Throughout 2006 Bulgaria was governed by the coalition government of the Bulgarian Socialist Party (BSP), the National Movement of Simeon the Second (NMSS) and the Movement for Rights and Freedoms (MRF). It was formed after the elections on June 25, 2005. On January 1, 2007 the country became an EU member. In 2006 the European Commission published two assessment reports on the state of preparedness of Bulgaria for EU membership – in May and in September.¹ Both of them outlined some problems with the human rights situation in Bulgaria, for example abuse of detainees during the preliminary detention, poor conditions in the detention facilities, discrimination of Roma and people with physical and mental disabilities, human trafficking and child protection. In general, however, these assessments dealt superficially with human rights and ultimately remained outside

the range of the final major recommendations of the Commission before the membership. Therefore, they failed to provoke adequate public debate on these topics.

As a matter of fact, the human rights situation in 2006 in Bulgaria improved slightly in some areas, for example the personal liberty and fair trail with regard to penal proceedings, as well as access to legal aid on penal cases due to the enforcement of the provisions of the new Legal Aid Act. In a number of other areas, however, for example the rights of people belonging to ethnic minorities and their protection from discrimination, freedom of expression and the freedom of association and peaceful assembly, the situation worsened. The negative trends increased after October when it became clear that Bulgaria would join the EU as of January 1, 2007.

The national human rights institutions, the Ombudsman and the Anti-discrimination Commission finally launched their activities in 2006. However, they were not fully efficient and failed to contribute significantly to put the respect to human rights on the agenda of the Bulgarian public.

The cooperation of Bulgaria with the international human rights bodies throughout the year was deplorable. According to the data of the Office of the United Nations High Commissioner for Human Rights as of February 16, 2006 Bulgaria delayed a total of 17 reports due to be submitted to different UN bodies. According to this data the country was more than five years late with the submission of eight reports and more than ten years late with the submission of two reports. There is not a single EU member state or a Council of Europe member state that has so many failures to fulfill their reporting obligations to the UN. On April 5, 2006 the Advisory Committee on the Framework Convention for the Protection of National Minorities published its first comments on the implementation of Bulgaria’s commitments under the Convention after it got the consent of the government. This happened almost three years after the submission of the official report.2

1. Right to Life

In 2006 the legislative and practical guarantees of state protection of the right to life in Bulgaria continued to be below the level of international standards. Article 74 of the Interior Ministry Act permits the use of firearms during the arrest of an individual who is committing or has committed even a petty crime, or to prevent the escape of an individual arrested for committing even a petty crime. This does not conform with Principle 9 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Many of the cases of fatal use of firearms by the law enforcement bodies in the past years remained inadequately investigated or were closed with the conclusion that the lethal weapon had been used legally. In some of

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2 See below: Minority Protection.
the cases the courts issued convictions. In at least one case a man lost his life in doubtful circumstances after he found himself in the hands of police officers.

In 2006 BHC monitored the investigations of some of the cases of excessive use of force and firearms that caused loss of human lives, which were reported in organization’s previous reports. These investigations revealed a high level of impunity of the police officers, especially in the cases where the victims were Roma.

On March 27, a police sergeant in Plovdiv shot fatally in the head a Roma man, Kiril Stoyanov. The Plovdiv Military Prosecutor’s Office (PMPO) instigated an investigation of the police officer for negligent homicide. On August 12, 2004, the investigation, however, was terminated by the Plovdiv Regional Military Prosecutor’s Office (PRMPO) on the grounds that the weapon had been used lawfully. Its order was appealed and several months later Plovdiv Military Court (PMC) remanded the case with mandatory instructions for further investigation into the case. On December 9, 2004 PRMPO terminated the proceedings for a third time on the grounds that the act did not constitute a crime. In its turn, PMC again repealed the order of termination. PMPO terminated the case for a third time issuing a conclusion that the situation concerned “inevitable defense” – art. 12, para 1 of the Penal Code. After this consecutive appeal PMC affirmed the termination of the penal proceedings. In September 2006 Stoyanov’s mother filed a civil motion with Plovdiv District Court against Police Regional Directorate for damages caused as a result of her son’s murder. The case was initiated and was pending at year’s end.

No progress was made on the investigation of the death of the Roma person Boris Mihaylov who was shot dead on August 3, 2004 by a police officer from the town of Smolyan. Penal proceedings were initiated in the case on the grounds of art. 119 of the Penal Code – exceeding the limits of inevitable self-defense, but the indictment against the police officer who shot the man was not brought in the court. By virtue of an order of October 29, 2004 the penal proceedings on the case were terminated by Sofia Regional Military Prosecutor’s Office (SRMPO) which took it that the murderer was committed in situation of inevitable defence pursuant to art. 12 of the Penal Code. The termination was appealed by the partner of the victim Mihaylov on behalf of their child. On December 13, 2004 Sofia Military Court (SMC) repealed the order of termination and remanded the investigative case to the prosecutor’s office with instructions. Without having followed the court’s instructions, on March 16, 2005 SRMPO terminated the penal proceedings again. The order was appealed again before SMC which repealed it on June 13, 2006. On November 10, 2006 SRMPO issued its next order on termination of the proceedings with unchanged grounds. By virtue of an order of November 22, 2006 SMC found the motion of the victim legitimate again by pointing out that the preliminary investigation bodies have not eliminated any of the flaws in the investigation found by the court in its rulings of December 13, 2004 and June 13, 2006. In its ruling the

court pointed out that “the investigation is still incomplete, formal and superficial, while the actual conclusions of the investigative bodies – ungrounded, discrepant and implausible... Obvioulsy, SRMPO's aim is to have the investigation terminated without any real efforts to find the truth about the act committed...” Nonetheless, until the end of 2006 no indictment was brought in the court.

On April 14, 2005 a police officer from Varna beat 37-year-old Julien Krustev to death. Late in the evening of April 14, the police officer was returning home from a nightclub when he found Julien Krustev sleeping in the hallway in his apartment block. As it was ascertained later in the investigation, he began beating him because of an old refrigerator that had been stolen the previous day. Some of the beating took place in the presence of two other police officers who did not react in any way. Forensic medical experts established that Krustev died of multiple internal injuries and ruptures caused by the beating. Sergeants D.V. and N. Zh. were suspended from duty. D.V. tried to lie to the police when the crime was revealed. He was arrested, charged with intentional murder and suspended from duty. The police officer was convicted by Varna Military Court on June 26, 2006 to 16 years of imprisonment. The sentence was appealed and until the end of 2006 the appellate instance failed to issue a decision on the case.

On August 14, 2005, a police officer from Plovdiv, along with two civilians, beat 37-year-old Ivelin Vesselinov to death on the marketplace in the Trakia residential region. The three men chased and caught Vesselinov and started beating him, because the girlfriend of one of the men claimed he had stuck a sharp object in her leg. They struck more than 20 blows on Vesselinov's head and torso. Citizens reported the case to the police and a patrol car from the 5th Police Precinct arrived at the scene. Vesselinov was driven to the 5th Police Precinct, where he collapsed. The emergency medical response team called to the scene failed to save him and two hours later pronounced him dead. In September effective sentences were issued on the case convicting the three perpetrators to deprivation of liberty. They were appealed, but until the end of 2006 the appellate court failed to issue a decision on the case.

On November 27, 2006 Sofia Regional Military Prosecutor’s Office brought in Sofia Military Court an indictment against the five police officers who beat to death Angel “Chorata” Dimitrov on November 10, 2005. The indictment was for attempted murder on the part of a member of the police staff of a person in a helpless situation in a particularly painful manner for the victim. This is one of the many indictments brought in by the prosecutor’s office. The previous two, of June 17 and October 2, 2006, respectively, were for negligent homicide as a result of intentionally inflicted bodily harm. Then Sofia Military Court remanded the file to the prosecutor’s office for implementation of the instructions for additional investigation issued in the ruling of January 19, 2006 by SMC. The first instance court hearing was scheduled for March 2007.

On December 20, 2005 in the village of Vlado Trichkovo, near Sofia, special police forces fatally shot 30-year-old Harry Milkovski, in a rescue operation to set
free the British citizen Kristou Fanos. By virtue of an order of February 20, 2006 issued by Sofia Regional Military Prosecutor’s Office the penal proceedings launched against the police officers were terminated. Pursuant to the details described in the order the officers of the special police forces heard a gunshot in the direction of the room where Milkovski was, therefore when they stormed the room shot him dead in the chest in a situation described as inevitable defense. The matter of repealing the order of termination issued by the prosecutor was not referred to Sofia Military Court.

On August 21, 2006 in the village of Elhovo, in the district of Stara Zagora, after having been detained by the police, Marko Bonchev, a Roma person, died. Based on the evidence of the eyewitnesses and relatives of the deceased man, on August 17 a brawl occurred between him and two other people from the village. The mayor of the village reported the case to the police, and a police patrol from the neighboring town of Gurkovo arrived. The police officers handcuffed Bonchev and, according to the witnesses, started kicking him in the stomach and the groins. He was forced into the police car which drove him to the town’s police precinct. Later, Bonchev was taken to the Regional Police Department in Kazanlak. His condition deteriorated there and he was taken to the emergency ward. He complained of acute pains in the stomach, difficult and impossible urination. In the meantime, he was convicted by summary proceedings under the provisions of the Minor Hooliganism Decree by Kazanlak Regional Court and was detained. On August 20, 2006, around 16 hours Marko Bonev was released from detention in a very poor health status. Suffering from the severe pains, he repeated in front of his relatives that the pains are a result of the blows and kicks of the police officers at the police precinct in Gurkovo. Due to the sharp pains, Bonchev was taken again to the emergency ward in Kazanlak on that same evening. They did not admit him for treatment at the hospital, though. He died the next morning. There were two investigations initiated on the case – one for medical blunder on the part of the medical staff at the hospital, and another one against the police officers who used force. On November 2, 2006 Plovdiv Regional Military Prosecutor’s Office issued an order by virtue of which they refused to initiate penal proceedings against the police officers.

On February 23, 2006 the European Court of Human Rights in Strasbourg issued its judgment in the case Ognyanova and Choban v. Bulgaria where they found a violation of the right to life (art. 2) of the European Convention on Human Rights (ECHR). The case concerns the death of Zahary Stefanov who died after he fell from the window on the third floor of the police precinct in the town of Kazanlak while he was interrogated by two police officers in relation to thefts and robberies. The Court found it was unlikely for Stefanov to have tried to escape by jumping from the window handcuffed, as the police officers claim. The Court decided that the bodies failed to perform their duty for adequate and effective investigation with regard to the accident, a fact that impeded finding the cause of Stefanov’s death. In addition, the court found a breach of the ban on inhuman or degrading treatment and punishment (article 3), since the state failed to explain reasonably the origin of the
numerous injuries on the deceased man’s body which are hardly to be caused by the fall.

2. Protection from Torture, Inhuman and Degrading Treatment or Punishment

In 2006 the legislation guaranteeing protection from torture, inhuman and degrading treatment and punishment in Bulgaria remained unreformed. The necessary amendments to the Penal Code were not introduced to criminalize torture as the UN Committee against Torture recommended yet again in June 2004.\(^4\) The conditions in many of the places of detention continued to be inhuman.\(^5\)

In 2006 BHC received credible complaints about torture and degrading treatment of people detained by the police. At the end of 2006, organization’s researchers carried out a survey of inmates in four prisons (Plovdiv, Pleven, Belene and Bobovdol) about the conditions of their detention and preliminary investigation. The survey sample was representative of the four prisons, but not of the penal system as a whole. It involved prisoners serving sentences on convictions that had already taken effect, whose pre-trial proceedings began after January 2005. In comparison to a similar survey conducted in 2005 the results from the new one showed a slight decrease in the complaints of use of force during detention and in the police precincts. In 2005 23.2% of the respondents from these prisons reported that force had been used at their arrest against 20.1% in 2006. The share of prisoners who in 2005 reported that physical force was used after they had been taken to the police precinct was 23.2% against 20.8% in 2006. Given that the survey data of 2005 showed an increase in the share of prisoners who complained of the use of force in the police departments compared to the results of a similar one of 2004,\(^6\) one can conclude that in the last three years there has been standstill and stagnation after the progressive decrease in the share of the complaints that started in 2000. The situation caused a particular concern given the enhanced access to the services of defense attorneys during the pre-trial proceedings in 2006.\(^7\)

In 2006 the practice of having massive police raids in Roma residential quarters that was particularly popular in the 90s, was revived. They are characterized with unscrupulous use of force and aids, including against women and elderly people. Both the management of the Ministry of the Interior and the judicial system reacted inadequately to the complaints filed.

According to witnesses on August 21, 2006 after midnight a group of police officers from Sofia stormed Hristo Botev Roma residential area after a report was filed by citizens that inhabitants made a lot of noise. After a brawl with a company of Roma merry-makers, the police officers fired warning shots and ordered everyone to

\(^5\) See below: Conditions in the Places of Detention.
\(^7\) See below: Independence of the Judiciary and Fair Trial.
lie on the ground. N. A. was holding an infant in her arms and refused to obey. One
of the policemen pointed a gun at her and hit her across the face. O. V. who tried to
calm down the officers was also brought down to the ground. The policemen kicked
P.G. after he was lying handcuffed on the floor. Women who came to the assistance
of the Roma begged the policemen not to beat the men. Some of the Roma were
detained in First Police Precinct where they claim the violence continued. Charges
were pressed against two of the Roma who participated in the incident for
hooliganism and resistance to obey a representative of the law-enforcement. The acts
of the police officers were not investigated.

Some days later, on August 24, 2006, a huge number of police officers blocked
all exits of Filipovtsi residential area in Sofia. According to the witnesses they
stormed many of the homes, kicked around the household belongings and used
physical force against the residents. BHC has at its disposal medical certificates for
the bodily injuries of several of the victims. Some of the victims reported the case to
Sofia Regional Military Prosecutor’s Office (SRMPO). The Metropolitan Police
Department (MPD) was approached with the request for making an inspection
whether there is ground to initiate disciplinary proceedings against the policemen.
SRMPO and MPD initiated preliminary internal investigations which, however, were
not concluded by the end of the year.

