During the whole of 2003 Bulgaria was governed by the coalition of the Simeon II National Movement (SSNM), led by the former Bulgarian monarch Simeon Saxe-Coburg-Gotha, and the Movement for Rights and Freedoms (MRF), which draws its following mainly from the community of Bulgarian ethnic Turks, some of the Bulgarian-speaking Muslims and some Roma. Local elections, which were free and fair, were held in October–November. The senior coalition partner, SSNM, performed much worse than in the last parliamentary elections and took much fewer seats in local governments than had been expected considering its strength as the single largest party in Parliament.

In 2003, human rights protection in Bulgaria saw some progress in several areas, mainly in the improvement of the legislative and institutional frameworks of human rights protection. In September, Parliament adopted the Protection from Discrimination Act, which was a major step forward in the fight against discrimination in a number of fields. The Act came into force on 1 January 2004 and established an administrative body with effective powers to investigate and punish alleged discriminatory practices. The Act has also gone a considerable way towards improving the legal framework of judicial remedies by, among other things, reversing the burden of proof from the victim to the perpetrator. The Act is consistent with EC Directives 2000/43 and 2000/78. In May 2003, Parliament adopted the Ombudsman Act (effective as of 1 January 2004), which introduced a formal system of advocacy before central or local bodies of government where their actions or inactions have violated or infringed upon civil rights or freedoms. Amendments to the Child Protection Act were adopted in April 2003, whereby the placement of a child with relatives or a foster family or in a specialised institution is subject to a court order, thus preventing the arbitrary placement of children in specialised institutions and providing a further safeguard for the child’s best interest.

However, in a number of other areas, human rights in Bulgaria did not achieve any progress, while in certain others, such as the right to asylum and freedom of expression, the situation even deteriorated. A lot of the old problems of legislative or practical nature were as severe in 2003 as in the previous years. In 2003, the European Court of Human Rights delivered 10 judgements against Bulgaria, some on problems solved in the judicial system, but some on problems still existing in law and in practice.

1. Right to Life

In 2003, the legislative and the practical guarantees for protection of the right to life in Bulgaria did not meet international standards. In February, Parliament amended Article 80 of the Ministry of Interior Act, which allows the use of firearms during the apprehension of an individual carrying out or who has carried out even a minor offence or to pre-
vent the escape of an individual arrested for the perpetration of even a minor offence. However, the amendment was immaterial and did not go far enough as to bring the Act in line with the relevant international standards and, in particular, with Principle 9 of the *UN Principles on the Use of Force and Firearms by Law Enforcement Officials*. In 2003, as in previous years, this major flaw in the legislation resulted in people being killed or maimed by law enforcement officials resorting to excessive use of firearms; and as in previous years, Roma were inordinately prevalent among the victims of such incidents.

At least two persons were killed in 2003 as a result of excessive use of firearms by law enforcement officials acting in the line of duty. No proper investigation was conducted in either of these incidents, and the officers concerned were not prosecuted. On 26 March 2003, Angel Simeonov, a 28-year old Romani man, was shot and killed while cutting firewood in the *Rido* area near the town of Samokov. Despite the existence of a witness who identified the killer as a forest ranger, no charges were pressed after the investigation. The criminal proceedings in the case were terminated on 25 September by the order of the Sofia District Prosecutor’s Office.

On 9 October 2003, a police officer, the local Police Inspector of the town of Suidenienie, Captain Manchev, shot and killed Petko Koshnicharski, who was schizophrenic, in front of his home. Mr. Koshnicharski had been harassing his family and on their call to the police and the medical emergency service, the captain and three other police officers, accompanied by medics came to his home to take him to a psychiatric hospital. Mr. Koshnicharski came out brandishing an axe at them, and after several warning shots in the air, Captain Manchev shot him lethally in the chest before any attempt had been made to restrain and arrest him. The criminal investigation was concluded on 8 December and the case was referred to a public prosecutor with an opinion that no crime had been perpetrated. The investigator determined that the firearm had been used in conformity to the law. Immediately after the incident, the then Director of the National Police Service General Vasil Vasilev awarded Captain Manchev for outstanding service.

On 18 October, Iliya Yordanov, a 21-year old Romani man, died in custody at the detention centre of the Plovdiv District Investigation Service, having been arrested for possession of drugs in the *Stolipinovo* Roma quarter on 14 October. Even though Mr. Yordanov and his relatives had told the investigation officers that he was a diabetic, he did not receive adequate medical care. The emergency medical teams that visited him twice in his cell determined that he was in no need of hospitalisation. The post-mortem report signed by three medical examiners concluded that the death had occurred as a result of diabetes-related complications. The investigation was concluded by an order to terminate the criminal proceedings on the grounds that “the act did not constitute a criminal offence.”

2. **Torture, Inhuman or Degrading Treatment or Punishment, Excessive Use of Force by Law Enforcement Officials**

Torture and inhuman or degrading treatment or punishment remained a serious problem in Bulgaria in 2003. Contrary to the requirement under Article 4 of the *UN Convention*
against Torture, torture is not a specific offence under the Bulgarian criminal law. The Bulgarian courts still admit as evidence statements made as a result of torture, contrary to Article 15 of the Convention. In late November 2003, four persons were convicted of the assassination of former Prime Minister Andrei Loukanov. The court established that some of the statements on which the prosecution based its case had been made as a result of torture while the defendants were in police custody. Nonetheless, the court admitted those statements as evidence and based its verdict on them on the grounds that they had subsequently been confirmed before the investigating officer. At the trial, however, the defendants withdrew their statements and demanded that, having been made as a result of torture, they should not be admitted as evidence. Criminal proceedings are still pending against the police officers who were allegedly involved.

In 2003, the Bulgarian Helsinki Committee (BHC) conducted two comprehensive surveys of disciplinary practices in places of detention and of police practices in the light of human rights. The surveys were conducted under respective agreements with the Directorate General of Prisons and with the National Police Service, and the results were published.¹

The survey of disciplinary practices in places of detention revealed serious issues relating to the conditions at the disciplinary facilities and, especially, in the high security areas, solitary confinement areas, and life imprisonment wards. The conditions in life imprisonment wards were almost without exception inhuman and degrading. This was also often the case in isolation and administrative confinement cells. At several prisons, BHC found issues relating to the use of force and auxiliary means by prison guards. The situation was particularly grave at the Bourgas prison. The absence of a single arrangement for the documentation of such cases contributed to the use of force and auxiliary means as an informal disciplinary punishment. Another finding was that the arbitrary exercise of disciplinary powers, in the absence of adequate controls and deterrents, was sometimes equivalent to inhuman or degrading punishment.

