Human Rights in Bulgaria in 2008

Annual Report of the Bulgarian Helsinki Committee
In 2008 Bulgaria continued to be governed by the coalition government of the Bulgarian Socialist Party (BSP), the National Movement Simeon II (NMSS) and the Movement for Rights and Freedoms (MRF). The year was marked by cynicism and stagnation in the attitude of the Bulgarian authorities to the values of political democracy, rule of law and transparent governance. A series of international and local observers noted on many occasions the increase of high-level corruption, including in the judiciary, as well as multiple cases of symbiosis between government and organized crime.

The developments in the sphere of human rights were multifaceted. Visible progress was achieved in some areas. The anti-discrimination regime, for example, evolved considerably, mostly in terms of the practice of the Commission for Protection from Discrimination, but also with regard to the protection of refugees and asylum seekers. In other areas, however, the stagnation continued or a regress occurred, as was the case with freedom of expression.

In May 2008, the UN Committee on the Rights of the Child reviewed the periodic report of the Bulgarian government under the UN Convention on the Rights of the Child. In March, Bulgaria submitted a periodic report to the UN Committee on the Elimination of Racial Discrimination after being threatened with a review in the absence of a report due to five overdue reports. As a whole, the cooperation of the Bulgarian government with the international human rights treaty bodies remained deplorable in 2008. A Bulgarian report to the UN Commission on Human Rights was last reviewed in 1993.
1. Right to Life

The use of force and firearms by law enforcement authorities in Bulgaria remained a problem in 2008. These were used often and were regulated by a legislative framework inconsistent with relevant international standards. Art. 74 of the Ministry of Interior Act, which allows the use of deadly force when detaining a person who has committed even a petty offense, was not amended. This provision is inconsistent with principle 9 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Police officers who used deadly force in 2008 or in previous years did so with impunity. With the December amendments to the Code of Criminal Procedure (CCP) the cases for crimes committed by Interior Ministry and National State Security Agency (NSSA) officials will no longer be reviewed by the military courts. The latter will only hear cases involving military personnel under the Defense and Armed Forces Act. These provisions are aimed at reducing impunity among police officers.

The cooperation with the prosecution in providing information about cases involving the use of force and firearms deteriorated. In February 2009, the Sofia Regional Military Prosecutor’s Office refused to provide information on investigations of cases of police violence, invoking “new instructions of the Supreme Cassation Prosecutor’s Office (SCPO), according to which information can be provided only with a resolution of the SCPO”. A prosecutor from the same Prosecutor’s Office stated that the Code of Criminal Procedure has precedence over the Access to Public Information Act even in those cases when information is requested about the course of the investigation only. The BHC was therefore unable to obtain information from the prosecution about cases in 2008 and in previous years, in which people lost their lives as a result of the use of force and firearms.

No progress was achieved in the investigation of the 2004 murders by police officers of Kiril Stoyanov from Plovdiv and Boris Mihaylov from Samokov\(^2\), both men of Romani origin. With regard to the latter, an application has been lodged with the European Court of Human Rights in Strasbourg; with regard to the former, the domestic remedies are still in the process of being exhausted.

The investigation into the death of Marko Bonchev, a man of Romani origin from the village of Elhovo, who died shortly after being detained by police\(^3\), was finally terminated in 2008. On January 1 2008, the Plovdiv Regional Military Prosecutor’s Office had initiated criminal proceedings to investigate the circumstances, in which on August 17 2006 a police officer from the Gurkovo police precinct had inflicted bodily injury to Marko Bonchev while performing his official duties - an act constituting an offense under Art. 131 (1) 2 of the Penal Code. On March 19 2008, the Plovdiv Regional Military Prosecutor’s Office ordered the termination of the penal proceedings as no use of excessive force against Marko Bonchev had been established. The prosecutor based his decision on statements by police officers. The same day the prosecutor’s decision was appealed to the Plovdiv Military Court. On June 13 2008, the Plovdiv Military Court repealed the prosecutor's decision of March 19 due to an incomplete investigation. More specifically, the court found that the second police officer involved in Mr Bonchev’s detention, had not been interrogated. The Plovdiv Regional Military Prosecutor’s Office appealed the decision to the Military Court of Appeals. On October 27 2008, the Military Court of Appeals repealed the decision of the Plovdiv Military Court and confirmed the decision of the Prosecutor’s Office, thus putting an end to the criminal proceedings. The court held that: while Mr Bonchev was alive he had not filed a complaint for police violence against him; he had also not made a statement on the circumstances concerning the bruises on his torso; and that this bodily injury was probably

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caused during his detention in the Elhovo square and not in the detention facility. According to the court, even if police officers had inflicted bodily injury to Mr Bonchev during his detention, the use of force by them was lawful. The other penal proceedings, for medical error against the doctor who treated Mr Bonchev prior to his death, was finally terminated with a decision of the Plovdiv Court of Appeals dated August 10 2008. The decision was not given to the victims or their lawyers.

