Throughout 2004, Bulgaria was ruled by a coalition government of the National Movement of Simeon the Second (NMSS), led by the former Bulgarian monarch Simeon Saxe-Coburg Gotha, and the Movement for Rights and Freedoms (MRF), the political party supported by the majority of Bulgarian Turks, some Bulgarian-speaking Muslims and some Roma. Over the course of the year the human rights situation in Bulgaria did not, on the whole, mark any significant improvements. In some spheres – like the right to freedom of religion and beliefs – it even deteriorated.

On October 6, the European Commission published its latest Regular Report on Bulgaria’s Progress Towards Accession. Although the report does comment, as have previous documents, that Bulgaria meets the criteria of the Copenhagen European Council of 1993, it points out a series of serious human rights problems connected with excessive use of physical force and firearms by law enforcement officials, the conditions in prisons and homes for mentally disabled people, legal aid in the criminal process, freedom of expression, children’s rights, and the integration of the Roma minority. The report however failed to adequately address and to make the necessary recommendations in a number of spheres, e.g. religious freedom.

The European Court of Human Rights (ECHR) in Strasbourg turned in a record number of judgments against Bulgaria in 2004, a total of 25. In one additional instance, the government reached a friendly settlement with the applicants by paying them damages and their court costs. In one case the Court did not find a violation of the European Convention on Human Rights. As in previous years, the state did nothing to establish the culpability of the official institutions and persons in positions of authority who were responsible for the violations.

1. Right to Life

In 2004, the legislative and practical guarantees for the protection of the right to life in Bulgaria continued to be below international standards. Article 80 of the Ministry of Internal Affairs Act permits the use of firearms in the detention of a person who is committing or has committed even a minor crime, or in order to prevent the escape of a person arrested for committing even a minor crime. This contradicts Principle 9 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. And as in previous years, in 2004 this serious legislative problem led to people being killed or maimed as a result of excessive use of firearms by law enforcement officials. Also as in previous years, Roma were disproportionately presented among the victims of such incidents.

The BHC documented at least two cases in 2004 in which police officers took the lives of civilians in the course of the exercise of their duties. In both cases there are grounds to suppose
that the law enforcement officers used lethal firearms in circumstances, which are not permitted under international standards.

On March 27, a police sergeant in Plovdiv fatally shot a Romani man, Kiril Ankov Stoyanov, in the head. According to the police report, a police patrol had tried to stop 24-year-old Stoyanov for a check, but he fled. According to the official version, the police ran after him firing warning shots in the air. Stoyanov allegedly brandished a knife, and after a one-on-one skirmish one of the officers shot him in the head. Stoyanov’s relatives however are adamant that he never carried a knife. The Plovdiv military prosecution opened an investigation of the police officer for negligent homicide. On August 12, 2004, the investigation was terminated by the deputy regional prosecutor in the Plovdiv Regional Military Prosecutor’s Office. The termination was appealed by the deceased’s attorneys, but as of the year’s end nobody had been prosecuted in connection with the incident.

On August 4, a police sergeant from the Samokov district police station fatally shot Boris Mihaylov, also of Romani origin. Following up an alert about a theft from a truck, a patrol vehicle from the Samokov police station took up pursuit of the suspected thieves. According to accounts from Interior Ministry employees, as in the Plovdiv case of Kiril Stoyanov, the 29-year-old allegedly pulled out a knife and engaged in a struggle with the sergeant, after which the police officer fatally shot Mihaylov in the head. Those close to Mihaylov claim that he was not carrying a knife, and was shot in order to intimidate local Roma after the previous day’s clash with forest rangers (in which a group of Roma attacked five forest rangers, two of whom were hospitalized). Preliminary proceedings were opened in the case on the basis of Art. 119 of the Penal Code, for overstepping the boundaries of unavoidable self-defense. The criminal investigation was terminated on October 29, 2004 by order the Sofia Regional Military Prosecutor’s Office, which found that the firearm had been used in compliance with the law. The termination was appealed by Mihaylov’s attorney, as a result of which on December 13 the Sofia Military Court overturned the termination order. The preliminary proceedings had not been concluded at the end of the year.

Several people died in Bulgarian institutions for people with mental disorders in 2004, as a result of violence between residents, combined with inaction and inadequate care on the part of the staff.3

On February 26, the European Court of Human Rights in Strasbourg delivered its judgment in the case of Nachova and Others v. Bulgaria. The case concerned the 1996 killing by military police of two soldiers who had escaped from a disciplinary division, in which they were serving sentences. The Court found a violation of the European Convention on Human Rights’ Article 2 (right to life), as it considered that the use of firearms against the two soldiers had been unnecessary and that the investigation of the killing by the state had been inadequate. It also found a violation of Article 14 (prohibition of discrimination), due to the lack of investigation into the extent to which the racist leanings expressed by one of the police officers had played a role in the use of deadly weapons. The government subsequently referred the case to the Grand Chamber, which will make its ruling in 2005.

In December 2004 the Plovdiv Military Court delivered its ruling in the case of the killing of Seval Sebahtin Rasim, who was 28 years old at the time of his death. This criminal act was committed on February 17, 2002 on the country’s borderline by three professional officers of the National Border Police Service and four recruits. The court found that the perpetrators had caused the victim’s death in the course of carrying out their duties, when they detained Rasim for crossing the border unlawfully and illegally conducting other people across it. This judgment confirmed the facts established in the preliminary investigation: that the death had been caused due to the use by the police officers of non-regulation means of exerting physical force – fists, kicks, rifle-butts, placement of weight atop the body of the victim, etc. The use of weapons allowed by the law –

3 See below, Discrimination of People with Mental Disorders in Institutions.
police batons – was also found to be excessive. The defendants’ attorneys have appealed this judgment to the Sofia Military Appeals Court.

Despite closely following developments in the case, the BHC cannot provide more detailed data at this time, since the ruling has not come into force. The BHC, however, considers that the efforts made by the authorities in the pre-trial proceedings were appropriate, even though it was necessary to gather additional evidence during the court phase.

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

The situation with regard to torture, inhuman or degrading treatment or punishment in Bulgaria was evaluated by several international organizations in 2004. On March 11, the European Court of Human Rights in Strasbourg issued its judgments in the cases of G.B. v. Bulgaria and Iorgov v. Bulgaria. They dealt with the situation of two death-row inmates whose sentences had been commuted to life imprisonment after Bulgaria abolished the death penalty in 1998. The Court ruled in these cases that the harsh regime of isolation, combined with poor material conditions, constituted inhuman and degrading treatment in violation of Article 3 of the European Convention on Human Rights. On May 19, the same court ordered that Bulgaria pay monetary compensation to the applicant in the case of Toteva v. Bulgaria, for violation of Article 3 of the Convention. The violation was found in connection with the 1995 ill-treatment of an elderly woman by a police officer, and the subsequent failure to conduct an adequate investigation of the incident. In another landmark judgment against Bulgaria for violation of Article 3, that of Krastanov v. Bulgaria, the Court held that the civil law procedure under which the applicant received pecuniary compensation for police ill-treatment in 1995 did not satisfy the requirements of investigation of such acts and did not prevent similar cases occurring in the future. The Court stated categorically that if the authorities restrict their reaction in cases of deliberate police ill-treatment of citizens to the payment of pecuniary compensation, without prosecuting the offenders, this could result in impunity, and the prohibition of torture and ill-treatment would be ineffective.

In June, the European Committee for the Prevention of Torture (CPT) published two reports, one from its periodic visit to Bulgaria in April 2002 and the other from the ad hoc visit to three social homes for adults and children with mental disorders in December 2003. In the report from its periodic visit, the CPT noted a number of serious problems concerning the excessive use of force by police officers and the inhuman conditions of custody in institutions subordinate to the Ministry of Internal Affairs, the Ministry of Justice, the Ministry of Healthcare and the Ministry of Labor and Social Policy. It expressed concern over the number of complaints received by its delegation about torture and ill-treatment in Interior Ministry institutions. In several of the investigation detention facilities and prisons visited, the CPT delegation found inhuman material conditions, overcrowding and a lack of activities. The conditions in the psychiatric institutions visited were the target of even harsher criticism, regarding both the State Psychiatric Hospital in the Karlukovo and the Ministry of Labor and Social Policy’s social care homes.

In its report about the ad hoc visit to the social care homes, the CPT delegation noted a number of serious problems regarding the material conditions and the placement and treatment of the residents in the homes for adults with mental disorders in the villages of Pastra, Rila municipality, and Razdol, Strumyani municipality. A number of the aspects of life in the homes were described as inhuman and degrading. The Committee made an immediate observation under Article 8, Para. 5 of the European Convention for the Prevention of Torture and Inhuman or


5 Both reports, along with the Bulgarian government’s replies, are posted at: www.cpt.coe.int.
Degrading Treatment or Punishment, recommending the emergency transfer of the residents in the Pastra home to an appropriate institution that could provide adequate social services. At the time of the visit, the Bulgarian government assured the delegation that the home in Razdol would also be closed down, and the residents transferred to another, better home. As of the end of 2004, however, neither of the two homes’ residents had been moved, and the conditions in both of them continued to be inhuman and degrading.

In May, the UN Committee Against Torture examined Bulgaria’s third and fourth periodic reports, and on June 11 delivered its conclusions and recommendations. The Committee again commented on Bulgarian legislation’s lack of a comprehensive definition of torture, containing all of the defining elements in Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It expressed concern over the many complaints from police violence, which disproportionately affected the Roma, as well as the lack of adequate investigation of these cases. Part of the Committee’s concerns and recommendations were focused on the inhuman conditions in Bulgaria’s detention facilities and its psychiatric institutions. Another important part of the Committee’s comments had to do with the practice of expulsion of foreign citizens to countries in which their lives and security would be endangered by the risk of torture. The Committee paid particular attention to the inadequate system of preventative measures, including the necessity of guaranteeing effective access to defense attorneys for all suspects and defendants in criminal proceedings. As of the end of 2004, the Bulgarian authorities had not made any legislative changes in these areas and had practically taken no steps toward fulfillment of the Committee’s recommendations.

In January 2005 the BHC conducted a survey among prisoners in three prisons (in Plovdiv, Pleven and Belene), regarding the conditions of their arrest and preliminary investigation. The study, which is representative for the three prisons but not of the system as a whole, encompassed prisoners whose pre-trial proceedings had begun after September 1, 2002. In comparison to a similar survey among the same prisons in 2003, the new study showed a trend of a reduction in complaints from use of force during arrest and inside the police stations. The decrease in complaints of ill-treatment at the time of arrest was 7% (from 24% to 17% of those surveyed), and the decrease in complaints of the use of force inside the police stations was 11% (from 28% to 17% of those surveyed). Despite this trend of reduction, the proportion of those complaining of illegal use of physical force remains high. Several of the prisoners described extremely cruel practices of torture and ill-treatment by police officers at the time of their arrest and in the course of the subsequent investigations. It also became clear that these practices vary significantly in different regions, highlighting a lack of consistent policy and oversight at the national level.

The BHC undertook investigations of Bulgaria’s investigation detention facilities and social care homes for people with mental disorders in 2004. The conclusions drawn in both investigations were that the conditions in many of these institutions amount to inhuman and degrading treatment in violation of the international standards.

3. Right to Liberty and Personal Security

The European Court of Human Rights in Strasbourg delivered eight judgments against Bulgaria in 2004 for violations of the right to liberty and personal security. Most of these involved incidents predating the criminal procedure reforms that came into force at the beginning of 2000, and were concerned with the legal authority of the prosecution and investigative services, which was removed from them by that reform. The rest concerned violations of the law.

---

6 The conclusions and recommendations of the Committee Against Torture are posted at: [www.ohchr.org](http://www.ohchr.org).