In its judgement in the case of Yankov v. Bulgaria of 11 December 2003, the European Court of Human Rights found a breach of Article 3 of the European Convention on Human Rights, relating to the disciplinary punishment of a prisoner in 1998, in that the prisoner’s hair was fully cut before he was placed in an isolation cell. The Court determined that the measure was equivalent to degrading treatment. It also found a breach of Article 13 of the Convention in that the existing legal arrangement for disciplinary practices at places of detention did not provide an effective remedy before a national authority where rights and freedoms were violated in connection with the administration of such disciplinary measures.²

In its survey of Bulgarian police practices in the light of human rights, BHC gathered information about multiple cases of torture and ill-treatment of police detainees. As part of the survey, BHC again interviewed a representative sample of 620 serving prisoners

whose pre-trial proceedings had commenced after 1 September 2001. The results showed a decline in the number of complaints about the use of force and auxiliary means during arrest and in police custody. In 2003, the proportion of detainees claiming to have been subjected to violence during police custody was down by 6 percent from 2002 (37% from 43%), and the proportion of those alleging the use of force during the arrest was down by 1 percent (30% from 31%). While these results were consistent with the downward trend over the last five years, the number of complaints about unlawful use of force was still unacceptably high.

On 23 July 2003, the Ministry of Interior adopted Instruction No. I-167 on the rules of action by the police authorities in connection with the detention of persons at the Ministry’s structural divisions and on the physical conditions and rules of procedure at the Ministry’s detention facilities. This was a positive step altogether, considering in particular its intended preventive effect on torture and inhuman or degrading treatment during arrest and in police custody. The Instruction did not lay down any detailed rules relating to the use of force or firearms, making instead a mere reference to the Ministry of Interior Act (MIA, Article 8). It did however make it a duty of any police officer in whose presence an act of unlawful use of force, or torture or inhuman or degrading treatment of a detainee was committed, to intervene in order to prevent such an act and to notify promptly his or her superior (Article 10). The Instruction also requires that the detention period of record under MIA commence “from the time of restriction of the person’s freedom of movement” (Article 12). Article 18 provides the duty of the authority making the arrest to inform detainees of their right to receive medical aid and legal counsel, and to inform their relatives or other close persons of their detention, and of their right to appeal the act of detention before a court of law. Detainees complete and sign a special statement acknowledging receipt of such information, and keep a copy of such statement. If a detainee undergoes a medical examination while in custody, he or she must receive a copy of the medical opinion. If it appears, upon a medical examination, that force or auxiliary means or a weapon may have been unlawfully used, the officer accompanying the detainee during the examination must report accordingly to the head of the appropriate structural division of the Ministry (Article 20(9)). Article 19 filled a gap under MIA by requiring that detainees be informed in a language they understand of the reasons for their arrest.

Further, Instruction No. I-167 laid down requirements concerning the physical conditions at detention facilities: cells must be furnished with a pallet or bed (Article 63(2)); a blanket or other covering must be provided for the night (Article 63(3)); cells must be constantly ventilated and have access to daylight (Article 73); and cells for minors must be equipped with bedclothes, a table and chairs, a closet, soap and towels. There may not be any ‘suspicious objects’ in interrogation rooms, such as: “wooden batons, broomsticks, bats, iron rods, pieces of thick electric cable, dummy firearms or knives, or any such other object as could be used for a violent purpose or might present a perceived threat to the detainee” (Article 80(5)).

The BHC survey team’s visits to police stations and the examination of their detention records revealed that police practices had yet to meet the requirements of Instruction
No. I-167. Informing the detainees of their rights and the signing of the relevant statement by them was rather a formality. In a mere handful of cases had the detainee requested, immediately upon his or her arrest, to consult a lawyer or be examined by a doctor. Of the 5,791 information acknowledgements examined during the survey, only 10 percent contained an expression of the detainee’s wish to have legal assistance. Similarly, in only 16 percent of the cases examined, had the detainee requested to have his or her relatives informed of the place and conditions of detention. Sometimes, a police officer would complete the statement form and have it merely signed by the detainee. The physical conditions in many detention facilities were also far below the standards established by the Instruction.

Access to counsel and to an independent medical opinion during detention still presents a major problem in the Bulgarian criminal justice system. The BHC survey at places of detention showed a considerable progress in access to counsel during trial, but almost no improvement during pre-trial proceedings. The proportion of defendants who said that they had had no access to pre-trial counsel was almost the same (app. 50%) as at the time preceding the 1999 reform of the Code of Criminal Procedure, which had been expected to result in a considerable improvement.

Medical examinations of detainees were performed at about 20 percent of the police departments visited by BHC. The cases were rather exceptional where a medical examination had been performed by a physician at the detainee’s own request. Most often, the examinations were performed by the local medical emergency unit, which did not always leave a documentary trail, and where it did, the record would be attached to the case file and only very rarely would the detainee be given a copy.

On 4 December 2003, the European Court of Human Rights found a breach of Article 3 of the Convention in the case of *M.C. v. Bulgaria.* The case concerned the rape of a 14-year-old girl where the alleged perpetrators had not been prosecuted on the grounds that there had been no evidence of the victim’s physical resistance to the assault, such as torn clothing or bruises. The Court ruled that the requirement of such evidence made by the investigation and the prosecution authorities had deprived the victim of an adequate remedy for what had been a grave assault on her personal inviolability. The Court also ruled that by focusing the rape investigation on the victim’s resistance, the government had acted in breach of its obligation, pursuant to Article 3 of the Convention, of ensuring adequate investigation of all acts of inhuman or degrading treatment.

The situation regarding institutions for mentally disabled individuals did not see any material change in 2003. The government did spend some money on the improvement of the living conditions at some of the social care institutions. The one based in the rural community of Dragash Voivoda, which had among the worst living conditions, was relocated to a newly-refurbished facility in another community. However, in 2003 as in previous years, cases of inhuman or degrading treatment of residents in institutions for mentally disabled persons kept coming to BHC’s knowledge. One of those was the Institution for the Aged Suffering from Dementia in Sofia, where 63, or two-thirds of the institution’s

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residents, died during the year as a result of inadequate care and inhuman treatment. The unlawful use of force, physical restraint or immobilisation were common practices at many institutions. Rehabilitation and social integration programmes, if any, were rather weak and included a very limited number of residents. Adequate medical care was unavailable at many of the institutions.

3. Right to Liberty and Personal Security

No steps were taken again in 2003 to amend, in the light of the judgement of the European Court of Human Rights in Varbanov v. Bulgaria, the legislation relating to involuntary civil commitment to a psychiatric institution for the purposes of psychiatric evaluation. Thus, the old practice persisted, where, with a view to establishing the need for subsequent involuntary treatment, persons were committed by a prosecutor’s order. The usual duration of commitment is one month or in exceptional cases – up to three months. The draft legislation prepared by the Ministry of Health in 2002 was not adopted by Parliament in 2003. Meanwhile, on 31 July 2003 the European Court of Human Rights delivered a judgement in yet another case of involuntary commitment for psychiatric evaluation (Kepenerov v. Bulgaria), where again the Court found a breach of Article 5 of the European Convention on Human Rights.

The placement of persons suffering from mental disorders in social care institutions continued to present problems regarding safeguards against arbitrary restriction of personal liberty. Such placement decisions are subject to an administrative procedure, without any judicial review, and were often unfounded, as BHC repeatedly established in the course of its monitoring. April 2003 saw the adoption of amendments to the Child Protection Act, whereby the placement of children in a childcare institution was made, in all cases, subject to a court order. However, no similar changes were introduced in the placement procedure for adults.