Another example of excessive use of force was the campaign of the police force
and the military police force (the gendarmerie) held on October 13, 2006 in Iztok
Roma residential area in Pazardzhik. It was conducted on occasion of a row between
two neighbor Roma families. The witnesses reported that the row grew into a fight
between 15 men and women from the two families. A crowd of about 50 people
gathered to watch. The police patrol that arrived asked for back-up, and later in the
night the gendarmerie arrived. The gendarmes, around 150 in number, broke into
about 200 homes. The victims say they were insulted and forced, taken out of their
houses and forced to the ground, beaten and kicked. A number of significant
material damages were caused. An estimated 200 Roma families were affected,
including people who were not involved in the family row in any way. Victims of
physical violence are about 20 people who have medical certificates issued.
Nevertheless, the inspections carried out by the prosecutor’s office and the police in
the town of Pazardzhik did not find any evidence of excessive use of physical force
and aids.

On June 18, 2006 officers of the elite strike force teams, known in Bulgaria as
“berets”, assaulted civilians in nightclubs in Varna during police checks. According
to the evidence of some of the victims apart from beating the people, the “berets”
made the people bark like dogs. “It was like under the Pinochet’s regime”, this is how
the situation was assessed by Nikolay Nikolaev, the chairperson of the Board of
Directors of St. St. Constantine and Elena Tourist Company. At the beginning of 2007
the victims from that incident were not aware of any investigation of the incident.

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8 Dnevnik Newspaper, June 20, 2006
In 2006 the European Court of Human Rights in Strasbourg issued several judgments by virtue of which it convicted Bulgaria for violating the ban on inhuman and degrading treatment (art. 3 of ECHR). On February 2, 2006 the court issued its judgment on the case Yonchev v. Bulgaria. In it, the Court found that there had been a violation of Article 3 due to the conditions in which the applicant had been held during his detention in the investigative detention facility in Plovdiv. The applicant had been kept in a cell of 20 square meters together with three other detainees, there were no beds or windows in the cell and he was forced to sleep on the floor on dirty blankets. He was allowed to leave the cell for two to three minutes a day to go to the toilet, while baths were not ensured for periods sometimes of 30 to 40 days. The Court found that some aspects of these conditions, although not aiming at deliberate degrading treatment of the detainees, are undoubtedly degrading. Improving the majority of those conditions did not entail major investments on the part of the state. In addition, the Court found that the Bulgarian court was too formalistic when it rejected the request of the applicant for indemnification under the provisions of the State Responsibility Act because of the inhuman conditions in the detention facilities using the grounds that Yonchev failed to prove with witnesses’ evidence the emotional suffering and damage incurred to him. The Court stressed that this limited approach on the part of the Bulgarian court turns a huge number of similar cases into impossible to prove and causes impossibility for the victims to be indemnified. Therefore, the Court found that the applicant did not have at his disposal an effective defense measure, hence art. 13 of the European Convention on Human Rights was also violated.

Similar to the Yonchev case, on November 12, 2006 the Court issued a judgment on Staykov v. Bulgaria case. The applicant spent almost seven years in a small cell in the Varna prison along with three to four other people. Often the possibility to use hot water was provided only once a month, and while he was kept in the investigative detention facility he was not allowed to take a walk in the open at all. During the time of his detention he fell sick of tuberculosis. The Court found that these conditions, combined with the excessively long period of detention, are inhuman and degrading treatment.

On August 10, 2006 the Court in Strasbourg issued judgments on two other similar cases – Dobrev v. Bulgaria and Yordanov v. Bulgaria, where it found violations of art. 3 of the ECHR due to the conditions in the detention facility in Pazardzhik. The applicants had been kept there for period of two, respectively three months, in overcrowded cells located below the level of the street, without any sunlight and fresh air, without any hot water and soap. The detainees were not allowed any access to any printed materials and books, or any physical exercises and physical activities. Given these circumstances, the Court found that the conditions the detainees were in go beyond the usual level of suffering that is associated with detention measures.

On February 26, 2006 the Court in Strasbourg issued its judgment on Tsekov v. Bulgaria case with regard to the complaint about unlawful use of firearms by the law-enforcement officers. The applicant, who is of Roma origin, was traveling on a cart
loaded with corn and did not obey the order of the police patrol to stop. The police officers, after warning the man they would use firearms, fired a few bullets, one of which touched the applicant. The Court found that the Bulgarian law does not guarantee the protection of the people against unlawful encroachment on their physical integrity, since it gives far too broader discretion to the policemen to use firearms regardless of the gravity of the crime or the danger posed by the person chased. In addition, the Court found that the use of lethal weapon in this particular case was not necessary and appropriate and that the investigation into the case was inadequate.

On June 22, 2006 the Court in Strasbourg issued a judgment on another case concerning unlawful acts by police officers. In the case Kazakova v. Bulgaria the applicant complained that she became victim of police violence at the time of her arrest. The Court, although it decided that it was not established “beyond reasonable doubt” that the trauma inflicted was the result of the acts of the police, found that the state failed to fulfill its obligation to investigate effectively and completely the complaints about police violence. Therefore, it found that there was violation of the ban on inhuman treatment.

3. Right to Personal Liberty and Security

In 2006 the European Court of Human Rights in Strasbourg issued a number of judgments against Bulgaria on violating the right to personal liberty and security. The Court found violations of the provisions of art. 5 of ECHR in a total of 17 different cases. For the most part these were cases pre-dating the penal procedure reforms that took effect at the beginning of 2000, having to do with the powers of the prosecutor’s office and the investigation services that were removed by that reform package. Some of the other judgments found violations due to the excessive length of the pretrial proceedings.

Throughout the year the situation with the right to personal liberty and security was improved as far as the penal proceedings were concerned with the enforcement of the new Penal Procedure Code of April 2006, although it failed to overcome some of the existing problems and caused some new ones. The access to public defense in the pre-trial proceedings was improved.

Throughout the year the placement in social care homes for people with mental disabilities continued to be another serious problem with the personal liberty and security. These placements are made through an administrative procedure, with no judicial review, and as the BHC has observed on many occasions in the past, they are often arbitrary. The legislation governing placement in social care homes was not amended throughout the year.

Another problem in 2006 was the placements under the provisions of the Juvenile Delinquency Act. Although the procedure was refined with the amendments

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9 See below: Independence of the Judiciary and Fair Trial.
of 2004, many of the placements continued to be arbitrary due to poor access to legal aid and inequality of the parties during the proceedings. Placement in homes for temporary placement of juveniles under the police authority, which by default cannot exceed two months, continued to be carried out by virtue of an administrative procedure, without any judicial review in breach of the international standards.

4. Independence of the Judiciary and Fair Trial

The problems concerning the administration of justice continued to be a focus of attention for the European Commission in the two assessment reports on the progress of Bulgaria in the process of joining the European Union prepared in March and September 2006. In April the Penal Procedure Code adopted in October 2005 became effective. According to experts BHC contacted for their opinion at the beginning of 2007 this Code is significantly more refined than the previous one, and has been complied with the European standards in the area of penal proceedings. The most positive aspect identified by the experts is the availability of differentiated procedures with different deadlines that provide for the possibility for shortened and faster conclusion of the pre-trial proceedings. Another positive aspect is the expansion of the range of the rights of the victim on cases of general type, including the pre-trial proceedings, along with the possibility of issuing the so called “limitative order” by the court to protect the witnesses when they are under threat. The regulation of the activities with relation to the functions of the supervising prosecutor is very well balanced, along with the possibility for the accused to request for the case to be brought to the court after the expiry of two years for cases on severe crimes, or, respectively, one year for the rest of the cases as of the beginning of the pre-trial proceedings. Although these two concepts, of the supervising prosecutor and the possibility for the accused to bring the case to the court, were existent in the previous provisions, in 2006 positive practice with regard to the application accumulated.

Despite these positive aspects the experts identify a number of critical points in the new legislative regulation. The authorities of the investigation were narrowed down considerably at the expense of broadening up the authorities of the preliminary investigators with regard to the investigating proceedings, and the fact that the police bodies were not prepared and lacked competences to perform these new obligations was not taken into account. Although the rights of the victims were expanded, the changes introduced affected only the cases of general type, but did not cover the cases where release from criminal responsibility is offered by imposing administrative punishment. The new shorter timeframes identified for the trial stage are hard to meet for the courts because of the difficulties with the facilities and the shortage of courtrooms, especially in the bigger cities. Difficulties are posed by the application of the Courts’ Act due to poor availability of facilities for most of them. For example, the lack of a second copy of the files for the court and the need to wait for the pre-trial bodies to send them another one once again make it difficult for the
judges to implement duly their authorities, for example, to issue “limitative order” for the protection of the witness.

The positive developments in the field of the judiciary involved the considerable increase in the judiciary budget for 2006; the legislative requirement for the random case assignment principle for courts, prosecutor’s offices and investigation services; the enhanced magistrates’ training curriculum.

In addition, the two reports of the European Commission outline a number of general and specific problems of the judiciary in Bulgaria. They include corruption and the continuing dissatisfying handling of the organized crime cases and cases on economic crimes. The Commission expressed its concern on occasion of the insufficient objectivity and transparency when assessing the work of the magistrates.

In 2006 the European Court of Human Rights in Strasbourg issued a large number of judgments against Bulgaria for violations of the right to fair trial. In a total of 19 decisions the Court found that there was a violation of art. 6 of the Convention. The majority of those judgments, 11 in number, concern a breach of the requirements for reasonable timeframe of the trials on penal proceedings (for example, the case Vasilev v. Bulgaria of February 2, 2006, penal proceedings that lasted for about 11 years, or the case Pekov v. Bulgaria of March 30, 2006, penal proceedings that lasted for about ten years). Once again, the Court stressed in some of its judgments that the Bulgarian legislation does not provide for lawful means for protection against excessive length of court trials, while the lack of individual procedure to appeal this excess of time is a violation of the right to effective protection measures under the provisions of art. 13 of the Convention. In other cases the problem was the failure to ensure free legal aid in penal proceedings (Padalov v. Bulgaria of August 10, 2006), or delay on the part of the competent bodies to enforce the court decision by virtue of which the applicant was entitled to indemnification (Rahbar-Pagard v. Bulgaria of April 6, 2006, on which the competent authorities delayed the enforcement of the decision for almost two years).

5. Freedom of Thought, Conscience, Religion and Belief

The past year saw no amendments to the legislation governing the relations between the religious denominations and the state in Bulgaria. These relations are still regulated by the Religious Denominations Act (RDA) passed on December 20, 2002 with all its shortcomings identified both by Bulgarian and international human rights observers. In 2006 again no steps were made to make changes to this act or to pass a new one complied with the criticism expressed, or with the recommendations of the Parliamentary Assembly of the Council of Europe in Resolution 1390 of September 9, 2004.10

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According to the data available as of the beginning of 2007 there were 89 religious denominations registered in the country.

The governments’ policy of the last years with regard to the forced "unification" of the two fighting branches of the Bulgarian Orthodox Church (BOC) did not change in 2006, either. Just as in 2005, the competent authorities did not take any steps to restore the status quo prior to the police campaign of July 20-21, 2004 when more than 100 churches and other facilities used by the so-called “Alternative Synod” of the BOC were raided, the priests serving there were thrown out of their positions, while most of them, being under threat to have nothing to live on, were forced to repent and acknowledge the BOC Holy Synod approved by the government and headed by Patriarch Maxim. In addition, just like in 2005, no steps were taken to reinstate the priests who were thrown out of the posts they held prior to July 20, 2004, for returning the churches and other spaces taken away to those who had been running them before the police raid code-named “Alternative Synod”, or for undertaking any action whatsoever to hold accountable the instigators or the perpetrators of the brute police raids of the summer of 2004. As in 2005, the priests from the so-called "alternative Synod" have been holding services in an "open-air church" – under an awning erected on the site where Georgi Dimitrov's mausoleum used to be.

In 2006 there was no considerable development on the more than 80 cases initiated in 2005 before the European Court of Human Rights in Strasbour on the occasion of the police raid mentioned above breaching a number of provisions of the European Convention on the Human Rights. These cases were initiated directly before the Court in Strasbourg, because the police raids in the churches and the takeover took place pursuant to an order of the Supreme Prosecutor’s Office of Cassation under the provisions of art. 118, previous para 3, now para 5 of the Judicial System Act which excludes the possibility for an appeal to a court. The applicants are more than 800 people – laymen and priests. This has been the biggest case initiated by a Bulgarian party before the Court in Strasbourg so far.

Just like in 2005 the public attitude to the so called “untraditional religions” was not positive. This attitude was voiced at the three-day national conference held on November 10-12, 2006 under the name “New religious movements – problems and perspectives at the threshold of the EU”, organized by an NGO calling itself New Religious Movements Research Center and by the problematic group Religion and National Security of the Philisphic Research Institute with the Bulgarian Academy of Science (BAS). At the event hatred on religious grounds was instigated, appeals from the past that were almost forgotten could be heard focusing “the attention to the dangers from the new religious movements”, many of which have “not only religious, but also political and demographic purposes”. Nevertheless, it has to be noted that the representatives of the state – of the National Assembly and the

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11 For more details see the report in the previous footnote.
Religious Denominations Department with the Council of Ministers took up a relatively moderate and balanced position, unlike the numerous speakers with academic background.\(^{13}\)

In 2006 there were several grave violations of the religious rights of Bulgarian followers of the Muslim religion, and several demonstrations of hostility and hatred instigated by the extremist nationalistic political forces, such as the Ataka (*Attack*) party to the followers of this religion. The most typical of this hatred and hostility was the campaign organized in June and July by Ataka against the loudspeakers magnifying the sound of the prayer of the people in Banya Bashi mosque in Sofia installed at the top of the minaret. The party started gathering signatures of citizens passing by the mosque, released numerous publications in its newspaper of the party’s name and broadcast many shows on the SKAT party’s TV station, all of them criticizing “the noise produced by the mosque”. The excuse of that the volume of the sound of the Muslims’ prayers hurts the feelings of the Orthodox Christians and disturbs the peace and quiet of the people, although in 2006 the volume of the sound was not changed in any way in the first place. In July a rally was organized for the followers of this organization propagating aggressively that the loudspeakers should be removed from the mosque. Unfortunately, this anti-religious and xenophobic campaign managed to involve some of the politicians as well. The mayor of Sofia Boiko Borisov requested in an express letter that the volume of the sound of the loudspeakers be turned down, and the DSB MP Dr. Nikolay Mihailov declared that “there is not dense Muslim population around the mosque”, therefore the volume of the sound of the loudspeakers should be at least turned down. In Sofia, however, there has not been “dense Muslim population” for more than a century now. The leader of nationalistic IMRO (International Macedonian Revolutionary Organization) party Krasimir Karakachanov was also involved actively in the campaign stating that the sound coming from the mosque disturbs him. In the meantime, in several other towns local nationalistic followers followed suit and organized campaigns for collecting citizens’ signatures against the local mosques.