7 See below, Conditions in Prisons and Detention Facilities and Discrimination of People with Mental Disorders in Institutions.
In July 2004 the Bulgarian parliament approved a new Healthcare Act, which regulates the involuntary civil commitment and treatment of people with mental disorders in a new way. The BHC participated in drafting the draft act. The final version of the law differs from the original text of the draft on several points, but on the whole it addresses the issues of confinement in violation of international norms, which had arisen in the 2000 case of Varbanov v. Bulgaria and several subsequent cases. The law stipulates that any commitment to or treatment in a psychiatric institution must be made by a court decision, except in cases of emergency, when it can be carried out upon the decision of a physician. The law makes a distinction between the decision to commit and the decision to apply treatment, and requires that the court determine separately whether the person being committed is capable of giving informed consent for treatment. The law also forbids treatment during the expert evaluation period and restricts the use of physical restraints on patients. A special provision requires the personal presence of the person to be committed at the court hearing regarding his/her involuntary commitment and treatment, as well as the mandatory participation of an attorney.

However, the new Healthcare Act did not enter into force until January 1, 2005. Throughout 2004 commitment to psychiatric institutions for expert evaluation continued to be conducted by order of the prosecutor, in violation of international standards.

Placement in social care homes of people with mental disorders continued to be a serious problem throughout the year from the point of view of the right to liberty and security of person. These placements are made through an administrative procedure, without judicial review and, as the BHC has remarked several times in the course of its monitoring of these procedures, are often arbitrary. No measures were taken in 2004 to reform this procedure.

In July 2004, the Bulgarian parliament adopted amendments and additions to the Act for Combating Juvenile Delinquency. The changes reformed the procedure for the placement of children found guilty of “antisocial” acts into juvenile correction centers (so-called social-educational boarding schools and educational boarding schools). Placement in such schools is now possible only with a court order, something for which the BHC has been arguing for ten years. However, the procedure provided by the new law has preserved the function of the commissions for combating juvenile's antisocial acts, saddling it with considerable confusion and unwieldiness. It also does not correspond with due process standards on several points, such as the lack of mandatory participation by an attorney and the fact that “antisocial behavior” is not comprehensively defined with concrete provisions.

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

The main events concerning the Judiciary in 2004 were the election of a new Supreme Judicial Council, the parliament’s adoption in April 2004 of the government’s proposed amendments to the Judiciary Act, and the Supreme Judicial Council’s subsequent appointment of new departmental chairpersons in the courts, prosecutors’ offices and investigative services. During the year the government also worked on initiatives aimed at adopting a regulatory structure for administrative procedure as a whole, a reform in the area of executory proceedings, the adoption of a law regulating the structure for providing free legal aid in criminal and civil proceedings, and the drafting of a new Code of Criminal Procedure.

The country’s main problems connected with the functioning and administration of justice, however, remained unchanged in 2004. These have to do with the lack of sufficient guarantees for court independence from institutional and private interests, the inefficiency of preliminary proceedings in criminal cases, the inordinately lengthy duration of both civil and criminal court proceedings, the length of preliminary investigations in criminal cases and the very low effectiveness of executory proceedings on civil case judgments after they come into force. The amendments to the Judiciary Act adopted in 2002 and 2004 made significant structural
improvements to the system, but did not implement an overall reform of it – much less could one say that they had a tangible practical effect. The possibility for effective reform of the judicial system was seriously hampered by Constitutional Court Decision No. 3 of April 10, 2003. In 2004, the political parties represented in the parliament, although admitting the need for such reform, still did not manage to reach a consensus about how to achieve it. Due to criticisms of the Bulgarian judicial system made in the context of European Union accession, as well even harsher criticism from nongovernmental organizations, the media and business, the necessity of overall reform of the judicial system became a central topic of public and political debate in 2004.

Having made constitutional amendments in the autumn of 2003, allowing for the establishment of a procedure to dismiss magistrates who are in gross violation of their duties, the parliament adopted amendments to the Judiciary Act with which it provided the legislative structure for the procedure. Other constitutional changes were also given legislative expression at the end of 2003. In the period since the adoption of those changes, however, there has been no indication that the leadership of the judicial system, as embodied by the Supreme Judicial Council, has any intention of actively using the new procedures to address the problems concerning the system’s inefficiency or – even more importantly – corruption. The indications were rather of the domination of professional loyalty and of efforts to maintain institutional positions and interests. Despite the Judiciary Act’s explicit provision requiring the Supreme Judicial Council’s sessions to be public, the council refused to comply with the law, continuing for months to hold closed sessions. Another indicative occurrence was the publication by investigators of information regarding corruption in the system – particularly involving their director, who had been arrested by police upon receiving a bribe from an investigation suspect who was being blackmailed. The reaction of the investigation service’s leadership to this event was to punish those who had made public statements about the corruption of investigators within the system. Meanwhile, the director of the investigation service, Mr. Angel Aleksandrov, publicly announced that these investigators would be investigated in detail for any possible violations in the fulfillment of their duties.

Over the course of the year, a new Supreme Judicial Council was elected and many of the directors of bodies within the judicial system were replaced. These replacements were also dictated by the amendments to the Judiciary Act. The fact that the Supreme Judicial Council was allowed to work up to the end of its five-year term, which expired in 2004, was unquestionably a positive event, in contrast to the actions of previous governments and parliamentary majorities, which committed gross infringements of the Constitution in order to ensure themselves a majority on the council. The appointment of a parliamentary quota to the Supreme Judicial Council in 2004, however, was in keeping with the entrenched partisan flavor of the appointments, also characteristic of the Supreme Judicial Council appointments of previous parliaments. No attempt was made by the parliament’s ruling coalition to achieve a broader consensus on the appointments. The subsequent appointments of directors to the various bodies within the judicial system highlighted another problem in guaranteeing the independence of the court – some direct participants in the appointment of those bodies’ directors expressed concerns that due to the larger number of candidates for court directorships, the investigators and prosecutors on the Supreme Judicial Council had the deciding vote in many of the appointments.

The system for providing free legal aid remained unchanged in 2004. A significant improvement was observed as a result of the 1999 amendments to the Code of Criminal

---

8 An interpretive ruling on Constitutional Case No. 22/2002, in which the Constitutional Court held that only a Grand National Assembly may change the structure of the judicial branch.

9 Judiciary Act, amendments and additions, State Gazette, issue 29, April 9, 2004, in force from April 9, 2004, amendment, State Gazette, issue 36, April 30, 2004, in force from July 31, 2004. The amendments provided a new basis for the dismissal of magistrates for “serious violation or systematic non-fulfillment of their official duties, as well as actions damaging to the prestige of the judicial branch”, a procedure for the investigation of magistrates by a three-member commission of the Supreme Judicial Council (SJC), and a five-year term of office for department heads, with irremovable status conferred after five years and an attestation from the SJC.
Procedure, which provided a new basis for the assignment of a court-appointed attorney to indigent defendants, when the interests of justice so require (CCP Art. 70, Para. 1, Sec. 7). The results of a study on the practice of assigning court-appointed lawyers showed that the introduction of this regulation into the CCP in 1999 improved the access of indigent people to justice. While about 55% of the suspects in pre-trial proceedings during the period of 1996-1999 had no attorney, the study conducted in 2004 by the Open Society Institute revealed a reduction in this proportion to 34.6%. If there were defense attorneys present in the first instance proceedings in 53.5% of cases during the period 1996-2004, this percentage was 75.04% for the period 2000-2004. There have also been no changes with respect to the other issues mentioned previously, casting doubt on the effectiveness of legal representation even in cases when there is a court-appointed attorney. The procedure for assigning the lawyers is not adhered to, and the remuneration of court-appointed attorneys is either minimal or they are paid with serious delays, inevitably leading to the defense being of unsatisfactory quality. Free-of-charge legal assistance in civil cases is, in practice, still nonexistent in this country. The government has made it a priority to draw up entirely new legislation on the provision of free legal aid by drafting a law, but work on the law was not finalized last year.

In 2004, the number of judgments of the European Court of Human Rights (ECHR), which found violations of the right to a fair trial, increased dramatically. In addition, several violations of the right to a trial within a reasonable period in criminal or civil proceedings were found. During the year, the ECHR found violations of the right to reasonable duration of preliminary proceedings and arrest in eight cases, and 12 instances of violations of the right to a fair trial within a reasonable period. In two cases, the Court also found violations regarding the fulfillment of court judgments. In its decision of April 22, 2004, in the case of Angelov v. Bulgaria, the court ruled that a state institution’s delay of more than two years in paying a court-ordered compensation award, during a period of high inflation, had violated the rights of the applicant. In another of its judgments, that in the case of Mancheva v. Bulgaria on September 30, 2004, the Court ruled that the lack of a procedure for the enforcement of court decisions against a state institution, which continues to be lacking in current legislation, was in violation of Art. 6, Para. 1 of the European Convention on Human Rights. This trend of an increase in the number of judgments by the Court in which violations are determined to have taken place is an ongoing one, and is explained by the weaknesses that have been characteristic of the judicial system in the country for years, and by the ever-more widespread practice of taking cases to the European Court of Human Rights.

5. Freedom of Thought, Conscience, Religion and Belief

There were no changes to the regulation of religious activity in Bulgaria in 2004. On December 16, 2004, the European Court of Human Rights delivered its judgment in the case of the Supreme Holy Council of the Muslim Community v. Bulgaria, in which it found, for the second time since 2000, a violation of Article 9 of the European Convention on Human Rights and ordered that the government pay compensation, this time to former Chief Mufti Nedim Gendzhev and his group. As in the 2000 case of Hasan and Chaush v. Bulgaria, the government was found at fault for unacceptable interference in the internal affairs of a religious community, expressed in its lack of neutrality in a dispute between rival groups, and favoring one of them.

The Bulgarian government did not, however, place any importance on these serious problems with the legislative apparatus and administration of justice, and in 2004 again committed grave violations of the right to freedom of religion. The event that could be categorized as the most serious human rights violation of 2004 and the most serious violation of religious freedom since 1989, was the massive police purge on July 20 of the churches and priests of metropolitan Inokentiy’s so-called “alternative Synod”, in which they attempted by force the unification of the divided Bulgarian Orthodox Church (BOC) under the leadership of Patriarch Maxim’s group, the one favored by the government. In the course of this repressive campaign, the scale of which had not been seen before, some priests and laypeople were beaten, and some were arrested only
because they protested the police violence. The BHC established a special group to gather information during this action and after it, and will publicize its findings in a special report.

The Bulgarian Orthodox Church has been divided into two factions since 1992. Bulgaria’s various governments have alternately tolerated first one of them, then the other. On October 18, 2000, the Supreme Administrative Court decreed that “…there are two religious communities in the Republic of Bulgaria that are called the Bulgarian Orthodox Church… Since there are citizens in the Republic of Bulgaria who do not wish to be in a church relationship with Patriarch Maxim, they have the sovereign right to separate themselves from the religious community led by that patriarch, and to found an independent church, as a religious community having its own bylaws and organs of leadership.” In the end, by the time of the present government’s coming to power the two factions had established a relatively peaceful mutual co-existence and had divided the churches in Bulgaria between themselves, albeit informally. From the very moment of its taking office in 2001, the new government openly took the side of Maxim’s synod. In December 2002, it drove through a new Denominations Act,\(^{10}\) Art. 10 of which gave Maxim’s group the status of a juridical entity ex lege, while all other faiths were required to register with the court. In §3 of the transitional and final provisions, the law stipulates that “…persons who, at the time of this law’s coming into force, have separated themselves from a registered religious community in violation of bylaws established according to the prescribed order, may not use an identical name, nor use or occupy its property.” This was the legal “grounds” for the accusation of taking the law into their own hands. Thus the priests and laypeople who had united around the synod of Metropolitan Inokentiy were faced with the choice of either relinquishing their claims to the name “Bulgarian Orthodox Church” or keeping it, on the condition that they first hand over all churches and other property to Maxim’s group and essentially give up all religious activity.