On February 20 the Military Court of Appeals repealed the initial verdict against the police officers accused of killing Angel “Chorata” Dimitrov in November 2005. Angel Dimitrov died in Blagoevgrad during an attempt at his arrest in a police operation. The court returned the case to the court of first instance for another review. On October 2 the first-instance court once again found the police officers guilty of premeditated murder and sentenced the head of the operation to 18 years in prison and each of the remaining four participants in the operation to 16 years in prison. In a civil lawsuit filed by Angel Dimitrov's son, partner and parents the court awarded 145,000 BGN (72,500 EUR) worth of compensations, to be paid jointly by the defendants. The defendants appealed and in December the Military Court of Appeals initiated the review of their case; the case was heard behind closed doors on the grounds that special means of surveillance have been used in the course of the police operation. The court returned the case to the prosecution where it remained until the end of the year. However, the police officer seen in the video standing next to the victim during the incident was acquitted by the Sliven Military Court at the end of May. The court held that the officer could not have foreseen and prevented the incident. The ruling was upheld in its entirety by the Military Court of Appeals on September 12 2008. The ruling is final and is not subject to appeal.

The lawsuit concerning the killing of Barzan Arif, a Swedish national of Iraqi origin, was still pending at year's end. Mr Arif died on July 16 2007, beaten to death by security guards at the Help Night Club in the Black Sea resort of Nesebar. The murder was filmed by a witness and broadcast by a TV channel. It clearly shows police officers standing by and watching calmly one of the security guards jumping on Mr Arif's limp body. The autopsy revealed that the cause of death were chest and abdominal injuries. The perpetrator was identified and the Burgas Regional Prosecutor's Office indicted him under Art. 124 of the Penal Code for manslaughter after inflicting premeditated bodily injury. The prosecution filed a request for extension of the investigation deadline by six months and the proceedings remained at pre-trial phase for more than a year and a half. On December 16 2008, the prosecution submitted a draft agreement with the defense of the indicted security guard. The Burgas Regional Court ruled, within the legal seven-day timeframe, that it did not approve the draft and returned the case to the prosecution where it remained until the end of the year. However, the police officer seen in the video standing next to the victim during the incident was acquitted by the Sliven Military Court at the end of May. The court held that the officer could not have foreseen and prevented the incident. The ruling was upheld in its entirety by the Military Court of Appeals on September 12 2008. The ruling is final and is not subject to appeal.

Several persons lost their lives during the year in suspicious circumstances as a result of use of force or firearms by law enforcement officials. Hristo Ivanov, a man of Romani origin, died on March 10 at the Pirogov emergency hospital in Sofia. On March 3 he was beaten by five police officers in an abandoned house in front of several of his friends. According to these witnesses, the cause for the battery was the theft of a mobile phone from the child of one of the police officers. An X-ray made several days later revealed broken ribs and a broken arm. Ivanov's mother and sister were questioned by the investigator on-duty at the Pirogov hospital, and his mother was also interrogated at the Third Police Precinct in Sofia. The family was given no further information about the course of the investigation. The Military Prosecutor's Office denied the BHC information on this and other cases of police violence.

On April 17, Yalcin Erdzhan, a Turkish fisherman and a poacher, was shot and killed in the Rezovo area, close to the border with Turkey. Initially, a border policeman was indicted on account of negligent homicide. The indictment caused a wave of protests by nationalists. Activists instigated by nationalist media, including the SKAT TV, closely associated with the ATAKA party, began collecting signatures in support of a demand for termination of the proceedings. In October a prosecutor from the Sliven Military Prosecutor's Office terminated the penal proceedings against the border policeman on the grounds that no crime has been committed. His decree was appealed and in January the Military Appellate Prosecutor's Office repealed the decree and returned the case for another review by the Sliven Military Prosecutor's Office.

Bashkim Marladzhaku, a 38-year-old Serbian national, was killed in Sofia after a police chase on November 29. An investigation was initiated into his death, but there were no developments on it by year's end. In December, the Interior Minister awarded two of the officers who had taken part in the operation.

In 2008 the European Court of Human Rights (ECHR) in Strasbourg ruled against Bulgaria in a case for breach of the right to life. The judgment addresses, for the first time, the inability of the social care institutions to protect the life of the persons accommodated in them. In its ruling of January 17 2008 on the case Dodov v. Bulgaria the Court held that the Bulgarian authorities had violated Article 2 of the European Convention on Human Rights (the Convention), which guarantees the right to life. In 1995, the applicant's mother, Mrs Stoyanova, who had Alzheimer's disease, disappeared from the institution for elderly people with dementia, located in Sofia's Knyazhevo neighborhood. She was never found. The Court held that there had been a direct connection between Mrs Stoyanova's disappearance and the authorities' inability to provide oversight over her. The Court ruled that in this case the Bulgarian state had not provided means of protection that would establish the circumstances of the disappearance and the responsibility of the culprits. During the criminal proceedings, the investigating bodies came up with contradicting decisions, without even investigating the issue of negligence on behalf of staff at the institution. No disciplinary actions were initiated against the responsible persons, and after more than 10 years the civil lawsuit for damages is still pending at first instance.