On June 27 the Anti-discrimination Committee (ADC) issued a decision on the case of two Muslim girls from Smolyan who wish to go to school with headscarves on their heads. The case was initiated based on a motion filed by the Union for Islam Development and Culture (MIDC), an NGO from Smolyan, against the decision of the management of Karl Marx vocational school of economics in the same town to forbid the Muslim graduates F.K. and M.V. to wear the headscarves that their religion requires to cover the hair, but not the face, the management’s excuse being that there is a school uniform introduced for all the pupils. The Committee decided that the management of the school discriminated not the girls who were forbidden to wear their headscarves, but the rest of the several hundred pupils who do not wear headscarves. It imposed fines on the Regional Inspectorate of Education and on the

\(^{13}\) For more details please see: Asen Genov, *How does Bulgaria perceive the new religious movements in 2006*, Obektiv, No. 137, November 2006
On September 4, 2006 Blagoevgrad Prosecutor’s Office brought to the court an appeal by virtue of which it requested the Regional Court to cancel the juridical person status of Ahmadiyya, a non-for-profit organization, because it was “performing activities contradicting the law, activities that disturb the peace and quiet of the public and contradict the moral”. According to the prosecutor’s office Ahmadis not-for-profit organization performs activities that promote the Ahmad religious school that differs significantly from the popular Islam belief. The police searched their place and confiscated some books with religious content, among them the book Some Characteristic Features of Islam by Hazrat Mirza Ghulam Ahmad, founder of the Ahmadi Muslim community. They were presented in court as evidence. According to the prosecution these books and the education activities Ahmadiyya has been carrying out are typical of a religious community registered under the Religious Denominations Act. They stressed that “the activities … performed by the association contradict the provisions of art. 27, para 1 of the Religious Denominations Act (RDA)”. Pursuant to this article of the RDA religious communicates may establish associations to “help and promote certain religious denomination that has the status of a legal entity”. In addition, these NGOs are not entitled to perform activities that are public and profess religious denomination. Since it concluded that the Ahmadi Association is not registered under the RDA, the prosecution requested that the court should close it down. Ahmadi requested to be registered as a religious denomination, but Sofia City Court turned this down and it was affirmed by the upper court. The prosecution added that “in support of this statement (that the association’s activities are contradictory to “the public order and the good morals”) is the involvement in the not-for-profit association’s supervisory council of the person Rifat Jahan Ara (Pakistani citizen), about whom police inspections found to be a member of Ahmadiyya Muslim Jamaat – an Islam sect persecuted in Pakistan.

It has to be noted that Sofia City Court refused the Ahmadis the status of a religious denomination on very formal grounds: the by-laws does not outline the religion very clearly, it does not answer questions about the attitude of Ahmadis to the marriage and polygamy, what their views about the structure of the state and governance are and whether Ahmadis are Muslims or not. There is a grounded assumption about the real reason for the refusal and that is the opinion of the Chief Office of the Mufti in Bulgaria, about whose content we can deduct from this extract of the expert opinion on the case of the Religious Denominations Department: “His principle (of the founder Mirza Ghulam Ahmad) are not accepted by the Islam world and are considered to be heresy and sectarianism. The major aspects that differentiate it from the Orthodox Islam are listed in the opinion of the Chief Office of the Mufti...”
The Ahmadis is a religious community with millions of followers throughout the world, including in EU member states. By its refusal—most probably influenced by the Theological objections of the Chief Office of the Mufti to recognize the Ahmadis religion, the court violates the principle of theological neutrality of the state in its relationship with the religious communities. While using as an excuse the discriminative and unclear provisions of RDA which prohibit the citizens that are not part of a certain religion from developing religious and education activities, the Bulgarian followers of the Ahmadi principles are forbidden, while sharply violating their religious rights, to profess and promote at all their beliefs.

6. Freedom of Expression and Access to Information

The situation of the freedom of expression in Bulgaria in 2006 was marked with two major trends: increased political pressure over the media that led to threats and dismissal of journalists and enhanced commercialism that led to a considerable narrowing down of the range and decreasing in amount and frequency the problems of public interest that were analyzed, especially of those related to the situation of the marginalized groups of the population. The commercialism led to the disappearance of one of the last radio stations of public interest – New Europe Radio, the successor of Free Europe Radio. In addition, there were gross violations of the Radio and Television Act on the part of radio and television broadcasting companies, including breaches related to racist and anti-minority propaganda. The Code of Ethics of the journalist failed to start operating effectively throughout the year.

One of the most shocking examples of political abuse with administrative resources aimed at the investigative functions of the journalist was the publication of the secret file of the popular TV host of the high-rating Koritarov live show on New Television. Announcing the fact that Georgi Koritarov was an agent of the State Security Service was in breach of the law. It was obvious that the Minister of the Interior Rumen Petkov was using all his power to punish severely Koritarov’s critical shows about the inactivity of the Ministry of the Interior on revealing the perpetrators of hi-profile killings that had been committed recently. The last provocation – the straw that broke the camel’s back, was the exceptionally persistent “probing” of the presenter into the case of the police murder of Angel “Chorata” Dimitrov.\footnote{See above: Right to Life.} The journalists were outrages with the double morals of Georgi Koritarov to be both a defendant of the democratic freedoms, on the one hand, and a State Security Service informer, on the other, thus turning himself was a flagrant offender of human rights. Meanwhile, however, the effect of the campaign of the Minister of the Interior was interpreted correctly by the journalists – this was a campaign to intimidate the freedom of speech.

During the presidential campaign in October the journalist from bTV Ivo Indzhev was forced to resign. The other journalists were aware that the resignation
of the journalist involved the then head of state and a candidate for a second term of office Georgi Parvanov. The reason – he was irritated by the “unsound curiosity” about his assets expressed by the journalist Indzhev in his show The Bull’s Eye (V Desetkata). On October 8 the TV host of the popular show disclosed information about which he originally made a disclaimer to be “unconfirmed”. According to this information the head of state owned a duplex located at a main street in Sofia. Although the journalist made a disclaimer that the information is unconfirmed, once he announced it, the effect of it did not take long to show. He was forced to resign the television station and officially that was “by mutual consent”, and the Bull’s Eye show was discontinued. Indzhev himself declared before BTA: “I do not think I was fired by bTV, but by the president”. Opposition politics assessed the removal of Indzhev as “censorship that has not been imposed since the democratic times started in Bulgaria”. It was a double intimidation: on the part of the government to bTV and to all the journalists working in the other media.

Similar to the dismissal of Ivo Indzhev was another case with the BNT correspondent in Ruse Natasha Dimitrova. At a press conference in Giurgiu on January 17, 2007 the journalist asked the Minister of the Interior Rumen Petkov to comment whether he was going to rehabilitate and re-appoint the gendarmerie director Zhivko Zhivkov, since the prosecutor’s office refused to instigate preliminary proceedings against him due to lack of sound evidence that crime has been committed. In his response the Minister of the Interior scolded the journalist for asking this “embarrassing” question in a foreign country. Immediately after this reaction of Minister Petkov Dimitrova was punished by the radio general director Polya Stancheva who gave her an immediate notice. Hours later this notice was cancelled by Stancheva herself. The journalists from Horizon radio station reacted at lightning speed by signing a note. The case with Natasha Dimitrova – the note says, is “a textbook example of inadmissible behavior of a hi-profile representative of the people of the day”. They requested that Minister Petkanov extend publicly his apologies to the Bulgarian media for his inadmissible behavior. Consequently, the Minister of the Interior refused to have interfered in any way in the work of the journalists and to have exercised any pressure over the management of the state-owned radio station. The behavior in this particular case of the general director Polya Stancheva was also very revealing. She was quoted by competent Bulgarian media saying that “BNR has a nationally accountable position and should not become a conductor of such topics”. The correspondent journalist came from the country, Stancheva added in front of the media, and was not aware of the priorities of the work of the national radio. The general director, whose second term expires in a few months, did not explain why, if the journalist was “incompetent”, she cancelled the dismissal notice so quickly.

After The Bull’s Eye show was discontinued on bTV new metamorphosis in the political journalism shows ensued. The last show there called Seismograph became Pyramid. The place of the rational debate on publicly significant topics was taken by a show aiming at attracting the audience’s votes through expensive sms-s. The BNT
serious show called “See who” with hosts Evgenia Atanasova and Irina Nedeva was also transformed. For years the show revealed the feedback of participants in the audience about how the school aggression can be subsided, and how to change the attitude to the outsiders in the society. These were shows that tried to find an answer to the question “How?” with regard to questions no one today is asking because the answers are part of the bad news items columns. Now this show gives the floor to political leaders of the ruling coalition more and more often.

The past 2006 marked a true upheaval of the commercialism of the Bulgarian media. The radio and TV operating companies started using progressively the air for commercial purposes. The percentage of TV live games increased. The viewers was involved in various shows the main purpose being exhorting money from them in various ways. The situation with the analytical shows on the TV suffered serious damages. They limited themselves to collecting and arranging of different trivial positions. Basic TV games, such as Big Brother and Fight (Sblasak) started playing the role of mouthpiece and claim to be a corrective of the public life.

One of the most revealing examples of the commercialism in the media throughout the year was the closing of New Europe radio (former Free Europe) and turning it into the commercial Z-Rock radio. This was possible through handing over the management of the foundation that owned the radio to people close to one of the biggest owners of advertisement agencies and press. Certain public personalities had an active involvement in this plot, along with the Council of the Electronic Media which approved very quickly the change in the license of the former New Europe. As a result the public radio was erased and its place was taken by a radio whose program is fully dominated by rock music. On January 8, 2007 BHC organized a special roundtable with the title “How and why New Europe radio was closed”. The monitoring commissioned by BHC was presented, and it showed that the new Z-Rock radio does not fulfill its commitments related to the radio program.

In 2006 the freedom of speech was a subject matter of a decision of the European Court of Human Rights in Strasbourg on the case Raychinov v. Bulgaria of April 20, 2006. The applicant who at the time of the events of 1993 described in the proceedings was a senior officer at the Ministry of Justice was sued for libel of a public officer, because he said that the then incumbent deputy prosecutor general was not “an honest man” with regard to the financial issues of the judiciary. The case was instigated by the prosecutor general, and the deputy prosecutor general was not a party to the case and had not filed a motion for damages. The applicant was convicted to pay a penalty fee of BGN three thousand. The court found there was violation of the freedom of speech, and it stressed its principle that had proved valid in the course of its practice that senior officials, due to the role they are playing in the society, should be subject if criticism more often than the other citizens, especially when this criticism contributes to the public debate, as in this case. The court stressed that the penal liability imposed is disproportionate, as opposed to a civil or disciplinary measure, for example. In this context, it reminded that due to its dominant position those in power should refrain from imposing penal measures,
especially when it is possible to respond to the unjustified attacks from their opponents in another way.

2006 saw no significant changes in the legislative framework regulating the access to information. According to the data of Access to Information Program the information sought by the applicants varied considerably in range. Most often, applicants were interested in information about the activities of state bodies and the local governance bodies, especially information concerning contracts signed with private companies based on procurement commissioned and concessions. Throughout the year there was an active interest in access to files of the former state security service related to the campaign about legislative setting out of the access to them. Another problematic area was the issue with the information contained in the public registers. In practice, many of them did not function as such, i.e. receiving information from them is not unproblematic. Interest was demonstrated in the information related to illegal constructions. Information about the environment was actively sought.

Throughout the year a trend continued toward expansion of the field of application of the limitation related to the protection of the rights of a third party. Thus, for example, on the case of NGO Center Razgrad against a refusal of the mayor of Razgrad to reveal the document proving the amount of the expenses for an advertisement paid in Duma newspaper, the Supreme Administrative Court (SAC) affirmed as a cassation instance the dismissal of the appeal. According to the judges, the newspaper’s advertisement pricelist is public and known to the applicant, but, on the other hand, the newspaper has expressed its disagreement to reveal the data, and this had to be taken into account. The problem, however, is that in this way the municipal transactions remain non-transparent which is a prerequisite for corruption and ineffective management.

In another case Trud newspaper appeals an express refusal of the Minister of Agriculture and Forests to provide information about the decisions by virtue of which the property rights over forests located in the Rila mountain were restored to the former Prime-minister of Bulgaria Simeon Saxe-Coburg-Gotha. The refusal was granted on the grounds that Mr. Saxe-Coburg-Gotha did not give his consent to that effect. In December SAC announced the case for resolution, but no decision has been issued yet.

Of particular importance is the decision issued by Sofia City Court in April on the case of the journalist Hristo Hristov (Dnevnik newspaper) against the refusal of the director of the National Investigative Service to provide access to archive files of former security service agents related to the murder of the Bulgarian writer Georgi Markov in London in 1978. With its decision the court obligated the director of the National Investigative Service to provide complete access to the information requested, after complying with the proceedings ordered by the court on declassifying of the information due to expired restricted status.

On another case SAC by virtue of its decision of the beginning of 2006 obligated the Minister of the Exterior to announce what the official reaction of
Bulgaria was on occasion of the de-installation of a monument of khan Asparuh in Ukraine. In 2002 on the initiative of the informal organization Union of the Bulgarians in Ukraine a monument of the founder of the Bulgarian state was erected which was de-installed later. The case was instigated in 2004 by the citizen Anton Gerdzhikov against an express refusal (on the grounds of the preparatory documents) of the Minister of the Exterior to provide information about the case.

In another decision the Supreme Administrative Court affirmed finally that the declarations of conflict of interests of the experts who conducted the ecological evaluation of Belene Nuclear Power Plant are public information. The Ministry of the Environment and Water kept secret the declarations of the experts who prepared the environmental impact assessment report on Belene Nuclear Power Plant claiming that these declarations contained protected personal data although the register of experts performing environmental impact assessment is public by virtue of the Environment Protection Act.