There were warning signs before the campaign of July 20. In 2002 and 2003, Maxim’s priests made several attempts to take over churches in which priests belonging to the other synod were serving, in Pomorie, Dobrich, Varna and the village of Osikovitsa in the Botevgrad region. The forcible takeover of a church in Dobrinishte by representatives of Maxim’s synod on July 21, 2002, resulted in one fatality, when one priest and one sexton belonging to Maxim’s group beat to death 65-year old Father Stefan Kamberov, of Inokentiy’s synod. In each of these incidents the police were either silent witnesses or direct participants in the church raids, and prosecutors did not react to the ensuing protests.

During the campaign on the night of July 20-21, 2004, the police burst into at least 94 churches and other buildings all over the country, threw out the priests serving in them, sealed the churches and installed new priests appointed by Maxim’s synod. Several priests and lay citizens were arrested, and there were reports that at least two priests (Kamen Barakov and Hristo Pisarov) and one layperson (Liliyana Shtereva) were beaten. In some locations the takeover lasted until late into the night of July 21, truly becoming a siege, because the priests and the citizens supporting them stood and resisted the police.

The church raids constituted a campaign that had been planned and coordinated in advance. They were foreshadowed by the Supreme Cassation Prosecutor’s Office Circular Letter No. 12173, of July 8, 2004, the text of which was subsequently reproduced in the regional prosecutors’ orders. These orders characterized the expulsion of priests belonging to the “alternative Synod” from the churches as the “restoration, in urgent and pressing cases, of rights violated through taking the law in one’s own hands.” According to Art. 118 of the Judiciary Act, which is a provision left over from the legal doctrine of the totalitarian regime, the prosecutor’s office has the authority to interfere in such cases, when those affected did not have access to the courts. This provision was applied in July 2004, even regarding some priests who had been serving in their churches for more than ten years. Such was the case, for example, with Father Zapryan Pisanov,

---

who had served as a church priest in the village of Graf Ignatievo, in the Plovdiv region, for 19 years; with Kamen Barakov of Sofia, who had served in one church for 15 years; Father Dimitar Sheyev from Razlog, who had served in his church for over 40 years; and many others. Even some churches built after the schism in the Bulgarian Orthodox Church were raided, as well as newly-built churches (two in Sofia, for example) that could not possibly have “taken the law in one’s own hands” – such an accusation would be absurd, since nobody was even occupying them or serving in them yet.

A number of grave human rights violations were committed before and during the campaign of July 20-21. These can be summarized as the distortion of facts, erroneous interpretation of the law and the enforcement of outdated domestic legal norms contradictory to international law. The Bulgarian Constitution was also violated. More specifically:

1. With its claims that the occupation by priests from Inokentiy’s synod of their churches constituted “taking the law in one’s own hands”, the prosecutor’s office grossly distorted the facts. Art. 323, Para. 1 of the Bulgarian Penal Code defines as taking the law in one’s own hands actions in which a person “willfully, not by the legally established order, exercises his own or someone else’s real or presumed right, which is disputed by someone else.” As long ago as 1968, the Supreme Court stated in a special decision that in order for a crime of taking the law in one’s own hands to have taken place, it is “necessary in an objective and subjective sense for the perpetrator to have made an unlawful change in the existing factual situation, willfully, on the pretext that he is exercising a right that is disputed by someone else.” It thus becomes clear that the claim of taking the law in one’s own hands in cases where priests had occupied their positions for many years and nobody else had served in their place, is ludicrous.

2. By interpreting the civil-law consequences of the Denominations Act, the prosecutor’s office was in effect administering justice, which is a grave violation of the Constitution, since that is exclusively the work of the courts. There has been a dispute in the Bulgarian Orthodox Church as to who its legitimate leadership is for 13 years. This argument cannot be resolved by Art. 10 of the new law, because nowhere in it is Maxim named as a legal representative of the BOC. In the same way, §3 of the law’s transitional and final provisions does not in any way state exactly who the people are, who have separated from “a registered religious community” – whether one or the other group in the BOC. Just who separated from whom has been the subject of an ongoing legal dispute for years, and the prosecutor is not the one to resolve it.

With its campaign of July 20-21, 2004, the Bulgarian government also violated a number of provisions of the European Convention on Human Rights and Fundamental Freedoms:

1. In two consecutive judgments

11 – the second of them very recent, from December 16, 2004 – on similar Bulgarian incidents, the European Court stated that Bulgaria had violated the right to freedom of thought, conscience and religion because the government had not maintained neutrality in a dispute between rival factions of one divided religious community and had taken sides rather than serving as an intermediary in negotiations for resolving the issue, and had used administrative means to favor one of the two rival groups. This is how the Court summarized its conclusions in Paragraph 78 of its judgment in the case of Hasan and Chaush v. Bulgaria: “State action favoring one leader of a divided religious community or undertaken with the purpose of forcing the community to come together under a single leadership against its own wishes would likewise constitute an interference with freedom of religion. In democratic societies the State does not need to take measures to ensure that religious communities are brought

---

11 See Hasan and Chaush v. Bulgaria, Appl. No. 30985/96, as well as the Supreme Holy Council of the Muslim Community v. Bulgaria, Appl. No. 39023/97, available on the Internet at:
under a unified leadership.” The Court’s judgment in the case of the Supreme Holy Council of the Muslim Community v. Bulgaria used almost exactly the same words. The pogrom of July 20-21 was a violation of enormous proportions, because tens of thousands of believers were deprived of their right to a relationship with a priest they had chosen for themselves.

2. The prosecutor’s actions essentially constituted the forced resolution of a civil dispute over property, which could only be resolved by the courts. The Strasbourg Court has stated on more than one occasion that property disputes fall under the purview of Art. 6.112 of the Convention and there is an established precedent13 that such cases must always be resolved in court. The prosecutor’s office use of its authority to restore taking the law in one’s own hands violated rights, in cases in which there is no court oversight, is a gross violation of the Convention on this point.

3. The right to peaceful use of one’s own property is also closely bound to the right to have access to the courts for the resolution of civil disputes, in accordance with the First Protocol to the Convention. In accordance with European Court practice, the terms “property” and “ownership” are broadly defined. It is sufficient for someone to have factually possessed a given piece of real or non-real property – or even to have “possessed” abstract things like rights and interests – over the course of a long period, in order to have the right to the peaceful use of his own possessions.

4. Finally, according to Art. 13 of the Convention, everyone should have the right to effective legal means of protection when his or her human rights have been violated. In this situation, when the orders of the prosecutors’ offices constituted a de facto pogrom against dozens of Orthodox churches that could not object in court, there was obviously a violation of the right to effective domestic legal means of protection against violations of the Convention. This was also remarked upon in the judgment in the case of Hasan and Chaush v. Bulgaria, in Paragraph 104 of which the court stated that Fikri Hasan and his group could not effectively dispute the unlawful state interference in the internal affairs of their religious community, and thus fight for their right to organizational autonomy, which is guaranteed by Art. 9.

The right to freedom of religion was also violated in Bulgaria in connection with other incidents in 2004. At the beginning of November, the Pazardzhik Regional Court sentenced Muslim cleric Ahmed Musa Ahmed to three years imprisonment and a 1,000-lev (500 Euro) fine, for his peaceful preaching of “radical Islam”. The charges were that he had preached antidemocratic ideology and the violent overthrow of the established state structure, desecrated the Bulgarian flag and preached racial and national, as well as religious, enmity and hatred. Articles 162 and 164 of the Penal Code, which define crimes against “national and racial equality”, were “put into use” for the first time since 1989. After Ahmed Musa Ahmed’s return from Germany, where the indictment alleges he came into contact with radical Islamists, during the period of 2001-2003 he allegedly preached the Muslim religion with a particular fervor, was unusually strict in his adherence to Islam and emphasized the necessity of establishing a Caliphate in his sermons. In addition to this he distributed aid, meat and clothing to the poor Roma Muslims of Pazardzhik, Nova Zagora, Karlovo and other places.

The indictment in this case was based solely on the existence of some religious literature in Arabic, which is not spoken in Bulgaria, as well as videotapes of Musa’s sermons. In these he

12 Art. 6.1 of the Convention states: “In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”

speaks of “jihad” and the coming to power of a Caliphate state, and waves the green flag of the Muslims. In his testimony during the trial, which the BHC observed, Ahmed Musa claimed that the “jihad” he spoke of is an internal war that everyone must wage against evil and sin in his own soul, and that the Caliphate is the spiritual empire of the true Islam, and in no way a real state. In addition, nowhere and in no way did he ever call for the violent overthrow of the constitutionally-established order. Musa’s conviction resembles discrimination, as viewed against the background of the increasing number of virulent racist statements made against Bulgarian Roma, and to a lesser degree against Jews, in Bulgarian Internet forums, several of which are also repeated in the press. No state organ has ever investigated these statements or prosecuted those who have made them.

Another serious problem this past year was the situation with the Muslim religion in Bulgaria, which has also been split for many years. The reason for the continued split is that the state, acting under pressure from interested political players (mainly the MRF), has not managed to maintain neutrality in the dispute between the different factions of this religious community.

On December 29, 2003, a conference of the Muslims in Bulgaria was held. Due to insurmountable differences the leadership of the group of Muslim conferences split in two, and thus at the end of 2003 two Muslim forums elected two Supreme Muslim Spiritual Councils and two Chief Muftis – Fikri Hasan and Ali Hadjisaduk. Both leadership structures applied for registration with the Sofia City Court. Meanwhile, Nedim Gendzhev, elected as the leader of the Muslim faith at the 1996 conference, attacked the legitimacy and decisions of the conferences of 1997 and 2000 in the Bulgarian courts, as well as the European Court in Strasbourg. In 2004, the Supreme Appellate Court ruled on Nedim Gendzhev’s complaints that those forums had been illegitimate and their decisions invalid. This interrupted the registration procedures regarding the decisions that resulted from the two conferences held at the end of 2003.

In July 2004, the Chief Justice of the Sofia City Court “referred the matter to himself” and appointed a temporary official leadership of the Muslim religion, headed by Fikri Hasan, who had been chosen at one of the two conferences and whose choice had the approval of the MRF. This constituted gross interference in the internal affairs of that religious community, and additionally was a judicial absurdity, because the court has no right to undertake such activity and was thus in grave violation of the Denominations Act, as well as other relevant laws. Later both the Appellate Court and the Supreme Court of Cassation (on January 20, 2005) ruled that the decision by the Chief Justice of the Sofia City Court had been invalid. Thus, only Nedim Gendzhev, as the chairman of the Supreme Muslim Council elected in 1996, and the Chief Mufti, Ali Uzunov, were ruled legitimate.

The Sofia City Court should then have carried out the judgment of the Supreme Appellate Court and registered Gendzhev, Uzunov and their Supreme Council in the register of religious organizations. Instead, at the end of January 2005 it issued a certificate of Current Legal Status to Fikri Hasan. According to that document, he and his council constitute the leadership of the Muslim faith. In addition, the prosecutor required the original incorporation documents, and thus there is no way that any registration can take place, partly including that of Gendzhev and Uzunov.

Thus, a series of unlawful and apparently biased actions by the Sofia City Court and the prosecutor’s office in favor of the candidate supported by the MRF created the unprecedented situation of a deeply divided Muslim faith with no officially recognized leadership. This constitutes a gross violation of the rights of regular Muslims to choose their own leaders and spiritual teachers.

Several unpopular religious communities, such as the Jehovah’s Witnesses, also experienced difficulties in their activity in 2004. For example, that faith’s local branch in Burgas has now essentially been operating illegally for six years, because the local authorities have refused to register them, in apparent violation of the law. Its branches in the cities of Veliko Turnovo, Dimitrovgrad, Smolyan and Stamboliyski are also in the same situation. This greatly hampers the
work of this religious organization, because the local authorities in the cities mentioned, as well as in other places, check up on the activity of the preachers who go door to door, and when they can not present a local registration, the authorities create problems for them. On June 19, 2004, in Pernik, locally known hooligans beat up two preachers, Georgi and Snezhana Stavrev, for being members of a “cult”. Eight months after the beating, despite the Stavrevs’ having filed a complaint with the prosecutor’s office, there is no evidence of the prosecutor having undertaken any action whatsoever against the perpetrators.