The procedure for placement of children in juvenile correction institutions (the so called educational boarding schools and social pedagogical boarding schools), in which the child’s liberty is restricted for the purposes of educational supervision, did not see any change in 2003. It remained entirely in the hands of local juvenile delinquency boards [Commission on Combating the Antisocial Behaviour of Children and Adolescents], where judicial review, regarding correctional schools only, is a mere formality, excluding the child’s counsel from the proceedings. In September 2003, the Government tabled a bill of amendment to the Combating of Antisocial Behaviour Act of Children and Adolescents aimed at bringing the placement procedure in line with the relevant international standards. However, the proposed amendments did not bring any greater clarity to the definition of antisocial behaviour and did not address the dual role played by juvenile delinquency boards, which needlessly complicates and confuses the procedure.

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4. Independence of the Judiciary and Right to a Fair Trial

After the repeal by the Constitutional Court, at the end of 2002, of the amendments to the Judiciary Act, 2003 did not see any major legislative steps to address the deficiencies in the structure and functioning of the judicial system. In the autumn of 2003, an amendment to the Constitution paved the way to the introduction of more stringent judicial accountability standards, but the relevant legal changes pursuant to the constitutional amendment have yet to come. The major problems in this area include: the excessive length of judicial proceedings, whether criminal or civil; the ineffective enforcement of judgements in civil cases; the absence of an adequate information system allowing to monitor the course of proceedings; the inadequacy of legal assistance in civil and in criminal cases; and corruption.6

In April and in October 2003, the European Court of Human Rights delivered its judgements in the cases of Kitov v. Bulgaria and S.H.K. v. Bulgaria.7 In both cases, the Court found a breach of Article 6 of the European Convention on Human Rights in the excessive length of proceedings, criminal and civil, respectively.

BHC’s survey of 620 serving prisoners whose pre-trial proceedings had commenced after 1 September 2001 revealed a certain improvement in access to legal assistance during the trial. Still, a considerable number of defendants, who were convicted and sentenced to imprisonment, had been tried without a defence counsel. On the other hand, the survey did not find any improvement at all in pre-trial legal assistance, with the same proportion of respondents (app. 50%) claiming to have had no such assistance as before the 2000 reform of criminal procedure.8

The legislation relating to the expulsion of aliens was not amended in 2003 in the light of the 2002 judgement of the European Court of Human Rights in Al Nashif v. Bulgaria, where the Court found that the existing ban on the judicial review of expulsion orders under the Aliens Act contravened Article 13 of the European Convention on Human Rights.

5. Freedom of Thought, Conscience, Religion and Belief

At the end of 2002, Parliament adopted a new Denominations Act, which, as the old one, and contrary to international standards, restricted the right to freedom of religion and placed religious denominations in a discriminatory legal framework compared with non-religious organisations. The Act favoured the Bulgarian Orthodox Church by establishing its legal personality, while the other denominations may be conferred legal personality by the Sofia City Court. The Act’s purpose was to overcome the schism in the Bulgarian Orthodox Church, making sure that one of its rivalling wings, that of Patriarch Maxim, 6

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8 See also section on Torture, Inhuman or Degrading Treatment of Punishment, Excessive Use of Force by Law Enforcement Officials above.
would be granted official status by the mere operation of law. The religious denominations that had been registered under the preceding legislation would retain their legal personality upon renewal of their court registration pursuant to the Act.

After the adoption of the Denominations Act, several Members of Parliament petitioned the Constitutional Court to declare unconstitutional certain provisions relating to the privileged status of the Bulgarian Orthodox Church and the possible restriction of individual rights by a denomination’s rules, observances or rituals. Those were not all of the provisions, which contravened the Constitution and international law. In July 2003, the Constitutional Court split into six of the Judges, who would grant the MPs’ request, and the remaining five, who would deny it. Thus, the contested provisions remained in force as, under the Constitution, the Court may only rule by a majority of no fewer than seven of its members.

The application of the Denominations Act in 2003 revealed some of its serious deficiencies. The Act even failed its sponsors in their original intent. Patriarch Maxim’s Synod did not file for renewal of registration with the Sofia City Court, which would have secured it a judgement establishing its legitimacy as a representative of the Bulgarian Orthodox Church. That, in turn, effectively prevented the Synod from registering its local representations since, under Article 19(3) of the Act, such may only be registered if the denomination itself and its national leadership have been registered by the Sofia City Court. In September, the Sofia City Court terminated the registration proceeding of the so-called ‘Alternative Synod’ due to the petitioner’s lack of procedural legitimacy. As a result, the yearend saw both wings of the Bulgarian Orthodox Church without registration.

In December 2003, the Muslim denomination also failed in its attempt to have its newly-elected national leadership registered. Its court petition was challenged by Mr. Nedim Gendzhev, archrival of newly-elected Chief Mufti Fikri Hassan, claiming that he had organized a legitimate Muslim conference at the same place and time. By way of an interim relief, the court ordered the denomination’s bank accounts to be frozen until the dispute was resolved.

With the exception of the Bulgarian Orthodox Church, the other recognised religious denominations had their registration renewed by the Sofia City Court without major obstacles by early 2003. Several new denominations were registered for the first time during the year, bringing the total to 36 (including the unregistered Bulgarian Orthodox denomination), and a few more are in the process of being registered. Having local representations registered proved much more difficult. While its national leadership does not have a duty under the Act to register local representations, a religious denomination is practically prevented from working in a community in the absence of a local registration, granted by a city official. Local ordinances adopted years ago still exist in many communities, which, contrary to the law, make the work of religious denominations conditional on local registration. Article 19(2) of the Act calls for a ‘notification arrangement’ for the

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purposes of local registration. Yet, the Act itself provides a number of formal require-
ments, which, if unmet, may cause registration to be denied. To these, the Religious De-
nominations Directorate of the Council of Ministers added a sample electronic form, which it imposed on the local authorities, thereby making the local registration process even more bureaucratic. At present, almost none of the major denominations have com-
pleted the process, which severely hinders their local activities. Indeed, some of them, like the Jehovah’s Witnesses, have yet to register in half of the local communities where their followers live.

Despite the controversy surrounding the leadership of the Bulgarian Orthodox Church, Patriarch Maxim’s Synod on several occasions resorted to violence and other unlawful means in its effort to bring the Alternative Synod to obedience and seize its assets. The government authorities did not intervene in any way. The Alternative Synod claims that in 2002–2003 Maxim’s Synod unlawfully took possession of no fewer than six churches and one monastery. In the most drastic of such incidents, in Varna in February 2003, a party of Metropolitan Bishop Kiril’s bodyguards and priests, loyal to Patriarch Maxim, seized the Church of St. Anastasius and banished the local priest, Father Lyubomir Popov, who was very popular among his parishioners but sided with the Alternative Synod. Later, the church keys were given back to the old owners, but on 20 May, it was again broken into and seized by Maxim’s followers, this time for good.