7. Freedom of Association and Peaceful Assembly

In 2006 freedom of association in Bulgaria was subject of two judgments issued by the European Court of Human Rights in Strasbourg. The first case, UMO Ilinden and others v. Bulgaria concerned the association of Macedonians in Bulgaria. Similar to its previous three decisions of 2005 concerning refusals by the local authorities to allow peaceful public events and gatherings of Macedonians in Bulgaria and the ban on a political party whose members were primarily Macedonians, in its judgment of January 19, 2006 on this case as well the Court found a violation of art. 11 of the European Convention on Human Rights. This particular case dealt with a refusal of the judicial bodies to register Ilinden of the Macedonians in Bulgaria organization. The Bulgarian courts justified their refusal by a number of reasons, among them that the purposes of the organization are to promote separatism and that it was a threat to the territorial integrity of the country, that the membership in it was limited to Macedonians only, hence it was discriminative, and that part of the subject matter of its activities, such as organization of peaceful gatherings and rallies were political activities in nature, therefore only a political party may perform those activities. The Strasbourg Court found that these reasons were not a solid ground for a refusal to register an organization, and that the involvement in the rights of these citizens to peaceful assembly was not justified and necessary.

With regard to the second case, Tsonev v. Bulgaria of April 13, 2006 the applicant tried to register a Communist Party of Bulgaria, but the Bulgarian court refused on grounds that the purposes of the party promote violence (interpreting the expression “revolutionary social and political order” in the by-laws). The Strasbourg court found a violation of art. 11 of ECHR, because there was not enough evidence collected to prove that the party posed indeed a real threat to the Bulgarian community to a degree that its registration could be refused.
In 2006 there were flagrant violations of the right to freedom of association and peaceful assembly on discriminative grounds with regard to unpopular groups. The municipal bodies and the courts did not apply the law equally for the different groups. An illustrative example of the discriminative treatment was the ban in June on a small protest rally in front of the City Hall in Sofia of the Roma people from Batalova Vodenitsa residential area whose only homes were being prepared for destruction without providing them with an alternative housing. In the meanwhile the municipal management allowed the members of Ataka party to demonstrate throughout the summer for their xenophobic claims in front of the mosque in downtown Sofia. Similar demonstrations of this extremely nationalistic party were tolerated in other towns throughout the country.

The Macedonians in Bulgaria were once again among the most affected by the limitations of the right to association and peaceful assembly. Although they were allowed to celebrate two of their traditional anniversaries in April and late July, other peaceful assemblies of theirs were forbidden. On May 5 the mayor of Blagoevgrad Lazar Prichkapov yet again refused to allow UMO Ilinden to organize a commemoration before the monument of Gotse Delchev in the town. The ban was justified with the excuse that another even had been planned in advance at the same time and at the same place. This ban was affirmed by the District Court. The same excuse was used by the mayorality in Blagoevgrad twice in September when two groups of Macedonians were not allowed to have their celebrations on occasion of the Genocide Day. In addition, to justify the second, the mayor did not even condescend to inform the applicants when the other event was planned since it was the official excuse for not allowing the organization of the celebrations. Both bans were affirmed by the District Court.

With a decision of October 30, 2006 Sofia City Court declined the request of the UMO Ilinden – Pirin party established earlier in June. The reason for that was that the membership declaration was not filled up personally, but by other people (the signature affixed below, however, was not questioned). The court was obviously partial and made gross violations of the relevant procedures. It admitted as evidence the expert report of the police, along with other evidence, despite the express provisions of the Civil Procedure Code that whether the testimony in uncontested matters is mendacious is established by a separate judicial procedure. However, it did not allow the petitioners to submit additional evidence that would eliminate the omissions made. The refusal of the registration of the UMO Ilinden – Pirin party was accompanied by a widely spread police campaign against the Macedonians in Bulgaria in the course of which they were threatened and pressed to give up their membership.

In another biased decision of June Plovdiv Regional Court declined the application for a registration of the National Turkish Alliance association of Mendes

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15 See: Freedom of Thought, Conscience, Religion and Belief and Minority Protection.
16 See below: Minority Protection.
Kungyun, described by the media as an extreme pro-Turkish nationalist. The justification of the court, however, was purely formal, speculative and obviously biased – it ruled that the principles laid down in the association’s By-laws are “political in nature”. In November Plovdiv Appellate Court affirmed this decision.

In another case of restrictive and discriminative ban on a peaceful assembly in December the Greater Municipality of Sofia did not allow the Bulgarian Falun Dafa Association a peaceful vigil with candles on the sidewalk against the Chinese Embassy in Sofia in connection with the repressions in China against local members of the association. The municipal authorities followed the advice of the Ministry of the Exterior which recommended that the vigil took place elsewhere “while the necessary measures are taken not to allow any activities that would affect the traditionally friendly relationships between the Republic of Bulgaria and the People’s Republic of China”.

8. Conditions in the Places of Detention

Prisons

There are a total of 13 prisons functioning in Bulgaria, eight of which are for repeat offenders, three for first-time offenders, one for women and one for juveniles. The prisons have dormitory facilities of closed, open and transitory type where the inmates are serving their time under milder conditions. In the last years the trend in the number of inmates as of December 31, including the accused and the convicts in the prisons developed as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Prisoners</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>8,971</td>
</tr>
<tr>
<td>2001</td>
<td>9,026</td>
</tr>
<tr>
<td>2002</td>
<td>9,422</td>
</tr>
<tr>
<td>2003</td>
<td>10,066</td>
</tr>
<tr>
<td>2004</td>
<td>10,871</td>
</tr>
<tr>
<td>2005</td>
<td>11,436</td>
</tr>
<tr>
<td>2006</td>
<td>11,058</td>
</tr>
</tbody>
</table>
In comparison to the previous year, as of December 31, 2006, there were less inmates placed in the prisons and the dormitories. This decrease, however, is at the expense of the considerably decreased number of the accused and the convicts in comparison to the previous years:

<table>
<thead>
<tr>
<th></th>
<th>As of Dec 31, 2004</th>
<th>As of Dec 31, 2005</th>
<th>As of Dec 31, 2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number of prisoners</td>
<td>10,871</td>
<td>11,436</td>
<td>11,058</td>
</tr>
<tr>
<td>Number of accused out of this number</td>
<td>348</td>
<td>389</td>
<td>272</td>
</tr>
<tr>
<td>Number of convicts out of this number</td>
<td>1,640</td>
<td>1,691</td>
<td>1,082</td>
</tr>
</tbody>
</table>

The analysis of the data shows that the number of the convicts has been increasing steadily in the past years. The chart below shows the trend to a steady intensive increase:

With the amendments to the Implementation of Penal Sanctions Act in 2002 the possibilities for placement of people deprived of their liberty in prison dormitories increased. This caused a steady trend to an increase in the number of people deprived of liberty in the dormitories of open and transitory type:
As of Dec 31, 2004 | As of Dec 31, 2005 | As of Dec 31, 2006
--- | --- | ---
Deprived of liberty in open dormitories | 632 | 696 | 855
Deprived of liberty in transitory dormitories | 1,273 | 1,439 | 1,590

In 2006 as well the increased number of inmates in the open and transitory dormitories did not cause a decrease in the overpopulation in most of the prison facilities for repeat offenders, neither in the closed dormitories. The conditions in the Bulgarian prison facilities are among the most inhuman in comparison to the other countries in the region. The buildings that make up the country’s prison system are very old and dilapidated. The Sofia prison was built more than 100 years ago, while the buildings of the prisons in Lovech, Pazardzhik, Vratsa, Stara Zagora, Varna and Burgas were built in the 1920s and 1930s of the 20th century, while the main buildings of the prisons in Bobovdol and Plevn used to be hostels adjusted to serve as prison facilities. The capacity of the closed institutions, like the ones enumerated above, has not increased. However, there is an increasing number of inmates placed there, while the overpopulation rate in most of the closed institutions reaches up to three times above the internationally recognized standards. The problems concerning the living conditions make it necessary to have double or even triple bunk-beds, while relaxation areas such as clubs and sports halls are turned into dormitories. This has a negative effect on the possibilities for using up free time for leisure activities and socializing. The cells in the main buildings of the prison facilities are occupied by 20 to 25 people, the living spare per inmate being less than two square meters, while the amount of the open space is even less than a square meter. In the most severely overpopulated prisons, there are double bunk-beds, or even triple bunk-beds. The worst overpopulation is in the Plovdiv city prison, where the number of inmates is several times greater than the prison’s maximum capacity. The prisons in Plevn, Varna and Vratsa, along with the closed dormitories are also in urgent need of measures to ease their overpopulation, increase the amount of personal space and improve lighting and ventilation in the cells.

In breach with the requirements of the new European prison facilities rules of 2006 the Bulgarian legislation does not provide for mandatory standards for the living conditions and living space in the prison cells. The cells in the prisons in Sofia, Vratsa, Plevn, Stara Zagora, Plovdiv, Sliven, Varna and Burgas, as well as those in the Troyan dormitory do not have their own toilets. Therefore in the daytime one
toilet is used by 30 to 50 prisoners. During the nighttime lockdown, the inmates use shared buckets for the relief of their physiological needs, at that in front of all the other cell mates. The general condition of the water closets in the prisons – lavatories, bathrooms and toilets, is in a wretched state; therefore there are not any elementary conditions to maintain them in a good hygiene condition. The lavatories in most of the prison facilities do not have any hot water, or any possibilities for washing and drying bedding and clothing.

In April 2005, 37 foreign citizens serving sentences in the Sofia city prison went on a hunger strike. At the beginning of September 2006, after it became obvious that no one did anything to improve the legal status of the foreigners, they renewed their protest which was focused on their unequal treatment in comparison with Bulgarian inmates, with regard to the possibilities for early release on parole, interruption of their sentences, permissions to use leave, permissions for annual holiday leave, and transfer to open or transitory dormitory facilities, as well as the delayed procedures for transfers to their home countries. After a meeting of the protestors with the Minister of Justice and being assured that the cases would be heard by the competent bodies, the foreigners called off their hunger strike.

The medical services in the prison facilities remain a serious problem related to the poor quality of the services, the shortage of medical staff, the shortage of medicines and the impossibility to ensure the adequate amount of specialized medical aid. It is not integrated in the national healthcare system. The continuously increasing number of inmates addicted to narcotics throughout the year caused a decrease in the ability to carry out quality therapeutic activities. The share of drug-addicted inmates already exceeds 10% of the total number of inmates. The specific profile of offenders who commit drug-related crimes does not change the legal status of this category of inmates and does not involve any additional medical care or re-socializing activities. There is a steady trend towards an increase of the share of inmates in need of specialized psychiatric treatment.

Given the continuously increasing number of inmates, the need of an increased prison staff can be felt more clearly not only for the purposes of guaranteeing the security, but also for the purposes of developing a wider range of re-socializing and correctional activities, including for providing opportunities for representatives of the registered religious denominations to serve their own liturgies with the inmates. The considerable share of illiterate and semi-illiterate inmates necessitates methodological and wide educational and training courses.

In June 2006 three convicts from Pazardzhik city prison sentenced to life went on a hunger strike, as two of them sewed up their lips. The prisoners wanted to be given work and involved in activities, to have their cells unlocked and be allowed to move around. Several days later their protest was called off because of the promise that their claims would be considered.

Disciplinary practices and the regime in the individual prisons sometimes contradict the legal provisions. A considerable part of the claims of the inmates is related to procedural problems – establishing violations, imposing punishments and
isolation and the possibility to appeal them. For example, an inmate was denied to be proposed for preliminary release on parole with the explanation that as of the time she was placed in transitory dormitory facility six months have not elapsed. The Bulgarian legislation, however, does not provide for any timeframe in which this measure cannot be imposed after the inmate has been moved under milder confinement terms.

Investigative Detention Facilities

As of December 31, 2006 the number of the convicts kept in the investigative detention facilities in comparison to the previous year has decreased from 862 to 786. The living conditions and the hygiene conditions under which detainees are kept are considerably worse than the conditions in the prison facilities and are among the most inhuman in the whole of Europe. Keeping detainees there is in itself inhuman treatment. In the last years many detainees sued the Bulgarian state in the local courts and in the European Court of Human Rights in Strasbourg. The court’s decisions describe the conditions in the detention facilities as inhuman and degrading. In 2006 alone The Court in Strasbourg issued three decisions convicting Bulgaria with regard to the inhuman conditions in the detention centers. Nevertheless, in 2006 as well the system of the detention facilities did not undergo the necessary changes to harmonize the conditions there with the requirements provided by the international standards for treatment of convicts.

At the end of 2006 the government approved a long-term investment program in compliance with which funds are allotted for the improvement of the conditions in the detention centers. Most of the 50 detention centers in use in the country do not meet the European standards. Due to the impossibility for reconstructions 33 of the detention facilities are about to be closed or moved. The current problems of the detention facilities have their roots in the facilities available where the offices do not provide for normal lighting, ventilation, possibilities for physical exercise and activities for the detainees. In some of the most overpopulated detention facilities, for example the one in Plovdiv and in most of the border detention facilities the number of the inmates at certain points of time has exceeded even the number of the beds which means that it is impossible to ensure even minimal living space for the detainees. This affects the sanitary and hygiene conditions in the cells and in the common areas. The majority of the detention facilities do not have external windows, while the access to natural light and fresh air is severely hindered. The cells in most of the detention facilities do not have their own toilets which makes the use of toilets at any time dependant on the mercy of the guards. In 30 out of the total of 50 detention facilities no open air platforms or space for having walks have been provided, and the detainees have no possibilities for physical exercise and walks. In one-third of the facilities there are no offices for the visiting hours when friends and

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17 See above: Protection from Torture, Inhuman and Degrading Treatment or Punishment.
relatives visit the detainees, or when they meet their defense attorneys. The inmates are not ensured any possibilities for involvement in any meaningful activities or access to television and radio broadcasts. The medical services in the detention facilities, just like the services in the prisons, have not been integrated in the national healthcare system. As a result, a number of problems occur related to the provision of the necessary quality of the services, of the specialized medical care, the delivery of medicines and consumables and dental care for the suspects.

In early 2005 the Supreme Prosecutor’s Office of Cassation conducted a mass inspection of all of the country’s investigative detention facilities, and found that some of them are completely inadequate for use, and that to the exception of several detention facilities and several individual groups for detainees and convicts in the prison facilities, all the remaining detention facilities do not meet the European standards for minimal living space, for going out in the open air, for individual toilets, lighting, etc. The prosecutors’ report recommended that the underground detention facilities, with no windows and no toilets or washroom facilities, be closed down, since they are not appropriate for reconstruction. The recommendation also pertains to detention facilities that are on the top floor of the buildings in which they are located, since there is no way to build toilet or washroom facilities or knock out spaces for windows in them.\(^{18}\) In 2006 these recommendations were not implemented.

