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## OPINION ON THE ACT AMENDING AND SUPPLEMENTING THE PRESCHOOL AND SCHOOL EDUCATION ACT OF BULGARIA

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### BULGARIA

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Based on an unofficial translation of the Act provided by the requesting body.

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## EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

The Act Amending and Supplementing the Preschool and School Education Act of Bulgaria (hereinafter “the Act”) adopted in August 2024 introduced a new prohibition of “*propaganda, promotion or incitement (...) of ideas and views*” in the system of pre-school and school education related to so-called “non-traditional” sexual orientation or the definition of gender identity that does not align with biological sex. According to the lawmakers, these changes are purportedly aimed at protecting children and reinforcing traditional family values.

The Opinion concludes that the new provisions unduly impact the exercise of several fundamental rights, including the rights to freedom of expression and access to information, to education, and to equality and non-discrimination. The bans introduced by the Act fail to meet the three-part test under international human rights law – legality, legitimacy, and necessity in a democratic society – and are inherently discriminatory.

The terms used in the Act – such as “propaganda”, “promotion,” and “incitement” – are vague, undefined, and overly broad, creating significant legal uncertainty and stigmatization. The inclusion of qualifiers like “in any way, directly or indirectly” exacerbates the ambiguity, opening the door to diverging interpretation and arbitrary enforcement. Such vague language does not meet the standard of foreseeability required under international law.

The stated justifications – such as protecting children, upholding traditional family values or reflecting the values of the majority of the population – are either not supported by evidence-based assessment or objective data, or do not constitute “legitimate aims” according to international instruments and international and regional caselaw. The legal drafters also invoked the need to preserve “public morality”. In this respect, the Grand Chamber of the European Court of Human Rights, in the case *Macaté v. Lithuania*, expressly held that “*legislative ban on ‘promotion of homosexuality or non-traditional sexual relations’ among minors does not serve to advance the legitimate aims of protection of morals, health or the rights of others, and that by adopting such laws the authorities reinforce stigma and prejudice and encourage homophobia, which is incompatible with the notions of equality, pluralism and tolerance inherent in a democratic society*”.

The Act under review makes no attempt to take into account the age and evolving capacities of children and adolescents throughout their schooling. Moreover, the Act fails to distinguish between genuinely harmful material, and information, including the essential information related to physical and mental health, which may fall within the scope of protection of Article 10 of the European Convention on Human Rights (ECHR) and Article 19 of the International Covenant on Civil and Political Rights (ICCPR), among other guarantees. This is far more restrictive than necessary to achieve any stated aim and fails to explore less intrusive alternatives, such as providing balanced, age-appropriate sexuality education.

The Act’s restrictions on discussing sexual orientation and gender identity in the education system foster an environment of discrimination, particularly against

students and teachers, who are, perceived to be, or self-identify as Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI), which is incompatible with the notions of equality, pluralism and tolerance inherent in a democratic society. Such bans reinforce stigma and entrench harmful stereotypes and prejudice against LGBTI people, contributing to marginalization and exclusion, and increasing the risks of violence against LGBTI persons, especially children and adolescents with diverse sexual orientations or gender identities. Ultimately, the Act may further create a chilling effect on teachers and educators, discouraging open and inclusive discussions that are essential for fostering a safe, tolerant, and diverse learning environment.

In sum, **the ban on the “promotion”, “propaganda” or “incitement” of ideas and views related to so-called “non-traditional” sexual orientation or gender identity fails to meet the strict criteria required under international human rights law for restricting fundamental rights and freedoms.** The amendment lacks legal clarity, does not serve to advance the legitimate aims of protection of morals, health or the rights of others and is not supported by objective evidence, and imposes sweeping, disproportionate, and discriminatory limitations on the rights to freedom of expression, access to information, and education. By explicitly targeting LGBTI identities, the Act institutionalizes unequal treatment and reinforces harmful stereotypes, in direct contradiction with Bulgaria’s international and regional anti-discrimination obligations. As such, **such a ban results in discriminatory and disproportionate interference with protected rights and must be repealed in its entirety.** Instead, Bulgaria should ensure that education is delivered in an inclusive and non-discriminatory manner, with age-appropriate, pluralistic content that respects the evolving capacities of children and adolescents and promotes tolerance, equality, diversity, and respect for human rights in school curricula and environments.

***As part of its mandate to assist OSCE participating States in implementing their OSCE human dimension commitments, ODIHR reviews, upon request, draft and existing laws to assess their compliance with international human rights standards and OSCE commitments and provides concrete recommendations for improvement.***

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## I. INTRODUCTION

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1. On 18 December 2024, the Secretary General of the Ombudsman of the Republic of Bulgaria sent to the OSCE Office for Democratic Institutions and Human Rights (hereinafter “ODIHR”) a request for a legal review of two laws, including the Act Amending and Supplementing the Preschool and School Education Act (hereinafter “the Act”), which was passed by the Bulgarian Parliament on 7 August 2024.
2. On 20 December 2024, ODIHR responded to this request, confirming the Office’s readiness to prepare a legal opinion on the Act to assess its compliance with international human rights standards and OSCE human dimension commitments.
3. This Opinion was prepared in response to the above request. ODIHR conducted this assessment within its general mandate to assist OSCE participating States in the implementation of their OSCE human dimension commitments, especially those on tolerance and non-discrimination.<sup>1</sup>

## II. SCOPE OF THE FINAL OPINION

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4. The scope of this Opinion covers the new provisions introduced by the Act submitted for review.<sup>2</sup> Thus limited, the Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework governing the right to education and the protection against discrimination.
5. The Opinion raises key issues and highlights areas of concern and is based on international and regional human rights and rule of law standards, norms and recommendations, as well as relevant OSCE human dimension commitments. Reference is also made to the relevant findings and recommendations from previous ODIHR legal opinions.
6. When referring to national legislation, ODIHR does not advocate for any specific country model but rather focuses on providing clear information about applicable international standards while illustrating how they are implemented in practice in certain national laws. Any country example should be approached with caution since it cannot necessarily be replicated in another country and has always to be considered in light of the broader national institutional and legal framework, as well as country context and political culture.

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1 See, in particular, Vienna 1989 (Co-operation in Humanitarian and Other Fields), para. 63, which provides that “[The participating States] will ensure access by all to the various types and levels of education without discrimination as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”; see also Maastricht 2003 ([Decision No. 4/03 on Tolerance and Non-discrimination](#)); Ljubljana 2005, especially [Decision No. 10/05 on Tolerance and Non-Discriminations: Promoting Mutual Respect and Understanding](#) and [Decision No. 11/05 on Promoting of Human Rights Education and Training in the OSCE Area](#)) (2010). [Decision No. 13/06 on Combating Intolerance and Discrimination and Promoting Mutual Respect and Understanding](#).

2 Prior to the entry into force of the new Act, Article 11 (2) of the Preschool and School Education Act used to provide that “[i]n the system of preschool and school education, the imposition of ideological and/or religious doctrines is not allowed and the implementation of political and party activities is prohibited”. The new provisions introduced by the new Act aim to add a new prohibition with respect to the “[p]ropaganda, promotion or incitement in any way, directly or indirectly, of ideas and views related to non-traditional sexual orientation and/or the definition of gender identity other than the biological”.

7. Moreover, in accordance with the Convention on the Elimination of All Forms of Discrimination against Women<sup>3</sup> (hereinafter “CEDAW”) and the 2004 OSCE Action Plan for the Promotion of Gender Equality<sup>4</sup> and commitments to mainstream gender into OSCE activities, programmes and projects, the Opinion integrates, as appropriate, a gender and diversity perspective.
8. In view of the above, ODIHR stresses that this review does not prevent ODIHR from formulating additional written or oral recommendations or comments on respective subject matters in Bulgaria in the future.

### III. LEGAL ANALYSIS AND RECOMMENDATIONS

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#### 1. RELEVANT INTERNATIONAL HUMAN RIGHTS STANDARDS AND OSCE HUMAN DIMENSION COMMITMENTS

9. The subject-matters under review touch upon several fundamental rights, including the rights to education, freedom of expression, and to receive and impart information, as well as the right to protection against discrimination on any ground, including sexual orientation and gender identity.

##### 1.1. Right to Education

10. The right to education is a fundamental human right enshrined in several United Nations (UN) international treaties, Council of Europe (CoE) instruments and the European Union (EU) Charter of Fundamental Rights.
11. At the UN level, the right to education is primarily recognized in Article 26 of the Universal Declaration of Human Rights (UDHR), which establishes free and compulsory elementary education.<sup>5</sup> This right is further elaborated in Articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which obligate states to ensure accessible education at all levels, progressively introduce free secondary and higher education, and make primary education compulsory and available to all.<sup>6</sup> While the International Covenant on Civil and Political Rights (ICCPR) does not explicitly establish a standalone right to education like the ICESCR, Article 18 (4) directly addresses education by stating that states must respect the liberty of parents and legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.<sup>7</sup>
12. Additionally, Articles 28 and 29 of the Convention on the Rights of the Child (CRC) reinforces the right to education, emphasizing equal access, discipline consistent with children’s dignity, and education directed towards the development of personality,

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3 See [UN Convention on the Elimination of All Forms of Discrimination against Women](#) (hereinafter “CEDAW”), adopted by General Assembly resolution 34/180 on 18 December 1979. Bulgaria deposited its instrument of ratification of this Convention on 8 February 1982.

4 See [OSCE Action Plan for the Promotion of Gender Equality, adopted by Decision No. 14/04, MC.DEC/14/04](#) (2004), para. 32.

5 See [Universal Declaration on Human Rights](#) (UDHR), adopted by General Assembly resolution 217 A on 10 December 1948.

6 See UN [International Covenant on Economic, Social and Cultural Rights](#) (ICESCR), adopted by UN General Assembly Resolution 2200A (XXI) on 16 December 1966. Bulgaria ratified the ICESCR on 21 September 1970.

7 See [International Covenant on Civil and Political Rights](#) (ICCPR), adopted by UN General Assembly Resolution 2200A (XXI) on 16 December 1966. Bulgaria acceded to the ICCPR on 3 May 1994.

talents, and respect for human rights.<sup>8</sup> Article 10 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and Article 24 of the Convention on the Rights of Persons with Disabilities (CRPD) further strengthen obligations to ensure non-discriminatory access to education for women, girls, and persons with disabilities.<sup>9</sup>

13. General Comment No. 13 (1999) to the ICESCR highlights the core elements of the right to education: (1) Availability, meaning that sufficient educational institutions and materials must be provided; (2) Accessibility, ensuring that education is accessible to all without discrimination, including physical, economic, and social barriers; (3) Acceptability, requiring education to meet quality standards and be culturally appropriate; and (4) Adaptability, emphasizing flexibility to meet the diverse needs of learners.<sup>10</sup> The General Comment also affirms the role of parents in choosing their children's education, including in private or religious schools, and stresses the importance of academic freedom and institutional autonomy in higher education. Moreover, education is seen as not only a right in itself but also as an indispensable means to realize other human rights and essential for promoting human dignity, social justice, and the empowerment of individuals, while fostering tolerance, gender equality, and democratic principles.
14. Separately, the CoE has reinforced the right to education through instruments such as Protocol No. 1 to the European Convention on Human Rights (ECHR).<sup>11</sup> Article 2 guarantees that no person shall be denied the right to education and emphasizes parental rights in choosing education aligned with their religious and philosophical beliefs. Moreover, Articles 17 and Article 10 of the European Social Charter affirm states' commitments to ensure free and compulsory primary education, promote vocational training, and prevent discrimination in educational access.<sup>12</sup> The right to education is also guaranteed under Article 14 of the EU Charter of Fundamental Rights.<sup>13</sup>

## 1.2. Right to Freedom of Expression and to Receive and Impart Information

15. The right to education is also interlinked with the right to freedom of expression and to receive and impart information. The right to freedom of opinion and expression is

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8 See UN [Convention of the Rights of the Child](#) (CRC), adopted by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990. Bulgaria ratified the CRC on 3 June 1991.

9 See [Convention on the Rights of Persons with Disabilities](#) (CRPD), adopted by General Assembly resolution 61/106 of 13 December 2006. Bulgaria ratified the CRPD on 22 March 2012.

10 See Committee on Economic, Social and Cultural Rights (CESCR), [General Comment No. 13](#): The right to education (article 13) (1999).