In 2003, the non-traditional religious denominations in Bulgaria continued to suffer dis-
crimination in a number of areas of activity. On 24 May, the Evangelical Pentecostal
Church in the town of Shoumen was vandalised: unknown perpetrators threw stones and broke 17 windows. In June, residents of the Slaveikov housing estate in Bourgas announced their intention of staging a riot to prevent the construction of a house of prayer by the Jehovah’s Witnesses. The protest lasted several days and provoked discriminatory comments against the Jehovah’s Witnesses by local politicians and city officials. In the end, Jehovah’s Witnesses suspended the project. In November, an American pastor was assaulted in Varna by young nationalists and suffered grievous bodily injury. The offend-
ers were identified but never punished. In December, the Mayor of Stamboliiski refused to allow Seventh-day Adventists to hold a religious teaching event in the village of Yoakim Gruveo, citing a petition against the ‘sect’ signed by 41 of the local residents. As in previous years, the local police and city officials in several communities issued fines against the Jehovah’s Witnesses for their peaceful religious activities.

In 2003, BHC’s attention was drawn to violations of the right to freedom of religion suf-
f ered by some non-traditional Muslim denominations in Bulgaria. In March, two mem-
bers of the Caliphate Muslim Society were arrested in the Roma quarter of Pazardzhik on allegations of Islamic fundamentalism. These, however, were not deemed sufficient to warrant further criminal proceedings. In May, press reports and police sources claimed that the authorities prevented an “unauthorised gathering of Muslims who had come under the influence of a Lebanese Islamic movement” in South Bulgaria. BHC was unable to find out more about the nature of the gathering and why and how it was ‘prevented’.

Representatives of several Protestant bodies complained about discrimination in local tax assessments. Their properties were treated for tax purposes as industrial estates, while Christian Orthodox churches paid token amounts or were exempt altogether. Non-Orthodox denominations are required to pay taxes on foreign donations, even when these are in the form of humanitarian aid or literature.

In May 2003, Parliament adopted amendments to the Alternative National Service Act whereby the term of peacetime alternative service was reduced from double to one and a half times the duration of conscription military service; and the provision was repealed under which alternative service could be extended by way of a disciplinary sanction. However, certain additional restrictions were introduced by the same amending legislation. Decisions to grant exemption from military service or impose disciplinary sanctions were excluded from judicial review. Moreover, the amendments did not go as far as to repeal altogether the unreasonable and discriminatory restrictions imposed on alternative servicemen, such as: the inadmissibility of civil work in non-profit organisations; the ban on religious or atheistic propaganda; the ban on alternative servicemen’s membership in trades unions or participation in trades union activities; the ban on alternative servicemen’s running for elected office.

6. Freedom of Expression, Freedom of the Media

2003 was among the darkest years in the recent history of the right to freedom of expression in Bulgaria. The year saw two precedent-setting cases in this area. On 6 November, for the first time since the start of the democratic changes, the Council for Electronic Media (CEM) annulled the registration of a television operator, thereby effectively outlawing the network and forcing it to stop broadcasting. On 11 December, the European Court of Human Rights delivered its first freedom of expression judgement against Bulgaria in Yankov v. Bulgaria. The two serious problems in this area, i.e., the coercion of certain government-controlled media and the criminal prosecution for defamation, continued to resurface in 2003.

In Yankov v. Bulgaria, where the Court found a breach of Article 10 of the European Convention on Human Rights, a prisoner had been confined to an isolation cell for seven days on account of moderately insulting comments about the justice system and the prison administration made in a manuscript not meant for publication. The manuscript had been seized by the prison administration on March 10, 1998, before the prisoner could talk to his lawyers.  

In 2003, the regulation of the broadcasting media continued to present serious problems. CEM did not perform its main licensing functions with regard to the private operators and did not exercise proper control over the Bulgarian National Television. The absence of a licensing procedure meant continual uncertainty for the private broadcasting media. The year also saw renewed attempts by the parliamentary majority to bring the media under its control by the adoption of a new broadcasting media legislation. In February, a group

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of majority MPs tabled a new bill in yet another attempt at a regulatory body reshuffle by legislative means. Had it been adopted, the proposed legislation would have resulted in a major curtailment of journalistic autonomy at the Bulgarian National Television and National Radio. The proposed institutional arrangement, with its lines of dependence and functionality, would place in jeopardy the very concept of mass media regulation, the regulatory bodies, the effective implementation of the law, the licensing, management, funding, and programming of the so called ‘public media’, and would make the entire broadcasting media market a hostage of the dominant political and economic establishment. All media organisations saw in that new-old legislation another devastating blow on mass media regulation, while the likelihood of an irreversible development in the right direction was being reduced to naught. The new bill met with strong opposition from the journalist community and was rejected by Parliament in May, but the tension among the journalists and the broadcasting companies remained and was exacerbated by the repressive measures against the Den television network in the autumn.

CEM’s formal cause to annul the registration of Union Television, the Den broadcaster, was the alleged spreading of ethnic and religious hatred by one of its programmes, From Telephone to Microphone, presented by Mr. Nick Stein. The programme established an active feed-back line with its viewers, who represented a spectrum of ethnic and religious backgrounds and political orientations. Sharp political comments, some of them ethnically tainted, were made live on air, while, in his response, the presenter was not always up to the appropriate standard of professional conduct and, indeed, made his own share of controversial comments. Before annulling its registration, CEM fined the broadcaster BGN 15,000 (7,500 euros), which was too heavy by Bulgarian standards. This backfired on air, in the programme’s following issue, with unrestrained criticism of the Council and of the governing majority. Then, in apparent retaliation — without having followed up on its first measure and in total disregard for proportionality — CEM annullled the broadcaster’s registration, only to reinstate it a couple of weeks later, backing down under the pressure of a massive public outcry. Despite this outcome, the case of Den and the effective censorship imposed by the media regulator deepened the public’s concern about the existing safeguards against violations of the right to freedom of expression, as well as about broadcasting content that offended against morals and incited ethnic hatred. Still in a state of underdevelopment, the mass media regulation had exhibited its inherent contempt for the journalist profession. More than 80 journalists and other Den employees, most of them unrelated to, and unaccountable for, Nick Stein’s controversial programme, lost their jobs, albeit temporarily. The chilling effect of CEM’s harsh measures will certainly linger in the minds of those whose duty it is to keep the public informed.

The managerial and professional reorganisation of the Bulgarian Telegraph Agency (BTA) in 200211 was another step in the governing majority’s strategy of mass media control. In late 2002 and early 2003, the newly-appointed Director General Mr. Stoyan Cheshmedzhiev launched a massive redundancy programme, with overstaffing as the only explanation. The performance appraisal committees, which were supposed to make ‘reasoned’ decisions on contract terminations, did their job under a veil of secrecy. Many lost their jobs, including journalists of 30 years of service and despite having employment

contracts of indefinite duration, among them Zoya Hristova, Deputy Editor in Chief of the International Information Board. Translators were left to cope with the stream of international news without any editorial support. The positions of Reporter and Editor were abolished and the positions of Journalist and Coordinator were created so that certain reporters and editors could be removed and replaced by the right journalists and coordinators. The position of Secretary General was also abolished, just to remove the veteran BTA employee Ms. Yana Kozhouvarova. On 10 February 2003, BTA journalists and union activists circulated a declaration against the onslaught and launched a protest campaign which involved more than 200 BTA employees, mostly journalists, and lasted almost six weeks. In the end, the Director General resigned and most of those made redundant were reinstated.