On December 3, 2003, the Turgovishte Regional Court upheld the District Court decision in the divorce case of Violeta Tacheva Tsvetkova, who was deprived of custody over her children, aged 9 and 12, and her former husband given full custody. The grounds for this were that the mother, due to her membership in the Jehovah’s Witnesses, could not raise her children properly, because “she, as a parent, has to a large extent violated the rights of her children, as well as other constitutional principles.” In addition, the court considered that “with regard to this indicator [ability to raise one’s own children], the father has an exceptionally large advantage, because he is capable of giving the children the opportunity both to be informed, and to develop their own abilities in a different direction”, while the mother had “restricted [their] rights”. That restriction consisted of her strong desire for the children to receive a religious upbringing, in the spirit of the teachings of the religion to which she belongs. In December 2004, the Supreme Administrative Court upheld the ruling of the Turgovishte Regional Court.

6. Freedom of Expression, Freedom of the Media

From the very beginning of 2004, there was clearly a serious problem in the field of media regulation in Bulgaria. The Radio and Television Act (RTA) provides, in an insufficiently clear manner, for a rotation system in the membership of the Council on Electronic Media (CEM). Asst. Prof. Georgi Lozanov, a prominent media expert and advocate of civil society and the independence of the journalists that work in electronic media, lost his seat on the council in the end-of-year rotation. Without any public discussion or debate, President Georgi Purvanov ignored Asst. Prof. Lozanov’s re-nomination by distinguished civil and media organizations, instead displaying his political bias by appointing Prof. Marko Semov, who is close to the circles of the Bulgarian Socialist Party, to Lozanov’s seat on the CEM. At the same time, upon the insistence of the MRF the parliament reappointed another member whose seat was up for rotation: Raycho Raykov, who voted in 2003 for the closure of the Den [Day] television station – an absurdly undemocratic action, for which nobody has ever taken responsibility.14 On January 24, 15 nongovernmental organizations sent a letter to Georgi Purvanov. In it they expressed their concern about media regulation, which had obviously again fallen into the trap of political expediency and non-transparency in the selection of new council members. “The actions of the CEM, in its membership up to now, drive us to think that from now on the council will be, to an even greater degree that it has been over the past two years, held captive by incompetence, irresponsibility and groups and political interests outside the media”, the letter reads.

The fears of the human rights and journalists’ organizations that sent the letter turned out to be well-founded. Just a few days later, the Parliamentary Assembly of the Council of Europe recommended in a special report that Bulgaria adopt new media legislation, in order to guarantee the political and financial independence of the public media. In March, the regulation of the media – as embodied by the heavily dependent CEM – went wrong yet again. The council voted for the early dismissal of the general director of Bulgarian National Television (BNT). Kiril Gotsev, whom the council itself had chosen, became the latest in a series of BNT directors who were not able to serve out their full tenure in that post. The official motivation put forward by the CEM for Gotsev’s dismissal were his “gross and systematic violations of the RTA”, with the specific

offences dating back to 2001 and 2002. It is an open secret that the reason for the dismissal of the television boss was a scandalous advertisement contract he had signed with the Russian advertising agency Video International. However, in order to dismiss Gotsev the council dug up some tragicomic incidents from a time when he was serving temporarily in the post, in an acting capacity. By ordering his dismissal, the CEM admitted that its aim was not to change the status quo at BNT, but rather to preserve it. Both during and since Borislav Gerontiev’s period in office as acting director, the country’s “public television” programming has remained boring and loyal to those in power. The airwaves have increasingly shamelessly been used for the settlement of personal accounts, slandering and smearing political opponents, conducting personal information and disinformation campaigns and “white” and “black” propaganda.

In July, the Supreme Administrative Court reversed the CEM’s autumn 2003 decision to shut down the Den television station. The court’s ruling restored fairness, but did not succeed in restoring the television station in its previous format. Many of its journalists had moved on to work in other media outlets.

On October 14, the Supreme Administrative Court (SAC) reversed the dismissal of Kiril Gotsev from the post of general director of BNT, categorizing the CEM’s motivations for it as inadequate. The CEM decided to appeal the ruling by the court’s three-member panel. In February 2005, the full five-member SAC panel surprisingly overturned the ruling of the three-member panel and decreed that Gotsev’s dismissal had been legal. The Bulgarian Media Coalition once again called upon the media regulatory council to dissolve itself until the adoption of a new RTA. However, the regulatory body continued to spew forth pointless actions and documents, such as the Charter for the Purity of the Bulgarian Language. It thus showed once again that media regulation in Bulgaria has sunk into an irreversible crisis.

On February 18, 2005, the five-member panel of the SAC issued Decision No. 1554, in which it rejected Kiril Gotsev’s appeal as unfounded: “...thus the administrative violations categorized as ‘gross’ were sufficient grounds in the sense of RTA Art. 67, Para. 1, Sect. 2, for the [council] to issue the administrative order for the curtailment of the term in office of the general director of BNT, and the remaining implied motivations for it should not be discussed. Therefore the CEM decision currently under appeal was in conformity with the law. It was issued by a competent organ, within the sphere of its authority, in the appropriate form, in keeping with the material-legal and procedural prerequisites for its issuance and is in conformity with the intention of the law.” Any discussion of this SAC decision was, curiously, totally absent from the newspapers. Obviously, the media have continued for the most part to act as a machine that takes and fulfills orders for personal campaigns. It is clear that the Gotsev crisis should be reviewed again in the context of the pre-election situation.

In May 2004, the CEM appointed Prof. Emil Vladkov as general director of BNT. A specialist known only in technical circles, he was met with hostility by the network’s journalists, who organized protests against his appointment. With the votes of two-thirds of those participating, a general assembly of all public media employees called for him to resign. The individual departments within BNT voted on and sent protest declarations to different institutions and political organizations represented in the parliament. They were also sent to the Council of Europe, the European Broadcasting Union and the World Federation of Journalists. The new BNT administration, for its part, dismissed the director of the Information Department, Simeon Vasilev. The host of the program “Questions and Answers”, Mariya Dimitrova, was invited to take long-term sick-leave. The nation’s airwaves were used to broadcast a message from Paun Tsonev, a member of the BNT Board of Directors. In it, he attempted to threaten and blackmail the protesting employees. Protest actions were held in front of the BNT building, and were also accompanied by other threats from the new administration of subsequent sanctions for the violation of professional discipline. This crisis at BNT highlighted the urgent necessity for legal guarantees of editorial independence, the rights of journalists, freedom of expression and citizens’ access to the public media in Bulgaria.
In the end, Vladkov submitted his resignation, in June. The CEM accepted his resignation and scheduled a new competition for the post. Meanwhile, BNT was put under the temporary leadership of an acting general director. Ulyana Prumova was selected as the new general director in September. No changes took place with regard to the news, publicity or other programs on the state-run network. One of the reasons it is impossible for BNT to become a truly public media outlet is the lack of separation between its administrative and programming decisions. The general director continues to say what appears onscreen and what does not. BNT continues to a large degree to maintain the old Communist model, including in its personnel structure.

November saw the explosion of two new scandals. The prosecutor’s office pressed charges against the BBC journalists who made the film “Buying the Games”, about corruption in the International Olympic Committee. The British journalists’ film shows the willingness of IOC member Ivan Slavkov to negotiate his vote over London’s bid to host the 2012 Olympic games. In other words, the prosecutor considered the journalists exposing facts about corruption to be guilty, rather than the person who was in fact a participant in a corruption scheme! This incident gave U.S. Ambassador James Pardew occasion to state that the actions of the Bulgarian magistrates reminded him of the repression at the time of the Cold War.

No less scandalous were the charges pressed by the Russe Prosecutor’s Office against Romanian journalist George Buhnici, who had filmed the illegal trade in cigarettes in the Russe-Giurgevo border area. Buhnici was charged under Art. 339a of the Penal Code, for the illegal use of a “special technological device”. This archaic article of the law, which provides for the criminal liability of persons who use technological devices without special permission, specifies a sentence of up to five years imprisonment. The purpose of the law, which was conceived during the UDF government of Prime Minister Ivan Kostov, had been to prevent the secret services from wire-tapping and spying on citizens. The use of Art. 339a in 2004, in the Buhnici case, shows the lack of adequate standards in Bulgarian legislation for guaranteeing freedom of information and the independence of the media. The Romanian journalist was found guilty and fined 500 Euros; he is appealing the verdict. Debates over journalists’ freedom to undertake investigative actions in the public interest also led to the drafting by a group of MPs and Darik Radio journalists of a bill to amend Art. 339a. As of the end of 2004, however, the provision had not been changed.

The situation with regard to access to information in Bulgaria on the whole remained unchanged in 2004, although the Supreme Administrative Court did introduce several positive changes on the matter in its jurisprudence. The Access to Information Program (AIP), a nongovernmental organization protecting the right of access to information, has analyzed 392 instances of access to information requests and highlighted the following problems with the seeking and provision of public information:

1. State institutions still do not adequately fulfill their obligation to actively provide access to public information.
2. Access is hampered to the preliminary materials and documents prepared in connection with executive-level decision making. Thus, the public receives access only to the final decision, but not to the documents that show how it was reached.
3. Access is not possible to any sort of information created or maintained by the monopoly enterprises that provide public services.

The AIP also analyzed judicial practice related to the Access to Public Information Act (APIA). In 2004, the Supreme Administrative Court provided interpretations of important limitations in the sphere of information law: those regarding so-called “state secrets” and “trade secrets”. In its interpretation of the term “trade secret”, the SAC imposed the limitation that access to a municipal public procurement contract could not be refused on the pretext of protecting the interests of a third party. Further on the court issued the opinion that even when there is a trade secret, the information must still be provided, after the clause in question has been excised.

The Supreme Administrative Court provided guidelines for the enforcement of the restriction regarding state secrets, by specifying that simply invoking the text of the APIA or simply claiming
that a certain document is classified does not meet the law’s requirement that grounds be given for a denial of access. According to the court, in such cases the administrative organ is obliged to indicate the precise category of the secret, from the list in Art. 25 of the Protection of Classified Information Act, and to provide its factual motivation. In several cases the SAC and the Sofia City Court have reviewed the classified document, either on their own initiative or that of the parties involved, in order to be sure that it was stamped with a security seal, affixed by an authorized official. A five-member panel of SAC judges issued the opinion that the classified document must be reviewed by the court with the participation of the parties involved.

The SAC also adopted a narrow interpretation with respect to the restrictions regarding the so-called “preliminary documentation” defined in Art. 13, Para. 2, Sec. 1 of the APIA. In a decision last fall the court ruled that the preliminary documents required during a public procurement procedure did not fall under the purview of the restriction, and obliged the administrative authorities to provide the information.

Developments regarding several other important issues related to access to information also took place over the year. Up until 2004, the SAC would return the file to the administrative organ to be reviewed anew, without requiring that it provide the requested public information. Last year, the SAC made several rulings in which it obliged the respondent to provide the information unconditionally. With regard to so-called silent refusals (failure to respond within the required time period), the SAC took an even firmer stance, ruling that they are not permissible. This opinion is intended to prevent the bad-faith behavior of certain institutions, which prefer not to reply to access requests and put off taking a position on the matter until it ends up in court.

Public interest in APIA cases increased in 2004. Refusals to grant access to information on topics of public debate were disputed in court. The following lawsuits were several examples of this:

- that of the electronic publication Vseki Den against the Foreign Ministry’s refusal to make public correspondence between Bulgaria and Spain from 1970, regarding the status of the current prime minister;
- that of journalists from four media organizations against the Supreme Judicial Council’s refusal to provide the access required by law to its public sessions;
- that of a reporter from Dnevnik newspaper against the Interior Minister’s refusal to provide access to archival material related to Georgi Markov, the writer murdered in London in 1978;
- that of a reporter from Monitor newspaper against the president’s refusal to provide a security services report on the business deals of Bulgarian firms in Iraq; and
- that of a reporter from 24 Chassa newspaper against the government’s refusal to provide information about the financing of its ministers’ official travel.