11 See the Council of Europe's [Convention for the Protection of Human Rights and Fundamental Freedoms](#) (ECHR), signed on 4 November 1950, entered into force on 3 September 1953; and [Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms](#), which entered into force on 20 March 1952. Bulgaria ratified the ECHR and Protocol 1 on 7 September 1992.

12 The [European Social Charter](#) is an integrated set of international standards concerning social rights and a mechanism for monitoring their implementation within the States concerned.

13 See [Charter of Fundamental Rights of the European Union](#) (EU), OJ C 326, 26 October 2012. Article 51(1) limits the applicability the Charter to situations where member states are implementing Union law. "They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties."

enshrined in Article 19 of the UDHR<sup>14</sup> and is guaranteed by Article 19 of the ICCPR,<sup>15</sup> Article 10 of the ECHR<sup>16</sup> and Article 11 of the EU Charter of Fundamental Rights.<sup>17</sup>

16. The jurisprudence of the UN Human Rights Committee (UN HRC) as well as its General Comment No. 34 on Article 19 of the ICCPR also offer authoritative interpretation of the nature and scope of the right to freedom of expression and access to information.<sup>18</sup> In addition, the Committee on the Rights of the Child, reaffirmed the importance of access to information in General Comment No. 4 on adolescent health and development (2023).<sup>19</sup> It stated that “[a]dolescents have the right to access adequate information essential for their health and development and for their ability to participate meaningfully in society.” The Committee further emphasized that “it is the obligation of States parties to ensure that all adolescent girls and boys, both in and out of school, are provided with, and not denied, accurate and appropriate information on how to protect their health and development and practise healthy behaviours.”
17. At the CoE level, the European Court of Human Rights (ECtHR) case-law further serves as an important reference point, particularly for assessing the necessity and proportionality of restrictions to freedom of expression.
18. At the OSCE level, a number of commitments proclaim the right of everyone to freedom of expression and to receive and impart information, as well as the right of the media to collect, report and disseminate information, news and opinion, underlining the essential role of independent and pluralistic media.<sup>20</sup>

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14 See the [Universal Declaration on Human Rights](#) (UDHR), adopted by General Assembly resolution 217 A on 10 December 1948.

15 Article 19 of the ICCPR provides that “everyone shall have the right to hold opinions without interference” and that “everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” According to Article 19 (3) of the ICCPR: “The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.”

16 Article 10 of the ECHR provides that “1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

17 See the [Charter of Fundamental Rights of the European Union](#) (EU), OJ C 326, 26 October 2012.

18 See UN Human Rights Committee, [General Comment No. 34](#) on Article 19 of the ICCPR, CCPR/C/GC/34, para. 11, where the UN Human Rights Committee further elaborates that “[f]reedom of expression is a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights” and protects “even expression that may be regarded as deeply offensive, although such expression may be restricted in accordance with the provisions of article 19, paragraph 3 and article 20.”

19 See [CRC General Comment No. 4: Adolescent Health and Development in the Context of the Convention on the Rights of the Child](#), adopted at the Thirty-third Session of the Committee on the Rights of the Child, on 1 July 2003.

20 See in particular OSCE, [Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE](#) (the 1990 Copenhagen Document), which states that “[t]his right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards.” The OSCE participating States also reaffirmed “the right to freedom of expression, including the right to communication and the right of the media to collect, report and disseminate information, news and opinion” in OSCE, [Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE](#), (the 1991 Moscow Document). Moreover, in 1994, the OSCE participating States reaffirmed that “freedom of expression is a fundamental human right and a basic component of a democratic society” committing to “take as their guiding principle that they will safeguard this right” and emphasizing in this respect, that “independent and pluralistic media are essential to a free and open society and accountable systems of government”; see OSCE, [CSCE Budapest Document 1994, Towards a Genuine Partnership in a New Era](#) (Budapest, 21 December 1994), para. 36.

### 1.3. Right to Equality and Non-Discrimination

#### 1.3.1. At the Global Level

19. Alongside Articles 2 and 7 of the UDHR, a series of core UN human rights treaties explicitly uphold the principles and rights to equality and non-discrimination. Article 2 of the UDHR affirms that all individuals are entitled to the same rights and freedoms without distinction of any kind. Articles 2 of the ICCPR and of the ICESCR obligate States Parties to respect and to ensure to all individuals the rights recognized in the respective covenants, without discrimination on any ground. Article 26 of the ICCPR provides a standalone guarantee of equality before the law and non-discrimination. These provisions of the ICCPR and ICESCR, although not including an explicit prohibition of discrimination on the ground of “sexual orientation” or “gender identity” have been interpreted as being inclusive of the grounds of sexual orientation and gender identity.<sup>21</sup> The UN Human Rights Committee also clarified that differentiation in treatment will not constitute discrimination under Article 26 of the ICCPR “*if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.*”<sup>22</sup>
20. In addition, Article 1 of the CRC ensures that all rights within the Convention apply to every child without discrimination. General Comment No. 4 to the CRC also highlights that “*States parties have the obligation to ensure that all human beings below 18 enjoy all the rights set forth in the Convention without discrimination (art. 2), including with regard to ‘race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status’.* These grounds also cover adolescents’ sexual orientation and health status.”<sup>23</sup> General Comment No. 20 to the CRC further urges States “*to eliminate such practices, repeal all laws criminalizing or otherwise discriminating against individuals on the basis of their sexual orientation, gender identity or intersex status and adopt laws prohibiting discrimination on those grounds. States should also take effective action to protect all lesbian, gay, bisexual, transgender and intersex adolescents from all forms of violence, discrimination or bullying by raising public awareness and implementing safety and support measures.*”<sup>24</sup>
21. In addition, the UN Human Rights Council has also addressed LGBTI rights through resolutions that call for an end to violence, discrimination, and human rights violations based on sexual orientation and gender identity.<sup>25</sup>
22. Various human rights monitoring and treaty bodies have consistently urged States to repeal discriminatory laws and implement protections based on sexual orientation and gender identity.<sup>26</sup> In particular, in its General Comment No. 20, the UN Committee on the Rights of the Child has urged States Parties to “*repeal all laws criminalizing or*

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21 See UN Human Rights Committee, *G. v. Australia*, CCPR/C/119/D/2172/2012, para. 7.12. See also, *Toonen v. Australia*, CCPR/C/50/D/488/1992, para. 8.7; and UN HRC, *Young v Australia*, CCPR/C/78/D/941/2000, para. 10.4; and under the ICESCR, see Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights (Art. 2, par 2)*, UN Doc E/C.12/GC/20, 2009, para. 32. See also United Nations High Commissioner for Human Rights, *Discrimination and violence against individuals based on their sexual orientation and gender identity* (4 May 2015) UN Doc No. A/HRC/29/23, para. 79(c).

22 UN Human Rights Committee (HRC), CCPR *General Comment No. 18: Non-discrimination*, 10 November 1989, para. 13.

23 See Committee on the Rights of the Child, *General Comment No. 4 (2003): Adolescent Health and Development in the Context of the Convention on the Rights of the Child*, para. 2.

24 See Committee on the Rights of the Child, *General comment No. 20 (2016) on the implementation of the rights of the child during adolescence*, para. 34.

25 See UN Resolutions on sexual orientation, gender identity and sex characteristics. This includes Combatting discrimination, violence and harmful practices against intersex people (adopted 4 April 2024) - [A/HRC/RES/55/14](#) and Protection against violence and discrimination based on sexual orientation and gender identity (adopted 30 June 2016) - [A/HRC/RES/32/2](#).

26 See the *Report of the UN High Commissioner for Human Rights on discrimination and violence based on sexual orientation and gender identity (A/HRC/29/23)*, 2015, para. 79c.

otherwise discriminating against individuals on the basis of their sexual orientation, gender identity or intersex status and adopt laws prohibiting discrimination on those grounds”.<sup>27</sup> Furthermore, the Committee has recommended “effective action to protect all lesbian, gay, bisexual, transgender and intersex adolescents from all forms of violence, discrimination or bullying”.<sup>28</sup>

### 1.3.2. At the Council of Europe Level

23. At the CoE level, Article 14 of the ECHR prohibits discrimination on any ground in relation to the exercise of the ECHR rights. Article 1 of Protocol 12 to the ECHR – although neither signed nor ratified by Bulgaria, contains a general prohibition of discrimination in the enjoyment of any rights set forth by law.<sup>29</sup> While Article 14 of the ECHR lists only “sex” among the discriminatory grounds and not “gender identity” nor “sexual orientation”,<sup>30</sup> the case law of the ECtHR has clarified that the prohibition of discrimination also extends to “sexual orientation” and “gender identity”.<sup>31</sup> According to the ECtHR case law, a distinction of treatment in the enjoyment of a right does not violate Article 14 ECHR if it pursues a legitimate aim and if there is a reasonable relationship of proportionality between the means employed and the aim sought to be realized.<sup>32</sup> Moreover, the States Parties to the ECHR enjoy a margin of appreciation<sup>33</sup> in assessing whether and to what extent differences in otherwise similar situations justify a differential treatment.<sup>34</sup> However, where certain discrimination grounds are at stake, in particular gender identity or sexual orientation, the ECtHR has held that the state’s margin of

27 See the [CRC General comment No. 20 \(2016\) on the implementation of the rights of the child during adolescence](#), para. 34.

28 *Ibid.*

29 Article 14 of the ECHR – ratified by Bulgaria, stipulates that the “enjoyment of the rights and freedoms set forth in this Convention should be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”. Bulgaria has not signed nor ratified the [Protocol No. 12 to the ECHR](#), which contains general prohibition of discrimination in the enjoyment of any rights.

30 This is a direct consequence of the fact that the ECHR dates back from 1950 when “gender” was still not a legal concept, whereas Protocol 12 opted for replicating the ECHR list of discriminatory grounds because “such an inclusion was considered unnecessary from a legal point of view since the list of non-discrimination grounds is not exhaustive, and because inclusion of any particular additional ground might give rise to unwarranted a contrario interpretations as regards discrimination based on grounds not so included”. See Explanatory Report of Protocol 12, ECHR, para. 20 available at: <<https://rm.coe.int/09000016800cce48>>.

31 As underlined by the ECtHR in [Khamtokhu and Aksenchik v. Russia](#) [GC], nos. 60367/08 and 961/11, 24 January 2017, para. 61, “Article 14 prohibits differences based on an identifiable, objective or personal characteristic, or “status” by which individuals or groups are distinguishable from one another” (discrimination grounds), underlying that the list of discrimination grounds is “an illustrative and not exhaustive” (thus open) list and noting that the words “other status” have generally been given a wide meaning and their “interpretation has not been limited to characteristics which are personal in the sense that they are innate or inherent”. When it comes to discrimination on grounds of sex, the Court has repeatedly stated that the advancement of gender equality is today a major goal in the Member States of the Council of Europe ([Konstantin Markin v. Russia](#) [GC], no. 30078/06, 22 March 2012, para. 127) and that, in principle, “very weighty reasons” had to be put forward before such a difference in treatment could be regarded compatible with the Convention ([Abdulaziz, Cabales and Balkandali v. the United Kingdom](#), nos. 9214/80; 9473/81; 9474/81, 28 May 1985, para. 27; [Schuler-Zraggen v. Switzerland](#), no. 14518/89, 24 June 1993, para. 67, etc.). The ECtHR has held that “references to traditions, general assumptions or prevailing social attitudes in a particular country [were] insufficient justification for a difference in treatment on grounds of sex” ([Konstantin Markin v. Russia](#) [GC], no. 30078/06, 22 March 2012, para. 127). For example, States were prevented from imposing traditions that derive from the man’s primordial role and the woman’s secondary role in the family ([Ünal Tekeli v. Turkey](#), no. 29865/96, 16 November 2004, para. 63). The ECtHR also held that “[t]he reference to the traditional distribution of gender roles in society cannot justify the exclusion of men [...] from the entitlement to parental leave” and that “gender stereotypes, such as the perception of women as primary child-carers and men as primary breadwinners, cannot, by themselves, be considered to amount to sufficient justification for a difference in treatment, any more than similar stereotypes based on race, origin, colour or sexual orientation” ([Konstantin Markin v. Russia](#) [GC], no. 30078/06, 22 March 2012, para. 143). See also ECtHR, [Identoba and Others v. Georgia](#), no. 73235/12, para. 96

32 See e.g., ECtHR, [Vallianatos v. Greece](#) [GC], nos. 29381/09 and 32684/09, 7 November 2013, para. 76; and [Burden v. the United Kingdom](#) [GC], no. 13378/05, 29 April 2008, para. 60.