The criminal prosecution of insult or libel, which under Bulgarian law is instituted on a private complaint, remained a problem in 2003. In addition, the right to freedom of expression would be interpreted differently from one court to another. Some courts gave journalists the benefit of the doubt and ruled to acquit. Thus, in May, the Montana District Court overruled the lower court’s judgement imposing a fine on Mr. Pavel Nikolov, journalist and owner of the local Montana radio station. Similarly, journalist Ekaterina Dzhougoubouria was acquitted in June. However, in other cases, the courts handed down heavy sentences with a crushing impact on the freedom of expression. In January, the Bourgas District Court (acting as an appellate instance) entered a money judgment against journalist Tanya Kasabova in the amount of BGN 7,472 (app. 3,700 Euro) (including a fine, civil damages, and costs) on account of a series of articles in the Kompas newspaper in which she uncovered cases of corruption among the members of an elite school admission board for disabled children. The Bulgarian Helsinki Committee, the Bulgarian Media Coalition and the Article 19 international organisation construed the following in the court’s verdict: 1. journalists must keep silent about suspected corruption, even when the facts, if revealed, would warrant the commencement of criminal proceedings; and 2. considerations of good faith or even of public interest are not a sufficient defence of one who does not even allege corruption but merely suspects it. Yet again, the court refused to take account of the media’s proper function of spreading information on matters of public interest and providing a forum for public debate.

In August 2003, Mr. Ivan Gargavelov, Secretary of the OMO Ilinden-Pirin Party, outlawed as unconstitutional, was fined BGN 100 (50 Euro) by the local court in the town of Gotse Delchev for an offence under the Minor Hooliganism Decree. He had insulted the pop-folk star Nikolina Chakurdukova with words, saying, among other things, that she sang Macedonian songs claiming they were Bulgarian.

7. Right to Respect for Private and Family Life

On 4 December 2003, the European Court of Human Rights delivered its judgement in M.C. v. Bulgaria. The Court found a breach of Article 8 of the European Convention on Human Rights concerning a case of rape of a 14-year-old girl by two men. The Court

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ruled that, by focusing exclusively on the evidence of physical violence and ignoring the psychological and social factors of duress, the national investigation and prosecution authorities had deprived the victim of an adequate remedy in breach of Article 3 of the Convention and in violation of the victim’s right to respect for private life.

The year did not see any change in the legislation relating to the expulsion of aliens. The Bulgarian Government did not follow up on the judgement of the European Court of Human Rights in Al Nashif v. Bulgaria, in which the Court found a breach of Article 8 of the Convention concerning the expulsion of an alien whereby his ability to communicate with his family had been prejudiced.

8. Freedom of Assembly and Association

No major changes occurred in Bulgaria in 2003 regarding the exercise of the right to freedom of assembly and of association. Many groups of citizens were allowed to assemble peacefully and to organise various public events, including such that were aimed against the Government’s policies. As in previous years, restrictions on these rights were imposed, contrary to international standards, with respect to unpopular groups or organisations.

The Bulgarian citizens of Macedonian identity again suffered discrimination in the exercise of their right to freedom of assembly and association. In 2003, they were allowed to organise celebrations on 20 April (to commemorate the death of Yane Sandanski) and on 2 August (the anniversary of the Ilinden uprising). On 12 September however, UMO Ilinden could not hold a memorial ceremony at the Gotse Delchev Monument in Blagoevgrad to honour the victims of the Macedonian genocide. The town’s Mayor had been notified on 28 August but refused to allow the event to take place. The Mayor’s decision was appealed within the prescribed time limit but the court did not hold a hearing, which would have suspended the ban. In the end, the event was banned by the order of the Local Prosecutor’s Office of Blagoevgrad.

Events proposed by several other groups were also banned. On 15 February, the City of Sofia refused to allow the march of a Kurdish group against the war in Iraq. Several of the organisers were rounded up by police vehicles and taken to Sofia Third and Fourth District Police Stations. Some of them were beaten and at least one of the participants was certified for bodily injury. On 11 March, Mr. Boris Naidenov, a Roma leader in Vidin, was arrested and charged on several counts under the Penal Code, including incitement to ethnic hatred, in connection with the winter protests of the local Roma community against power cuts. He was later released and some of the charges were dropped.

In March 2003, the Sofia City Court refused to grant registration to the United Macedonian Community – party for integration, development and economic progress founded by

13 See also section on Independence of the Judiciary and Right to a Fair Trial above.
14 See also section on Protection of Minorities. Aggressive Nationalism and Xenophobia below.
Bulgarian Macedonians some time before the local elections. The Court cited a filing technicality but, behind it, its prejudice against any party of Bulgarian Macedonians was plainly seen.

At the end of the year, the Government drafted amendments to the Assemblies, Rallies and Demonstrations Act, which, in its existing version, imposed a number of restrictions on the right to freedom of assembly in contravention of international standards, including a ban on any public events in the vicinity of the House of Parliament and on any such events, involving the use of vehicles in inhabited places or the use of such vehicles to block streets and roads, as might create “unreasonable traffic difficulties.” The amending bill was tabled in Parliament in January 2004.

9. Prison Conditions

As at 1 January 2004, a total of 10,066 persons had been deprived of their liberty at prisons and labour correctional hostels in Bulgaria, including 325 indicted pre-trial detainees and 1,536 defendants awaiting sentence. From the previous year, the number of pre-trial detainees and defendants had decreased, but the number of convicted prisoners had gone up by 11 percent. The 2002 amendments to the Execution of Prison Sentences Act increased the scope of eligibility for commitment to labour correctional hostels. Thus, the number of persons deprived of their liberty at open-type labour correctional hostel rose from 482 at the end of 2002 to 569 at 1 January 2004; and the number of persons at transitional labour correctional hostel rose even more considerably during the period, from 672 to 1,084.

Despite these positive developments, as 2003 saw an increase in the number of prisoners, overcrowding remained an issue in prisons and halfway facilities of the closed type. BHC’s 2003 monitoring of living conditions revealed that, in most prison wards for repeated offenders and in two of the closed-type halfway facilities, the sleeping quarters allowed an average of 1.3 to 2.0 sq m per person. In his letter to BHC, ref.: 5349-1 of 18 July 2003, Mr. Peter Vasilev, Director General of Prisons at the Ministry of Justice, pointed out that no provisions existed under Bulgarian law prescribing the size of living space at places of deprivation of liberty. In the former school building of the Kremikovtsi labour correctional hostels, refurbished in 2003 for residential purposes, some of the sleeping quarters accommodated 18–20 prisoners on 26 sq m (or 1.3–1.4 sq m per person). There was one bathroom and one toilet for all, which had no running water during most of the day. With a few exceptions, the same living conditions were found in the other parts of the facility. Even though all of the prisoners were first-time offenders, eligible for lighter confinement conditions, the shortage of space in the corridors meant that they were kept locked in their cells during the day. In December 2003, 19 prisoners went on hunger strike in protest against the intolerable living conditions and the cell-locking arrangement. Another of their grievances was the lack of clarity about the rules of eligibility for transfer to a transitional halfway facility. Even though the prisoners had met the requirements for transfer to the Kazichene labour correctional hostel, the administration refused to make the transfer without an explanation of its reasons. Two of the hunger
Strikers alleged that administration officers had solicited bribes from them in return for assistance with the transfer. A few months earlier, 176 of the prisoners at the same facility had signed a petition to the Minister of Justice with the request that the members of the Judiciary on the Parole Board establish objective criteria of determination in each case.