The Committee of Ministers at the Council of Europe continued to monitor the implementation of several ECHR judgments against Bulgaria from preceding years. Non-compliance with Interim Resolution CM/ResDH(2007)107, which requires the reopening of the criminal proceedings against the police officers in the ECHR cases Anguelova v. Bulgaria (2006), Ognyanova and Choban v. Bulgaria (2002) and Velikova v. Bulgaria (2000). The cases concern murder during detention for which the law enforcement bodies are responsible, as well as lack of effective investigation thereof. The Bulgarian government reported that the criminal proceedings against the police officers involved in the first two cases had not been reopened, as the prosecution had judged that the initial acts for the termination of the investigations (which were the grounds for the ECHR rulings) were lawful and justified. The Committee of Ministers will pursue the supervision of the execution of these judgments and of that on the Velikova v. Bulgaria case, for which information is still expected.

The Committee of Ministers also urgently requested information on the execution of the ECHR decision on Nachova v. Bulgaria (2005). This case concerns unjustified use of firearms by the military police while chasing two unarmed men of Romani origin who had went AWOL. The Court held a violation of the right to life and discrimination. According to the information provided by the government, the reopened criminal proceedings for the investigation in the death of the victims were terminated by the Committee.

prosecution. The justification was that the use of firearms by the military police officer was consistent with the rules on the use of firearms. The Committee of Ministers will also review the execution of the decision on Anguelova and Iliev (2007), in which the Court held that the Bulgarian authorities have failed to effectively investigate a racial murder by a group of young people. The criminal proceedings against most of the perpetrators cannot be reopened as the absolute statute of limitations prescribed in the Penal Code has expired. The Committee of Ministers is waiting for information on the course of the penal proceedings against another two of the perpetrators.

The Committee of Ministers considers highly necessary the training of police officers on the requirements Articles 2 and 3 of the Convention and the guaranteeing the independence of investigations regarding allegations of ill-treatment inflicted by the police. The Bulgarian government refuses to introduce guarantees for effective persecution and punishment of racially-motivated crimes, a requirement arising from the ECHR decisions on Nachova v. Bulgaria and Anguelova and Iliev. In the review of the execution of the decision on Tzekov v. Bulgaria (2006), the Committee of Ministers demanded that the MIA Act be made compliant with the requirements on the use of firearms arising from the Convention and the ECHR case law.

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

The Bulgarian Penal Code does not contain a specific provision penalizing torture. In 2008 the act was not amended, despite 2004 recommendations of the UN Committee against Torture. In 2008 and in preceding years, the BHC received many credible complaints from people alleging they had been ill-treated by police officers at the time of arrest or in custody. Many police officers responsible for such deeds got away with impunity.

In December 2008, BHC researchers interviewed 121 inmates in four prisons (Plovdiv, Pleven, Belene and Bobovdol) on the circumstances of their detention and preliminary investigation. The survey is representative for the four prisons, but not for the system as a whole. It covered inmates whose sentences had entered into force and whose pre-trial proceedings were initiated after January 1 2007. The results and the comparisons with the previous three years are presented in the table below:

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<th>% respondents saying that force had been used against them</th>
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<td>2005</td>
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<td>At the time of arrest</td>
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<td>Inside the police station</td>
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The share of inmates complaining of use of force has obviously increased in comparison to the previous survey. The increase is especially significant with regard to the share of inmates complaining of ill-treatment at the time of arrest – 6% in comparison to the previous year. The share of those complaining of ill-treatment at police stations has remained unchanged. As a whole, the relative share of both categories is substantial. For the fourth consecutive year, this indicates a stagnation after the progressive reduction of the relative share of complaints that began in 2000.

In 2008 the ECHR ruled in several cases against Bulgaria for violations of the prohibition of inhuman and degrading treatment (Article 3 of the Convention). This year the Court was especially critical of the conditions in places of detention. The Court delivered five judgments for violation of Article 3 on account of the conditions, in which inmates had been placed in preliminary detention in investigation detention facilities and in prisons.

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On February 7 and on March 8 2008, the Court delivered judgments on the cases Kostadinov v. Bulgaria and Gavazov v. Bulgaria, concerning the deplorable conditions at the Pazardzhik investigation detention facility and prison. In the Kostadinov case, the applicant complained of having spent almost seven months in 1999 in the above detention facilities, in conditions of insufficient ventilation and natural light and inadequate cell hygiene, including parasites; furthermore, he was forced to use a bucket for his physiological needs. The applicant also complained of unhealthy food, lack of opportunities for physical exercise, lack of access to printed materials and television, as well as restricted rights to correspondence and attorney visits. Judging the cumulative effect of these conditions on the applicant, the Court held that the authorities had subjected him to inhuman and degrading treatment in the investigation detention facility and in the prison. Similarly, in the Gavazov case the Court found that the deplorable conditions at the investigation detention facility and at the prison in Pazardzhik constituted a violation of Article 3 of the Convention.