33 Margin of appreciation doctrine as developed by the ECtHR, see cases of the ECtHR, [Paksas v. Lithuania](#) [GC], no. 34932/04, 6 January 2011, concerning the right to vote and stand for elections, para. 96; [Vallianatos v. Greece](#) [GC], nos. 29381/09 and 32684/09, 7 November 2013, concerning discriminatory regulation of the partnership agreements for the same-sex and different-sex couples, para. 76, etc.

34 See cases of ECtHR, [Burden v. the United Kingdom](#) [GC], no. 13378/05, 29 April 2008, para. 60; [Schalk and Kopf v. Austria](#), no. 30141/04, 24 June 2010, para. 96; and [X and Others v. Austria](#) [GC], no. 19010/07, 19 February 2013, para. 98, etc.

- appreciation is restricted and “very weighty reasons” would have to be put forward to justify a difference of treatment based on such grounds.<sup>35</sup>
24. The Revised European Social Charter also codifies the non-discrimination principle.<sup>36</sup> The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention),<sup>37</sup> signed although not ratified by Bulgaria,<sup>38</sup> requires the implementation of the Convention to be secured without discrimination on any ground, explicitly referring to sexual orientation and gender identity.<sup>39</sup>
  25. In addition, the Committee of Ministers of the CoE, in its 2010 Recommendation on measures to combat discrimination on grounds of sexual orientation or gender identity, recommended that: “[t]aking into due account the over-riding interests of the child, appropriate measures should be taken to this effect at all levels to promote mutual tolerance and respect in schools, regardless of sexual orientation or gender identity. This should include providing objective information with respect to sexual orientation and gender identity, for instance in school curricula and educational materials, and providing pupils and students with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity. Furthermore, member states may design and implement school equality and safety policies and action plans and may ensure access to adequate anti-discrimination training or support and teaching aids. Such measures should take into account the rights of parents regarding education of their children”.<sup>40</sup>
  26. In Resolution 1948 (2013), the Parliamentary Assembly of the CoE (PACE) addressed the issue of legislative bans on so-called “LGBT propaganda”.<sup>41</sup> In addition, in Resolution 2417 (2022) on combating rising hate against LGBTI people in Europe, PACE urged Council of Europe member States with “anti-LGBTI-propaganda” laws to immediately repeal legislation preventing access to objective information on sexual orientation, gender identity, and sex characteristics, particularly for minors.<sup>42</sup> It also called on all CoE member States to provide children with non-stigmatizing, objective information on these topics. Additionally, PACE emphasized that combating hatred against LGBTI people requires societal changes, including addressing gender equality

35 In this regard, the Court has stated that “very weighty reasons” would have to be put forward before a difference of treatment based on sex could be regarded as compatible with the Convention ECtHR (*Emel Boyraz v. Turkey*, no. 61960/08, 2 December 2014, para. 51). Similarly, the ECtHR has established that “very weighty reasons” would have to be put forward to justify a difference of treatment based exclusively on sexual orientation (see e.g., ECtHR, *E.B. v. France* [GC], no. 43546/02, 22 January 2008, para. 91). In addition, in *AM and Others v. Russia*, the court noted the “absence of any demonstrably convincing and sufficient reasons for the difference in treatment” based on gender identity. In *Hamalainen v. Finland*, a case about discrimination against a trans woman, the court stated that “the Court has held repeatedly that differences based on gender or sexual orientation require particularly serious reasons by way of justification”.

36 See CoE, *European Social Charter (Revised)*, adopted in 1996, ratified by Bulgaria on 7 June 2000..

37 See CoE, *Convention on preventing and combating violence against women and domestic violence*, Istanbul, 11.V.2011. Bulgaria has signed the Istanbul Convention on 21 April 2016 but has not ratified it.

38 Though not legally binding on Bulgaria, in principle, pursuant to Article 18 of the Vienna Convention on the Law of Treaties (to which Bulgaria acceded on 21 April 1987), “a state is obliged to refrain from acts which would defeat the purpose of a treaty when [...] it has signed the treaty”. Hence, following the signature of the Convention on preventing and combating violence against women and domestic violence, Bulgaria should not be adopting legislation that would be in flagrant contradiction with the provisions of the Convention, thus defeating the very purpose of this Convention and being in violation of Article 18 of the Vienna Convention on the Law of Treaties. Article 14 (1) of the Istanbul Convention provides: “Parties shall take, where appropriate, the necessary steps to include teaching material on issues such as equality between women and men, non-stereotyped gender roles, mutual respect, non-violent conflict resolution in interpersonal relationships, gender-based violence against women and the right to personal integrity, adapted to the evolving capacity of learners, in formal curricula and at all levels of education”.

39 See CoE, *Convention on preventing and combating violence against women and domestic violence*, Istanbul, 11.V.2011. Bulgaria has signed the Istanbul Convention on 21 April 2016 but has not ratified it.

40 See *Appendix to Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity*, adopted by the Committee of Ministers on 31 March 2010 at the 1081st meeting of the Ministers’ Deputies, para.32.

41 See *PACE Resolution 1948 (2013) ‘Tackling discrimination on the grounds of sexual orientation and gender identity’*, 27 June 2013.

42 See *PACE Resolution 2417 (2022) ‘Combating rising hate against LGBTI people in Europe’*, 25 January 2022, para. 12.3.

and harmful masculinities, and urged member states to conduct public awareness campaigns to counter false narratives and promote LGBTI equality.<sup>43</sup> Similarly, in its Resolution 2097 (2016) on access to school and education for all children, PACE called on CoE member States to “*ensure access by lesbian, gay, bisexual, transgender and intersex children to quality education by promoting respect and inclusion of LGBTI persons and the dissemination of objective information about issues concerning sexual orientation and gender identity, and by introducing measures to address homophobic and transphobic bullying*”.<sup>44</sup>

27. With respect to “*bans on promotion of homosexuality or non-traditional sexual relations among minors*” specifically, in *Bayev and Others v. Russia*, the ECtHR noted that by adopting such a ban, the authorities reinforce stigma and encourage homophobia, which is incompatible with the notions of equality, pluralism and tolerance inherent in a democratic society.<sup>45</sup> The Court also noted that, as a result, “*the legislation states the inferiority of same-sex relationships compared with opposite-sex relationships*” and “*embodie[s] a predisposed bias on the part of the heterosexual majority against the homosexual minority*”, which without convincing and weighty reasons justifying the difference in treatment amounted to a violation of Article 14 of the ECHR in conjunction with Article 10.<sup>46</sup> Similarly, in *Macaté v. Lithuania*, the ECtHR found that “*where restrictions on children’s access to information about same-sex relationships are based solely on considerations of sexual orientation – that is to say, where there is no basis in any other respect to consider such information to be inappropriate or harmful to children’s growth and development – they do not pursue any aims that can be accepted as legitimate for the purposes of article 10(2) of the Convention and are therefore incompatible with Article 10*”.<sup>47</sup>
28. Key CoE institutions have also reaffirmed the prohibition of discrimination based on sexual orientation and gender identity, especially in legislative matters. Notably, the Recommendation CM/Rec(2010)5 urges Member States to “*ensure that legislative and other measures are adopted and effectively implemented to combat discrimination on grounds of sexual orientation or gender identity, to ensure respect for the human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them*.”<sup>48</sup> Similarly, the Parliamentary Assembly of the Council of Europe urges Member States to “*ensure that any new legal and policy instrument they adopt in the area of equality and non-discrimination explicitly includes sexual orientation and gender identity*.”<sup>49</sup>

### 1.3.3. At the European Union Level

29. As an EU member State, Bulgaria is also bound by the principle of non-discrimination, which is a fundamental principle of the EU, enshrined in the Treaty of the EU (TEU),<sup>50</sup> the Treaty on the Functioning of the EU (hereinafter “TFEU”),<sup>51</sup> and the Charter of

43 Ibid. para. 18.

44 See [PACE Resolution 2097 \(2016\) ‘Access to school and education for all children’](#), 29 January 2016, para. 4.

45 See ECtHR, *Bayev and Others v. Russia*, no. 67667/09, 20 June 2017, para. 83.

46 Ibid. paras. 90-91.

47 See ECtHR, *Macaté v. Lithuania* [GC], no. 61435/19, 23 January 2023, para. 216.

48 See the CoE Committee of Ministers, [Recommendation CM/Rec\(2010\)5](#) of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity, [Recommendation 2].

49 See the Parliamentary Assembly of the Council of Europe, Tackling discrimination on the grounds of sexual orientation and gender identity, [Resolution 1948 \(2013\)1](#).

50 See [Treaty of the European Union](#), consolidated version, published in *OJ* [abbreviation from the *Official Journal of the EC* (now of *EU*)] C 326, 26 October 2012, pp. 1–390.

51 [Treaty on the Functioning of the European Union](#), consolidated version, *OJ* C 202, 7.6.2016, pp. 1–388. Most notably, Article 8 of the TFEU states: “*In all its activities, the Union shall aim to eliminate inequalities, and to promote equality, between men and women.*”

Fundamental Rights of the EU (EU Charter).<sup>52</sup> Article 2 of the Treaty on European Union (TEU) provides that “[t]he Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”<sup>53</sup> Article 20 of the EU Charter guarantees that “[e]veryone is equal before the law”, while Article 21 provides that any discrimination based on any ground, including sex and sexual orientation, shall be prohibited.<sup>54</sup> Additionally, the Court of Justice of the European Union has interpreted the EU’s sex discrimination laws to encompass both gender reassignment and gender identity.<sup>55</sup> This is supplemented by the European Commission 2020-2025 LGBTIQ Equality Strategy, which focuses on protecting fundamental rights, promoting anti-discrimination measures, and ensuring that appropriate action is taken to ensure that existing EU laws are enforced.<sup>56</sup> Rather than directly condemning restrictive national laws, it focuses on the adoption of positive measures to foster equality and inclusion. As a result, the Strategy does not explicitly mention bans on so-called “LGBTI propaganda”. However, its overarching commitments provide a legal and political foundation for challenging such laws when they arise.<sup>57</sup>

#### 1.3.4. At the OSCE Level

30. Lastly, at the OSCE level, key commitments relating to tolerance and non-discrimination, prevention and protection against discrimination date back to the OSCE founding document, the Helsinki Declaration. Specifically, OSCE participating States committed to “respect human rights and fundamental freedoms (...) for all without distinction as to race, sex, language or religion”,<sup>58</sup> “colour [...], political or other opinion, national or social origin, property, birth or other status”, and agreed “that no individual exercising, expressing the intention to exercise or seeking to exercise these rights and freedoms or any member of his family, will as a consequence be discriminated against in any manner”,<sup>59</sup> while committing to ensure “equal protection of the law” and “equal and effective protection against discrimination on any ground”.<sup>60</sup>

52 [Charter of Fundamental Rights of the European Union](#), initially published in OJ C 364, 18.12.2000, pp. 1–22; binding after entry in force of the 2009 Lisbon Treaty in December 2009, especially Article 20 on Equality before the law and Article 21 (1) on Non-discrimination, which provides that “Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited”.

53 See the [Treaty on European Union](#).

54 Article 10 [TFEU](#) also requires that “In defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.” [Directive 2000/78](#) prohibits discrimination on a number of grounds, including sexual orientation, in the context of employment.

55 See CJEU, [P v. S and Cornwall County Council](#) [1996] 2 CMLR 247, para. 20; [Mousse Mousse, Case C-394/23](#) (CJEU, 9 January 2025), paras. 61 and 62. See also Judgment of the Court (Fourth Chamber) of 29 April 2015, [Case C-528/13 Léger](#) [ECLI:EU:C:2015:288](#).

56 See [Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions ‘Union of Equality: LGBTIQ Equality Strategy 2020-2025’](#) COM(2020) 698 final.

57 It must also be noted that the Council has not yet harmonized EU discrimination law in the field of education. As a result, while general protections against discrimination based on sexual orientation and gender reassignment exist, EU law does not mandate their inclusion as protected characteristics within educational contexts.

58 OSCE/CSCE, Questions Relating to Security in Europe: 1. (a) “Declaration on Principles Guiding Relations between Participating States – Principle VII”, Helsinki, 1975.