The number of journalists from nationwide and local media outlets seeking protection in court from infringements on their right to information also increased. As a rule, these cases receive widespread public attention.

The practice of the SAC on matters related to the constitutional right of citizens to seek information also broadened beyond the enforcement of the APIA. The court’s full five-member panel struck down the Supreme Judicial Council’s silent refusal to admit journalists to its sessions, which are public by law, as illegal. In interpreting the term “public”, the court opined that should be defined in keeping with its generally accepted meaning: “accessible to the citizenry”. According to the court, when evaluating the right of access to information on the one hand, and the
restrictions on that right, on the other, “it is not a matter of choosing between two opposing principles, but rather of the application of an exception to one principle.”

7. Freedom of Association and Peaceful Assembly

Despite the ECHR judgment in the case of Stankov and the United Macedonian Organization Ilinden (UMO Ilinden) v. Bulgaria, from October 2001, in which Bulgaria was found guilty of violating the right to freedom of peaceful assembly, in 2004 the Bulgarian authorities continued to violate the right of Bulgarian citizens with Macedonian self-identification to freedom of peaceful assembly. As in 2003, the violations were less often direct and flagrant, and more frequently consisted of causing problems for this community in conducting public gatherings. In 2004, the ECHR declared admissible three applications submitted by Macedonian activists against Bulgaria for its violation of their right to freedom of association and peaceful assembly. With regard to one of the complaints, the Court held that the organization’s activists did not even need to appeal in court the mayors’ refusals to allow their open-air gatherings, since given the courts’ systematic rejection of such appeals in the past, “the Court does not consider that in the particular circumstances of the case the applicant organization had at its disposal a remedy offering reasonable prospects of success.” This was in itself a dire evaluation of the Bulgarian state’s behavior toward Bulgarian-citizen Macedonians.

On April 18, 2004, UMO Ilinden once again applied to the mayor of the Sandanski municipality regarding its traditional visit to Yane Sandanski’s grave, in the mountains near the Rozhen Monastery. The request was for the period from 10:00 a.m. to 2:00 p.m. The mayor of Sandanski gave permission for the event, but only from 10 to 12 o’clock. UMO Ilinden carried on with its celebration after 12 o’clock, but a civilian employee of the security services warned them to end it.

On May 4, 2004, UMO Ilinden informed the mayor of Blagoevgrad that its activists wished to place a wreath and flowers on the monument to Gotse Delchev in the city, a procedure which usually takes about 10-20 minutes. The mayor refused, with the explanation that there would be ceremonies taking place on the square at that time, at which the organization could not be present. UMO Ilinden appealed to the District Court, which declined to make a ruling on the matter. In the end, the gathering was held in the presence of the police, but in a tense atmosphere. In April and July the cable TV networks in the region reported that UMO Ilinden was holding forbidden rallies, inciting public opinion against the organization.

On August 1, 2004, UMO Ilinden notified the mayor of the town of Petrich that, as it had in previous years, it intended to celebrate the anniversary of the Ilinden uprising at the location of the Samuil Fortress. The mayor forbade the celebration, giving the reason that notification had already been given of an event at the same place and time, by the nationalist IMRO Party (Internal Macedonian Revolutionary Organization). This refusal was appealed before the District Court, which overturned the ban on the UMO Ilinden ceremony.

In September 2004, UMO Ilinden notified the mayor of Blagoevgrad that it wanted to pay homage at the Gotse Delchev monument in Blagoevgrad on September 12. The mayor refused with the motive that on that day the city’s high school students would be holding a gathering for the start of the new school year. This refusal was appealed before the District Court in Blagoevgrad, but the court made no ruling on the appeal. According to Bulgarian legislation, if a court fails to make a ruling that means that the public gathering is permissible since the existence

of a pending appeal suspends the validity of the mayor’s refusal. On September 12, the organization’s activists gathered on the square. About 30–40 uniformed and plain-clothes police officers surrounded them. A police colonel informed them that their gathering had been forbidden and that they had to leave the square, but that the police would make a compromise if they did not carry a flag or any signs. The activists rejected this condition, and the police formed a cordon blocking their path to the monument. At the same time, they allowed a dozen or so men carrying a Bulgarian flag to go up to the monument, yelling and cursing at the UMO Ilinden activists, who were forced to disperse. The organization submitted a complaint about this incident to the ECHR, and about a month later received notification that a new case was being filed against Bulgaria for violation of the right to peaceful assembly.

8. Conditions in Prisons and Detention Facilities

In 2004 the number of people held in prisons or other involuntary custody in Bulgaria continued to increase. As of December 31, 2004, there were a total of 10,871 people incarcerated in Bulgarian prisons. One year earlier the total number had been 10,066. The number of accused being held under arrest grew from 325, at the end of 2003, to 348 at the end of 2004, and the number of defendants increased from 1,536 to 1,640. Thus, the average increase in the inmate population of Bulgarian prisons of eight percent is mostly attributable to the increase in the number of convicted prisoners. This increase is in contrast to the trend, reported by certain researchers, of a reduction in criminal activity in the country in recent years.17

Amendments and additions to the *Enforcement of Sentences Act* of 2002 have provided greater possibilities for the prison administration to place convicted prisoners in prison hostel facilities with less restrictive conditions. Because of this, the number of prisoners housed in open-type prison hostel facilities increased from 482 at the end of 2002 to 569 at the end of 2003, reaching 632 by December 31, 2004. The same also applies to the number of prisoners in transitional prison hostel facilities, in which 672 prisoners were housed at the end of 2002. By the end of 2003 their number had grown to 1,084, reaching 1,273 by the end of 2004. However, the increase in the inmate population housed in open-type and transitional prison hostel facilities was significantly less than it had been expected to be by the end of 2004. This, along with the general increase in the prison population in 2004, led to an even greater increase in overcrowding in the prison blocks and in the closed prison hostel facilities.

The BHC discovered that in most prisons for repeat offenders the living space is completely inadequate. The inmate population in some prisons (Plovdiv, Burgas, Pleven) is up to three times greater than their capacity. Thus, the average space per inmate in the sleeping quarters is no more than two square meters. The beds are triple-bunk beds, the space in the cells does not allow free movement, and the necessary ventilation, lighting and personal space are condensed to the bare minimum. Maintenance of proper hygiene in such conditions is exceedingly difficult, even more so since the lack of toilets in the cells means that inmates are still forced to use buckets for physiological needs during the night. Not only the living spaces, but also the sanitary facilities are in a state of extreme neglect. In most of the prison blocks there are two to four toilets per floor, for use by an average of about 100 people. The situation in the washrooms and showers is similar. In two of the closed-type prison hostels for non-repeat offenders, Kremikovtsi at the Sofia prison and Atlant at the Lovech prison in the town of Troyan, the living conditions in the cells, which often house over 20 prisoners, are even worse.

Another serious problem in Bulgarian prisons is the absence of activities for the inmates who do not work. They spend their days in their cells or in the corridors, which are often overcrowded. The rehabilitation programs, insofar as there are any at all, are limited in scope and are inadequate.

Contact between prisoners and the outside world continued to be a problem in 2004. Inmates’ correspondence with their lawyers, friends and family, the media and nongovernmental organizations continued to be inspected regularly, in violation of international standards. Outdated and inadequate legal regulations continue to hamper access by human rights organizations to arrested people in custody, who have not as yet been convicted. In order to establish contact with such detainees, the organizations have to request advance permission from the investigative body in each individual instance.

Also in 2004, a large part of the complaints from prisoners were focused on the quality and availability of medical care. The care provided in Bulgarian prisons is still not integrated into the national healthcare system. The problems in prison healthcare are not just connected with organizing specialized medical care. They also stem from the inability to ensure adequate care for people who suffer from chemical dependencies and those who need specialized psychiatric care.

An analysis conducted by the BHC in 2003 of the disciplinary practices in Bulgarian prisons showed that the lack of clear legal procedures for determining whether the law has been violated, what sentence to impose, the appeal of guilty verdicts and the mechanism for applying isolation all contribute to an atmosphere conducive to arbitrary behavior on the part of the administration. Placement in conditions of isolation in punishment cells or in cells for long-term isolation continues in many of the prisons to have the nature of inhuman or degrading treatment. The same is true of the living conditions in some of the high-security areas in the prisons. Especially grave is the situation of inmates serving life sentences, who spend a great deal of their time in conditions of long-term isolation, some of them in inhuman conditions. In some prisons the guard staff does not maintain thorough documentation of each instance involving the use of physical force and auxiliary means against the prisoners, creating obstacles to the objective, unbiased investigation of such incidents.

As in previous years, foreign citizens serving sentences in Bulgarian prisons continued to be discriminated against in comparison with Bulgarian inmates, in terms of receiving placements in open-type or transitional prison hostel facilities, temporary leave passes or reductions in their sentences, even though the Enforcement of Sentences Act does not contain any restrictions on foreign citizens enjoying any of the above-mentioned social reintegration opportunities.

At the beginning of February, amendments to the Enforcement of Sentences Act were introduced that deprived prisons of the right to engage in independent commercial activity. The deputy justice minister justified the decision at the time, by citing the individual prisons’ poor organization and financial results. The BHC observations revealed that this centralization has had a negative effect on the commercial initiative of the prisons and, correspondingly, on the level of employment among prisoners, which in many prisons is their only form of recreation outside their cells.

In 2004 the BHC made a detailed survey of the investigation detention facilities in Bulgaria. On the eve of review of Bulgaria’s report to the UN Committee Against Torture, the number of such facilities had been reduced from 65 to 51. Despite this, the number of suspects held in them as of December 31, 2004 had grown in comparison to the previous year – from 788 to 858. In seven of the facilities, the number of people in custody exceeded their maximum capacity – i.e. it was not possible to ensure an individual bed for some of those being held. The argument in favor of closing down most of these detention facilities was supported by the impossibility of making

---

needed improvements to the living conditions in them. As of the end of 2004, nine underground facilities continued to be in use.

Repairs were carried out to improve the conditions in the cells in most of the detention facilities, as a result of which the ventilation, lighting and hygiene conditions were improved significantly. The material condition of the facilities, however, is not in keeping with contemporary requirements and even after the repairs they are still not able to ensure that inmates are held in conditions close to those in prisons. Due to a lack of funding, the Central Penitentiary Administration was unable to equip all of the detention facilities with the necessary spaces to allow for the inmates to spend time outdoors, for conducting visits – including with attorneys – or for the storage of food items. As in the previous year, the most worrisome issue remained the state of the border detention facilities in the towns of Svilengrad, Slivnitsa and Petrich, which often operate in conditions of severe overcrowding.

9. Protection of Minorities and Ethnic Discrimination

The policy of the Bulgarian authorities in 2004 with regard to ethnic minorities continued to be hypocritical and inadequate. The state continued not to recognize the identity of several minorities; for example, the Macedonians. In May, a delegation from the Council of Europe’s advisory committee for monitoring compliance with the Framework Convention for the Protection of National Minorities visited Bulgaria. As of the year’s end, however, the delegation’s recommendations had not yet been published.

Only cosmetic measures were undertaken in 2004 to overcome the discrimination and isolation suffered by the Roma community, mostly geared toward making a show of action for the benefit of international organizations. No legislative changes were made for promoting the Roma integration into Bulgarian society. As in previous years, there was practically a lack of any state policy aimed at Roma integration. This minority group’s exclusion from societal processes, discrimination, educational segregation, lack of adequate access to justice, poverty and poor hygienic conditions continued to characterize the position of Roma in Bulgaria in 2004. The BHC also received reports during the year from Bulgarian-speaking Muslims of labor discrimination.