In a decision from May 22 2008 on another case concerning the conditions at the investigation detention facilities in Pazardzhik and Montana, Aleksov v. Bulgaria, the Court found a violation of Article 3 due to inhuman detention conditions. The applicant spent two months in the Pazardzhik investigation detention facility in 1999 and over a month in the Montana investigation detention facility the next year, in conditions of overcrowding, in underground cells, with lack of fresh air and natural light, bad sanitary conditions and unhealthy food. He had neither opportunities for open-air activities, nor access to newspapers and books. As there was no need for such a restricted regime, the Court held that the suffering the applicant had to endure exceeded what was necessary for the detention.

The Court also found a violation of Article 3 in its judgment on Slavcho Hristov v. Bulgaria (November 2008) in connection with the conditions of detention at the Sliven investigation detention facility. In 1995, the applicant had spent 26 days in the detention facility. Upon the termination of the criminal proceedings against him for lack of evidence, he filed a damages lawsuit for being accused of a crime he hadn't committed, for being detained for nearly a month, and for having his freedom of movement restricted for more than a year afterwards. The applicant claimed non-pecuniary damages due to the inadequate conditions of detention. The Bulgarian courts admitted his claim partially and awarded 3,000 BGN (1,500 EUR) out of the sought compensation of 50,000 BGN (25,000 EUR); the court further sentenced him to pay 1,880 BGN (940 EUR) state fees for the portion of the claim that had not been admitted. The court explicitly acknowledged that the conditions of detention had been “extremely severe”. The ECHR held that although the Bulgarian courts had recognized the inadequacy of the detention conditions, this was not the main reason for their decision to award compensation and they had not specified what portions of the amount were awarded for the different violations established, including the inadequate detention conditions. Such a decision did not allow the ECHR to judge what amount, if any, has been awarded for the inadequate conditions. The Court therefore held that the applicant had not received adequate compensation for the inhuman and degrading treatment suffered. The Court also held that the inadequate detention conditions, recognized as such by the European Committee for the Prevention of Torture and by the Bulgarian courts, had caused the applicant significant suffering. This ECHR decision should serve as an indication that the Bulgarian courts should explicitly consider inadequate detention conditions when awarding compensations, including in the operative part of their decisions.

On November 20 2008, the ECHR ruled on the case Isyar v. Bulgaria concerning the bad living conditions in the Sofia prison. The applicant complained of overcrowding (2.5 to 3 m² of living area per inmate), lack of purposeful activities, bad hygiene, lack of constant access to a lavatory during the day and inadequate nutrition. The
Court held that, given the applicant's lengthy stay in such conditions, their cumulative effect equaled inhuman and degrading treatment.

At the same time, in another judgment the Court pointed out that individuals complaining of inadequate conditions related to detention after 2003 should first resort to domestic remedies. This is due to the fact that the ECHR has found a change in the practices of the Bulgarian judiciary after 2003, when the courts started awarding compensations for non-pecuniary damages arising from inadequate conditions. This is why in its decision of May 22 2008 on the case Kirilov v. Bulgaria concerning the conditions at the Shumen investigation detention facility, the Court rejected the complaint, as the applicant had not exhausted domestic remedies. The ECHR pointed out that, given the change in the judicial practices, the applicant should first file a compensation claim under the Damages Liability of the State and the Municipalities Act.

In 2008 ECHR was once again critical with regard to the way Bulgarian authorities investigate cases of police violence. The Court held that the authorities had not conducted effective investigations in three such cases.

In the case Petrov v. Bulgaria (July 2008), the applicant complained that he had been handcuffed to a pipe in a police station so that water dripped on his head for one night and four hours. Later, he was handcuffed again, in a position that didn't allow him to stand up. The applicant also claims that police officers hit and kicked him at the time of arrest. The ECHR held that the government had not disproved the allegations and the evidence presented by the applicant, and ruled a violation of the prohibition of inhuman and degrading treatment. The Court also found that the investigation had been delayed due to inadequate actions of the investigating bodies. They delayed the lawsuit against the police officers so much that the court finally terminated it due to the expiration of the statute of limitations.

On July 22 2008, the ECHR found a violation of the prohibition of inhuman and degrading treatment in the case Ivanov v. Bulgaria. The applicant complained of police violence. He was assaulted with blunt, heavy objects for which he possessed the necessary medical certificates. The prosecution initiated an investigation, but later terminated it. In this case, too, the ECHR held a violation of Article 3 on the grounds that the government failed to disprove the applicant's allegations. At the same time, the Court held that the state has failed to carry out an effective investigation, as the authorities neglected clear evidence - medical documents certifying the inflicted injuries, they failed to collect additional evidence and terminated the case only because the applicant filed a complaint against the police officers after some time.