59 Questions Relating to Security in Europe: Principles, Vienna, 1989, paras. 13.7 and 13.8.

60 See [CSCE/OSCE, Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE](#) (1990 Copenhagen Document), para. 5.9; see also 1990 Copenhagen Document, paras. 25.3 and 25.4: “measures derogating from obligations will be limited to the extent strictly required by the exigencies of the situation” and “will not discriminate solely on the grounds of race, colour, sex, language, religion, social origin or of belonging to a minority”; and [OSCE Decision no. 10/05 Tolerance and Non-discrimination: Promoting Mutual Respect and Understanding, MC.DEC/10/05](#), adopted at the Ministerial Council in Ljubljana, 6 December 2005, paras. 4, 5 and 5.1; [OSCE Decision no. 13/06 Combating intolerance and Discrimination and Promoting Mutual Respect and Understanding, MC.DEC/13/06](#), adopted at the Ministerial Council in Brussels of 5 December 2006, paras. 2, 5, 6 and 10; and [OSCE](#)

## 2. BACKGROUND

31. The initial Bill Amending and Supplementing the Preschool and School Education Act was registered with the National Assembly of the Republic of Bulgaria on 7 July 2024, and approved in first and second, final readings on 7 August 2024.<sup>61</sup>
32. Prior to the adoption of the Bill, Article 11 (2) of the Preschool and School Education Act used to provide that “[i]n the system of preschool and school education, the imposition of ideological and/or religious doctrines is not allowed and the implementation of political and party activities is prohibited”. The Act seeks to prohibit the “public promotion” of what it describes as “an extremely unacceptable model of social and sexual orientation” within the education system. Specifically, it introduces a new category of prohibited educational content under Article 11 (2) (3) of the Preschool and School Education Act of Bulgaria, regarding the “[p]ropaganda, promotion or incitement in any way, directly or indirectly, of ideas and views related to non-traditional sexual orientation and/or the definition of gender identity other than the biological”. It further defines “non-traditional sexual orientation” as being “different from the generally accepted and established in Bulgarian legal tradition conception of emotional, romantic, sexual or sensual attraction between persons of opposite sexes”.
33. The Explanatory Note to the Act justifies the new ground for prohibition by referring to a decision of the Constitutional Court of Bulgaria, which upheld that society is traditionally based on a gender binary, where biological sex, determined at birth, defines civil sex.<sup>62</sup> This binary conception is also embedded in Article 46.1 of the Constitution of the Republic of Bulgaria, which defines marriage as a “voluntary union between a man and a woman”. The Explanatory Note further argues that the “promotion of non-traditional sexual orientation”, particularly through advertising near educational institutions, contradicts Bulgarian legal norms, especially amid the country’s demographic crisis. It also claims that the proposed changes will positively reinforce traditional Christian family values, love, and respect within the family, in accordance with Bulgarian cultural, educational, and legal traditions.
34. The Impact Assessment on the Act asserts that “[t]he proposed changes do not affect the equal treatment of citizens and will have a positive impact on the demographic development of the Republic of Bulgaria”. Both the Explanatory Note and the Impact Assessment make clear that the legislation is founded on the belief that sex is strictly binary, male and female, determined solely by biology, and that gender identity is only valid when it aligns with an individual’s biological sex. Furthermore, both documents reinforce the notion that heterosexuality is the only acceptable sexual orientation, categorizing all others, particularly homosexuality, as “non-traditional” and rejecting their normalization.
35. The CoE and the European Commission have expressed concerns that the Act contradicts EU principles of non-discrimination and equality, as it could foster discrimination against LGBTI individuals.<sup>63</sup> UN human rights bodies have also raised alarms about similar laws enacted or proposed in several States that seek to restrict public discussion of sexual

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[Decision no. 13/06 Combating intolerance and Discrimination and Promoting Mutual Respect and Understanding, MC.DEC/10/07](#), adopted at the Ministerial Council in Madrid of 30 November 2007, paras. 7, 9 and 10

61 See [Bills - National Assembly of the Republic of Bulgaria](#).

62 Interpretative Decision of the Constitutional Court of Bulgaria 2/2020, 20 February 2023; see the details on [the case](#) (in Bulgarian language).

63 See for example the [2024 Rule of Law Report on Bulgaria](#), where the Commission considered that such proposals “do not go through the same mandatory procedure as for the government, including impact assessment and public consultations”. See also the [post](#) of the CoE Commissioner on X, who urged the Bulgarian President Not To Sign Law Banning LGBT 'Promotion' In Schools.

orientation alleging the need of “protecting minors” from information on so-called “non-traditional sexual relations”, noting that they are often vaguely worded and arbitrarily restrict the rights to freedom of expression and assembly, and also contribute to ongoing persecution of members of the LGBT community.<sup>64</sup> With respect to the adoption of the Act in Bulgaria specifically, the Office of the UN High Commissioner for Human Rights expressed concerns about the *“signing into law of a legislative amendment in Bulgaria prohibiting discussion of sexual orientation and gender identity in schools and urge for it to be reconsidered in line with the country’s international human rights obligations. Addressing stigma and disinformation is critical to promoting acceptance and tolerance, and to building inclusive societies that respect and uphold the human rights of all.”*<sup>65</sup> International NGOs and local Bulgarian civil society organizations have similarly opposed the amendment, arguing that it restricts fundamental rights and creates an environment of intolerance.<sup>66</sup>

36. So-called “LGBTI-propaganda” bans have been considered and, in some cases, adopted in recent years by several countries, particularly in Eastern and Central Europe and in Central Asia. These bans have faced widespread criticism for violating human rights, contributing to rising intolerance and increased discrimination and violence against LGBTI individuals.<sup>67</sup>

### 3. GENERAL COMMENTS ON THE JUSTIFICATION FOR ADOPTING THE AMENDMENTS

37. The Explanatory Note aims to justify the adoption of the Act by referring several times to the alleged need of protecting children from harm and upholding the majority’s values, as well as Bulgarian traditions. These justifications rely on two assumptions: (1) that providing information on and discussions of diverse sexual orientations and gender identities may harm children; and (2) that public education should rely on the majority’s views and a dominant tradition, and that human rights, and specifically “minority rights”, depend on majoritarian approval or that they should reflect the views of the majority of

64 See the [Report of the UN High Commissioner for Human Rights on discrimination and violence based on sexual orientation and gender identity \(A/HRC/29/23\)](#), 2015, para. 48.

65 See [Comment](#) by UN Human Rights Office Spokesperson Liz Throssell on anti-LGBT legislative changes in Bulgaria.

66 See, for example, ILGA-Europe, [2025 Rule of Law Submission](#), p. 6; and a [news article](#): Bulgarian Parliament Adopts Amendment Banning LGBT 'Promotion' In Schools.

67 See e.g., [European Parliament resolution of 13 June 2013 on the rule of law in Russia \(2013/2667\(RSP\)\)](#), para. 8, raising strong criticisms for allowing discriminatory “homosexual propaganda” laws at both regional and federal levels, warning of increased discrimination and violence against LGBTI individuals. See also, with respect to Poland’s “LGBTI-free zones”, [European Parliament resolution of 18 December 2019 on public discrimination and hate speech against LGBTI people, including LGBTI free zones, 2019/2933\(RSP\)](#), para. 3; and [European Parliament resolution on public discrimination and hate speech against LGBTI people, including LGBTI free zones](#), para. 24, where the European Parliament called on “Poland to firmly condemn discrimination against LGBTI people, including when it originates from local authorities, and to revoke resolutions attacking LGBTI rights, including local provisions against ‘LGBT ideology’, in accordance with its national law as well as its obligations under EU and international law.” See also, in response to Hungary’s 2021 ban on “LGBTI propaganda”, [European Parliament resolution of 18 December 2019 on public discrimination and hate speech against LGBTI people, including LGBTI free zones, 2019/2933\(RSP\)](#), paras. 4 and 5, whereby the European Parliament strongly condemned the law as a clear violation of EU values and principles and urged Hungary and other Member States to ensure that education and information for minors align with EU and international human rights law, providing scientifically accurate, evidence-based, and non-discriminatory sexuality education. In 2024, The European Parliament also called on Georgia to withdraw its proposed constitutional legislation curtailing LGBTI rights; see the [Statement](#) by the Spokesperson of the European Parliament on the legislative package on “family values and protection of minors, 4 September 2024. See also the recent joint [call](#) concerning Kazakhstan, 31 July 2024, by the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the right to education, also referring to previous concerns raised about similar draft legislation on so-called “LGBTI propaganda”, in Kazakhstan, Kyrgyzstan and the Russian Federation. See also Venice Commission, [Opinion on the issue of the prohibition of so-called “Propaganda of homosexuality in the light of recent legislation in some Council of Europe Member States](#), Adopted by the Venice Commission at its 95th Plenary Session (14-15 June 2013); and [Georgia - Opinion on the draft constitutional law on Protecting Family Values and Minors](#), adopted by the Venice Commission at its 139th Plenary Session (Venice, 21-22 June 2024).

the population in a given country. However, neither of these assumptions provides a legitimate ground justifying potential restrictions to the exercise of fundamental rights and freedoms protected under international and regional human rights instruments, especially on the right to freedom of expression and access to information, the right to education and the right to equality and non-discrimination.

38. Regarding the allegations that such information may be harming children, the Explanatory Note does not provide any evidence and thorough assessment justifying the need to introduce such a ban. This does not align with the guiding principles of democratic lawmaking, which emphasize an evidence-based approach to regulation and require that laws be adopted based on well-founded arguments, scientific evidence, and reliable data, including inputs from impact assessments and consultations with the public and other relevant stakeholders.<sup>68</sup> With respect to a similar ban adopted in the Russian Federation, the UN Human Rights Committee considered that “[w]hile noting that the State party invokes the aim to protect the morals, health, rights and legitimate interests of minors, the Committee considers that the State party has not shown that a restriction on the right to freedom of expression in relation to “propaganda of homosexuality” – as opposed to propaganda of heterosexuality or sexuality generally – among minors is based on reasonable and objective criteria. Moreover, no evidence which would point to the existence of factors justifying such a distinction has been advanced”.<sup>69</sup>
39. It is also important to underline that international and regional human rights frameworks make clear that the best interests of the child should guide policy- and lawmaking.<sup>70</sup> In *General Comment No. 14 (2013) on Article 3 of the UN CRC*, the Committee on the Rights of the Child stresses that “[c]hildren are not a homogeneous group and therefore diversity must be taken into account when assessing their best interests”, including characteristics such as sexual orientation and gender identity.<sup>71</sup> By *de facto* banning educational content related to sexual orientations and gender identities and silencing discussions on these matters, the Act violates the principle of non-discrimination enshrined in several human rights instruments. Limitations to the right to freedom of expression and access to information in schools may, in some cases, be more narrowly drawn than in other settings – such as academia. However, the nature of the new restriction introduced by the Act raises serious concerns regarding the students’ rights to access to information and to education, including to receive comprehensive sexual education, adaptable based on the age of students and the capacities associated with their levels of emotional and cognitive development<sup>72</sup> (see also Sub-Section 4). Moreover, the Act raises concerns with regard to the right to health as enshrined in Article 12 of the ICESCR and Article 24 of the CRC. Denying students, particularly those who are or identify as LGBTI, access to comprehensive, inclusive education on sexual orientation, gender identity, and reproductive health directly undermines their ability to make informed decisions about their bodies and relationships.<sup>73</sup> Such bans also reinforce stigma

<sup>68</sup> See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws* (16 January 2024), Principle 5 on Evidence-based Lawmaking.

<sup>69</sup> See UN Human Rights Committee, *Fedotova v Russia*, Communication No. 1932/2010, para. 10.6. See also European Court of Human Rights, *Fedotova and Others v. Russia*, no. 40792/10 and 2 others, 13 July 2021, paras. 52-54.

<sup>70</sup> This guarantee is set out in Article 3(1) of the *CRC*, which provides that: “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

<sup>71</sup> See Committee on the Rights of the Child, *General Comment No. 14 (2013) on Article 3 of the UN CRC*, para. 55.

<sup>72</sup> See Committee on the Rights of the Child, *General Comment No. 4 (2003): Adolescent Health and Development in the Context of the Convention on the Rights of the Child*, para. 12. See also United Nations Special Rapporteur on the right to education, *Report on the on the human right to comprehensive sexual education* (2010), A/65/162, para. 87 (c).

<sup>73</sup> According to the OHCHR’s *factsheet* on the right to health, adolescents’ health needs must be met in a non-discriminatory manner and with particular sensitivity to the risks faced by marginalized groups. By excluding vital health-related content that specifically addresses the lived realities of LGBTI youth, the Act not only entrenches stigma but also places students at avoidable risk, violating their rights to both health and education as guaranteed under international human rights law.

and entrench harmful stereotypes and prejudice against LGBTI people, fostering an environment where discrimination against LGBTI persons is legitimized. By preventing discussions that may challenge so-called “traditional” norms, they also perpetuate ignorance, contribute to marginalization and exclusion, and increase the risks of violence against LGBTI persons.