**Correctional and educational boarding schools (social educational boarding schools and correctional boarding schools – SBS and CBS)**

As a result of the latest legislative changes and the consequent decrease in the number of children placed in SBS and CBS, the number of these institutions was reduced significantly. Thus from 8 CBS and 24 SBS in 2000, after the end of 2005/2006 school year only 5 CBS and 9 SBS remained in use. The decrease in the number of these institutions is supposed to be the immediate result from a unified strategy for the improvement of the condition in them. Monitoring over this process, however, has shown that one of the main reasons for that is the improved court proceedings for placement of juvenile offenders. Thus the decrease in the number of SBS and CBS was not the result of the strategy for deinstitutionalization of the care for “difficult children”, but due to the decrease in the number of correctional measures imposed. Anyway, so far there has been no data about the destiny of the former SBS and CBS inmates – what part of them was transferred to other institutions for children, what part of them went back to the streets or found themselves in environment harmful to them.

The procedure for placement of children in SBS and CBS was reformed yet again in July 2004, but knowing and applying it remain problematic for the local

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committees in Bulgaria. The general assessment of BHC about the educational activities in the schools at CBS and SBS is that the educational process in them is considerably less effective, and the level of education is lower compared to the level of education in the other mainstream/comprehensive schools. The efficiency of the process of education is tightly linked to the motivation and payment for the teaching staff which by the common opinion of the teachers and supervisors working in the CBS and SBS is extremely inadequate to the conditions under which they are working.

The present existence of SBS and CBS in their current form raises a lot of questions, the most important of which being how does the state take care of juvenile delinquents and do they, the offenders and the state itself, benefit in any way from the maintenance of such institutions? In that respect, an increasingly topical issue is the question whether there are any efficient alternatives to those institutions both from correctional and educational point of view, and from the point of view of the facilities themselves.

9. Protection from Discrimination

In 2006 the key problems with inequality in the society remained unresolved, as some of them were left untouched upon, others enjoyed certain positive development, while a third group marked regression. The positive developments include:

- On July 21, 2006 the first instance court in Sofia convicted the politician and deputy to the National Assembly Volen Siderov for his extreme anti-minority propaganda, thus making the first significant rule of law step in the direction of drawing a line in the public life between terror and inciting discrimination, on the one hand, and freedom of speech, on the other. The court ruled unambiguously that the hate speech of Siderov violated the rights of all people of ethnic origin, as well as the public interest. In the process of appealing this decision before the upper instances the judicial system has to cope with the challenge to distinguish between rule of law, and terror and inciting discrimination.

- On January 5, 2006 Sofia District Court convicted the Prosecutor’s Office of Bulgaria for its discriminative official statements against Roma people made by a certain prosecutor, thus demonstrating its ability to protect the dignity and equal opportunities of each and every individual.

- The court continues to apply comparatively effectively the Anti-Discrimination Act, issuing several other significant decisions. On May 18, 2006 the second instance court affirmed the judgment against the Bulgarian Academy of Sciences (BAS) for racial discrimination against a Roma person demonstrated by a BAS employee who refused to provide to the applicant the services of the academy’s hotel, openly justifying his refusal with his anti-Roma prejudices. Throughout the year there were decisions issued both by first instance and
second instance courts convicting the litigants for other refusals to Roma people for public services or employment. Once the cases are referred to the Supreme Court of Cassation, we will see how capable it is to protect effectively the equality as law.

The Anti-Discrimination Commission (ADC) started working more actively in 2006. It was established by virtue of the provisions of the Anti-Discrimination Act that was put in effect on January 1, 2004 with the purpose of applying the act in its capacity of a specialized body authorized to investigate appeals and reports, to make conclusions whether discrimination was demonstrated, to impose sanctions and to issue mandatory instructions. ADC started working with a considerable delay, and it was only in 2006 when it managed to accumulate certain experience. According to ADC statistics, the total number of the appeals filed with ADC as of December 31, 2006 was 424.19 Proceedings were instigated on 273 of them. The rest were left without progress as being inadmissible or irregular. 48 of the proceedings instigated are for ethnic discrimination, 6 – for religious, 3 – for sex discrimination, 25 – for discrimination for the characteristic of disability, 8 – for citizenship, 8 – for age, 7 – for sexual orientation, 2 – for family status, 32 – for discrimination for more than one characteristic (multiple discrimination). ADC issued a total of 54 decisions on subject matter. By virtue of 26 of them it ruled out discrimination. ADC established 7 cases of ethnic discrimination, 1 case of religious discrimination, 1 case of sexual discrimination, 3 cases of discrimination for the characteristic of citizenship, 2 cases of discrimination for disabilities, 1 case of discrimination for sexual orientation, 1 case of multiple discrimination. In 2 cases ADC found harassment on religious grounds, and sexual orientation, respectively. In 2 cases ADC established instigation to discrimination on the grounds of sexual orientation and ethnicity, respectively. In 2 cases ADC issued mandatory instructions for provision of accessible environment for disabled people without finding any discrimination, though. In a total of 35 cases ADC imposed sanctions and/or issued mandatory instructions. In 6 cases ADC addressed its recommendations to governmental or municipal bodies for termination and repeal of discriminative practices or acts of theirs. 26 of the decisions issued by ADC were put into effect. There are 40 decisions of ADC appealed before the Supreme Administrative Court (SAC). SAC repealed and remanded to ADC for renewed consideration 2 decisions; 1 decision was partially repealed. SAC affirmed 1 decision. Certain ambiguities and contradictions contained in this and other statistical data about the ADC cases speak for the underdeveloped institutional capacity of the body.

Overall ADC practice demonstrated certain positive trends, along with the negative occurrences mentioned below. It issued a number of fair decisions in which it demonstrated its involvement in the protection of the rights and applied progressive standards combined with the will for active application of the law. In a

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19 The data has been submitted officially by ADC, letter to BHC outgoing ref. No 408/02.02.2007.
number of its decisions it demonstrates its explicit involvement in protecting the equal opportunities of disabled people. It demonstrates its understanding and sympathy to the vulnerability of other groups, for example women, as well as to the current mechanisms for oppression and social exclusion. ADC consistently refers to the international law and jurisprudence, the constitutional rights, as well as the general principles of the law and the common sense, while trying to coordinate its conclusions with those. It is trying to interpret the law systematically and teleologically. The ADC approach to collecting and assessing the evidence could be characterized with its teleological involvement, dynamics and lack of formalism, as well as with its attempts to comply with the real dimensions of the public life outside the narrow boundaries of the case with which ADC excels many judges. Its approach in the process of constituting litigants to the proceedings and the process of communication with them were active and dynamic. ADC was liberally-minded towards the involvement of the interested parties in the proceedings, by actively attracting them in its own ways which contributes to the high degree of competence of its decisions. ADC was actively involved in helping the applicants with instructions how to comply with the procedural requirements which makes easier the access to it of the socially excluded people. One could easily notice its attempts for an active, rather than formal application of the authorities provided for by law. ADC was brave in granting responsibilities and in issuing instructions and guidelines, including to ministers and other authorities. The language, structure, contents and the legal approach in the decisions were improved considerably towards the end of the year. In a nutshell, not an insignificant number of the ADC decisions in 2006 demonstrated common sense and will for effective application of the rules for equality, as their professionalism improved increasingly. ADC has the potential to grow into an efficient human rights institution. In addition, the ADC initiative to establish its own regional structures so that it can be accessible to as many people as possible is very praiseworthy. On ADC initiative, the Anti-Discrimination Act was amended in 2006 to provide for such local structures.

On the other hand, a number of negative characteristic features occurred in the practice of ADC that made it extremely contradictory and ambivalent. This ambivalence can be spotted in almost each and every individual decision where positive features go hand in hand with negative ones. The expert analysis of ADC on the interpretation and the application of the concepts of the anti-discrimination law is not exhaustive. ADC does not distinguish at the necessary level between discrimination in its different occurrences from other forms of right-infringement or unfair treatment which blurs the concept of discrimination, especially in the earlier decisions. The ADC analyses of the elements of discrimination in its individual legally provided forms are not made in depth. In a number of decisions there is no analysis of the comparison between the analyzed treated to other events occurred under the same circumstances, along with an analysis of the isolation of the correct benchmark. In decisions that talk about indirect discrimination, there is no analysis of the justification of the difference in the results, i.e. of the validity of the purpose
and the necessity of the means. The Commission failed to understand the concept of indirect discrimination and applied incorrectly the law in this part. A number of its decisions find that there is a seemingly neutral discrimination and conclude that there is indirect discrimination, while in fact there is direct discrimination. These decisions demonstrate failure to interpret the notion of seemingly neutral provision by confusing it with inexplicit justification of the different attitude. The Commission demonstrated its failure to interpret the concept of relocation of the weight of the evidence in anti-discrimination proceedings. In none of the decisions was this concept applied to the facts adequately. There is no in-depth analysis of the contents of the concept applied in practice. No understanding was demonstrated of the concept of the significant and decisive professional requirement as an exception to the ban on different treatment. ADC has demonstrated restrictive and illegal interpretation of the law, for example with regard to the principle of equal payment for equivalent work. It demonstrated certain irrationality in dealing with protected characteristics, for example determining as a characteristic “the right to employment” along with race, ethnicity, gender, disability, etc.

Another weakness of ADC was the justification of the findings and conclusions. Not infrequently the conclusions are not justified and the assessments are ungrounded and arbitrary. Very often the reasons are superficial and unprofessional. In some cases ADC draws illegitimate legal and factual conclusions. For example, the conclusion that the requirement of a public place not to have its customers dressed in leisure clothes is a considerable and definite professional requirement.

In its decisions the commission demonstrated certain bias and prejudice, while in others – certain liberty and narrow mindedness. Though in isolated cases, ADC issued some completely unjustified, prejudiced and unreasonable decisions. For example, the ADC decision, by virtue of which it finds that the gender quotas for admissions to the universities are not discrimination, in utter contradiction to the law and the common sense. This decision was deprived of any analytical depth and justification, and protects openly unreasonable sexist stereotypes. Another example is the number of decisions by virtue of which ADC accepted that there is no discrimination against the foreign inmates although they are not entitled to use any leave for good conduct or to any transfer to milder regime which are conditions allowed for the Bulgarian inmates. Other ADC decisions were restrictive, arbitrary, controversial and unfair. For example the decision by virtue of which ADC announced wearing headscarves in school to be discrimination and imposed a fine on the applicant, along with all the other parties to the dispute.

Another weakness of a number of ADC decisions was the professional approach. They were poorly structured and incoherent, especially the ones from the earlier stages. They show a certain proclivity to being didactic and irrelevant.

20 Decision No 008 of April 11, 2006
expressions and the legal categories and terms used are not professional enough, especially in the earlier decisions.

To conclude, the ADC practice was controversial and inconsistent, and is still not professional enough both from the point of view of the anti-discrimination and legal expert analysis, and from the point of view of a legal approach as seen from the aspect of form and content. These shortages make it vulnerable before the Supreme Administrative Court that will control it, thus decreasing its sustainability. It is necessary to develop and strengthen institutionally this body through professional trainings.

In addition to the shortages in the jurisprudence, the most serious error of ADC was the lack of an overall proactive focused policy to overcome the existent inequality and its lack of involvement should be self-corrected with regard to the most serious problems of discrimination in our country, for example the segregated education of Roma children and children with mental disorders, along with the rampant hate speech against minorities and other vulnerable groups. Another error was that ADC was not proactive in promoting its decisions and encouraging the public sympathy and understanding towards them, along with its abstaining from taking up a firm public position of denial and condemnation of the rampant racist, sexist, homophobic and other prejudices and indifference. Another shortage of ADC is its tendency to exaggerate its independence given by the law thus isolating itself from the other bodies and causing reluctance to work in cooperation with them. Thus, for example, ADC refused to participate along with other institutions and NGOs in the development of a national action plan to fight discrimination in 2007 initiated by the government.

In addition to the practice of ADC, ambivalence was a characteristic feature of other developments in the area of the protection from discrimination throughout the year. In September and October at the initiative of the government, with the involvement of NGO experts a national action plan to fight discrimination was developed in 2007.21 The working group came up with a number of worthwhile suggestions. The final version of the plan, however, adopted by the government, is relatively poor in quality. It envisages primarily promotional and training measures, as well as statistical research. However, it does not envisage any actual measures for desegregation of the Roma education and the education of children with mental disorders, or any measures for improvement of the grave housing conditions of the Roma communities. The plan does not provide for the ratification of Protocol 12 to ECHR which is a gross blunder.

In 2006 the government or the other representatives of the authorities did not try in practice to solve the grave housing problems of the Roma people despite the piles of documents adopted by them in what just seemed to be this field. On the contrary, the authorities were active in making the situation even worse.22

22 See below: Minority Protection.
10. Minority Protection

In 2006 no practical steps were taken in the direction of minority protection and strengthening the ethnic and cultural identity of the people from the ethnic minorities in Bulgaria. On the contrary, due to the increased anti-minority speeches in public and due to the discriminative actions of some of the institutions and private groups the situation with their rights deteriorated.

In 2006 the leader of the extremely nationalistic party Ataka that won parliamentary seats after the elections in 2005, along with many of its followers, continued to incite hostility and discrimination against the ethnic and religious minorities, as well as against sexual minorities. To do this, Ataka used primarily its mouthpiece – SKAT cable television. Neither the media regulatory body, the Council of the Electronic Media, nor any other institution undertook any efficient measures against the obvious violations of the provisions of the *Radio and Television Act*. Many other extremist racist and xenophobic organizations in Bulgaria promoted hatred and discrimination undisturbed throughout the year. In 2006 the practice of massive violent raids of police officers in Roma districts was revived.\(^{23}\) Racist speech was used on many occasions by popular media, as well as by officials. In October the Minister of Health Prof. Radoslav Gaydarski requested publicly to ban by virtue of law people from minority groups who have not come of age, to give birth. In November the mayor of Ovcha Kupel district in Sofia on occasion of the plans of the municipality to provide housing to Roma population there stated: “The cows in Ovcha Kupel will be far less disturbing than a Roma residential district there... A Roma district like this is ten times more dangerous to be close to residential areas than a dumping ground”. None of the authorities did anything on occasion of this statement of the mayor.

In several months throughout the summer Ataka organized unprecedented protests (collecting signatures, piquet, rallying) in front of the Banya Bashi Mosque in Sofia, as well as in front of several other mosques in the country, requesting that the loudspeakers be turned off.\(^{24}\) The mayor of Sofia allowed these campaigns to continue in the open until September. Throughout the year Ataka organized undisturbed several other public xenophobic events. The leader of Ataka came out second in the presidential elections held in October winning 24% of the votes.