On October 16 2008, the ECHR delivered a judgment on the case Georgiev v. Bulgaria. The applicant complained that he was kicked by police officers to sign documents; when he self-injured in protest, he was illtreated two more times. Following his release, he obtained a medical certificate for multiple traumas. He filed a complaint with the prosecutor's office, which concluded there was no evidence of a crime and explained the traumas with him being restrained by prison guards. The internal investigation of the Ministry of Justice also concluded that the use of force by prison staff had been justified. The ECHR held that the applicant had been subjected to inhuman and degrading treatment and that the investigation had been ineffective, as the authorities failed to carry out the necessary acts to establish the cause for the multiple injuries.

Committee of Ministers with any information in respect to the first four cases.

In 2008, the Committee of Ministers reviewed once again the execution of the European Court judgment on the case M. C. v. Bulgaria (2004) and once again found lack of effective safeguards that sexual acts would be investigated and punished due to the simple lack of consent, even when the victim had not resisted physically.

3. Right to Liberty and Security of Person

The Code of Criminal Procedure was amended in December 2008. The amendments will have no effect on improving the safeguards against arbitrary deprivation of liberty. The placement in social care institutions for people with mental disabilities continued to be a severe problem. Such placement is carried out under an administrative procedure, without control by the court and, as noted by BHC monitoring on multiple occasions, is often arbitrary. The legislation governing placement remained unchanged during the year.

The placements under the Juvenile Delinquency Act continued to occur in violation of international standards regulating the right to liberty and security of person. Many of the placements during the year were arbitrary, due to the inadequate access to legal assistance and the inequality between the parties in the procedure. In violation of international standards, the placement in institutions for temporary (up to two months) placement of minors and juveniles continued to occur under an administrative procedure beyond court control. In 2008, BHC visited several so called 'crisis centers' for placement of children, in existence from the autumn of 2006. Placement in these centers, which are essentially detention facilities, is as a rule arbitrary and a severe violation of the international laws guaranteeing personal freedoms.

The detention under administrative procedures of foreigners awaiting extradition continued to be a serious problem in 2008. The courts followed the practice of the Supreme Administrative Court to turn down motions for judicial review of administrative measures of involuntary placement, thus restricting access to court in a situation of factual deprivation of liberty without a verdict or indictment, but because they had violated the regime regulating foreign nationals' stay. When “deportation” or “transfer to the border” is imposed, the Foreigners Act allows the police, at its own discretion, to detain the foreigner at detention centers (special institutions for temporary placement of alien residents). More often than not, the Interior Ministry fails to implement the enforcement measure within a reasonable time and the detained individuals are deprived of liberty for extended periods of time, sometimes exceeding a year or two years. The statutory procedure and the law enforcement continued to allow arbitrary and lengthy detention, combined with lack of effective opportunities for appeal before a court.

In 2008 the ECHR ruled on many cases against Bulgaria involving violations of the right to liberty and security of person. The Court found a violation of a hypothesis under Article 5 of the Convention in a total of 16 cases. Some violations predate the penal process reform which was effected in 2000 and concern powers of the prosecution and the investigation to detain people in detention places and psychiatric hospitals without a court order. Other violations are related to excessive duration of detention, including due to large delays in the course of the investigation.

Some of the judgments concern deficiencies in the courts’ approach to reviewing detention measures. In many cases the Court found violations due to

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8 For more details, see Conditions in Places of Detention below.
the formalistic judgment of the courts of the grounds to extend the detention. The courts often decided purely on the basis of the severity of the charges, or they did not substantiate why they believed the detainee may escape, commit a crime or obstruct the investigation. Other violations are related to the excessive duration of the appeal proceedings on detention measures or the review of such appeals in camera, thus depriving the detainees of the possibility to take part in the proceedings in person. The ECHR also pointed out another deficiency of the court proceedings with regard to the review of detention, and namely the lack of competitiveness in the process, as the detainees get no access to the prosecutors’ opinions on their complaints, which does not allow them to organize adequate defense consistent with the arguments of the opposing party.

The Committee of Ministers of the Council of Europe found systematic problems in the execution of the ECHR decisions against Bulgaria related to Article 5 of the Convention. The deficiencies include the excessive duration of the detention and the material conditions, in which it is effected (see the cases reviewed in conjunction with Kehayov v. Bulgaria (2005) and the findings of the European Committee for the Prevention of Torture). The Committee required that the following general measures be implemented: justification of detention decisions; effective judgment by the courts of the grounds for the extension of the detention, the means of the detainee and the analysis of specific evidence on the extent of the danger (the case Bozhilov v. Bulgaria, 2005); and provision of an applicable mechanism for soliciting compensation in case of a violation of article 5(1) of the Convention (ibid.).

4. Fair Trial

The new Code of Civil Procedure (CCP) entered in force on March 1 2008. The purpose of its adoption was to speed and rationalize the civil process, as well as to introduce some new institutes and procedures. At the same time, legal experts, including members of the Committee on Legislation with the speaker of parliament, criticized the code for some provisions that violate the equality of the parties. The government rejected these charges as unjustified. The new CCP contains certain progressive provisions, but also preserves intact old provisions that need to be reformed. The practices with regard to the implementation of this act in the future will show whether it is consistent with the requirements of a fair and public hearing.