40. As noted in para. 66 *supra*, it has been recognized that entrenching harmful stereotypes and prejudice against LGBTI people in legislation, contributes to rising intolerance and increased discrimination and violence against LGBTI individuals.<sup>74</sup> The impact is particularly severe for children and adolescents with diverse sexual orientations and gender identities, who are disproportionately affected by increased risks of homophobic and transphobic bullying, ultimately harming the mental and physical well-being of children. In its General Comment No. 4 (2003) on Adolescent Health and Development,<sup>75</sup> the CRC Committee highlights that “*Adolescents who are subject to discrimination are more vulnerable to abuse, other types of violence and exploitation, and their health and development are put at greater risk*”. Legislative measures that suppress open and inclusive discussion on sexual orientation and gender identity not only reinforce inequality but also deny all children critical education needed to challenge discriminatory norms and foster inclusive, safe learning environments. Crucially, such measures also withhold information that may be vital to students’ physical and mental health, particularly for adolescents with diverse sexual orientations and gender identities, who may already face elevated risks of stigma, sexual violence, mental and reproductive health challenges. Therefore, rather than protecting or promoting the best interests of the child, the Act ultimately risks to harm children’s rights, well-being and development.
41. With respect to the alleged need to reflect the position of the majority of the Bulgarian population, international and regional human rights law firmly establishes that the enjoyment of fundamental rights by one group cannot be conditioned on the majority’s acceptance. As the ECtHR has stated on several occasions, in a democracy, “*a balance must be achieved which ensures the fair and proper treatment of people from minorities and avoids any abuse of a dominant position*” considering that making minority rights contingent upon majority approval undermines the effectiveness of those rights.<sup>76</sup> The Court has also consistently declined to endorse policies and decisions which embodied a predisposed bias on the part of a heterosexual majority against a homosexual minority considering that “*traditions, stereotypes and prevailing social attitudes in a particular country cannot, by themselves, be considered to amount to sufficient justification for a difference in treatment based on sexual orientation*”.<sup>77</sup> Hence, while societal morals may be considered when assessing the legitimacy and proportionality of rights restrictions, they cannot, by themselves, justify denying fundamental rights to a minority. Therefore, the reference to the views of the majority of the population and/or use of domestic morals to justify the Act’s blanket prohibition on discussing diverse sexual orientations and gender identities in schools is not a legitimate justification.
42. The Explanatory Note also refers to the “*Bulgarian educational tradition*”. In this respect, it is important to emphasize that Article 29 of the UN CRC sets out that the aims

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<sup>74</sup> See footnote 68 above.

<sup>75</sup> See Committee on the Rights of the Child, [General Comment No. 4 \(2003\): Adolescent Health and Development in the Context of the Convention on the Rights of the Child](#), para. 2.

<sup>76</sup> See e.g., ECtHR, [Fedotova v. Russia](#) [GC], nos. 40792/10, 30538/14 and 43439/14, 17 January 2023, paras. 216-218; [Bayev v. Russia](#), nos. 67667/09 and 2 others, 20 June 2017, paras. 68-70; [Alekseyev v. Russia](#), nos. 4916/07, 25924/08 and 14599/09, para. 81; see also: [Committee of Ministers, Recommendation CM/Rec\(2010\)5](#) of the Committee of Ministers to Member states on measures to combat discrimination on grounds of sexual orientation or gender identity.

<sup>77</sup> See e.g., ECtHR, [Fedotova v. Russia](#) [GC], nos. 40792/10, 30538/14 and 43439/14, 17 January 2023, para. 217.

of education for all children should be directed, among other objectives, to the “*preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin*”. As such, states should ensure these objectives are adequately reflected in the curricula, content of materials, teaching methods and policies.<sup>78</sup> Similarly, Article 2 of Protocol 1 to the ECHR requires the State, in fulfilling the functions assumed by it in regard to education and teaching, to take care that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner. The Amendments are at odds with these objectives of tolerance, equality, diversity, pluralism and inclusiveness that should be promoted in the education system, policies and all school content and materials. Ultimately, by imposing effective censorship on books, movies, cultural materials, and other educational content that may be referring to diversity within sexual orientations and gender identities, it restricts academic freedom<sup>79</sup> of educators and students – evolving based on the the developing capacities and maturity of students – and limits students’ exposure to diverse perspectives. Last but not least, it may further create a chilling effect on teachers and educators, discouraging open and inclusive discussions that are essential for fostering a safe, tolerant, and diverse learning environment.<sup>80</sup>

43. The Explanatory Note also mentions the “*traditional Christian family values, love, and respect within the family, in accordance with Bulgarian cultural, educational, and legal traditions*” to justify the introduction of the Act. With respect to similar arguments, the ECtHR found a violation of Article 10 of the ECHR, where it held that “[t]he Government failed to demonstrate how freedom of expression on LGBT issues would devalue or otherwise adversely affect actual and existing “traditional families” or would compromise their future.”<sup>81</sup>
44. Finally, the reference to only one single national tradition and one religion is also problematic from a human rights and anti-discrimination perspective. As underlined above, according to Article 29 of the UN CRC, the aims of education should also be to promote respect for civilizations other than one’s own. Referring to their shared culture and values, OSCE participating States have also committed to protect and promote their “*cultural and spiritual heritage, in all its richness and diversity*” (OSCE Charter of Paris for a New Europe, 1990), also underlining the importance of promoting tolerance, diversity and non-discrimination.<sup>82</sup> Moreover, pursuant to Article 18 of the ICCPR, Article 9 of the ECHR and OSCE commitments on freedom of religion or belief,<sup>83</sup> the State has the duty to respect, fulfil and protect the right to freedom of religion or belief without discrimination. As specifically held by the European Court of Human Rights, in principle, “*the State has a duty to remain neutral and impartial in exercising its regulatory power and in its relations with the various religions, denominations and*

78 See Committee on the Rights of the Child, [General Comment No. 11 \(2009\): Indigenous children and their rights under the Convention](#), para. 56.

79 See Special Rapporteur on the right to education, Report on the right to academic freedom (2024), especially para. 84.

80 See UNESCO, [Ensuring the right to equitable and inclusive quality education: results of the ninth consultation of Member States on the implementation of the UNESCO Convention and Recommendation against Discrimination in Education](#) (2018).

81 See ECtHR, [Bayev and Others v. Russia](#), no. 67667/09, 20 June 2017, paras. 67-71, and [Fedotova v. Russia](#) [GC], nos. 40792/10, 30538/14 and 43439/14, 17 January 2023, para. 53.

82 In the OSCE Copenhagen Document (1990), OSCE participating States recognized “*the important role of non-governmental organizations, including political parties, trade unions, human rights organizations and religious groups, in the promotion of tolerance, cultural diversity and the resolution of questions relating to national minorities*” (par 30). In the OSCE Document of the Cracow Symposium on the Cultural Heritage (1991), while noting the key importance of protecting cultural heritage and the role of non-governmental associations in that respect (pars 14 and 19), it is also stated that “*[t]he preservation and interpretation of the values and the cultural heritage of diverse groups will be enhanced with the involvement of those groups, which is conducive to the tolerance and respect for different cultures which are of paramount importance*”.

83 See, in particular, [OSCE Vienna Document](#) (1989), paras. 11 and 16-17; and [OSCE Copenhagen Document](#) (1990), para. 9.4.

*beliefs*” as this is crucial for “*the preservation of pluralism and the proper functioning of democracy*”.<sup>84</sup> The narrow focus of the Explanatory Note, which refers to only one religion and national origin appears to be at odds with these principles.

45. More generally, and as further detailed below, the ban on the dissemination or access to information on so-called “*non-traditional sexual orientation and/or the definition of gender identity other than the biological*” fails to comply with the strict test of legality, legitimacy, necessity and proportionality as well as non-discrimination as established by international instruments.

#### 4. IMPLICATIONS ON THE RIGHT TO FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION

46. The newly introduced prohibition under Article 11 (2) (3) of the Act outright prohibits “[p]ropaganda, promotion or incitement in any way, directly or indirectly, of ideas and views related to non-traditional sexual orientation and/or the definition of gender identity other than the biological”. Depending on the interpretation of this provision, this may potentially prevent any discussions of diversity within sexual orientations and gender identities in pre-school and school settings, as well as significantly impede the delivery of comprehensive sexuality education, adaptable based on the age of students and the capacities associated with their levels of emotional and cognitive development.<sup>85</sup>
47. This is a direct interference with the right to freedom of expression, including both the freedom to impart and receive information and ideas, as protected under Article 19 of the ICCPR and Article 10 of the ECHR. A similar protection is enshrined in Article 11(1) of the EU Charter of Fundamental Rights. Article 13 of the CRC also explicitly provides that “[t]he child shall have the right to freedom of expression”, including the “*freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice*”. Importantly, adolescents have the right to seek, receive, and share information through various means, “*including spoken, written and sign language and such non-verbal expression as images and objects of art. Means of expression include, for example, books, newspapers, pamphlets, posters, banners, digital and audiovisual media, as well as dress and personal style.*”<sup>86</sup>
48. The right to freedom of expression is however, not absolute. Any restriction on the right to freedom of expression must be compatible with the strict test set out in Article 19 (3) of the ICCPR, Article 10 (2) of the ECHR, and Article 13 (2) of the CRC requiring any restriction to be provided by law (requirement of legality), to be in pursuit of one of the legitimate aims listed exhaustively in the respective international instruments<sup>87</sup> (requirement of legitimacy) and to be necessary in a democratic society (requirement of necessity and proportionality, which *inter alia* presupposes that any imposed restriction should represent the least intrusive measure possible among those effective enough to

84 ECtHR, [Supreme Holy Council of the Muslim Community v. Bulgaria](#) (Application no. 39023/97, judgment of 16 December 2004), para. 93.

85 See United Nations Special Rapporteur on the right to education, [Report on the on the human right to comprehensive sexual education](#) (2010), A/65/162, para. 87 (c).

86 See the [CRC General comment No. 20 \(2016\) on the implementation of the rights of the child during adolescence](#), para. 42.

87 See Article 19 (3) of the ICCPR: “(a) for respect of the rights or reputations of others; (b) for the protection of national security or of public order (ordre public), or of public health or morals”; Article 10 (2) of the ECHR: “in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary”; Article 13 (2) of the CRC: “(a) For respect of the rights or reputations of others; or (b) For the protection of national security or of public order (ordre public), or of public health or morals.”

reach the designated objective). In addition, the restriction must be non-discriminatory (Articles 2 and 26 of the ICCPR, Article 2 of the CRC and Article 14 of the ECHR<sup>88</sup>). Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific aim being pursued (Article 18 of the ECHR).

49. Although there is no international obligation explicitly guaranteeing a right of children to receive information on subjects dealing with sexual orientation and gender identity, a State obligation can be implied under Article 13 of the ICESCR. Good practice also provides that children and young people have the right to receive reliable, science-based and comprehensive information about sexuality.<sup>89</sup> As underlined above, one of the objectives of the education system should be to promote tolerance and non-discrimination, also taking into account children's evolving capacities. Moreover, in its General Comment No. 4 on Adolescent Health and Development, the Committee on the Rights of the Child also called upon states *"to develop and implement, legislation, policies and programmes to promote the health and development of adolescents"*, including by *"providing adequate information and parental support to facilitate the development of a relationship of trust and confidence in which issues regarding, for example, sexuality and sexual behaviour and risky lifestyles can be openly discussed and acceptable solutions found that respect the adolescent's rights"*.<sup>90</sup>
50. As further elaborated below, while States may in principle restrict children's access to certain types of information in educational settings for legitimate purposes, the restrictions in the Act are overly vague and broad, do not serve to advance the legitimate aims of protection of morals, health or the rights of others, are disproportionate, and are also discriminatory.

#### 4.1. Requirement of Legality of the Ban

51. The requirement that any restrictions on freedom of expression be 'provided by law' not only requires that the restriction should have an explicit basis in domestic law, but also refers to the quality of the law in question.<sup>91</sup> While acknowledging that absolute precision is not possible and that many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice,<sup>92</sup> laws must be foreseeable, and narrowly construed to prevent misuse and overreach. Accordingly, laws must be sufficiently clear and precise to enable an individual to assess whether or not his or her conduct would be in breach of the law and to foresee the likely consequences of any such breach.<sup>93</sup> This also means that the law

88 Bulgaria has not signed nor ratified the [Protocol No. 12 to the ECHR](#), which contains general prohibition of discrimination in the enjoyment of any rights.

