and to grant recognition to LGBT+ families.

What are your thoughts on the first LGBTI strategy? Do see any new opportunities for support for civil society?

First of all, I think it is a very important position on behalf of the European Union. It is very meaningful for the advancement of LGBT+ rights in the EU. It is important and needed in the current context across Europe, and especially in Hungary and Poland. I think that a lot more can be achieved and a lot more can be done to achieve it. We understand how politics work and how the European Union functions, however we hope that human rights will be a priority for the EU. It is crucial that people understand that the rule of law and democracy cannot exist without human rights.

What else could the EU do to support LGBT+ organisations in their work and in facing the challenges you described in Bulgaria?

We need more action instead of words from the EU. We need the EU to understand that threats will not stop countries like Bulgaria, Romania, Poland, Hungary. The EU should be more courageous to use infringement proceedings or stop specific funding for the Governments that abuse democracy.

We cooperate a lot and with different organisations, mainly in the field of

58 this information, the municipality refused to issue the child's birth certificate. We appealed this decision, and the case reached the administrative Court in Sofia. On the basis of our findings, the court decided that this case concerns pieces of European law that are not clear enough. Hence, the administrative Court of Sophia decided to send the so-called preliminary ruling request to the Court of Justice of the European Union. We had our court hearing in Luxembourg on February 2021 and we are waiting for the court's decision. This court case is of great importance for the development of EU law.

same-sex couples who are in cross-border relationships. This means that when travelling or coming back to their country of origin, their rights as partners and spouses are not guaranteed, nor are the rights of their children born in same-sex relationships. The uncertainty in same-sex relationships extends to their children. This situation creates a multiplicity of insecurities related to their economic situations, inheritance rights, access to healthcare, and education. This is a grey area at the moment, and it should be discussed and decided at the European level. I hope it

What would be the impact of the ruling in case of a favourable outcome both in Bulgaria and at EU level?⁴

In the EU and in many member states, there are no standards that secure the rights of same-sex couples, especially

⁴ It should be known that the decision was rendered months after the interview took place, therefore the answer to the question should be considered in light of this and of the fact that the decision was favourable.

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LGBTIQ rights and mainly with umbrella organisations such as ILGA Europe, ILGA World, NELFA (the network of European LGBTI families) TGEU (the transgender Europe), the intersects organisation, the European lesbian conference. We are all fighting and trying to make our voices heard at the European level, and I think we succeed when we work together. ■

The interview was carried out on 28 July 2021