In 2008, the ECHR adopted 27 judgments against Bulgaria for violations of the right to access to a fair trial, as provided by Article 6 of the Convention. As in previous years, most of these judgments concern the unreasonable duration of the penal and civil lawsuits. The Court once again underlined that the Bulgarian legislation does not provide means of protection against the excessive duration of the proceedings, in violation of the right to effective remedy stipulated in Article 13 of the Convention. Several such cases ended with “friendly settlements” between the state and the applicant(s). The state thus avoided the delivery of a judgment finding it in violation of certain articles, and the applicants received compensation at a significantly earlier time, albeit reduced in amount. In the case Trifonov v. Bulgaria, the state assumed the obligation to pay 2,800 EUR non-pecuniary damages, costs and expenses arising from a six-year penal lawsuit against the applicant. In the case Petrov v. Bulgaria, the state agreed to pay 1,500 EUR for a damages lawsuit against the authorities, which took seven years to complete.

In 2008, the ECHR ruled once again on a case concerning the fees courts collect from plaintiffs under the Damages Liability of the State and the Municipalities Act (DLSMA). In 2007, in the case

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10 For more detailed comments on some provisions in the new CCP, see Discrimination against People with Mental Disorders in Institutions.
In its decision of November 20 2008 on another case, *Isyar v. Bulgaria*, the Court held a violation of the right to a fair trial, as the Bulgarian court made the applicant pay the interpretation expenses in a criminal lawsuit against himself. The ECHR ruled that in this way the state had revoked the applicant's right to free assistance of an interpreter, as stipulated in Article 6 (3) e) of the Convention.

In 2008, the Committee of Ministers of the Council of Europe continued to monitor the execution of many ECHR decisions related to Article 6 of the Convention. The Committee noted the following systematic problems:

- the excessive duration of the proceedings in civil cases (*Dzhangozov v. Bulgaria*, 2004, and similar cases), as well as the lack of effective means of protection against this (ibid.). The same holds true for the proceedings under the DLSMA;
- the excessive duration of the proceedings in penal cases (*Kitov v. Bulgaria*, 2003 and similar cases), as well as the lack of effective means of protection (ibid.).

In addition, in 2008 the Committee of Ministers noted the need for computerization of the judiciary and the creation of a working mechanism for the collection and analysis of statistical information on the cases. The Committee expressed concern with regard to the lack of an explicit provision in the new CCP on the reopening of the cases upon the delivery of a ECHR judgment that requires this (see the review of the measures with regard to *Ivanova v. Bulgaria*, 2007, above).

There has been no change in the implementation of the Committee of Ministers’ requirement for the inclusion in the legislation of an effective mechanism against refusal by the authorities to pay compensation to persons who have been given such on the basis of decisions of domestic courts (see *Anguelov v. Bulgaria*, 2004, *Mancheva v. Bulgaria* (2004), etc.) The Committee of Ministers also noted that even the new CCP contains a ban on forced execution of obligations against the state.

In the review of the execution of the ECHR judgments on *Al-Nashif and others v. Bulgaria* (2002) and *Musa and Others v. Bulgaria* (2007), the Committee of Ministers once again found the unsolved problem with the lack of suspension effect of complaints against deportation, revocation of permission to stay in the country and ban on entering the country, when these measures are based on national security considerations. Concern was also expressed with regard to the real possibility for judiciary control on the lawfulness of detention in the special detention centers for foreigners pending extradition or deportation on the grounds of national security.

### 5. Respect for Private and Family Life, Home and the Correspondence

In December 2008, parliament amended the legislative framework on the use of special intelligence means (SIM). In an attempt to comply with the ECHR requirements, the legislators provided new guarantees against abuse in the use of SIM. In June 2007, the ECHR had ruled against Bulgaria in *Association for European Integration*...
and Human Rights and Ekimdzhiev v. Bulgaria on the grounds of the SIM law. The ECHR found that the law was deficient as it did not foresee follow-up controls on the use of SIM by a body external to the services or at least guaranteed to be independent. According to the ECHR, such a body needed to monitor whether the use of special intelligence means really corresponded to the warrant awarded by the court; whether the evidence reflected correctly the contents of the information recorded; whether the information was destroyed within the statutory timeline if it has proven to be useless. Moreover, the court that has permitted the use of SIM had to be notified about the results from the use of SIM and to exercise control on compliance with the statutory requirements. The ECHR found “total lack of external control” in Bulgaria, as the interior minister was the only body controlling the use of SIM. The Court also noted the lack of regulation on the way such control was exercised by the minister, as well as that (s)he does not report to anyone on how the system for the use of SIM worked. According to the ECHR, there was also a lack of adequate regulation of the information storage and destruction procedures. Should the information collected exceed the scope of SIM use, it was the minister who, at his own discretion and without being subject to any independent control whatsoever, decided what to do with it. Another important safeguard omitted in the law was the obligation the persons under surveillance to be notified that they had been under surveillance, when this would not hinder the purposes of the investigation. The reason behind this is to allow the persons to protect themselves in case of illegal surveillance. In May 2008, the ECHR ruled once more against Bulgaria for the violation of privacy due to tapping.\footnote{See below.}