89 See, for example, [Comprehensive sexuality education protects children and helps build a safer, inclusive society - Commissioner for Human Rights](#). See also [General comment No. 1: Reporting obligation](#).

90 See Committee on the Rights of the Child, [General Comment No. 4 \(2003\): Adolescent Health and Development in the Context of the Convention on the Rights of the Child](#), para. 12.

91 See e.g., ECtHR, [M.M. v. the United Kingdom](#), no. 24029/07, 13 November 2012, para. 193. See also ODIHR, [Guidelines on Democratic Lawmaking for Better Laws](#) (16 January 2024), Principle 16.

92 See, for example, ECtHR, [Kudrevičius and Others v. Lithuania](#) [GC], no. 37553/05, 15 October 2015, para. 109. See also ECtHR, [Perinçek v. Switzerland](#) [GC], no. 27510/08, 15 October 2015, para. 131, where the Court underlined that: "A norm could not be regarded as a 'law' unless it was formulated with sufficient precision to enable the person concerned to regulate his or her conduct: he or she needed to be able – if need be with appropriate advice – to foresee, to a degree that was reasonable in the circumstances, the consequences that a given action could entail. However, the Court went on to state that these consequences did not need to be foreseeable with absolute certainty, as experience showed that to be unattainable."

93 See, for example, ECtHR, [Hashman and Harrup v. the United Kingdom](#) [GC], no. 25594/94, 25 November 1999; [Gillan and Quinton v. the United Kingdom](#), no. 4158/05, 12 January 2010; [Kudrevičius and Others v. Lithuania](#) [GC], no. 37553/05, 15 October 2015. See also ODIHR, [Guidelines on Democratic Lawmaking for Better Laws](#) (16 January 2024), Principle 11; UN HRC, [General comment No. 34](#) on Article 19 of the ICCPR, CCPR/C/GC/34, para. 25. See also ECtHR, [The Sunday Times v. the United Kingdom \(No. 1\)](#), no. 6538/74, paras. 48-49; and [Perinçek v. Switzerland](#) [GC], no. 27510/08, 15 October 2015, para. 131.

must be formulated in terms that provide a reasonable indication as to how these provisions will be interpreted and applied.<sup>94</sup>

52. First, the amended provision referring to the prohibition of “[p]ropaganda, promotion or incitement in any way, directly or indirectly of ideas and views related to non-traditional sexual orientation and/or the definition of gender identity other than the biological”, is overly broad and vague. The Act fails to define key terms such as “propaganda”, “incitement” and “promotion”, resulting in significant legal uncertainty. Such terms not only seem to be very wide, but also rather ambiguous, stigmatizing and vague.<sup>95</sup> Promoting certain issues can for instance be understood in different ways. Even a factual mention of non-binary sexual orientations or gender identities, or same-sex relationships, could potentially be construed as a type of “*promotion, propaganda or incitement*” triggering the application of the ban.<sup>96</sup> The ambiguity and vagueness of such terms are further compounded by adding the qualifiers “directly or indirectly”. Such ambiguity not only creates legal uncertainty but also allows for arbitrary interpretation and application, as well as risks excessive restrictions on freedom of expression and the right to receive and impart information. Similarly, the definition of “*non-traditional sexual orientation*” in the Act,<sup>97</sup> especially the reference to alleged legal concept of “*emotional [or] romantic*” attraction, would also fail the requirement of legality.
53. As a consequence, the newly introduced ban raises serious concerns as it may open grounds for potentially diverging or arbitrary interpretations. It may also trigger self-censorship and create a chilling effect on teachers and educators, discouraging open and inclusive discussions that are essential for fostering a safe, equal, and diverse learning environment.

#### 4.2. Requirement of Legitimacy of the Ban

54. The Explanatory Note refers to the need to prevent harming children and to protect them, as well as to reflect the position of the majority of the Bulgarian population. The aims to *protect the morals, health, rights and legitimate interests of minors* feature among the legitimate aims that may be invoked to restrict the right to freedom of expression and to receive and impart information according to international and regional human rights instruments. However, as noted in Sub-Section III.3 above, the considerations provided to justify the adoption of the Amendments to the Act would not appear to be based on well-founded research, arguments, scientific evidence and data, and hence appear to go beyond the scope of the legitimate aims that may be invoked according to international human rights instruments.
55. In general, the new provisions or similar measures are often based on the false premise that exposing children to age-appropriate discussions on LGBTI issues could influence them to change their sexual orientation or gender identity, or expose them to harm. However, there is no credible evidence to suggest that sexual orientation or gender identity can be altered through external influence, nor any scientific basis for the claim

94 See e.g., Venice Commission, [Rule of Law Checklist](#), CDL-AD(2016)007, para. 58. In addition, see ECtHR, *The Sunday Times v. the United Kingdom (No. 1)*, no. 6538/74, where the Court ruled that “the law must be formulated with sufficient precision to enable the citizen to regulate his conduct, by being able to foresee what is reasonable and what type of consequences an action may cause.”

95 See e.g., ECtHR, *Bayev and Others v. Russia*, no. 67667/09, 20 June 2017, para. 76. See e.g., Venice Commission, [Opinion on the issue of the prohibition of so-called “Propaganda of homosexuality in the light of recent legislation in some Council of Europe Member States](#), CDL-AD(2013)022-e, para. 28.

96 See ECtHR, *Macatė v. Lithuania*, no. 61435/19, 23 January 2023, para. 185.

97 i.e., “[being] different from the generally accepted and established in Bulgarian legal tradition conception of emotional, romantic, sexual or sensual attraction between persons of opposite sexes”.

that such exposure is harmful.<sup>98</sup> As such, it is unclear from what potential harm the Act seeks to protect children or adolescents. On the contrary, all students should receive age-appropriate (i.e., adaptable based on the age of students and the capacities associated with their levels of emotional and cognitive development) inclusive education, acknowledging diverse experiences, in order to ultimately foster tolerance and respect, and help protect children's rights and dignity.

56. In addition, the mere reference to commonly invoked justifications for similar bans such as *“public morality, the protection of the traditional family, the protection of health, and the protection of minors”* are insufficient *per se* to justify their imposition. In particular, in *Macaté v. Lithuania*, the Grand Chamber of the ECtHR explicitly found that *“legislative ban on ‘promotion of homosexuality or non-traditional sexual relations’ among minors does not serve to advance the legitimate aims of protection of morals, health or the rights of others, and that by adopting such laws the authorities reinforce stigma and prejudice and encourage homophobia, which is incompatible with the notions of equality, pluralism and tolerance inherent in a democratic society”*.<sup>99</sup>
57. The UN Human Rights Committee in relation to similar law explicitly stated that *“[w]hile noting that the State party invokes the aim to protect the morals, health, rights and legitimate interests of minors, the Committee considers that the State party has not shown that a restriction on the right to freedom of expression in relation to ‘propaganda of homosexuality’ – as opposed to propaganda of heterosexuality or sexuality generally – among minors is based on reasonable and objective criteria. Moreover, no evidence which would point to the existence of factors justifying such a distinction has been advanced”*.<sup>100</sup> The ECtHR also found a violation of Article 10 of the ECHR, where it held that *“[t]he Government failed to demonstrate how freedom of expression on LGBT issues would devalue or otherwise adversely affect actual and existing ‘traditional families’ or would compromise their future. The Court has consistently declined to endorse policies and decisions which embodied a predisposed bias on the part of a heterosexual majority against a homosexual minority.”*<sup>101</sup> Similarly, the Venice Commission has concluded that *“the statutory provisions prohibiting ‘propaganda of homosexuality’, are incompatible with ECHR and international human rights standards”*.<sup>102</sup>
58. In particular, while the protection of morals is a legitimate aim under both the ICCPR and the ECHR, any claim to restrict freedom of expression and access to information on the grounds of protecting morals should be treated very carefully. In its General Comments No. 34, the UN Human Rights Committee has warned against the use of such a ground for restricting freedom of expression, noting that *“the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations... for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition”* and that *“[a]ny such limitations must be understood in the light*

98 See e.g., ECtHR, *Alekseyev v Russia*, nos. 4916/07, 25924/08 and 14599/0, para.86.

99 See ECtHR, *Macaté v. Lithuania [GC]*, no. 61435/19, 23 January 2023, para. 202. See also UN Human Rights Committee, *General Comment No. 34* on Article 19 of the ICCPR, CCPR/C/GC/34, para. 33, which states: *“When a State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in a specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.”*

100 See UN Human Rights Committee, *Fedotova v. Russia, Communication No. 1932/2010*, para. 10.6. See also European Court of Human Rights, *Fedotova and Others v. Russia*, no. 40792/10 and 2 others, 13 July 2021, paras. 52-54.

101 See European Court of Human Rights, *Bayev and Others v. Russia*, no. 67667/09, 20 June 2017, paras. 67-71, and *ibid* (*Fedotova and Others v. Russia*), para. 53.

102 See Venice Commission, *Opinion on the issue of the prohibition of so-called “Propaganda of homosexuality in the light of recent legislation in some Council of Europe Member States”*, CDL-AD(2013)022-e, para. 83.

of universality of human rights and the principle of non-discrimination”.<sup>103</sup> As also underlined by ODIHR and the Venice Commission in their Joint Opinion on the Draft Constitution of the Kyrgyz Republic, “morals” as a potential ground for restricting human rights and fundamental freedoms should be approached with caution “*due to the likely wide and inherently subjective interpretation of such terms*”.<sup>104</sup> Justifications based on public morality have also been carefully considered by the ECtHR. For example, in one case, the ECtHR upheld restrictions on freedom of expression only in the context of material promoting underage sex and pornography.<sup>105</sup> The Venice Commission earlier noted that discussions of same-sex relationships and gender identity do not undermine public morals.<sup>106</sup>

59. Further, the argument that these restrictions protect the so-called “traditional family” lacks merit, as there is no necessary link between this objective and the prohibition of all content related to diversity within sexual orientations or gender identities, or LGBTI rights in schools.<sup>107</sup> It is also not demonstrated why and how a discussion of these topics in school is posing a threat to the so-called “traditional family” that needs to be countered. Although the Act may be primarily directed towards the information that students receive as part of in-class instruction, it also has the potential to stifle any discussion or action intended to acknowledge sexual orientation and gender identity within school settings.<sup>108</sup> This has a negative impact upon all school children or adolescents, irrespective of their sexual orientation or gender identity, because it denies them key age-appropriate information about sexual and gender diversity, and it means that school children and adolescents may form opinions about sexual orientation and gender identity based upon misinformation, stereotypes and bias.<sup>109</sup>
60. Moreover, the argument that the restrictions serve to protect public health is unfounded. Access to accurate information about sexuality, gender identity, and self-protection, when presented objectively and scientifically, is essential for child development, individual physical and mental health, disease prevention and public health policy. Restricting discussions on LGBTI issues does not mitigate health risks; rather, it obstructs informed decision-making and may undermine efforts to safeguard public health. As also affirmed by the UN Committee on the Rights of the Child, states must “*adopt comprehensive gender and sexuality-sensitive sexual and reproductive health policies for adolescents, emphasizing that unequal access by adolescents to such information, commodities and services amounts to discrimination. Lack of access to such services contributes to adolescent girls being the group most at risk of dying or suffering serious or lifelong injuries in pregnancy and childbirth.*”<sup>110</sup>

103 See the UN Human Rights Committee, *General Comment No. 34* on Article 19 of the ICCPR, CCPR/C/GC/34, para. 32.

104 See ODIHR-Venice Commission, *Joint Opinion on the Draft Constitution of the Kyrgyz Republic* (2021), para. 36.

105 See *Handyside v. United Kingdom*, Application No. 5493/72, 7 December 1976, para. 49.

106 See e.g., Venice Commission, *Opinion on the issue of the prohibition of so-called "Propaganda of homosexuality in the light of recent legislation in some Council of Europe Member States"*, CDL-AD(2013)022-e, para. 58. See also Recommendation CM/Rec(2010)5 of the Committee of Ministers to members states on measures to combat discrimination on grounds of sexual orientation or gender identity.