In July, the Minister of Education and Science – and afterwards, the Council of Ministers – approved a strategy for the educational integration of minority children and students. Supplementary to this document, a draft law was written to set up a fund for the educational integration of children and students from ethnic minorities. On October 7, a majority of MPs in parliament, made up of the left and right opposition and a few from the pro-government majority, rejected the draft at its first reading, citing populist and even racist arguments. That was the first attempt by any Bulgarian government since 1989 to introduce elements of so-called “positive discrimination” favoring minorities by law, but unfortunately, it failed. The draft included a provision for a special fund to be set up by the state for the purpose of financing projects related to educational desegregation. In order to avoid further censure by the National Assembly, the government decided to circumvent it and established such a fund in January, by a Council of Ministers decree. This was doubtless a weaker solution than if the fund had been set up by law. In its current form, the fund is strongly dominated by government functionaries, so that they – and not minority NGOs – have the deciding word in the allocation of the desegregation funding that it disburses. Despite all this, the very establishment of this fund, which is also expected to accumulate money from international donors, was a step forward in solving the most important problem: that of equal access to a quality education for minority children.

Although the issue of quality education for minority children currently continues to be an area of activism exclusively by NGOs, the state has taken some measures in this sphere of key importance to integration, which are expected to show results during this academic year. Among these is the provision of breakfasts, warm milk and free textbooks to about 300,000 children in the
first through fourth grades, as well as the decision to invest 10 million levs (5 million Euro) toward improving the currently low level of Bulgarian language skills, providing transportation to the secondary schools and lowering the drop-out rate. All of these measures will likely have positive effects for Roma children, but they are not specially geared toward them and do not address the problem of Roma segregation in the sphere of education. In addition, NGO desegregation projects, which in 2004 were again conducted without any official participation whatsoever, have so far covered fewer than 2,000 Roma children, which is an insignificant percentage of all the school-age Roma children in the country. And over the past year, despite the regulatory documents tightening the admissions criteria of schools for developmentally disabled children, the practice of placing healthy children of Roma origin into such schools has continued to spread.

A decree issued in December transformed the National Council on Ethnic and Demographic Issues (NCEDI) into a National Council for Inter-Ethnic Cooperation. In practice, this decree limited the opportunities for Roma NGOs to influence policies affecting the Roma community, since NGO representation was sharply reduced on the new council. On the other hand, the administration of the former NCEDI was transformed into the Council of Ministers Directorate on Ethnic and Demographic Issues, to a certain degree increasing its influence in executive decision-making regarding the Roma community. In fact, the replacement of the NCEDI with a special Agency on Minorities had been promised as early as the summer of 2001 in the government’s Program for Government, and should have occurred by the end of 2002. To a certain extent the new organs fulfilled that promise, albeit with a long delay. But both the new directorate and the new council suffer from the same fundamental flaw as their predecessors. They have no authority to impose sanctions and are only advisory bodies.

Although a large part of 2004 passed in preparations for the ceremonial opening of the international Decade of Roma Inclusion 2005-2015 (which took place in Sofia on February 2, 2005, in the presence of the prime ministers and high-ranking representatives of eight Eastern European countries, as well as the directors of the World Bank and the Open Society Institute of New York), it cannot be said that these preparations had any real effect other than pre-election campaigning by the ruling coalition. Proof of this was to be found in the formulation by a special working group of a government “Action Plan for Achieving the Goals of the Decade of Roma Inclusion”. There are many laudable measures written into this plan, which could significantly ease, if not resolve completely, problems related to healthcare, employment, education and the hygiene and infrastructure in the Roma neighborhoods. Unfortunately, the great majority of these measures are only good wishes, because the Bulgarian budget’s funding for them is minimal. A total of 37,622,000 Euros is envisioned for the entire ten-year period. This amount was, however, negotiated long before the formulation of the 2005-2015 Action Plan, and is also far from sufficient. A special declaration from 63 Roma leaders, published on the eve of the Decade’s inauguration, harshly criticized the government’s formal attitude toward its own promises with regard to helping the Roma minority to overcome discrimination and isolation. Slogans about overcoming discrimination also dominated the first Roma demonstration of its kind. On February 2, 2005, at the same moment at which the dignitaries in Sofia were signing the Declaration of the Decade at the National Theater, about a thousand Roma, led by the Roma DROM Party, demonstrated in front of the National Assembly, shouting slogans against discrimination and against the formal and bureaucratic character of the Decade. This was the first mass Roma anti-discrimination demonstration in the capital since 1989.

At a special conference held on May 13 and 14 by the Roma rights organization Human Rights Project, 142 Roma experts on ethnic and demographic issues from the regional and municipal administrations signed an open letter to Prime Minister Simeon Saxe-Coburg Gotha, in which they claimed that the Framework Program for Equal Integration of the Roma into Bulgarian Society, adopted in April 1999, was not being fulfilled. They called upon the government to undertake the genuine fulfillment – rather than just on paper – of this program document, to take steps toward multilateral consultations with the Roma community on Roma integration issues, and to extend real, rather than just consultative, powers to Roma representatives in the regional and municipalities – the municipal and regional experts on ethnic and demographic matters.
The now-traditional clashes between Roma and police over the illegal felling of trees continued in 2004. They were most severe during the winter months of 2004 in Samokov, where there was a direct struggle between Roma tree-cutters and police that left wounded on both sides. There were skirmishes between Roma and police in Lom in January, brought on by electricity rationing in the Roma neighborhood. During the summer there was unrest in the Roma quarter of Burgas, provoked by the municipality’s decision to tear down over 100 illegitimately erected homes in order to build a housing complex in their place – a complex not designated for the Roma. Public protests by unemployed and hungry Roma often transformed into brawls and clashes with the police, and this dangerous tendency has not stopped. There is a lack of any kind of effective mechanism for the prevention of such conflicts, in which protests against hunger and misery increasingly turn into scenes resembling inter-ethnic strife. In January the police, under the pretext of searching for criminals in hiding, stormed into the Roma ghetto of “Fakulteta” in Sofia, destroying property and groundlessly arresting many people, some of whom were beaten. This brutal action provoked unrest in the ghetto.

In August, Bulgaria witnessed an explosion of anti-Roma hysteria that was unprecedented for the entire period since 1989. On August 21, the leader of the Podkrepa Trade Union, Dr. Konstantin Trenchev, called publicly for the establishment of armed civilian squads, in order to do battle – with weapons in hand – against what he called “Roma criminality”. This openly racist exhortation by the union leader was very strongly condemned in a special announcement disseminated nationwide on August 27 by dozens of Roma organizations as an attempt to revive fascist methods of dealing with actual problems. It is disturbing that after this most significant outburst of aggressive and fascistic anti-Roma rhetoric in recent years, neither the president, the prime minister, nor the speaker of the National Assembly considered it appropriate to condemn the statements of the trade union leader.

The newly-passed Anti-Discrimination Act came into force in 2004. Several dozen lawsuits were filed on the basis of this law over the course of the year, most of them regarding instances of racial discrimination against Roma. The cases concerned refusals by public establishments such as hotels, swimming pools, cafeterias, discotheques and restaurants to admit Roma customers, refusals by employers to allow Roma to apply or be hired for jobs, or racist anti-Roma statements made by law enforcement officials, such as prosecutors, medical personnel, such as hospital physicians, or commercial enterprises, such as real estate agencies, in the course of carrying out their duties. These were not isolated incidents; rather, they were representative of widespread ongoing practices in the country. By the end of 2004, eight of the lawsuits filed had been resolved. In six of them the court ruled that discrimination against the Roma claimants had taken place, and ordered that the offending companies pay them compensation for damages suffered. Three such verdicts were delivered against the monopoly Sofia Electricity Distribution Company for providing its services to Roma customers under less favorable conditions than to non-Roma customers. The less favorable conditions consisted of the company depriving its Roma customers of access to their electricity meters and the ability to monitor their readings, by mounting the meters up on high poles, as well as refusing to restore service to a large number of punctually paying Roma customers after a blackout in the Fakulteta neighborhood until their non-paying neighbors paid off the amounts they owed. The company had taken these unfavorable actions only against Roma customers, and not against non-Roma customers. The suit against the company’s refusal to restore service to punctually paying Roma customers was filed and won in the public interest by two human rights organizations: the Bulgarian Helsinki Committee and the Romani Baht Foundation. The Anti-Discrimination Act explicitly provides that public-interest organizations may file anti-discrimination lawsuits in cases affecting the rights of a large number of individuals. The other three court decisions regarding discrimination against Roma in 2004 were verdicts against commercial enterprises for refusing to provide Roma with access to the services they provide or to employment. These six cases, won by Roma victims of discrimination during the first year of the anti-discrimination law, marked its successful debut in the courts.

In opposing counterweight to those victories was the failure by the parliament and the president to establish the Anti-Discrimination Commission, as provided for by the new law. This
failure also constituted a violation of the law on the part of the authorities. The Anti-Discrimination Act required that the commission should be established by March 31, 2004. A year after the expiration of this deadline, there is still no commission. The parliament’s failed attempt to choose its quota of anti-discrimination commission members was the result of the politicians’ flawed approach. They demonstrated their lack of serious will to create an active human rights body by nominating as commission members individuals who lack the necessary professional and personal qualities and societal legitimacy for effective human rights work. Their nominations were made without public discussion or participation by civil organizations, and were based primarily on criteria of political expediency. The president, for his part, did not even announce any nominations for his quota of commission members, and instead simply remained passive. The parliament also failed, in a similar violation of the law, to appoint an ombudsman, who in accordance with the Ombudsman Act should have been chosen by the same deadline as the anti-discrimination commission. The Bulgarian institutions’ lack of will to comply with these two newly adopted laws, which call for the establishment of active enforcement institutions, provoked the serious disapproval of the Bulgarian Helsinki Committee, the human rights community and civil society as a whole. The consequent serious failures, resulting from this lack of will, should be corrected within the shortest time possible.

10. Discrimination of People with Mental Disorders in Institutions

In August 2004, the BHC published an extensive report on the human rights situation in Bulgarian homes for people with mental disorders.19 This publication was the result of three years of monitoring by the organization, including visits to all such institutions in the country.

Despite some measures undertaken by the government to improve living conditions in the homes, the situation in them has not changed significantly and residents are still subjected to inhuman and degrading treatment. The Agency for Social Assistance conducted a nationwide monitoring program from March to May 2004, the results of which were announced on October 29, 2004, but have still not been published. The outdated legislation regulating commitment to the homes has not changed, and still contains no safeguards for the rights of those committed, as there is no provision requiring evaluation by an independent body of the legality of commitments (which by their nature constitute a deprivation of liberty), as provided for in the Child Protection Act for the placement of children in institutions. The BHC study revealed that the commitment of people with mental disorders to social care homes is often conducted without collection and precise analysis of all the information about the candidate required by law. In the absence of alternative possibilities for the provision of social services, the person is committed to a home unlawfully. In addition, current legislation regarding the profiling, districting and organization of the homes and their activity is even being violated by officials in the Ministry of Labor and Social Policy (MLSP). Developmentally disabled people continue to be placed together with mentally ill people and people with dementia, even though they have different needs and require specialized care.

Dozens of mentally disabled people in homes in different towns around the country were declared mentally incompetent in 2004, under silent pressure from the MLSP, which has not amended its regulations to this effect since 1999. The Bulgarian system for declaring someone incompetent and appointing a guardian or trustee is extremely outdated, and allows for major interference in the rights and personal lives of those declared incompetent. In practice, they are deprived of the ability to exercise their civil rights until the end of their lives.