Throughout the year on several occasions extremist nationalistic followers attacked Muslim prayer houses and encroached on other property of people belonging to the minority groups. The authorities failed to impede these attacks although in some cases they had the same target. Swastikas and notices “Turks go away” appeared in March on the mosque in Pleven. In September there were other encroachments on it and the windows were broken. Swastikas were drawn on the

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\(^{23}\) See above: *Protection from Torture, Inhuman and Degrading Treatment or Punishment.*

\(^{24}\) See above: *Freedom of Thought, Conscience, Religion and Belief.*
walls of the mosque in Kazanlak and it was lit on fire in late July and early August with inflammable liquid. In June bottles of inflammable liquid were thrown in the home of the leader of the National Turkish Alliance Menderes Kukyun. This happened days after Plovdiv Regional Court declined registration of the association.

Until the end of 2006 the housing problem for the occupants in the Roma populated area of Batalova Vodenitsa in Serdika residential district, Sofia, who have been waiting for more than a year for a reasonable humane solution to be made with regard to their housing problem by the municipal authorities. In August 2005 the administration of Vazarazhdane Region with the help of the Municipality of Sofia undertook forced eviction of approximately 180 Roma from their homes, including more than 80 children without any advance or due notice about this or any discussions of possible alternative options, nor was there any indemnification for their homes. The residents of Batalova Vodenitsa appealed the eviction order before Sofia City Court which by virtue of a decision of January 12, 2006 denied the reasons of the applicants as ungrounded. This decision was appealed before the Supreme Administrative Court which affirmed the decision of Sofia City Court on June 12, 2006. Both courts at the two instances refused to discuss the reasons of the applicants for violation of the European Convention on Human Rights due to the brutality, impudence and inconsistency of the activities of the authorities, along with the disproportionately grave consequences they would suffer as a result of these activities that make them homeless. After they were not protected by the national courts, in August 2006 the residents of Batalova Vodenitsa filed an application with the European Court of Human Rights alleging that their rights of property over their homes, their right to personal and family life were infringed, and that they were victims of discrimination by the municipal authorities due to their Roma ethnicity. Nonetheless, the demolition of their homes had been prepared for, but it was ceased at the last minute because of the protest of several MPs to the European Parliament and after the Strasbourg Court informed the Bulgarian government about the application filed (under art. 40 of the Rules of the Court). These activities of the authorities that almost left homeless approximately 180 people were being carried out simultaneously with the adoption of a National Program on the Improvement of the Housing Conditions of Roma and lent a cynical touch to the promises contained in it.

One of the negative trends in 2006 was the adoption in April of the amendments to the Social Assistance Act. A limitation of 18 months was included for the period in which the unemployed labor force can receive on an ongoing basis their monthly social allowances. This limitative condition is applied even when the people meet the social assistance criteria. This provision, despite its neutrality, affects disproportionately the Roma people. Its effect is supposed to be felt at the beginning of 2008.

In 2005 and 2006 when Bulgaria was at the threshold of EU membership several governmental political documents on Roma integration were adopted, but to a large extent they remained on paper only. In September 2005 a Healthcare Strategy
for Disadvantaged People from Ethnic Minorities was adopted along with an Action Plan to it. The latter envisioned for 2006 budget funds earmarked at the amount of BGN 50,000, an amount that is sharply insufficient to meet the needs of the Roma population. In practice what was allotted was the ridiculous BGN 30,000. Throughout the year the government continued to report as progress small projects in the area of education part of which were implemented by nongovernmental organizations. Serious problems with the healthcare situation of Roma, however, among which lack of efficient access to healthcare services; the high mortality rate (almost three times higher than that of the rest of the population); the low life expectancy (among Roma people it is about 10 years less than that of the Bulgarians); wide dissemination of chronic diseases and the “diseases of the poor”, such as tuberculosis, still existed. In the summer of 2006 in the Stolipinovo Roma ghetto in Plovdiv there was an unheard of in its dimensions outbreak of Hepatitis A. Hundreds of children were inflected before approximately 10,000 were vaccinated, while the dirtiest parts of the ghetto were cleaned.

In late June the government adopted an Action Plan on Implementation of the Framework Program for Equal Integration of Roma in Bulgarian Society, another document that by the end of 2006 was still on paper only. On June 7 the parliament adopted a National Program for the Development of School Education and Preschool Upbringing and Preparation for 2006–2015. This program is a step back from the commitments undertaken with the 1999 Framework Programme for Equal Integration of Roma in Bulgarian Society. Unlike the Framework Program, the National Program does not mention at all desegregation of the Roma schools. It does not mention also integration of the children from the special schools for children with intellectual disabilities (Roma primarily) into the mainstream schools.

In late November a real “witch hunt” was launched after the members of UIMO Ilinden PIRIN party, a political party of the Macedonians in Bulgaria. Following an order by a prosecutor from Sofia City Prosecutor’s Office the police launched investigations into all the members of the party, exceeding 5,000 in number, who have signed membership declarations. The purpose was to prove that the lists have names of people who have not agreed to become members of the party. The campaign was widely promoted in the media and heatedly discussed as a necessary repressive measure against a minority whose existence the state has decided firmly to ignore. Until the end of the year the Prosecutor’s Office never disclosed the results of its inspection. BHC conducted its own research of this unprecedented campaign and found that it was used to threaten the active members of the party. In several cases people were taken away from their workplaces before their colleagues and employers, and taken by the police to answer questions (for example, M.A. from Sandanski).25 In other cases (for example, that of K.N. from Petrich) the people summoned were told that the party is illegal, and its members would be jailed. B.A.

25 BHC has at its disposal the names of the people involved in the above cases, but are given here with their initials to guarantee their security.
from Targovishte was threatened that her membership in the party would have a negative impact on her daughter. There were some cases (like the one of N.P. from Petrich) when elderly people with impaired sight were offered to sign a paper that they were unable to read. The police explained to 17 party members from a village close to Sandanski that the party was illegal and encouraged them to find a way to leave it.

On occasion of the refusal of Sofia City Court to register the UMO Ilinden Pirin Party representatives of all parliamentary political parties declared publicly that there is no Macedonian minority in Bulgaria. On November 22 the spokesperson of the Ministry of Foreign Affairs Mr Dimitar Tsanchev went even further stating that there are no minorities in Bulgaria (This was the official position of the communist authorities during the campaign for forced renaming of the Bulgarian Turks in the second half of the 1980s).

On April 5, 2006 the Advisory Committee on the Framework Convention for the Protection of National Minorities of the Council of Europe published its opinion after it considered the first state report submitted by Bulgaria. In it the Committee expressed its concern in several areas of application of the Convention on the part of the Bulgarian authorities:

- With regard to their refusal to extend the protection of the Convention to groups that identify themselves as belonging to ethnic minorities and have expressed their desire to be protected by the Convention, such as the Macedonians and the Bulgarian Muslims;
- With regard to the discrimination and social exclusion of Roma people, particularly in the areas of employment, housing, healthcare and education;
- With regard to the lack of adequate application of the Convention with regard to the use of the languages of the minorities in their relations with the administration, in the field of the penal administration of justice and in topographic demarcation of locations;
- With regard to the insufficient study of the languages of the minorities and lack of any instruction in the mother tongue.

Despite the few official papers on Roma integration that were adopted by the authorities in 2006, no practical steps were taken to overcome these problems.

11. Discrimination of People with Mental Disabilities in Institutions

In 2006 BHC together with the Mental Disability Advocacy Center (MDAC) in Budapest continued its work on Initiating court cases to protect the rights of mentally

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disabled people project. On occasion of its work on this project, and in the course of its monitoring the institutions for placement of people with mental disorders and disabilities, in 2006 as well BHC found a number of violations of the rights of those people.

In the process of preparing a summary of the results of the cases, the monitoring over the court cases and institutions, as well as on the basis of the numerous complaints and personal conversations with victims, BHC continued to find a number of problems with the mandatory placement for treatment under the provisions of the Public Health Act and forced treatment under the provisions of the Penal Procedure Code. Although the application of the Public Health Act is supposed to have grown competent, in the second year of its coming into force no considerable changes ensued in the way court hearing were conducted. A positive and lasting trend, however, can be identified with regard to the provision of the mandatory legal defense of the people whose placement for treatment is required within the framework of the court proceedings. The courts use expert’s assistance in identifying the degree and the type of the disease, as in some cases one can see the understanding of the benefits of an outpatient experts’ analysis compared to the violence over the personality of the patient who is registered in the hospital’s logs which would be exercised during a possible inpatient experts’ analysis.

In the course of the application of the provisions of the Public Health Act, however, some new problems became obvious which are related to the protection of the rights of the people placed for treatment. Regardless of the fact that the rule for mandatory legal aid is complied with, so far the problem with the quality of the free legal aid provided remains unresolved. Very often the public defenders see their client for the first time in the courtroom and they plead in a manner that is not to the best interest of their client. Most often this is due to the stigma that brands people with mental disorders. Very often, without going into the necessary depth, the public defenders take it for granted that it is in the interest of their client to be assigned for treatment without showing any interest in the history of this person, what were the conflicts that led to instigating the court proceedings against the person and without discussing the issue of the form of the treatment. Thus, in many cases, people with mental disorders placed for mandatory or forced treatment benefit formally from public defense, while in practice they are denied any.

There were some gaps that remained in the Public Health Act concerning the defense of the people with mental disorders who cause problems in practice. The language of art. 155 of the Act still poses some questions that the case law fails to address adequately. It is still not clear whether the mandatory treatment should be applied to people who pose a threat to themselves. And where is the dividing line that can justify the application of this measure. The practical result of this flaw in the law is the following: In many cases the prosecutor’s offices are handling cases where

27 Art. 155 of the Health Act: “Subject to mandatory accommodation and treatment shall be the persons under Article 146, Paragraph 1, Items 1 and 2 who, due to their disease, may commit an offence threatening their relatives, the people around them or the community or seriously threatening their health.”
an offended relative or a person who has financial claims to another person, files an appeal claiming that their relative suffers from a serious mental disorder and poses a threat to the people around. Although such cases are usually dismissed, they use up resources of the judicial system. On the other hand, while dealing with such cases the prosecutor’s office often disregards those cases where the patients really need these measures urgently so that their treatment is ensured. In BHC practice in 2006 there were two such cases that were dismissed on accounts of mandatory treatment and followed by claims under the provisions of the Act on the Liability for Damage Incurred by the State on Citizens. It is worth noting, however, that these two cases are just illustrative and indicate the existence of the problem, but do not exhaust the number of such occurrences.

Another significant problem with regard to the implementation of the Public Health Act throughout the year was the timeframe in which a person may be kept as an urgent psychiatric case without a court decision issued to that effect. BHC became aware of detentions that lasted for a week, ten days, even more than that.

Compared to previous years the trend in 2006 was to a decrease of the number of patients kept for treatment illegally. However, the infringement of the rights of children with mental disorders remained alarmingly frequent in other spheres – with the lack of adequate legal aid identified above and with the superficial approach in the development of the experts’ opinions in some cases. Particularly alarming is the trend to ignore the rule of the so called “informed consent for treatment”. The Public Health Act introduces the informed consent as an absolute prerequisite for conducting any medical activities. Pursuant to article 87 “Medical activities shall be performed upon the informed consent expressed by the patient. Where the patient is under age or put under partial legal incapacity, his/her informed consent shall be given together with the consent of a parent or a custodian. Where the patient is a minor or placed under full legal incapacity, the informed consent shall be given by a parent or a trustee, unless prescribed otherwise by law. Where persons have mental disorders and are incapable of giving informed consent, the latter shall be expressed by the persons under Article 162, Paragraph 3.” With people with mental disorders the common rule is not to request such consent, and if there is an actual one, however, it has to be given formally without supporting it with the necessary clarifications for the patient. A common practice in the social homes is not to request informed consent at all. On many occasions the voluntary treatment is in fact concealed forced treatment. Very often the patients are surprised to find that they were admitted to the psychiatric hospital “voluntarily” on the grounds of a signature affixed on a document, the content of which they have never been aware. On many occasions the formal consent is attained through gross manipulation of the patients, threats that their pensions or other “privilege” would be taken away from them, through a real threat, even through the use of physical force.

At some places the practice of immobilizing and isolating the patients in the psychiatric wards continues which is in sharp contradiction with the express order developed in 2005, and the international standards in that field.
The practice of failing to conduct an efficient investigation into the death cases occurred in the psychiatric hospitals and wards continues. On the number of cases where BHC helped the instigation of cases on the part of relatives of people who died in such psychiatric hospitals no efficient actions have been undergone so far. The investigation into the death of Ivaylo Vakarelski has not been finalized; this happened in Karlukovo psychiatric hospital in June 2005, after the young man was kept for more than ten days against his will, without an informed consent and without a court decision. So far, the prosecutor’s office has been unable to find any breach with the law during his detention, treatment, or even the death that followed as a result.

In 2006 BHC continued to be interested actively in the situation of the social homes for people with mental disorders. In 2006 special attention was paid to the reintegration programs for people placed in community-based institutions and to the condition of the institutionalized children. The two institutions – Home for women with mental disorders in the village of Razdol, and Home for men with mental disorders in the village of Pastra, have not been closed down; the Council of Europe Anti-Torture Committee gave very critical comments about them after its visit in 2003. In the rest of the homes visited by BHC in 2006 on an ad hoc basis in addition to the improvements of the facilities, a progress was marked in them with regard to the quality of the life there and the care about the inmates. The people with mental disorders in the social homes are not offered opportunities for effective reintegration in the society. A positive trend, though yet very slowly emerging and poorly developed, is the introduction of the service “protected homes”. Currently, however, it cannot address the need of such social services and many people remain outside the range of the quality social services provided.

Even less developed despite the pressing need of them are community-based social services. On many occasions there are bureaucratic obstacles for their start. There is data showing the community-based social services for mentally disordered people are sabotaged because of fears, lack of any promotional and educational activities on the part of the municipalities and discriminative attitude of the clerks in the municipalities on occasion of such practices.

In 2006 BHC together with the Empathy Association brought a lawsuit against the Council of Ministers on occasion of a decision by virtue of which the budget was drafted for the social care homes for mentally retarded elderly people and the social homes for elderly people with mental disabilities. The organization claimed that the issuing of the decision was affected by the discriminative attitude to these groups of people as a result their situation in the homes identified is considerably worse in comparison to the situation of people without mental disabilities. Though on different grounds, a three-member panel of the Supreme Administrative Court repealed this decision of the Council of Ministers on October 30, 2006. In 2007 a five-member panel will render a decision on the appeal of the Council of Ministers.