The December 2008 amendments to the SIM act provided for the creation of a National Bureau for Control on SIM, an independent body that carries out “monitoring”. Under the act, “control” on the use of SIM is still exercised by the interior minister and by the chair of National State Security Agency (NSSA). The National Bureau has the right to: demand information from the services; verify whether the SIM registers are kept properly; enter premises where documents and information are stored; issue compulsory instructions on the improvement of the regime. The Bureau reports annually to parliament. It is questionable, on the one hand, whether these powers meet completely the requirement for contents control on the use of SIM by the services. It is questionable, on the other, whether the Bureau, which is still not operational, will exercise these powers effectively. The statutory requirement that the members of the Bureau should have 10 years’ experience within the services, as an alternative to 10 years’ legal experience, is a cause for skepticism. If a significant number of the Bureau members are people who have worked in the services and are professionally and socially tied with them, then the probability that the Bureau will exercise control on the services in a critical and active manner is slim.

Another deficiency of the legislative amendments is that the persons under surveillance are notified about the surveillance only when the Bureau decides that the surveillance was illegal. This provision contradicts the ECHR requirement the people under surveillance to be unconditionally notified about this, when it becomes possible. The Bulgarian law introduces the condition that to inform these people, the Bureau needs to find an illegal act. Thus, the judgment of the Bureau predetermines the issue of whether the surveillance was illegal or not, as the matter will never be brought to court if the person never learns that he was under surveillance. With the statutory amendments, the services are required to report to the judge who has permitted the use of SIM. The report contains data on the type, the beginning and the end of the use of SIM, whether material evidence has been collected and whether the information collected has been destroyed. However, the report does not tell the judge the content of the information collected with SIM.

The problem with the arbitrary and discretionary tapping by the security services remained
unsolved in 2008. A scandal burst in September, when several members of parliament announced in the National Assembly that NSSA has arbitrarily collected printouts of their phone calls. A website owner declared that his phones were regularly tapped. The prosecutor general said that “what is going on, if it has really happened in the way we understand, is totally unacceptable and it’s obvious that measures need to be taken”. However, the results from the investigation of the allegations were not announced by the end of the year.

In 2008, the ECHR announced several judgments concerning the privacy of correspondence and breach of privacy by special intelligence means. The Court ruled for the second time on a case involving the use of SIM. On May 22 2008, in Kirov v. Bulgaria, the Court held a violation of the right to privacy and correspondence under Article 8 of the Convention. The applicant's phones were tapped on request by the Interior Ministry. The Court held that there is no independent body to review the use of SIM, and that the applicant had no way of getting information about the tapping of his phones and opportunity to defend himself.

In 2008, the privacy of the correspondence of persons in custody was the subject of an important ECHR judgment. On November 13 2008, in Bochev v. Bulgaria, the Court held a violation of the privacy of personal correspondence (Article 8 of the Convention) of detainees. It held that the Bulgarian authorities have systematically checked the private correspondence of detainees, with such checks not being “in accordance with the law” as stipulated by the Convention, i.e. without court order as required by Article 34 of the Constitution, and not having a lawful purpose or being proportional, least detrimental to the law means. The checks were based on Article 25(1) of Ordinance No. 2 on the Situation of the Accused and the Indicted in Detention (prom. 19.04.1999, in force until 2006) and Article 132 e) (3) of the Execution of Sentences Act (ESA), which allow the whole correspondence of the detainees, with the exception of correspondence with their lawyers, to be checked. In a 2006 decision the Constitutional Court held this ESA provision unconstitutional due to the great possibility the correspondence of the detainees to be checked without regard to their personal situation and the danger to the public that the correspondence may pose. The regime is already changed; the new provision in Article 178 of the Regulation on the Enforcement of ESA provides that the correspondence of the detainees is not subject to checking.

The privacy of detainees’ correspondence was also the subject of another case, Petrov v. Bulgaria. In a decision of May 22 2008, the ECHR held that the checks of the applicant's correspondence did have “the lawful purpose” of guaranteeing that this correspondence did not contain materials that could pose a threat to the security in prison. However, the checking of the whole correspondence, without consideration of its type, was disproportional and the court therefore held a violation of Article 8 of the Convention. It also held a violation of Article 14 of the Convention, which prohibits discrimination. Unlike married inmates, single ones were not allowed to call their partners even when they were living together with them and had children.