Despite a minor increase in 2004, the financial support released by the MLSP for the support of the homes turned out to be insufficient to meet even the most fundamental needs of the

19 See Archipelago of the Forgotten: Homes for People with Mental Disorders in Bulgaria, Sofia, BHC, 2004. An English-language summary is posted on the BHC website.
residents. Although some relocation and reconstruction were carried out in the infrastructure of the homes, they did not contribute to a significant improvement in the residents’ quality of life and were rather the result of external pressure. Therefore, the residents of the homes still live in buildings built to serve as workers’ dormitories, schools, agricultural structures, etc., which do not allow for sufficient personal space, space for personal belongings or even appropriate conditions for maintaining personal hygiene.

Following an ad hoc visit to several social welfare homes in Bulgaria by the Council of Europe’s Committee for the Prevention of Torture at the end of 2003, in June 2004 the CPT issued its recommendations for improvements in the conditions in them and was assured by the Bulgarian government that two of the homes visited, one for mentally ill women in the village of Razdol and one for mentally ill men in the village of Pastra, would be relocated in 2004, and urgent measures taken before that to improve the material conditions in them. Unfortunately, in its 2004 visits to these two homes the BHC was unable to discover any trace of such measures having been taken.

The social care home in Pastra had not had any major reconstruction since its founding in 1980. Over the period of the BHC visits (from 2001 to 2004), the buildings had deteriorated considerably – the floors were covered with rotted, soiled flooring and cement, and there were pools of urine in places. The windows in most of the rooms had no glass panes in them, the window-frames had rotted away and the doors had no locks. One of the residential blocks also had no exterior entrance door. In 24 years, the home had only had its rooms freshened up a few times. Radiators had been installed in the home in 2001, several of which were already rusted or had been detached. The home had one washing machine, which was 24 years old, with no centrifuge or dryer. There were some caged enclosures, each measuring about 30-50 square meters, set up in front of the three main buildings housing the sleeping quarters. The enclosures were surrounded by metal fences about two meters high, with barbed wire stretched over them. The metal doors to these enclosures were locked by the staff. The furnishings in the dormitory rooms consisted of old metal beds, small metal cabinets and wardrobes, and soiled bedding – in most of the rooms there were only threadbare blankets and tattered mattresses, without top or bottom sheets. The second building had three rooms, in which the residents with the most difficulty controlling their bodily functions were housed. None of the windows in this building had glass panes in them, and the structure had no exterior entrance door. The water taps were located out in the yard, and the home had no indoor washrooms. The toilets were also outdoors and often filthy.

Some efforts had been made to improve the material living conditions at the home in the village of Razdol, mostly funded by donations: a separate bathroom had been established, the rooms had been furnished with new beds and bedding, and the dining hall furnished with chairs. Despite this, most of the resident women (60) continued to live in two bedrooms, and had no personal space or place to keep their possessions. The toilets in the home were still not fully in use, even though they had been refurbished. There were not enough activities for all of the women, and the home’s distant location (in the Maleshevska mountains, 1,200 meters above sea level, four kilometers from the Bulgarian-Macedonian border) presented access difficulties for adequate medical services, food deliveries and visits by inspecting bodies and nongovernmental organizations.

The home for developmentally disabled adults in the village of Batoshevo, which was visited by an international mission of the International Helsinki Federation (IHF) in September 2004, was in slightly better material condition than the worst-off homes in the country – although its rooms were overcrowded, had no furniture other than beds, and some of the beds had no bedding. The mission saw many of the residents washing clothing in a sparsely equipped laundry room. Only two orderlies, one of whom had been employed via the MLSP “From Welfare to Job Security” program, were on duty to care for 100 men with developmental disabilities. The men’s clothing and physical appearance were extremely neglected, as was the general hygiene in the buildings, which smelled strongly of urine. Mission members saw two locked rooms with about 10 residents who, according to staff, were being isolated for an unspecified period of time for attempting to escape or aggressive behavior. This isolation was not recorded or ordered by a doctor. Kitchen
employees complained of insufficient funds in the home’s budget for food and kitchen equipment. The men committed to this home were totally uncared for and no activities were provided for them, other than watching television (the home had one television set for 100 residents).

Medical care in the homes remains unregulated – and for this reason unsupervised – by any state body, and the rooms in which medical activity is conducted are not licensed by the hygiene inspectorate. The residents’ diagnoses, as well as their prescribed treatment, are not reviewed regularly by a psychiatrist and are often inappropriate to their condition.

Despite the fact that the social care homes keep records of deaths in the homes and generalized information about them is reported to the MLSP, they are still either not investigated – or not thoroughly enough – by the homes themselves, nor by external medical or law-enforcement institutions. There have been instances of residents who have murdered other residents in the homes, as the result of carelessness, inaction and a generally negligent attitude on the part of the staff. The BHC investigated two such incidents that took place in 2004, which were by no means the only ones during the year:

- At 6:30 a.m. on November 17, 2004, orderlies at the home for mentally ill men in the village of Pastra discovered one of the home’s residents, Boris Ivanov, aged 59, in a critical condition. He died about an hour later. According to the home’s director, the autopsy concluded that he had died of severe trauma to the skull and brain, most likely inflicted by the other residents in the room. Ivanov had been placed in the block with the worst material conditions (Block no. 2) with six other people. He had been nearly immobile, with a paralyzed right arm and a serious hernia that had not been operated. Despite having been examined by a physician while still alive, Ivanov was not taken to the nearest hospital for emergency medical care. The Investigation Service in the town of Dupnitsa has opened investigative proceedings on this case, which are still in progress.

- The BHC learned of another death case, that of Yovcho Filipov Lozanov, during its June 2004 visit to the home for mentally ill adults in the village of Govezhda. About half the men from the Dragash Voyvoda home had been transferred here after its closure due to poor material living conditions. According to information from the home director, Lozanov died during the night in late February 2004, after a fight with another resident. The Investigation Service in the town of Montana opened an investigation of the incident and initiated preliminary proceedings with the Montana Regional Prosecutor, which have been terminated.

Despite MLSP efforts to ban seclusion and immobilization of people with mental disorders in institutions, in 2004 the BHC still discovered cases in which residents were isolated in special rooms or wards. The organization also received complaints of the use of physical force on residents by staff members.

Care in the homes did not include any activities aimed toward the acquisition of social skills, nor any geared toward the rehabilitation and social reintegration of their residents. The homes had at their disposal neither the appropriate material conditions, infrastructure, nor human or financial resources to conduct such activities, and establishing them is still not a priority for the Bulgarian government. The only therapy offered in the homes is pharmaceutical.

Staff in most of the homes had no sensitivity toward residents with mental disorders and had low qualifications for working with them. In addition, despite the recommendations of international organizations, no additional incentives or training had been instituted for the homes’ employees in order to improve the quality of care provided by them.

In 2004 the BHC also discovered problems connected with people being committed to and confined in Bulgarian psychiatric hospitals. At the time of the IHF mission to Bulgaria in September, it visited the State Psychiatric Hospital in the town of Karlukovo. The delegation
discovered many instances of unlawful detention for two or more months for carrying out of an in-patient forensic medical expertise in the psychiatric hospital without a due authorization of a competent state body. In addition, the mission observed almost no practice of taking all patients’ informed consent for their treatment, regardless of whether or not they had been voluntarily committed to the hospital. Many of the patients interviewed did not know the reason why they had been transferred from one hospital to another. The material conditions in the Karlukovo hospital, especially in the wards housing patients with severe psychotic conditions, were extremely poor. The bedding, clothing, floors and walls of the rooms were badly stained and extremely dilapidated. The patients had no way to maintain personal hygiene. The therapy used in the hospital was primarily pharmaceutical. There was still a practice of using long-term isolation (for months) in individual rooms, with maximally limited contact for those in isolation, and physical immobilization used in the presence of other patients. Besides this, there were reported instances of physical violence, both among patients and inflicted on patients by orderlies. Commitment to psychiatric institutions was still conducted according to the old procedure in 2004, and did not conform to international standards regarding the right to personal liberty. However, this practice is expected to change with the entry into force of the new Healthcare Act on January 1, 2005.

11. Right to Asylum

The Bulgarian Helsinki Committee continued its work in 2004 on the program launched in 1994 for protecting the rights of refugees and asylum seekers, as a particularly vulnerable group fleeing persecution and violations of their human rights in their countries of origin. The situation in Bulgaria in 2004 with regard to the issue of refugees reflected to a large extent the global trends in the areas of immigration and asylum. As a country in transition and in the process of joining the European Union, Bulgaria demonstrated a lack of its own position and an inability to conduct its own national policy in this sphere. The distinguishing factors regarding the position of refugees and asylum candidates in Bulgaria over the past year were: the number of asylum seekers, the low recognition rate and granting of status, the lack of secured budget for the functioning of the refugee system, the failures in the repatriation procedures for asylum seekers whose applications receive final refusals, public animosity toward asylum seekers, and the obvious connection between the more restrictive measures imposed by the government and the growth in illegal human trafficking. It should be noted that since Bulgaria is still more of a transit country than a final destination for refugees, it does not share many of the problems of refugee system overcrowding found in more developed, industrialized countries. Despite this, however, it conforms fully and mechanically to the restrictions adopted by those countries, resulting in a wide discrepancy between the restrictions themselves and the public need for them.

The trend begun in previous years of instituting strict border control measures in Bulgaria continued in 2004. This was an attempt to react to the widely publicized growth in the number of asylum seekers worldwide, despite the statistics showing a significant decrease in the number of asylum seekers and refugees in the past year throughout Europe, including Bulgaria. The European Union has been investing in increasing the capacity of Bulgaria’s border police services, with the purpose of bringing them into condition to function as the future external border of the union by 2007. These measures had an extremely negative result upon the number of those who entered the country and the number of asylum applications registered, of which in Bulgaria in 2004 there were 1,127 people from 42 countries, a 27.2% decrease in comparison with the 1,549 applications registered in 2003 for people from 38 countries.

Neither accelerated proceedings nor any other form of proceedings were conducted at the border for the recognition of refugee status. Neither of the two transit centers planned for this purpose by the State Refugee Agency is functioning as yet. The BHC found that no actions have been undertaken to even begin building the center at the village of Pustrogor, on the Bulgarian-Turkish border, which is the main overland point of entry, nor the one at the village of Busmantsi, near the Sofia Airport, which is the main point of entry by air. The authorities denied NGOs the possibility of observing the border detention centers, although observation of the illegal alien
detention centers inside the territory of the country did not meet with any obstacles. For this reason there were no practical guarantees of compliance with the principle of non-refoulement as per Art. 33, Para. 1 of the Geneva Convention on the status of refugees and people seeking asylum at the border. The Ministry of Internal Affairs continued not to differentiate in its annual statistics on people turned away at the border between illegal immigrants and asylum seekers. The refugee administration, as embodied by the State Refugee Agency, maintained its passive stance in this respect and only reviewed those border cases that were referred to it by the Border Police Service, even though in accordance with the precedent established in the case of Gul Azin, nongovernmental organizations may refer refugee applications to the administration.\(^{20}\) Thus, in 2004 the State Refugee Agency only agreed to review the 59 cases sent to it by the Border Police, in 30 of which entry on the country’s territory had only been secured via the intercession of the BHC. In comparison, 95 cases had been transferred from the border in 2003, and 151 cases in 2002. The lack of NGO ability to observe the National Border Police Service detention centers led to the registration of eight cases of denial of entry (refoulement) in violation of Art. 3 of the European Convention on Human Rights of persons seeking asylum on the Bulgarian-Greek border, four of whom were unaccompanied children. The BHC has also observed an alarming trend of abuse of the refugee system by the police, who transfer cases of people who have not sought asylum to the State Refugee Agency as refugees, for the purpose of securing their short-term presence on Bulgarian territory as witnesses in trials of people traffickers, instead of applying the more long-term witness-protection measures in the Anti-Trafficking in Persons Act. Because of this, in 2004 the BHC found it especially important to resume its function of observing the borders and detention centers for foreigners who enter the country illegally. At the end of 2004, the BHC and the National Border Police Service signed a memorandum granting NGO representatives unlimited access to conduct monitoring and legal consultations at the border stations’ 24-hour detention centers.