107 See ECtHR, *X and Others v. Austria* [GC], no. 19010/07, 19 February 2013, para. 139, where the Court considered the aim of protecting the family in the traditional sense as “rather abstract”; see also ECtHR, *Bayev and Others v. Russia*, no. 67667/09, 20 June 2017, para. 67, where the Court considered that there was no reason to consider the maintenance of family values as the foundation of society to be incompatible with the acknowledgement of the social acceptance of homosexuality, especially in view of the growing general tendency to include relationships between same-sex couples within the concept of “family life”.

108 Congress of Local and Regional Authorities, *Protecting LGBTI people in the context of rising anti LGBTI hate speech and discrimination: The role of local and regional authorities*, Report, CG(2021)40-18 (17 June 2021), para.54.

109 See *European Commission against Racism and Intolerance, ECRI Report on Serbia* (6th Monitoring Cycle), Adopted on 6 December 2022, Published on 9 March 2023, para.14.

110 See the *CRC General comment No. 20 (2016) on the implementation of the rights of the child during adolescence*, para. 59. See also *Committee on Economic, Social and Cultural Rights, General Comment No. 20 (2009)* on non-discrimination in economic, social and cultural rights, para. 29.

61. Finally, with respect to the alleged aim of protecting the health, rights and interests of children, as underlined in Sub-Section III.3 above, the best interests and evolving capacities of the child should always be taken into account to determine what may be some legitimate, justifiable restrictions to the access by or imparting some types of information to children or adolescents. It is noted that the ECtHR found a violation of the right to freedom of expression in a number of cases, considering that a legislative ban on so-called “promotion of homosexuality” or “non-traditional” sexual relations among minors does not serve to advance the legitimate aims of protection of morals, health or the rights of others.<sup>111</sup>
62. In light of the foregoing, **the ban under review seems to not pursue a legitimate aim.**

#### 4.3. Requirement of Necessity and Proportionality of the Ban

63. To meet the standard of being “necessary in a democratic society”, any restriction must be narrowly tailored and strictly proportionate to the legitimate aim pursued.<sup>112</sup> When assessing whether a restriction is proportionate, it is important to consider whether less restrictive alternatives exist;<sup>113</sup> it is also important to weigh the specific risks of silencing discussions on sexual orientation and gender identity, limiting access to information, including crucial health information, and the risk of further marginalizing children or adolescents with diverse sexual orientations or gender identities, especially during vulnerable stages of their development.
64. While it may be legitimate to restrict access to some information or content relating to sex and sexuality, the Act under review makes no attempt to take into account the age and evolving capacities of children and adolescents in pre-school and throughout schooling. Moreover, the Act fails to distinguish between genuinely harmful material,<sup>114</sup> and information which may fall within the scope of protection of Article 10 of the ECHR and Article 19 of the ICCPR (among other guarantees). Rather, the Act seems to apply a blanket ban to all information relating to diverse sexual orientations and gender identities. As such, the Act introduces a disproportionate interference with the right to freedom of expression and access to information.
65. Moreover, it is notable that, while the Act prohibits all discussions and views on so-called “non-traditional” sexual orientations and gender identities not aligned with biological sex, it places no limitations on discussions of heterosexuality and cisgender identities,

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111 See ECtHR, *Macaté v. Lithuania*, no. 61435/19, 23 January 2023, para. 202, which states: “legislative ban on ‘promotion of homosexuality or non-traditional sexual relations’ among minors does not serve to advance the legitimate aims of protection of morals, health or the rights of others, and that by adopting such laws the authorities reinforce stigma and prejudice and encourage homophobia, which is incompatible with the notions of equality, pluralism and tolerance inherent in a democratic society”. See also *Bayev and Others v. Russia*, where the ECtHR ruled that “by adopting such [anti-LGBTI propaganda] laws, the authorities reinforce stigma and prejudice and encourage homophobia, which is incompatible with the notions of equality, pluralism and tolerance inherent in a democratic society.”

112 In *Handyside v. United Kingdom*, the ECtHR highlighted that interference with freedom of expression must be “necessary in a democratic society” and cannot be justified if it goes beyond what is “proportionate” to the aim pursued; see *Handyside v. United Kingdom*, no. 5493/72, 7 December 1976, paras. 42-45. Similarly, in *Vereinigung Bildende Künstler v. Austria*, the Court reaffirmed that restrictions on expression must be “prescribed by law” and “necessary in a democratic society”; see ECtHR, *Vereinigung Bildende Künstler v. Austria*, no. 68354/01, para. 38.

113 See ECtHR, *Glor v. Switzerland*, no. 13444/04, 30 April 2009, para. 94.

114 For example, a number of international instruments require the criminalization of the dissemination or communication of certain forms of sexually exploitative content. Articles 2 (c) and 3 (1) (c) of the *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography* require the criminalization of “child sexual exploitation material”. Article 20 of the *Council of Europe Convention on Protection of Children Against Sexual Exploitation and Sexual Abuse* (Lanzarote Convention) requires the criminalization of intentional conduct, amounting to “(a) producing child pornography; (b) offering or making available child pornography; (c) distributing or transmitting child pornography; (d) procuring child pornography for oneself or for another person; (e) possessing child pornography; and (f) knowingly obtaining access, through information and communication technologies, to child pornography.” Council of Europe Convention on Protection of Children Against Sexual Exploitation and Sexual Abuse (Lanzarote Convention), CETS No. 201, Article 20. The Lanzarote Convention was ratified by Bulgaria on 15 December 2011.

even those, which may be objectively inappropriate for children. As such, the Act appears to fail the test of proportionately to the extent that it is both overly inclusive (covering LGBTI discussions that should not be censored) and overly exclusive (failing to prohibit other, non-LGBTI-related discussions of sexuality and gender that may not be age-appropriate for children).

66. As affirmed by the UN Committee on the Rights of the Child, it is the right of “*all adolescents to freedom of expression and respect for their physical and psychological integrity, gender identity and emerging autonomy. [...] It urges States to repeal all laws criminalizing or otherwise discriminating against individuals on the basis of their sexual orientation, gender identity or intersex status and adopt laws prohibiting discrimination on those grounds.*”<sup>115</sup>

#### 4.4. Requirement of Non-Discrimination

67. By prohibiting information on so-called “non-traditional” sexual orientations and gender identity other than the biological, the Act directly discriminates on the basis of sexual orientation and gender identity. By explaining the introduction of these amendments by unjustified, harmful stereotypes and prejudice against LGBTI people in legislation, this contributes to legitimizing discrimination, which ultimately leads to rising intolerance and risks of increased violence against LGBTI individuals. Such provisions, particularly when applied in educational settings, perpetuate misleading narratives, which have no factual basis, and foster a hostile environment for LGBTI persons, contributing to their marginalization, and increasing the risk of violence and exclusion.
68. Such discriminatory provisions constitute a direct violation of international human rights obligations. The UN instruments guarantee the rights to equality and non-discrimination to all, meaning that LGBTI persons must be afforded the same rights and freedoms as all individuals, free from discrimination, violence, and persecution.<sup>116</sup>
69. In addition, the ECtHR has considered that sexual orientation and gender identity are protected under Article 8 of the ECHR, which protects the right to respect to private and family life.<sup>117</sup> Furthermore, the ECtHR has held that a difference in treatment based solely on considerations of sexual orientation or gender identity without particularly convincing and weighty reasons, is unacceptable under the ECHR.<sup>118</sup> More specifically, the ECtHR confirmed that “*differences based on sexual orientation require particularly serious reasons by way of justification or, as is sometimes said, particularly convincing and weighty reasons [...] [and where a difference based on sexual orientation arises, the ECtHR affords State Parties only a narrower margin and appreciation, and] [d]ifferences based solely on considerations of sexual orientation are unacceptable.*”<sup>119</sup> In another case, the Court held that differences based on gender or sexual orientation requires particularly serious reasons by way of justification.<sup>120</sup>
70. The ECtHR has emphasized that “*measures which restrict children’s access to information about same-sex relationships solely on the basis of sexual orientation have*

115 See the [CRC General comment No. 20 \(2016\) on the implementation of the rights of the child during adolescence](#), para. 34.

116 See, for example, the UN Human Right Council Resolution on Combatting discrimination, violence and harmful practices against intersex people (adopted 4 April 2024) - [A/HRC/RES/55/14](#), and Protection against violence and discrimination based on sexual orientation and gender identity (adopted 30 June 2016) - [A/HRC/RES/32/2](#)

117 See e.g., ECtHR, [A.K. v. Russia](#), no. 49014/16, 7 May 2024, para. 44; [Sousa Goucha v. Portugal](#), no. 70434/12, 22 March 2016, para. 23.

118 See, e.g., ECtHR, [A.K. v. Russia](#), no. 49014/16, 7 May 2024, para. 44; [Sousa Goucha v. Portugal](#), no. 70434/12, 22 March 2016, para. 45.

119 See ECtHR, [X v. Austria](#), no. 1747/62

120 See ECtHR, [Hamalainen v. Finland](#), no. 37359/09.

wider social implications [...] [and] demonstrate that the authorities have a preference for some types of relationships and families over others – that they see different-sex relationships as more socially acceptable and valuable than same-sex relationships, thereby contributing to the continuing stigmatisation of the latter. Therefore, such restrictions, however limited in their scope and effects, are incompatible with the notions of equality, pluralism and tolerance inherent in a democratic society”.<sup>121</sup> The absence of any legitimate, objective justification for differential treatment of heterosexual and homosexual orientations or cisgender and transgender identities underscores the discriminatory nature of such bans.<sup>122</sup>

#### 4.5. Conclusion

71. In light of the above, **the prohibition of “promotion”, “propaganda” or “incitement” “in any way, directly or indirectly, of ideas and views related to so-called “non-traditional” sexual orientation and/or the definition of gender identity other than the biological”, does not serve to advance the legitimate aims of protection of morals, health or the rights of others and is neither necessary nor proportionate and also directly discriminates on the basis of sexual orientation and gender identity. As such, the Act unjustifiably and disproportionately results in undue interference with the right to freedom of expression and access to information. The said amendments to the Act should therefore be repealed entirely.**

#### 5. IMPLICATIONS ON THE RIGHT TO EDUCATION AND ACCESS TO ESSENTIAL INFORMATION, INCLUDING ON HEALTH

72. The adopted amendments also deprive children and adolescents of their right to education and to access essential age-appropriate information, including on health and sexuality, as recognized under the CRC.<sup>123</sup>
73. Pursuant to Articles 29 and 2 of the UN CRC, all children have the right to education free from discrimination based on sexual orientation and gender identity. States must also implement measures to protect children and adolescents with diverse sexual orientations or gender identities from bullying, harassment, and violence while ensuring educators receive proper training and materials to support them with cultural competence, tolerance and respect. Education must be delivered in a non-discriminatory manner, while still allowing authorities to ensure that the material is appropriate for students’ age and the evolving capacities of the child, and developmental stages.
74. The prohibition in pre-school and school education of *“carrying out propaganda, promotion or incitement in any way, directly or indirectly, of ideas and views related to non-traditional sexual orientation and/or the definition of gender identity other than biological one”* also fundamentally undermines children’s right to education and access to essential information critical to their well-being, development, and meaningful participation in society. As underlined above, states should adopt comprehensive gender and sexuality-sensitive sexual and reproductive health policies for adolescents, emphasizing that unequal access by adolescents to such information, commodities and

<sup>121</sup> See ECtHR, *Macaré v. Lithuania*, no. 61435/19, 23 January 2023, para. 215.

<sup>122</sup> See, for example, *Vallianatos v Greece*, nos. 29381/09 and 32684/09; *PB and JS v Austria*, no. 18984/02; *Pajić v Croatia*, no. 68453/13.