In several other prisons, overcrowding or shortage of adequate living space was similar. At the closed-type labour correctional hostel in the town of Troyan, 31 prisoners were accommodated in a 55 sq m cell (1.77 sq m per person), and the conditions in most of the other cells were similar. At the Bourgas Prison, Group 1, cells of some 26 sq m accommodated 14 to 18 prisoners each. At some prisons and labour correctional hostels, beds in the most overcrowded cells were installed at three levels.

Prison sanitation facilities were in a very bad state of disrepair. In most of the repeat-offenders wards, no more than two to four toilets were used on average by 100 prisoners. The situation was similar regarding washbasins and showers. In prison cells with no facilities of their own, the prisoners had to use buckets during the night.

Inadequate funding and the problem of overcrowding continued to cause shortages of bedclothes in prisons. Mattresses, blankets, bed sheets, and also prison uniforms were in a very poor condition. Another serious issue in most prisons was the poor condition of cell furniture. The interviews conducted by BCH among the prisoners revealed that the food continued to be of insufficient quantity and poor quality, and medical services were as inadequate. In the summer of 2003, the Council of Ministers issued Regulation No. 159 defining prison medical centres as therapeutic establishments within the meaning of Article 5(1) of the Therapeutic Establishments Act, and Rules for the organisation and functioning of such centres. The reference to the Act implied that prison medical centres would only provide specialised medical aid, in pursuance of Article 16, thereby creating a void in primary health care.

In 2003, BHC published a comprehensive analysis of the disciplinary practices at the places of deprivation of liberty in Bulgaria. The main finding was that, the absence of clearly defined legal procedures for the establishment of misconduct, for the imposition of punishments, and for the appeal of such decisions, and the administration of long solitary confinement on disciplinary grounds, encouraged abuses by prison administrations. At some prisons, solitary confinement in disciplinary cells, including such confinement for indefinite periods, was of the nature of inhuman or degrading treatment. The same conclusion could be made concerning the living conditions in some high-security areas, in which high-security and life sentences were served.

Ill-treatment in some prisons was one of the serious problems revealed by the publication. In the first half of 2003, BHC found that the use of force and aid devices in the Bourgas Prison had taken considerably larger proportions than elsewhere. On BHC’s information, the Directorate General of Prisons conducted an examination, which established that the prison guards did not deny the allegations but had always stayed within the limits of the

law. With its formal response to BHC, the Directorate General enclosed reports and explanations given by officers and by prisoners as at the date of the examination. The examiners had not found anything on record at the prison relating to the incidents and dates referred to in BHC’s information. Cases of guards’ brutality were also found at the correctional institution for adolescents in the town of Boichinovtsi. The official inquiry established that in only one of the alleged cases the complainant had marks of violence on his body and that the officer had used a baton but had not made a note of that in his report; he had instead admitted the fact in a subsequent oral explanation to his superior. All documents gathered in the course of the inquiry were referred to the Directorate General of Prisons and the officer concerned was demoted and given a written last warning prior to dismissal.

The 2002 amendments to the Execution of Prison Sentences Act did not change the legal status of foreign nationals serving a prison sentence in Bulgaria. Unlike convicted Bulgarian citizens, convicted foreigners may not be placed in halfway open-type or transitional facilities, regardless of the length of sentence, its remaining period or the prisoner’s behaviour. Foreigners are not allowed temporary leaves or suspension either.

The number of detainees awaiting trial at the 65 investigation detention centres as at 1 January 2004 was 788. The last two years saw several detention facilities in Sofia closed down, where living conditions could not be improved; and the detention centres in Byala Slatina, Belene, Svoge, and Etropole were also closed down; but there were still detention premises in operation below ground level. The general problem concerning most detention facilities was that normal living conditions were practically impossible to provide, including: natural lighting, fresh air, access to toilet facilities and running water, and open-air spaces for the detainees. As a whole, the physical conditions at detention centres were much worse than in prisons. Inadequate funding had prevented the Directorate General of Prisons from developing the necessary facilities at detention centres for open-air exercise; for visitations, by relatives and lawyers; for the storage of food parcels; and for listening to radio or watching television. The situation was worse still in the towns of Slivnitsa, Svilengrad, and Petrich, where the detention facilities were greatly overcrowded, allowed no access to daylight or sunlight or fresh air. As in previous years, overcrowding at the Plovdiv detention centre had resulted in the installation of bunk beds. And it was in that facility that in October 2003, a 22-year old drug addict was found dead in his cell: the day before, an emergency doctor had examined the detainee but, despite his diabetic condition, had seen not need for his hospitalisation.16

These poor conditions in which the preventive measure of remand in custody was served led to an increasing number of detainees filing for damages against investigation detention centres. In one such case, the court adjudicated in favour of the complainant against the detention centre in the town of Turgovishte. A similar complaint was filed against the Varna detention centre where the complainant allegedly spent nine months in a cell without access to daylight or sunlight or fresh air, and was not provided with bedclothes. The same person alleged that the toilet in the cell could not be used otherwise than in view of the other detainees, and that he was beaten while in detention. Where the toilet and washing facili-

16 See section on Right to Life above.
ties were located outside the detention cells, conflicts between detainees and officers most often arose on account of this arrangement not allowing enough time for each detainee to have proper access to the facilities; and at some detention centres, detainees still had no other choice but to use bottles and buckets in their cells.

Despite some urgent measures taken by the Government in 2002–2003 to improve living conditions at the social care institutions for adults with developmental disabilities and mental illnesses, in 2003, BHC again found serious problems in that area. Residents with developmental disabilities were not effectively separated from those suffering from mental illness and in need of special therapeutic care, and the care was still not differentiated by degree of developmental disability or the nature of the mental disorder. The remote location of these homes, away from the large urban communities, made the residents’ socialisation difficult and caused a number of other problems of logistics, staffing and medical care. Hygiene and general living conditions at some homes were very poor indeed. Again, those patients who were confined to their beds suffered the most as adequate care was usually not provided for them. The provision of health services to the residents was still largely problematic; the high incidence of disease and the high mortality rates among the mentally disabled continued to be a cause for concern among local and international rights-watch organisations.17

As in previous years, the condition of juvenile delinquents placed in the two types of juvenile correction institutions – educational boarding schools and social educational boarding schools – did not change for the better. The placement procedure remained inconsistent with the international fair trial standards, allowing abuse of administrative discretion and precluding proper judicial review or legal assistance. At most of these institutions, the residents’ needs for food, clothing and teaching materials remained largely unsatisfied. Mixed-age classes and low levels of staff motivation had considerably impaired the teaching process. Placements in some social educational boarding schools had apparently been guided by social-policy rather than educational considerations, resulting in up to 80 percent of the residents being of Roma origin. The existing system of juvenile correction institutions is in urgent need of modernisation to ensure that these institutions perform an effective educational and correctional function.