In 2006 BHC paid serious attention to the children with intellectual and mental disorders placed in HMRCJ and studying at the so called “remedial schools”. The
conclusions showed that the education needs of those children are ignored to the utmost degree.

In 2006 there were no changes with regard to the persons under legal incapacity. The people with limited capacity and those deprived of any are still not liable to a right to access to justice. With regard to those placed in social institutions it can be noted that in practice they are deprived of a number of their human rights. The right to personal life and correspondence is denied to them, they have no chance of starting a job or even request a review of their contract on the provisions of the social service “placement in a home outside the community”. The contracts on social services themselves contain a lot of breaches of the legislation and in their nature they are discriminative thus placing in a considerably disadvantaged situation the users – the people with mental and intellectual disabilities placed in a social institution.

To conclude, it is worth noting that despite the existence of an announced Mental Health Policy and the existing Action Plan to it and in 2006 no considerable changes were implemented in the institutions monitored by BHC. As in 2005, mentally disabled people placed in psychiatric institutions under the authority of the Ministry of Health and in the social care homes for people with developmental disabilities under the authority of the Ministry of Labor and Social Policy are still treated inhumanly and degradingly. Patients are subjected to forced treatment without the institutions duly obtaining their informed consent, and their treatment is limited to drug therapy. There are no actively-functioning, effective rehabilitation or social integration programs that could aid in the deinstitutionalization of the mentally disabled, and no incentives are being established to attract highly qualified medical and other personnel into the mental healthcare system. This leads to the poor quality of life and the exclusion from society of these individuals.

12. Right to Asylum, Freedom of Movement

Asylum as one of the fundamental human rights has been protected under the provisions of 27, para 2 of the Constitution of the Republic of Bulgaria. In agreement with the text asylum is the protection granted to foreigners persecuted for their beliefs or activities in protection of internationally recognized rights and freedoms. Since 1994 BHC has been continuously conducting monitoring activities over the state policy and practice in the field of asylum and the mechanisms to render protection and provide legal aid of the asylum seekers, refugees and foreigners who have been granted humanitarian status. The problems of the refugees are related directly with the issues of migration and migration processes, and are affected directly by the tendency observed for enhanced state control over transborder migration of people and for limiting of the access of immigrants to the labor market.

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28 Mental Health Policy and National Action Plan to it for the period 2004-2012 were adopted by the Council of Ministers on July 22, 2004
The observations in this area have shown a strong violation of the balance between the need of such a control and the boundaries of its practical application and exercise which limits not only the access of refugees to the asylum sought, but imposes in general terms restrictions on the right of free movement and choice of residence for each individual. The tendency of turning these measures into national policy and practice to the detriment of the human rights of the migrants – both immigrants and emigrants, led to the expansion of the range of the activities of BHC to the field of migration in Bulgaria.

The right to asylum in 2006 was conditioned by the measures introduced in the last years for border control and access to the territory of the country. This explains the continued decrease in the number of people who sought asylum in the country in the past year. In 2006 the asylum applications were filed by 639 people from 36 countries which compared to the asylum applications filed by 822 people from 38 countries in 2005 is a decrease of 22%, while compared to the number of applications filed by 1,127 people from 42 countries in 2004 is a decrease by more than 56%.

The political development of Bulgaria over the past year was fully subjected to the then upcoming EU accession which had its effect in the field of asylum and refugees. The State Refugee Agency with the Council of Ministers which is the specialized body for granting special asylum initiated amendments and modifications to the Asylum and Refugees Act to ensure translation into the national legislation of the adopted European directives on asylum. Namely, Dublin II (EU Council Regulations 343/2003/EC and 1560/2003/EC), Eurodak (EU Council Regulation 304/2002/EC) the directives on the procedures for granting status (EU Council Regulation 2005/85/EC), assessing of the refugees’ applications (EU Council Regulation 2004/83/EC), reception of asylum seekers and refugees (2003/9/EC), family reunion (2006/83/EC) and giving temporary protection (2001/55/EC). Some of the proposed amendments and modifications were explicitly restrictive in nature and they rather followed the European asylum rules rather than the universal standards of the United Nations High Commissioner for Refugees. For example, there was a proposal for narrowing down the refugee definition of article 1A of the Geneva Convention relating to the Status of Refugees through the introduction of additional definitions in it, expansion of the field of application of the cases where the protection of refugees from being returned to places they are fleeing from is cancelled (the non-refoulement principle), restrictions on the right to family reunion and expansion of the cease-to-apply clause of article 1C of the Geneva Convention. Particularly alarming is the proposed amendment to art. 92 of the law by virtue of which fees are introduced for court experts’ reports due for the applicants seeking asylum which makes dependant the protection of the fundamental human rights through the tools of court proceedings on availability of financial funds to exercise them, or, in other words, property criteria is introduced. By the end of 2006 the act was not passed by the Parliament.
Institutional guarantees for access to the territory of the refugees and the related protection of the refugees from being returned are still missing (non-refoulement). On January 1, 2007 Bulgaria became an external border of the EU. The last several years were completely devoted to the preparation of the state bodies and institutions, and in particular the Border Police, for performing this function. A considerable part of the pre-accession funds was earmarked for the implementation of technical and operating tools for monitoring and catching perpetrators at the border. On the other hand, the State Refugee Agency continued not to launch into exploitation of the transit registration and accommodation center for asylum seekers in the region of the village of Pastogor (Kapitan Andreevo checkpoint) at the main entrance point of the country and completely abandoned the project on building a transit refugee center in the village of Busmantsi (Sofia Airport checkpoint). Therefore in 2006 no summary proceedings were carried out at the border that would guarantee the access to the territory of the asylum seekers. Pursuant to the law, the border police does not have the right to conduct refugee policy procedures, but should refer the applications to the specialized body State Refugee Agency (SRA) for further registration, consideration and opinion. On many occasions the asylum applications are referred only after the BHC involvement. The State Refugee Agency continues to not provide for the transportation of the persons who have filed with the border authorities an asylum application addressed to the registration and receiving refugee centers in the country. Therefore the monitoring conducted at the detention centers of the refugees at the borders, including the border police places of detention, found that the lack of functioning SRA transit centers for summary proceedings poses a serious problem and until it is solved, the rights of the people filing asylum applications and their access to the territory and proceedings will not be protected adequately.

The decisions issued on the refugee applications by the State Refugee Agency continued to be unjustified. There was an increasing number of corruption reports about the officials of the Agency which, however, were not investigated because of the fear of the refugees from reverse measures and mostly from the fear that the status granted would be taken away if they file a complaint with the prosecutor’s office. This cast doubts over the fairness of the procedures held. In 2006 SRA refused to use recording system of the interviews held as a guarantee against corruption and unconscientious performance of their business obligations. In December 2006 in breach of the law several summary proceedings were held in the special home for temporary placement of foreigners (SHTPF) in Busmantsi, where illegal foreigners are placed there forcefully. The level of security in the receiving centers was not satisfactory and there was information that people implicated in human trafficking use unrestricted access to the rooms where asylum seekers and refugees are accommodated. The number of cases of termination of the proceedings was alarming due to the anonymous state of the asylum seekers and particularly of the unaccompanied children. Despite the sharp decrease of the number of the newly filed asylum applications in 2006 only 95 people out of a total of 639 applicants were
granted asylum, as only 12 foreigners were acknowledged refugee status, while the remaining 83 people were granted humanitarian status. The share of the recognized refugees remains too small – only 1.8% of the registered asylum applications although the total share of the other forms of protection granted increased from 10.46% to 12.9%.

Freedom of movement is enshrined in Article 13 of the Universal Declaration of Human Rights and Article 12 of the International Covenant on Civil and Political Rights, which proclaim the right of every person to move about freely and choose his or her place of residence within the borders of any country, as well as the right to leave the territory of his or her own country and return thereto. In the domestic legislation, this right is provided for in Art. 35 ex rel. Art. 27, Para. 1 and Art. 26, Para. 2 of the Constitution. Just like in the field of asylum, the Bulgarian immigration legislation, policy and practices in 2006 followed completely the lack of an individual domestic policy regarding migration led to the introduction in the regulatory structure and practice of a number of restrictive administrative oversight mechanisms over the right of foreign immigrants to enter into and reside in the country and the right of Bulgarian citizens who are economic emigrants and have committed a violation of the administrative regime of residency in EU states to leave the country freely.

The only liberalization in the residency regime was made with regard to the EU citizens and the members of their families introduced by virtue of the European Union Citizens and Members of Their Families Entry and Residence in and Departure from the Republic of Bulgaria Act adopted in October, enforced as of January 1, 2007. They were allowed to stay under milder conditions and extended terms. With regard to the other foreigners, however, entry and residence continued under the current regulatory regime and under a number of conditions and prohibitions. BHC found an explicit discriminative approach in the application of the provisions of the Foreigners in the Republic of Bulgaria Act (FRBA) with regard to foreigners who married Bulgarian citizens. The general provisions of art. 27, para 1 of FRBA allowing for residence of such foreigners without long-term “D” type visa were applied only with regard to citizens of the European Union, the EEC and the countries of the Northern America. As for all the other foreigners, especially Africans or people of Arabic origin were denied permission to stay on the grounds that there is no “D” type visa. This is direct violence of art. 6, para 2 of the Constitution, art. 4, par 1 of the Anti-Discrimination Act and possibly of art. 14 of ECHR. After the initial good practice to repeal of such refusals on the grounds of art. 8 of ECHR in defense of the right to personal and family life, the courts in 2006 issued controversial decisions which arouses concerns about their independence and impartiality. The violation of the rights of foreign immigrants with regard to the lack of any suspensory effect pursuant to art. 46, para 4 of the FRBA, of appeals filed against the enforcement of coercive administrative measures, with a view to guaranteeing the right of migrants to an effective legal defense, in accordance with Article 13 of the ECHR, when they have a court case pending; the lack of legal assistance for foreigners under administrative detention for deportation, in fulfillment of the
guarantees provided for in accordance with Article 5 of the ECHR, and the waiver of court fees in such cases in order to prevent the possible denial of justice; the failure to recognize the rights as family members of all foreigners in factual cohabitation, rather than doing so only for those foreigners accredited to foreign diplomatic, consular, or commercial missions or the missions of intergovernmental organizations; the lack of a right to an active and passive vote in local elections or participation in local governance; the requirements in article 71 of the Employment Stimulation Act with regard to unchangeability, inadmissibility, qualification, vacancy and fixed term as conditions for hiring foreigners under the legal conditions of labor or civil contracts; the requirement in art. 24, para 1, item 2 of the FRBA of opening of 10 vacancies for Bulgarian citizens as a condition for granting residency permission on the basis of commercial activity and entrepreneurship; and others.

Just like in the previous years the basic problem related to human rights in 2006 as well remained the way the Migration Department with the Ministry of the Interior continued to carry out the deportation procedures of illegal immigrants. The average length of forced detention (detention under administrative provisions) in the special homes for coercive placement of foreigners varies from 3 to 6 months, but even now in Busmantsi SHTPF there are foreigners who have been detained by the police under administrative provisions for more than 12 months. The main reason is the lack of coordination between the units of the Ministry of the Interior and the ones of the Ministry of the Exterior, Consular Relations Department, in particular, whose obligations include providing the foreigners with documents for their forced deportation from Bulgaria to the respective countries of origin. In the most shocking examples of prolonged detention one can witness blatant inaction on the part of the two state bodies, while in the meanwhile the foreigners are kept deprived of their right to freedom and free movement in breach of art. 5f of ECHR. Once again in 2006, the government was unable to shorten these lengthy detention periods by carrying out the timely deportation of such foreigners, but despite this it continued to impose involuntary detention rather than the milder measure provided for by law of daily signing-in which has to be imposed as a general measure in such cases. The foreigners detained are not ensured an interpreter upon serving of the writs which makes it impossible to appeal them before the court within the stipulated terms. The court continued to repeal orders for involuntary placement due to the length of the detention on the grounds of which the foreigners were released. There were findings about cases when the police did not comply with the court decisions and issued new orders to the same effect and refused to release the persons affected. As far the law provides for free legal aid rendered by the state at the trial stage of the proceedings and provided certain conditions are available, the only free legal aid offered to these persons to defend their fundamental right to freedom is provided by BHC in its capacity of a nongovernmental human rights organization.
13. Women’s Rights and Gender Discrimination

Since the adoption of the *Protection from the Domestic Violence Act* (PDVA) in 2005 and its enforcement in the same year, almost a year and a half later PDVA is working and the number of the cases initiated has increased considerably. In the towns where there are efficient nongovernmental organizations the number of the cases initiated is considerably higher. As with any new act, the application of this one reveals gaps and ambiguities in its language. According to the data of nongovernmental organizations defending the domestic violence victims, the gaps are far too many and a legislative change in this direction is necessary. The biggest flaw in the law is that PDVA does not provide for incrimination of failure to execute a court’s order that imposes a protection measure over the victims. In about 50% of the cases the court order is not complied with and the measures provided by virtue of PDVA turn out not to be functional. The inefficiency is enhanced by the requirement for multiple evidence that is not collected by the court ex officio, along with the intentional disparaging of urgent protection as a main priority of PDAVA on the principle of reversing the weight of the proof.

Although there were preparatory trainings for policemen and magistrates throughout the previous year due to the pro-active work of nongovernmental organizations, there are still occurrences of inadequate reactions on their part which poses to a risk the safety of the victims.

With regard to the responsibilities and liabilities of the state, on October 19, 2006 the Council of Ministers adopted Protection from Domestic Violence Program (the Program) developed by an inter-ministerial group made up of experts from the Ministry of the Interior, of Justice, of Labor and Social Policy, of Health, of Finance, of Education and Science, from the Social Assistance Agency and the State Agency for Child Protection. The Program envisages legislative changes concerning the incrimination of the failure to execute a court order by virtue of which a protective measure for domestic violence victims is imposed, or providing for an action procedure in the cases of failure to execute a court order, as the authorities of the court, the police and the prosecutor’s office are specified. The Program provides for grave sanctions for repeated domestic violence occurrences. The Program further envisages opening of a 24-hour telephone hot line, providing shelter for domestic violence victims, finding a mechanism to systematize the information about domestic violence offenders. Approval of the action plan for implementation of the Program is envisaged to be carried out within 3 months of its adoption (October 19, 2006). Until the end of 2006, however, no tangible results were achieved.