<sup>123</sup> See Committee on the Rights of the Child, *General Comment No. 4 (2003): Adolescent Health and Development in the Context of the Convention on the Rights of the Child*, para. 12.

services amounts to discrimination.<sup>124</sup> The Act seems to deny children access to age-appropriate, comprehensive education on the diversity of sexuality and gender, limiting their ability to form well-informed, evidence-based perspectives. Act's impact is especially harmful to children and adolescents with diverse sexual orientations or gender identities, deepening their isolation, reinforcing stigma around their identities, and depriving them of the opportunity to learn in a safe, open, equal, diverse and affirming environment.<sup>125</sup>

75. Although there is no international obligation explicitly guaranteeing a right of children to receive information on subjects dealing with sexual orientation and gender identity, a respective State obligation can be implied. Under Article 13 of the ICESCR, education must promote human rights and fundamental freedoms, meaning that curricula should be inclusive and foster respect for diversity. Article 29 (1) of the UN CRC and Article 24 of the CRPD further mandates that education develop respect for human rights, tolerance, and equality, requiring states to provide an inclusive learning environment. As also affirmed by the UN Committee on the Rights of the Child interpreting the UN CRC, states must *“adopt comprehensive gender and sexuality-sensitive sexual and reproductive health policies for adolescents, emphasizing that unequal access by adolescents to such information, commodities and services amounts to discrimination.”*<sup>126</sup> The Committee on the Rights of the Child's General Comment No. 4 further clarifies that adolescents must have access to accurate, age-appropriate sexual and reproductive health education, which would also necessarily imply some information about sexual orientation and gender identity, including tailored information on reproductive health. General Comment No. 1 also adds that *“[b]asic skills should include [...] the ability to [...] develop a healthy lifestyle”*. General Comment No. 12 further emphasizes that access to information is essential for children to exercise their right to be heard.<sup>127</sup> The ECtHR has also affirmed that restricting access to information on LGBTI topics in schools violates Articles 10 (Freedom of Expression) and 14 (Non-Discrimination) of the ECHR.<sup>128</sup>
76. In light of the foregoing, the right to education places an obligation upon States Parties to provide comprehensive and inclusive information relating to sexual orientation and gender identity.<sup>129</sup> This should allow all children to develop a well-informed knowledge about sexual and gender diversity, while specifically allowing children and adolescents with diverse sexual orientations or gender identities to more fully understand their own identity and orientation. The right to education also mandates State Parties to provide sufficient training and instruction materials for educators, so that they are able to engage

124 See the [CRC General comment No. 20 \(2016\) on the implementation of the rights of the child during adolescence](#), para. 59. See also [Committee on Economic, Social and Cultural Rights, General Comment No. 20 \(2009\)](#) on non-discrimination in economic, social and cultural rights, para. 29.

125 See UNESCO, [Ensuring the right to equitable and inclusive quality education: results of the ninth consultation of Member States on the implementation of the UNESCO Convention and Recommendation against Discrimination in Education](#) (2018).

126 See the [CRC General comment No. 20 \(2016\) on the implementation of the rights of the child during adolescence](#), para. 59. See also [Committee on Economic, Social and Cultural Rights, General Comment No. 20 \(2009\)](#) on non-discrimination in economic, social and cultural rights, para. 29. Moreover, under the right to non-discrimination according to Article 2 of the UN CRC, States Parties shall respect and ensure the rights set forth in the CRC to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's “race”, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status (para. 1). States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members (para. 2).

127 See the [CRC General comment No. 20 \(2016\) on the implementation of the rights of the child during adolescence](#), paras. 23-25.

128 See ECtHR, [Bayev and Others v. Russia](#), no. 67667/09.

129 See the [Resolution 2417 \(2022\)](#) of the Parliamentary Assembly of the Council of Europe on combating rising hate against LGBTI people in Europe, Text adopted by the Assembly on 25 January 2022 (3rd Sitting), para.16.4; See also [Committee of Ministers, Recommendation CM/Rec\(2010\)5](#) of the Committee of Ministers to Member states on measures to combat discrimination on grounds of sexual orientation or gender identity.

and support children and adolescents with diverse sexual orientations or gender identities in a manner which is informed, culturally competent and which respects differences in sexual orientation and gender identity.<sup>130</sup> Where States incorporate issues relating to sexuality and gender into educational curricula, they must do so in a manner which is inclusive, comprehensive, age-appropriate and evidence-based.<sup>131</sup>

77. The Venice Commission in a number of opinions also stressed that “*where such information is provided, this must be done in an objective, critical and pluralistic manner, avoiding indoctrination and in compliance with the principle of non-discrimination, including on the grounds of sexual orientation and gender identity.*”<sup>132</sup> The Committee of Ministers of the CoE also stresses that the right to seek and receive information includes “*information on subjects dealing with sexual orientation and gender identity*” and that, “*taking into account the rights of parents regarding the education of their children*”, this right should be effectively enjoyed without discrimination.<sup>133</sup>
78. The European Committee of Social Rights has underscored the importance of a non-discriminatory health education curriculum.<sup>134</sup> Referring to the non-discrimination clause in the European Social Charter, the Committee affirmed that States must provide sexual and reproductive health education to school children without discrimination on any ground. In particular, it stressed that, as part of their positive obligation under the right to health protection, States must ensure that sexual and reproductive health education “*extends to ensuring that educational materials do not reinforce demeaning stereotypes and perpetuate forms of prejudice which contribute to the social exclusion, embedded discrimination and denial of human dignity often experienced by historically marginalised groups such as persons of non-heterosexual orientation*”.<sup>135</sup>
79. Since the Act could result in depriving children of comprehensive, age-appropriate education and inclusive information on sexuality, sexual orientation, gender identity, expression, and sex characteristics, it is not compliant with the right to education under Article 2 of Protocol No. 1 to the ECHR and other relevant international human rights standards, including Article 2 CRC. **The ban introduced by the 2024 Amendments should, therefore, be repealed.**

## 6. PROCESS OF DEVELOPING AND ADOPTING THE ACT

80. The Bill Amending and Supplementing the Preschool and School Education Act was introduced in early July 2024 and adopted in the first and second, final readings by the Bulgarian National Assembly on 7 August 2024. Despite public protests and appeals from various organizations, the President signed the amendments into law on 15 August 2024, bringing them into immediate effect. The amending Act was pushed through in just a month. No justification was provided for this fast-track procedure. The amendments

130 See European Commission against Racism and Intolerance, *ECRI Report on Armenia* (6th Monitoring Cycle), Adopted on 29 March 2023, Published on 20 June 2023, para.14; *Congress of Local and Regional Authorities, Protecting LGBTI people in the context of rising anti LGBTI hate speech and discrimination*; The role of local and regional authorities, Report, CG(2021)40-18 (17 June 2021).

131 See ECtHR, *Macate v. Lithuania*, no. 61435/19, 23 January 2023, para. 206.

132 See Venice Commission *Opinion* on , para.93. See *Opinion* on the Compatibility with International Human Rights Standards of Act LXXIX Amending Certain Acts For the Protection of Children, para. 39.

133 See *Recommendation CM/Rec(2010)5 of the Committee of Ministers to member States on measures to combat discrimination on grounds of sexual orientation or gender identity*, 31 March 2010, para. 13

134 See *International Centre for the Legal Protection of Human Rights (Interights) v. Croatia*, Complaint No. 45/2007, European Committee of Social Rights, 30 March 2009.

135 *Ibid.*

advanced rapidly through the legislative process, with both readings and deliberations in the National Assembly completed in a single day.

81. This accelerated timeline severely restricted the ability of the opposition, civil society, educators and other stakeholders to provide meaningful input, hence undermining the inclusive and open process of law-making. As noted in the European Commission’s 2024 Rule of Law Report, legislative proposals introduced by members of the National Assembly in Bulgaria “do not go through the same mandatory procedure as for the government, including impact assessment and public consultations.”<sup>136</sup> While the Rules of Procedure of Parliament require that draft laws tabled by members of the Parliament undergo public consultations and impact assessments, stakeholders have criticized these processes as often being carried out *pro forma*, lacking meaningful engagement or thorough evaluation.<sup>137</sup>
82. As underlined in *ODIHR Guidelines on Democratic Lawmaking for Better Laws* (2024), accelerated legislative procedure “should be used rarely and only in exceptional cases of genuine urgency to pass a specific law, as the process entails a lack of legislative planning and less or no time for in-depth consultations on draft laws, nor for adequate parliamentary scrutiny.”<sup>138</sup> The Guidelines further underline that “[t]he legal framework should define precisely and narrowly the circumstances in which fast-track procedures may be applied and should require proper justification” and “[a]ccelerated lawmaking procedures should only be possible if they are based on a formal request submitted in accordance with the relevant legislation”.<sup>139</sup> They should not be applied to introduce important and/or wide-ranging reforms, such as legislation significantly impacting the exercise of human rights and fundamental freedoms.<sup>140</sup>
83. More generally, OSCE participating States have committed to ensure that legislation will be “adopted at the end of a public procedure, and [that] regulations will be published, that being the condition for their applicability” (1990 Copenhagen Document, para. 5.8).<sup>141</sup> Key commitments specify that “[l]egislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives” (1991 Moscow Document, para. 18.1).<sup>142</sup> The Venice Commission’s Rule of Law Checklist also emphasizes that the public should have a meaningful opportunity to provide input.<sup>143</sup> Public consultations should be an integral part of the legislative drafting process, and need to be open, transparent, meaningful and inclusive. In particular, sufficient and appropriate outreach activities should ensure the involvement of interested parties from various groups representing different and opposing views (including those that may be critical of the proposals made). The authorities responsible for organizing consultations should seek to respond to proposals made by stakeholders, in particular where these proposals are not incorporated into the relevant draft law or policy (in this case, the authorities should explain why).<sup>144</sup>

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136 See the [2024 Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria](#), accompanying the document ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: 2024 Rule of Law Report – the rule of law situation in the European Union’ SWD(2024) 802 final, page 34

137 *Ibid.*

138 See ODIHR, [Guidelines on Democratic Lawmaking for Better Laws](#) (16 January 2024), Principle 11.

139 *Ibid.* Principle 11.

140 *Ibid.* Principle 11.

141 See [1990 OSCE Copenhagen Document](#), para. 5.8.

142 See [1991 OSCE Moscow Document](#), para. 18.1,

143 See Venice Commission, [Rule of Law Checklist](#), CDL-AD(2016)007, Part II.A.5.

144 *Ibid.* para.99

84. **The accelerated legislative procedure should not be used to amend the legislation impacting the fundamental rights, and should it be nevertheless used so, special oversight should be in place, including a review clause.**
85. **Therefore such legislative amendments should have been subjected to inclusive, extensive and effective consultations, including with civil society, non-governmental organizations promoting the rights of LGBTI persons, educators, parents' associations and others while ensuring genuine involvement of interested parties from various diverse groups representing different and opposing views, offering equal opportunities for women and men, for persons with disabilities, and persons from under-represented or marginalized groups to participate. According to the principles stated above, such consultations should have taken place in a timely manner, at all stages of the law-making process, including before the Parliament. More generally, as an important element of good law-making, a consistent monitoring and evaluation system of the implementation of the Act and its impact, including in terms of potential increase of discrimination, incitement to hatred and intolerance and violence against children and adolescents with diverse sexual orientations or gender identities, should also be put in place that would efficiently evaluate the impact of the Act after some time following its entry into force.**<sup>145</sup>

*[END OF TEXT]*

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<sup>145</sup> See e.g., OECD, [\*International Practices on Ex Post Evaluation\*](#) (2010).

## **ANNEX: Act Amending and Supplementing the Pre-School and School Education Act of Bulgaria** *(as adopted on 7 August 2024)*

### **ACT**

## **Amending and Supplementing the Pre-school and School Education Act**

(rev. SG, no. 79 of 2015; amendm. no. 98 and 105 of 2016; no. 58 and 99 of 2017; no. 24, 92 and 108 of 2018; no. 24, 42, 100 и 101 of 2019; no. 17 and 82 of 2020; no. 17, 34 and 102 of 2022; no. 11 and 102 of 2023; and no. 23 and 27 of 2024)

*‘§ 1. In Article 11, paragraph 2 is amended and reads as follows:*

*"(2) In the system of pre-school and school education, actions related to:*

- 1. The imposition of ideological and/or religious doctrines;*
- 2. The implementation of political and party activity;*
- 3. Propaganda, promotion or incitement in any way, directly or indirectly, of ideas and views related to non-traditional sexual orientation and/or the definition of gender identity other than the biological;"*

*§ 2. The following amendments and additions are made to § 1 of the additional provisions:*

- 1. A new point 16 is inserted:*

*"16 "Non-traditional sexual orientation" is a different from the generally accepted and established in Bulgarian legal tradition conception of emotional, romantic, sexual or sensual attraction between persons of opposite sexes."*

- 2. The former paragraphs 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36 and 37 become paragraphs 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37 and 38 respectively.'*

The law was passed by the 50th National Assembly on 7 August 2024 and is stamped with the official seal of the National Assembly.

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President of the National Assembly: **Raya Nazarian**

N.B.: [An amendment to the Preschool and School Education Act, [No. 50-454-01- 15](#), introduced by [Rep. Kostadin Kostadinov and a group of MPs on 03.07.2024](#) and adopted by the National Assembly on 07.08.2024.]