The BHC’s Center for Legal Aid also continued working at the reception center of the State Refugee Agency during the past year, providing free legal assistance for refugees and asylum seekers residing in the Registration and Reception Center. This activity, as well as representing asylum seekers with bona fide refugee applications at their court hearings, led to a significant growth in the number of those granted asylum, for a total of 276 people out of 1,127 registered applications in 2004, of which 259 were granted humanitarian status and 17 were granted refugee status. Despite this, the BHC remarked that the relative proportion of those recognized as refugees remained low, at just 1.5% of the registered asylum applications.

The state administration continued its attempts in 2004 to push through as lawful the idea of conducting accelerated hearings at the Home for the Temporary Accommodation of Adults (HTAA) in Sofia, in violation of the law and of the resolutions of the Executive Committee of the UN High Commissioner on Refugees. The BHC noted the disturbing fact that while the court had struck down this practice as being in contravention of the law in the 2003 case of Kizito Chukudi, the same court in 2004 – even the same panel of judges – accepted the accelerated hearing procedure as valid in the case of Mahmudzade, which had been conducted under custody conditions in violation of Article 5 of the European Convention on Human Rights.

The BHC has found that the National Police Service is unable to organize the return of foreigners arrested for unlawful presence in Bulgaria to take place within a reasonable period. The detention of foreigners at the HTAA lasts from five to eight months – there are even some recorded cases of detention for over 12 months – during which the Bulgarian state is not able to end the detention by undertaking the forced deportation or expulsion of the foreigner to his country of origin. Foreigners in custody at the HTAA are not given a copy of their detention, expulsion or deportation orders, making it impossible for them to appeal within the periods stipulated by law and hampering the organization of legal protection for them. The state lacks a system for the provision of legal aid to persons held at the HTAA, and the only legal assistance provided has turned out to be that from representatives of the BHC program.

\(^{20}\) Sofia City Court Decision No. 108, April 26, 2004.
12. Women’s Rights

The past year marked several positive changes in Bulgarian legislation concerning women’s rights. These included the entry into force of the Anti-Discrimination Act and the Anti-Trafficking in Persons Act, and the approval of the bill for an Act for Protection from Domestic Violence at its first reading. Both the new laws and the draft law affect women’s rights, since women are among the most frequent victims of discrimination, people trafficking and domestic violence in Bulgaria.

Despite the progress made in the legislative arena, progress has yet to be made in the area of enforcement of the laws passed. Structures and mechanisms have not yet been established for the enforcement of the laws already in force. As of the end of 2004, long after the deadline specified in the Anti-Discrimination Act, the Anti-Discrimination Commission had still not been formed. It is very important that practices in the sphere of gender equality and women’s rights be established by such a specialized commission. Despite the possibility provided in the law to seek protection via the courts, they still demonstrate weak competence on issues of gender-based discrimination. Women very rarely exercise their right to file lawsuits, and therefore the existing jurisprudence gives an erroneous idea of the level of women’s rights violations, especially those regarding their right to work. Women in Bulgaria do not utilize the law’s provision to seek legal remedy in the courts often enough, because they do not want to risk their hard-won jobs in a court proceeding that does not give them sufficient guarantees of ending the discrimination and/or receiving compensation.

As of the end of 2004, the National Commission for Combating Trafficking in Persons also had yet to be set up or begin operation, as provided for in the anti-trafficking law. Also connected to this was the delay in the establishment of temporary shelters and centers for sanctuary and assistance to the victims of people trafficking. The state still relies on efforts and funds provided by nongovernmental organizations and the International Organization on Migration for these services. Even though the Anti-Trafficking in Persons Act was passed in 2003 and has been in force since January 2004, its enforcement was not provided for financially in 2004.

Court proceedings began in 2004 in several trials of defendants charged with trafficking in persons under Art. 159a and 159b of the Penal Code — texts introduced in the amendments adopted in late 2002. The women victims of trafficking who testified at these trials were in a disadvantaged position. They are usually not considered to be private plaintiffs or civil complainants in the first hearings of the case, since they have no rights in the pre-trial phase, they do not feel sufficiently protected in the process and may not receive legal assistance or real compensation. The Anti-Trafficking in Persons Act introduced the principle of providing a special protected status, but only for trafficking victims who consent to cooperate with the authorities during the pre-trial proceedings. The law also does not provide a mechanism for the compensation of trafficking victims. A special working group was formed within the Ministry of Justice to develop such a mechanism, but its work was stopped in July 2004.

The activism of nongovernmental organizations is also still relied upon in the area of domestic violence, toward which the state also cannot claim to have made any significant financial contribution. Examination of the draft law on domestic violence on the second reading was delayed in 2004, after it had made it through its first reading. Meanwhile, no measures for its enforcement or funding were planned for. Besides the speedy court procedure that it provides, the state should also provide funding for the rehabilitation of victims of violence. There were more than 2,500 victims of domestic violence who received psychological consultations and assistance from nongovernmental organizations in 2004, in Sofia and elsewhere in the country. A large percentage of them needed legal assistance and additional funding for their rehabilitation.

Steps were taken for the first time in 2004, primarily by the Ministry of Labor and Social Policy (MLSP), in the direction of establishing an institutional mechanism for ensuring equal opportunities for women and men in Bulgaria. A Gender Equality Department was founded within the MLSP in March. A Council of Ministers decree of November 2004 provided for the creation of
a consultative body, the National Council for Equal Opportunities for Women and Men, to include representatives from state institutions and with the Minister of Labor and Social Policy as its chairperson. At the beginning of December 2004, the first National Plan for Equal Opportunities for Women and Men was approved and ratified by the Council of Ministers. These initiatives were influenced by the European Union, and the adoption of the plan anticipated the “Beijing Plus 10” review regarding fulfillment of the Beijing Platform for Action from the Fourth World Conference on Women held in September 1995.

These actions by the government, although late in coming, are expected to have an effect on gender equality and women’s rights over the coming years. However, the necessary resources must also be allocated for developing this activity, in addition to creating and funding the institutions provided for in the above-mentioned laws.

13. Children’s Rights

The Bulgarian government failed again in 2004 to present its periodic report on the Convention on the Rights of the Child, which should have been presented in July 1998 and is now nearly seven years overdue. Its initial report was presented in 1995, and now Bulgaria is supposed to report on the entire period since then. The Bulgarian government also failed to fulfill its promise to present initial reports on the Conventions’ Optional Protocol on the sale of children, child prostitution and child pornography, and the Optional Protocol on the participation of children in armed conflict. These reports should have been submitted by 2004.

The legislative changes regulating children’s rights adopted in 2003 with amendments to the Family Code, the Child Protection Act and some by-laws were intended to serve as a barrier against the arbitrary institutionalization of children. Placement with relatives or close family friends was viewed as an alternative to institutionalization. It became mandatory to have a court order for placement in an institution, or an administrative decision for temporary placement. However, the state failed to invest in staff training, and for this reason the enforcement of protective measures in the best interests of the child remains at an unsatisfactory level.

Instead of assisting parents in fulfilling their role, placement in institutions continues to be the most-often implemented protective measure. Bulgaria’s state institutions refuse to recognize the children in the special schools for children with light developmental disabilities as institutionalized. With regard to such children, the state considers that “although they have special needs, they are not separated from their families on a long-term basis and in this sense are not institutionalized.” In reality, the majority of these children live with their parents, if they have any, only during school vacations, and a significant percentage of them have no parents and remain in state institutions even during vacation periods. On the whole, with regard to separation from their families, they are not any different from the children in the social-educational boarding schools and educational boarding schools (the two types of juvenile correction institutions), whom the State Child Protection Agency recognizes as institutionalized.

One of the most serious problems in this area, along with financing, is the number of people employed in child protection at the local level. One study showed, for example, that in the municipality of Belitsa, one social worker is responsible for a region with 11,200 inhabitants. In Troyan, two social workers and one legal advisor are responsible for 38 towns and villages, with a

---


total population of 25,823. In none of the cases studied were the social workers provided with transportation, or even computers on which to store basic data about the children in whose interest they were supposed to be working.

As a result of the reasons outlined above, as of December 31, 2004, the number of children placed with foster families was only 29,\(^23\) and the number placed with relatives or family friends was 3,755.\(^24\) Compared with the figures for children living in institutions, these numbers are far too low to have any significant effect on the institutional care system. Until sufficient state resources are allocated to prevent the abandonment of children and reintegrate institutionalized children into their families, along with the parallel overall development of alternatives such as foster families and adoption, violations of the right of children to live in a family environment will continue.

Despite the introduction in recent years of legislative changes intended to ensure the access of all children to regular schools, the situation of children in institutions remains unsatisfactory. The majority of children institutionalized in the Ministry of Labor and Social Policy’s homes for children with developmental disabilities\(^25\) have no access to the educational system, and are considered uneducable.\(^26\) The accent is placed on their physical needs, and not on their education or social integration.

Also of serious concern is the number of children placed in homes for children deprived of parental care (orphanages) who continue to attend special schools without any re-evaluation of their educational needs. They are thus deprived of the opportunity to attend a regular, mainstream education school, which is a violation of their right to receive a quality education, as well as development and equal opportunities on the labor market later on.

Despite the 2003 amendments to the Family Code that restricted the possibilities for international adoption, further reform is necessary. A uniform, nationwide register is needed of available children and people who wish to adopt a child. This would increase the possibility of finding Bulgarian parents for Bulgarian children, even when they live in different parts of the country. Greater transparency is also needed in the system for international adoptions, in order to reduce the financial incentives of those who view international adoption as a “business”. International adoption should be viewed as a last-resort measure, when all other alternatives have been examined and it is found to be in the child’s best interest.

Bulgaria is a country of origin, a country of transit and – to a lesser degree – a final destination country for trafficking in children. The destination countries for children from Bulgaria are usually Greece, Turkey, Italy, Cyprus, Macedonia and Albania, as well as countries in Central and Western Europe.\(^27\)

Trafficking in children for international adoption is also a problem in Bulgaria. There were several cases in 2004 of Bulgarian babies being sold to foreign families (usually Greek, though lately there have also been several much-discussed cases involving French families). The traffickers seek out pregnant women and transport them abroad, where they house them in special


\(^{24}\) Ibid.

\(^{25}\) According to the latest publicly available information, there are about 3,400 children in such institutions.


\(^{27}\) Informative Report on Child Trafficking, ENACT (European Network Against Child Trafficking), March 2004.
homes in which they give birth. This type of trafficking will continue to be a problem as long as there is no well-regulated, transparent, international adoption procedure.  

Amendments and additions were made in July 2004 to the Act for Combating Juvenile Delinquency, under which the placement of children who have committed acts of juvenile delinquency in social-educational boarding schools and educational boarding schools can only take place via a court order. This represents significant progress in the outdated system for the handling of children who commit acts of juvenile delinquency, the reform of which the BHC has been calling for since 1996. However, the amendments to the law are still not entirely compliant with the principles of due process, in that there is no requirement that an attorney be present, and the term “antisocial behavior” continues lack a comprehensive definition. In addition, the new placement procedure has turned out to be quite unwieldy. For this reason, a half a year after its introduction, there is a real danger that placement in reform schools will continue to take place with long delays and in violation of the law, contrary to the very purpose of having such corrective behavioral measures. The reduction in the number of pupils in reform schools in recent years is the main reason for which classes have been consolidated, which along with the low level of motivation among the teaching staff, has led to the serious deterioration of the academic process.

Emil Cohen, Margarita Ilieva, Yonko Grozev, Krassimir Kanev, Slavka Kukova, Yuliana Metodieva, Sviilen Ovcharov, Svetla Peeva, Stanimir Petrov, Iliana Savova, Rositsa Stoykova and Genoveva Tisheva contributed to the preparation of this report. Information specially provided by the Access to Information Program was also used.

---

28 For more detailed information on international adoption, see: Position Paper on International Adoption of Children from Bulgaria, Save the Children UK, October 2003.