10. Protection of Minorities, Aggressive Nationalism and Xenophobia

The condition of persons belonging to an ethnic minority did not change materially in 2003. During the year, Bulgaria was visited by a Delegation of the Committee of Experts on the Framework Convention for the Protection of National Minorities. The Committee’s delegation had not prepared its recommendations by the end of the year. With a view to provoking a domestic and international public debate on minority issues, BHC prepared two reports which it presented to the Committee’s delegation and to the Bulgarian public: an alternative report to the Government’s Report pursuant to Article 25(1) of the Convention and a report on the condition of Muslims in Bulgaria, from the legal and

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17 See also Torture, Inhuman or Degrading Treatment or Punishment, Excessive Use of Force by Law Enforcement Officials above.
from the practical perspective. In these reports, BHC discussed the legal and the practical changes concerning minorities, which had occurred over the last few years, and laid an emphasis on the following two issues: the discrimination of the Roma and the refusal of the official authorities to recognise the ethnic identity of some minorities, such as the Macedonian one. The alternative report also highlighted some inconsistencies of the Bulgarian legislation with the international standards for the protection of minorities and, in particular, with several provisions of the Convention.

The Protection from Discrimination Act adopted in September 2003 made a step forward in the development of the national legal framework for the protection from discrimination on ethnic basis by providing a broad definition of the scope of protection, by establishing a special authority effectively empowered to investigate and issue penalties in cases of alleged discriminative practices and by reversing the burden of proof in conformity to the requirements under EC Directives 2000/43 and 2000/78. However, the Act did not enter into force until 1 January 2004.

In 2003, the Roma continued to face discrimination in a number of fields, including: employment, health care, education, housing, and criminal justice. As in previous years, in the winter of 2002–2003, local electricity distribution companies periodically cut the power supply to Roma quarters as a form of collective punishment for the unpaid electricity bills of some households. This caused public unrest in a number of towns, including: Vidin, Sofia, Plovdiv, Shoumen, Sliven, Montana, Lom, and Peroushtitsa. In Vidin, the authorities’ response was repressive, including, by way of intimidation, heavy criminal charges against the protest organisers.

The year saw a deterioration concerning the Roma’s access to health services. In 2003, the health care system introduced the identification and exclusion of persons who had defaulted on their health insurance payments, and the Roma were severely affected by the measure.

No progress at all was made in the implementation of the Government’s declared policy of educational desegregation of the Roma. Work on several desegregation projects continued during the year with funds made available by foreign donors and without any funding support from the Government. The Ministry of Education and its regional inspectorates continued to support the desegregation effort.

In September 2003, the Government announced an Action Plan under its Framework Programme for Equal Integration of Roma in Bulgarian Society, making more concrete commitments in several areas of the Programme. However, the proposed budget allocation to town planning measures in Roma quarters was extremely inadequate to the scale of the problem, and the Plan failed to provide for public transport allowances to Roma children who attend integrated schools outside their neighbourhood.

The year also saw repeated assaults by young racist radicals in several cities, including Sofia. Victims of those were Roma and dark-coloured foreign nationals. That form of

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18 Both reports are available on the BHC website: www.bghelsinki.org.
racist violence, however, fell outside the focus of attention of the law enforcement authorities.

11. Right of Asylum

In 2003, the situation concerning the right of asylum in Bulgaria got worse, with an adverse effect on all areas of exercise of this right. Access to the national territory and, hence, access to the asylum procedure became more problematic. This was the result of the entry into force, in 2002, of the new Asylum and Refugees Act, which relieved the border police of its responsibility to conduct summary proceedings. The National Border Police Service unilaterally terminated the arrangement allowing BHC access to the detention areas (so called ‘reception centres’) for aliens entering the country illegally. This prevented the monitoring of conditions in those areas and the provision of assistance with the exercise of the entrants’ right to receive protection and asylum by reason of a violation of their human rights and fundamental freedoms in their country of origin. The government thereby infringed on the refugees’ right of access to the status recognition procedure and acted in breach of the non-refoulement principle under the 1951 Geneva Convention relating to the Status of Refugees. BHC received information about routine indiscriminate returns of asylum seekers to the country, or its borders, from which they were fleeing. Being in breach of Article 33(1) of the Convention, that practice was also frequently in breach of Article 3 of the European Convention on Human Rights. The Refugee Agency, being the competent authority under the Act for the purposes of the procedure relating to the status of refugees at the national borders, was neither ready nor willing to set up and make operational in the coming year transit centres for the conduct of that procedure, which made refoulement the norm. In its annual statistics, the Ministry of Interior still did not distinguish between rejected illegal immigrants and asylum seekers. In January 2003, BHC noted with concern that several Iraqi refugees had not been allowed into Bulgarian territory by the border police at the Port of Varna. Having been rejected by the Bulgarian authorities, the same refugees were given asylum in Romania. Similarly, in April, a refugee family from Georgia, with their child, were kept for four days between the Bulgarian and the Turkish border by the authorities at the Kapitan Andrevo Border Checkpoint, were not allowed into Bulgaria, despite their application for status recognition, and were finally returned to Turkey. Two months later, their refugee status was recognised in Hungary.

After the Act’s entry into force, the administration made an attempt to conduct accelerated proceedings at the Administrative Detention Centre in Sofia in contravention of the Act itself and of the Resolutions of the UNHCR Executive Committee. The court ordered the discontinuation of this unlawful practice but in August 2003, contrary to the law again, Tairebe Pairadvan Sabzali and Gasem Akbari, a family of Iranian refugees detained at the Centre, who had fled persecution in their country by reason of their conversion to Christianity, were returned to Iran by the police despite their applications for status recognition already filed with the Refugee Agency. Since their return to Iran, their whereabouts have been unknown and BHC fears that they may have been executed or otherwise heavily punished pursuant to the law applicable in the Islamic Republic of Iran.
BHC’s monitoring of the detention facilities for illegal aliens established that the authorities were incapable of escorting to the border or deporting such persons within reasonable time limits. Some detainees at the Administrative Detention Centre in Sofia had spent between four and nine months there. As a rule, the detainees were not served with a copy of the arrest warrant or of the order to deport or escort them to the border. This made it impossible to file appeals within the statutory time limits and presented difficulties with legal assistance, the situation being complicated enough already by the fact of the arrest and by the absence of an administrative system for legal assistance to such detainees. Indeed, BHC was the only source of such assistance.

The Refugee Agency retained its practice of accepting applications under the Act from Monday to Wednesday only, which meant that during the rest of the week and at weekends, newly-arrived asylum seekers could not register and rely on protection, and were exposed to the risk of being detained and even escorted back to the border in breach of the non-refoulement principle.

Under the Act, an asylum seeker is covered by the non-refoulement provision from the time of his or her written or oral request for protection. Upon such request, a protection seeker has the right to be issued with a Bulgarian identity document and on the strength of this document, he or she may no longer be detained by the police as an illegal alien. A year after the Act’s entry into force, there were still some asylum seekers who, instead of the appropriate identity documents, had received from the Refugee Agency a slip of paper, without a personal photograph and often without the official stamp, stating merely that the holder was required to appear before the Agency on a certain date. The police authorities would not regard this as a proper identity document, with the corresponding adverse consequences for the asylum seeker.