On December 8, 2006 the National Assembly voted unanimously the text of the Declaration of the campaign of the Council of Europe “Parliamentarians united in the fight against violence, domestic violence included 2006 – 2008” which was launched officially on November 27, 2006 in Madrid. The draft of the declaration was handed in by Darinka Stancheva (NMSS) – a coordinator of the campaign for the Bulgarian Parliament.
The data collected by the nongovernmental organizations focused on the domestic violence problem, shows clearly that it continues the leading form of violence over the women in the country. The NGOs report an increase in the number of domestic violence victims who sought help in comparison to the previous 2005. They believe the reason for that is the fact that people are much better informed now.

- In the past year there were 1,965 clients who addressed the Animus Association, 1,410 of them were domestic violence victims. This means 71.75% of the cases.
- The people who sought help from Diva Community-based Services Foundation in Plovdiv for the same period are 671. Under PDVA 23 cases were instigated and resolved, on 12 of them immediate protection was imposed. Three of the cases were dismissed because the plaintiff withdrew the appeal.
- In 2006 SOS - Families at Risk Foundation in Varna provided services to 296 clients. 91% of the total number of the cases concern domestic violence. Through the SOS - Families at Risk Foundation in 2006 42 cases were instigated under the provisions of PDVA, 23 of which were concluded by issuing of a protection order, seven – with an immediate effect protection order, two were dismissed because the applicant withdrew the appeal, while the other 10 remain pending proceedings.
- From January 2006 to November 20, 2006 Demetra Association conducted 135 legal consultations to clients who became victims of domestic violence. There were 49 cases instigated under the provisions of the PDVA. 40 of them have effective sentences issued in favor of the plaintiff, 27 have immediate protection order, while the rest are instigated under the general conditions with the request for protection. Six cases were dismissed on the grounds of an application/refusal from the client. 12 of the cases were appealed and heard at a second instance.
- For a period of one year (September 1, 2005 to August 31, 2006) a total of 202 clients, 23 of whom children used the services provided by the Intake Office which functions as part of the activities of Samaritans Association, Stara Zagora. 91 of the cases were domestic violence cases.
- In 2006 the team of the P. U. L. S. – Pernik, worked with a total of 178 clients who sought help for the first time. In addition to the new clients, the team continued its work with 48 of the people who sought assistance in previous periods of time. 124 from the new clients defined themselves as victims of domestic violence. Under the provisions of PDVA a total of 69 clients were consulted. Pernik District Court issued 18 orders for protection of the victims under the PDVA; 14 of them were issued within 48 hours and they are for immediate protection; while four of them are for protection within a month.
- The overall statistics has shown that since the beginning of 2006 there have been more than 150 applications for orders for protection in Sofia (in 1/3 of the
cases such orders for protection have already been issued), in Burgas there are about 40 orders for protection, while in Plovdiv – more than 50 protection orders.

The other serious problem throughout the year was the trafficking in people. The Combating Trafficking in Human Beings Act (CTHBA) was adopted in May 2003, but the National Commission for Combating Trafficking in Human Beings with the Council of Ministers does not function yet. At the end of 2005 Daniel Valchev, Minister of Education and Science and deputy prime minister, was appointed a chairperson of the Commission, while a year later, on December 12, 2006 the secretary of the National Commission for Combating Trafficking in Human Beings was appointed, Mrs. Monika Kopcheva. The local commissions provided for under the provisions of CTHBA have not been established, nor were there any orphanages opened for temporary placement, or any centers for protection and assistance to the victims of human trafficking. In practice, almost three and a half years after its adoption CTHBA failed to attain its goals and the state fails to perform its obligations and fails to render assistance to the victims of human trafficking. This is something that only the NGOs are doing with their own funds. Much to the astonishment of the whole European community, however, the deputies to the Parliaments of this same country approved the proposal of Mrs. Tatyana Doncheva for decrease of the punishment provided for inducing to prostitution in the Penal Code.

In compliance with the requirements to the countries acceding the European Union, Bulgaria has to apply the principle of gender equality. A positive step in that direction was made by the Council of Ministers by adopting the draft of the Equal Opportunities for Men and Women Act on July 20, 2006. On August 2, 2006 the draft was submitted to the National Assembly and is at the stage of discussions.

The Anti-Discrimination Commission (ADC) started performing its work in a more efficient manner. The number of the applications and reports filed people who were victims of discrimination on the grounds of gender is not high. In the past year ADC issued only one decision by virtue of which it found direct discrimination on the characteristic of gender. The case law with regard to such cases is also insufficient. Very often these people are asking for consultations from NGOs, but currently they master the courage to turn to human rights institutions in very rare cases.

14. Rights of the Children in the Specialized Institutions

In 2006 BHC continued its consistent monitoring over the children’s institutions on the territory of the whole country. The conditions in 89 children’s specialized institutions, specialized schools and alternative forms of social services for children and juveniles were assessed. A subject of the assessment report was the
implementation of governmental measures under the UN Convention on the Rights of the Child reported by the Bulgarian government.²⁹

The first conclusion drawn by BHC at the beginning of its monitoring over the children’s institutions in 2006 was that there was complete discrepancy between the official statistics of the different institutions in the country with regard to the number of the children institutionalized in the children’s institutions under the Child Protection Act (CPA). The number of the children, according to the different reports, varied from 9,600 to 10,000 for the same periods of time. An example of this discrepancy is that in the different reports of the State Agency for Child Protection (SACP) and the Ministry of Labor and Social Policy (MLSP) the number of the children in the Homes for Mentally Retarded Children and Juveniles (HMRCJ) in 2005 was 1,310 and 1,499 respectively. In 2006 this number, according to MLSP, is 1,618. This is a great discrepancy in the data that cannot be explained only with the different dates on which the information was reported. The data usually does not cover the number of juveniles over the age of 18 although it is a common practice for them to continue to live in children’s institutions. The confusion is even greater if we add that the state institutions refuse to admit about the children institutionalized in the auxiliary schools that are taught all year round in the boarding schools.

In January 2006 the plan on decrease of the number of children raised in specialized institutions in Bulgaria in the period 2003-2005 was reported. The plan was adopted by virtue of Decision No 602 of the Council of Ministers of September 2, 2003. The report states that at the end of 2005 the number of children placed in the specialized institutions decreased by 18.3%, or 2,176 children, while the 2004-2006 National child protection strategy had a target decrease rate of 10%. BHC, however, found serious flaws in the methodology of reporting the decreased number of the institutionalized children. For the period from 2002 to 2005, according to the government, of the three types of institutions under the CPA, the biggest share of the decrease is in the Homes for education and upbringing of children deprived of parental care (HCDPC) – by 24%, followed by HMRCJ– by 13.2%, while the smallest share is the decrease in the Homes for medical and social services for children (HMRCJ) – by 7.5%. The official methodology, however, does not take into account the general demographic dynamics for the country of the decrease/increase of the number of children in the different age groups in any of the institutions. In the age group 5 -19 years of age, where the majority of the children from HCDPC and HMRCJ belong, for the period of 2002 to 2005 has a general decrease of the number of children in Bulgaria due to the strong negative demographic trends. In the meanwhile in the same period in the age group 0-4 years of age, where the majority of the children in HMSCC belong, the tendency is for general increase of the number of the children. Therefore, the indicator for the efforts of the state for the decrease of the number of the children in the institutions would be not just the decrease in their

²⁹ Despite the commitment of the part of the Bulgarian state to submit to the UN Committee on the Rights of the Child the next due official report on the implementation of the commitments under the Convention on the Rights of the Child, by early 2007 the final report on the Convention was not ready.
number in the institutions, but the comparison of this decrease to the general demographic trends. Interpreted from this perspective, the data outlines a slightly different picture.

According to BHC in HCDPC there is a trend for an actual decrease of the number of the children, but compared to the general demographic trends of decrease in the age group 5 to 19 years of age, it is about 15%. This is 9% less than the official data – 24%. The tendencies in the decrease of the number of children in HMRCJ for the period 2002 to 2005 compared to the general demographic trends in the age group 5-19 years of age for the same reported period show that the actual decrease is only 6.2%. This number is more than two times less than the number given in the governmental report – 13.2%. The tendency for the decrease of the number of the children in HMRCJ for the period from 2002 to 2005 is entirely at the expense of the sharp decrease by 19% in the last year. In 2004 the children in HMRCJ were 3.5% more than in 2002. The tendencies in the decrease of the number of the children in HMSCC compared to the general demographic trends in the age group 0-4 years of age for the period 2002-2005 show that with those institutions in the governmental reports, following the erroneous methodology, the governmental efforts were underestimated. The actual decrease in them is 10.5%. According to the official statistics it is 7.5%. The major part of the decrease is in the period 2002 to 2003 – by 7.5%. While from 2004 to 2005 there is even an increase of the children in those institutions both in absolute numbers and as a share of the children in 2002. With regard to the decrease of the number of children in the auxiliary schools for the period 2000/2001 to 2005/2006 academic years BHC thinks that the trend for a decrease of the children enrolled in them coincides with the general trend for a decrease of the number of children enrolled in the primary school which is the result of the natural demographic decrease and the migration. These children are not recognized by the government as institutionalized children due to the formal criteria officially approved – a court decision for placement. In practice, the situation of many of the children in the auxiliary boarding schools is no different from that of the other children in the institutions.

When we turn from the official statistics to what is happening in practice we can see that in HMRCJ there is a simulation of deinstitutionalization. In the period 2003 to 2006 the official statistics reported the closing of six all year children’s homes for mentally retarded children. Namely:

2004 - HMRCJ in Fakia, municipality of Sredets, district of Burgas;
2005 - HMRCJ in Dzhurkovo, municipality of Laky, district of Plovdiv and HMRCJ in the village of Dobromirtsi, municipality of Kirkovo, district of Kardzhali;
2006 HMRCJ – Tri Kladenitsi, municipality of Vratsa, HMRCJ – Berkovitsa and DCCMRCJ - Pazardzhik.

According to the BHC assessment, however, in the period 2003 to 2006 out of the six children institutions reported as closed down, in practice only three were
closed down. While actual deinstitutionalization can be observed in few cases only – the total number of the reintegrated children in the institutions identified is four only. The rest of the children were relocated to other institutions. The BHC assessment of the closing of the three children’s social homes in 2006 can be defined as pure misleading. In the three cases there is no actual closing down of the institutions, reintegration, adoption, foster care. It is about change of the institution only, i.e. simulation of deinstitutionalization.

- The institution in Pazardzhik is not closed down in practice. The Home for Mentally Retarded Children in Pazardzhik has been providing day and night care to mentally retarded children since 1998, regardless of the fact that in 1999 by virtue of a decision of Pazardzhik District Court the daycare center was restructured into all year center. Since the beginning of 2000 in connection with Order No 6 of January 21, 2000 of the MLSP on profiling the social institutions the daycare center has been considered to be an all year center. 44 of the inmates are from Pazardzhik and are using the service “daycare”, while 24 of the children and the juveniles from the villages and towns in the municipality use the service “week care”. There are few children who use the all year service.

- In HMRCJ in Berkovitsa in 2006 of 89 inmates there were only 16 children at the age of 18. The rest 73 are juveniles at the age of more than 18. This entailed a change in the home’s profile, but there is no actual closing down of the institutions either. Only the sign of the home was replaced.

- HMRCJ in the village of Tri Kladentsi, municipality of Vratsa was restructured into a Home for juveniles at the age of 18 to 35 (in 2006 39 out of 42 inmates were above the age of 18, while three are at the age between 16 and 18 years). That is why the home’s profile was changed. The children that grew up in the home remain in the institution where they were raised.

Of the three types of institutions under CPA in practice only in HCDPC there is tendency for actual decrease in the number of the children. In 2006 the MES closed down 15 homes of this type. The homes closed in Pobeda, Slatino, Gavril Genovo, Orehovo, Chepelare, Gutsal, Skobelevo, Slavyanovo, Leshnitsa, Ugarchin, Georgi Damyanovo, Stoikite, Kalotina, Rila, Zheravna. Each of the institutions closed had some problems with its location in a small town or a village which caused problems concerning the medical services, the education, supervision and communications. As a result of the measure undertaken by MES the number of HCDPC from 101 in 2004 was reduced to 86 in 2006. While the number of the children institutionalized in this type of homes from 5,840 was reduced to 4,745 – a decrease by 1,095. The greatest share of the reintegrated children from HCDPC is of the ones who went back to their biological families. The share of orphans with one or two parents deceased is less than 1% of all HCDPC inmates. Most of the children are placed there due to risk family environment, but their parents were not deprived of parental rights. More than 50% of the inmates in HCDPC are still Roma children.
For HMSCC a one-off decrease of the children was established in the period 2002 to 2003. The BHC explanation is that this decrease coincides with the beginning of the changes and the actual start of the reforms in the field of child protection, along with turning deinstitutionalization into a priority of the governmental policy. According to the directors of HMSCC the cases with successful outcome from the application of the measures for prevention of abandoning children are few – more than 50% of the children are admitted to HMSCC straight from the maternity wards.

Given the general situation with the healthcare in the institutions for children most alarming according to BHC is the situation with the healthcare for children with disabilities. The children in the homes for mentally retarded children and juveniles in Bulgaria are usually admitted at the age of three, in the majority of the cases they are transferred from HMSCC. The diagnosis “mental retardation” is determined as early as in the HMSCC. After the children are placed in HMRCJ, their development is measured once or twice a year, most often by a general practitioner or by the medical staff in the home. In 2006 no unified standardized development measuring system for the institutionalized children was introduced, either.

The educational segregation because of disabilities remained a serious problem for Bulgaria in 2006. The BHC monitoring over the children’s institutions confirmed once again that the auxiliary schools for children with mild disabilities in their development, the “reformatory schools” – social educational boarding schools and the correctional schools, as well as the homes for mentally retarded children remain forms of educational segregation. More than 1,600 mentally retarded children and juveniles residing in HMRCJ are outside the focus of attention of the newly established resource centers with REI that are supposed to be the main engine of the process of introduction of inclusive education in the country. There are few cases when the educational abilities of children with disabilities from the social institutions were assessed and this was mainly the initiative predominantly of the directors of HMRCJ. Far from any standards for quality education remain the process of education in the auxiliary schools and in SBS and CBS. According to MES data only 1,538 with special education needs were included in the integrated education in the general schools in the 2005/2006 school year. The comparison to the total number of the children with disabilities below 18 included in the 2006 statistics was more than 18,500 which leads to the conclusion that the majority of the children are still excluded from the process of education in the general school.

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