In 2003, the Refugee Agency of the Council of Ministers decided no longer to grant protection to refugees from Afghanistan and to lift the protection it had previously granted to such refugees. From then on, protection to Afghani refugees would be granted in exceptional cases only, the argument being that the democratic changes in Afghanistan had provided sufficient safeguards of citizens’ life and security. Applications from Palestinians, Kurdish refugees from Turkey, and Iranian nationals were treated in the same manner. A positive development was achieved in the Shushea Case, in which the Supreme Administrative Court ruled that Palestinians were ipso facto refugees and must in all cases be granted protection. Another positive precedent was set by the Said-Akbar Case, in which the Sofia City Court ruled that women left without the support of a male family member were a vulnerable group whose rights were not properly safeguarded in Afghanistan and, therefore, should not be returned and should be granted protection in Bulgaria.

The status recognition procedure of unaccompanied children and adolescents remained a major problem area. The system of appointed guardians and, respectively, trustees was not working properly due to the lack of cooperation from the appropriate municipal authorities. Thus, the status recognition procedure of refugee children and adolescents was conducted in the absence of the subject’s legal representative and determination decisions
were served, including decisions to deny refugee status, with the child or adolescent being made to place his or her own invalid signature in acknowledgement of receipt. There was not either an automatic appointment of a legal professional in the capacity of a guardian *ad litem* to oversee the lawful conduct of the procedure and to provide assistance should a denial of status be appealed. Following the signing of an agreement with the Refugee Agency, BHC started contributing its lawyers to provide the minimum of legal assistance and procedural representation that this especially vulnerable group of refugees need. As yet, however, no first-instance court had established the practice of appointing guardians *ad litem*.

In 2003, the system of refugee protection gave demonstrable proof of its inadequacy in a case of status revocation concerning Mr. Feisa Uoldu Refu from Ethiopia who had been recognised as a refugee in Bulgaria in 1996. In May 2003, the Refugee Agency revoked Mr. Refu’s status having established that he had acted contrary to the UN principles and had committed crimes against peace and humanity in violation of Article 1F(a) of the *Convention relating to the Status of Refugees* — the ‘findings of fact’ being that he was a member of the Oromo Liberation Front and had incited ethnic hatred against other members of the Ethiopian refugee community in Bulgaria. In actual fact, however, Mr. Refu’s conflicts with his fellow countrymen in Bulgaria were ideological, political and, indeed, personal, and had nothing to do whatsoever with crimes against humanity, either contemplated or committed. No one in Bulgaria had ever raised any such charges against him. Still, however inadmissible, these arguments for the application of an exclusion clause under the Convention were admitted by two chambers of the Supreme Administrative Court before which the case was appealed.

12. Women’s Rights

At this writing, the Bulgarian Government has not yet submitted reports to the appropriate UN institutions on compliance with the *Convention on the Elimination of All Forms of Discrimination against Women* and with the Beijing Declaration and Platform for Action adopted by the Fourth World Conference on Women in 1995. The latest, Second and Third, Consolidated Reports pursuant to the Convention were submitted in 1998, and the Government has the obligation to report on compliance with the Convention and on the implementation of the Committee’s recommendations for the entire period since 1998. In addition, Bulgaria has made a commitment to submit a report on its implementation of the Beijing Platform in connection with its forthcoming review in the framework of the UN. The only high-level instruments adopted so far, and relevant at the time of adoption, are the Council of Ministers Decision of July 1996 to adopt a National Plan of Action for the implementation of the Beijing Platform and the appropriate government measures adopted in that framework.

The Bulgarian Government is yet to deliver also on its commitments under the Revised European Social Charter. In the summer of 2003, the Committee of Experts on reviewing the Charter issued its first report, which was extremely critical, regarding in particular
practices in the field of equal pay to men and women workers and the prevention of sexual harassment in the workplace.

A review of the progress made in 2003 does reveal certain achievements in the legal framework and, partially, in policies for gender equality, including:

- the *Protection from Discrimination Act*, adopted in September 2003, which covers also gender discrimination. The Act called for the establishment of an anti-discrimination committee, which would have a special panel of inquiry into gender discrimination;
- the *Combating of Human Trafficking Act*, adopted in May 2003 and in force since January 2004, with the supporting statutory instruments to it adopted recently;
- the draft legislation against home violence, proposed by non-governmental organisations and soon to be tabled in Parliament;
- Bulgaria’s participation in the Community Framework Strategy on Gender Equality (2001–2005), after the adoption, in December 2002, of the Act of Ratification of the Memorandum of Accession;
- the Advisory Committee on Equal Work Opportunities for Men and Women and for the Socially Disadvantaged, established at the Ministry of Labour and Social Policy and comprising representatives of mostly women’s non-governmental organisations; and the National Employment Plan, adopted by the Government in 2003, with the promotion of equal opportunity policies for men and women as its fourth pillar. (The Ministry of Labour and Social Policy is the project implementing agency for the purposes of the Plan.)

However, while the above does demonstrate a will to improve the legal framework for gender equality, it has mostly been the result of EU pressure to have the Bulgarian legislation approximated to the *acquis* and of the activities of non-governmental organisations. Besides, most of these positive changes occurred only recently and are yet to be proved effective and financially feasible. In 2003, women still suffered discrimination in a number of fields. Their access to certain employment opportunities was still severely limited. Trafficking in women remained a serious problem, and corruption within the administration of justice remained an obstacle to the effective fight against it. No significant progress was made in combating home violence.

### 13. Discrimination against the Disabled

In 2003, the European Year of the Disabled, they continued to be discriminated against in Bulgaria. Three bills were introduced before Parliament, relating to the rights of the disabled, which are yet to be consolidated and tabled for debate, possibly in 2004. The situation was worst still at the institutions run by the Ministry of Labour and Social Policy. Most of these are a dumping ground for people set up in remote places and offering no meaningful activities or adequate health services or any other form of care. Some institutions are in a decrepit physical condition, despite the Ministry’s efforts in 2003 to make some improvements. BHC’s visits during the year revealed also the lack of adequate medical care and cases of abuse of the residents’ legal incapacity by both relatives and
The routine practice of incapacitating persons placed in such institutions pursuant to a 1999 circular of the Ministry continued in 2003. No changes were made in the legal framework relating to physical restriction, and unlawful confinement was still practiced at some of the institutions BHC visited.

For the physically disabled, the lack of appropriate facilities in the built-up environment remained the most serious of problems. The inability to use public transport to go to work or school, the insurmountable curbs, stairways, etc., in the urban environment continued to confine these people to social isolation and to traumatisé them emotionally. Most of the disabled were prevented from voting in the local elections as the polling stations were physically inaccessible to them, despite the changes in the electoral law which were supposed to spare them the physical and the emotional inconvenience. More than 30 legal actions were brought in 2003 relating to the inaccessibility of the built-up environment. As a result of a correspondent report shown on television about an individual confined to a wheelchair who could not negotiate the steps to the entrance of the Local Court building in Karlovo, and was thus effectively denied justice, the Court administration built a ramp for wheelchairs.

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