The Court also ruled on another case related to the privacy of correspondence and the home – Stefanov v. Bulgaria, decision of May 22 2008. The case involves a search and a seizure of computer equipment from the office of a practicing lawyer. The police seized the applicant’s office computer, together with all disks, in connection with the investigation of a crime in which the applicant was suspected. The ECHR held that, although the authorities had a lawful purpose of the seizure – investigation of a crime - they had not acted proportionally. The seizure warrant was formulated in such broad terms that it allowed the police to seize all of the

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13 Decision No. 4 of April 18 2006 on constitutional case No. 11 of 2005, prom. State Gazette no. 36 of May 2 2006.
applicant’s computer equipment, containing information that constituted a trade secret under the Bar Act, and keep it for two months. At the same time, the Court held that the Bulgarian legislation does not contain a procedure for contesting search and seizure lawfulness, due to which the applicant had no effective legal means of protection.

Protection against domestic violence was also the subject of a lawsuit against Bulgaria filed with the ECHR. In a June 12 2008 decision on Bevaqua and S. v. Bulgaria, the Court held that the state has violated the right to personal and family life of two Bulgarian nationals, Mrs Bevaqua and her minor son, S. The Court held that the Bulgarian authorities, represented by the police and the prosecution, had not taken adequate measures to penalize Mrs Bevaqua’s ex-husband’s violent behavior against her. The Court also criticized the sluggishness of the Bulgarian courts in defining temporary child care measures; the courts were to do so immediately, as the circumstances (aggressive behavior of the father) could have a harmful effect on the child’s development. The ECHR criticized the Bulgarian authorities’ inability to provide protection to the applicant in relation to the difficulties with the divorce and the aggressive behavior of Mrs Bevaqua’s ex-husband. Although significant evidence was presented for violence in the family, the police and the prosecution had not provided effective protection. Although they were not entirely passive, they neither penalized nor took any other restrictive measures against the illegal behavior of the husband, which constitutes denial of provision of immediate protection to persons in need. Instead, the authorities decided that such protection would not be necessary as the matter was a “personal argument”.

6. Freedom of Thought, Conscience, Religion and Belief

In 2008 there were no changes in the legislation regulating the relations between religious communities and the state, nor in the limits of citizens’ rights to exercise their religion. The restrictive and discriminatory Denominations Act, adopted on December 20 2002, remained in force. In December it became known that the ECHR judgment on the case concerning the so-called “alternative synod” of the Bulgarian Orthodox Church (BOC), filed when its priests were forcefully expelled from their churches in the summer of 2004, will not be in favour of the Bulgarian government. The judgment was announced on January 22 2009. There are two main consequences of its execution. The first is that the 2002 Denominations Act should be amended, inasmuch as according to the Court it violates Article 9 of the Convention. The second is that the state needs to find a way to “justly meet the claims” of the BOC wing that does not recognize Maxim as patriarch within a period of three months. This means that at least the scores of priests who were expelled from the churches in the police raid on July 21 2004, should return and, should the two BOC wings chose not to unite, the state will have to find a way of recognizing the so-called “alternative synod”.

In 2008, the violations of citizens’ religious rights were similar to those in 2007, both in terms of focus and in terms of severity.

An NGO was closed in April on accusations of being involved in activities that are only allowed to communities registered under the Denominations Act. This was the case with the so-called Ahmadii in Blagoevgrad, a division of the Muslim religion. The group had obtained registration as an NGO because in 2005 it was denied registration as a religion. However, on April 29 2008 the Supreme Court of Cassation revoked its NGO status following two denials in 2005 and 2007 of registration as a religion under the name of Religious Community of the Ahmadis. When denying the status of a religion, the Sofia City Court decided the Ahmadis may “cause dissent in the Muslim religious circles” and that their interpretation of the Islam is “not traditional”.

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for our country. A series of materials were published in the press and in the electronic media, describing the Ahmadis, in contradiction with the facts, as “a dangerous, totalitarian and terrorist cult”. Many observers thought that both the denial of registration as a religion to the Ahmadis and their deletion from the NGO lists is due to the resistance of the Chief Mufti’s Office which acted as a consultant with regard to the negative opinion submitted by the Council of Ministers’ Religions Directorate in relation to this case.

The management of the Chief Mufti’s Office was registered on April 21. The incumbent chief mufti, Mustafa Alish Hadzhi, retained his position. The registration was preceded by a conference of the Muslim religion on April 19. The conference was convened on order by the Sofia City Court, because the former chief mufti, Nedzhim Gendzhev, won a case with the ECHR. The ECHR held that his removal from his post and the involvement of the state in the internal affairs of the Muslim religion contradicted Article 9 of the Convention, while three area muftis and Gendzhev supporters, Shinasi Suleiman, Ramadan Malekov and Ibryam Isdlyam, filed a lawsuit contesting the regularity and the lawfulness of the 2005 convention at which Mustafa Hadzhi was elected chief mufti and Basri Pehlivan - chair of the Supreme Muslim Spiritual Council. Nedzhim Gendzhev and his supporters claim that in this case, as on many occasions in the past, the political powers, and more specifically the Movement for Rights and Freedoms, have intervened in favour of the election of a Chief Mufti’s Office management convenient to this party and the government.

In December a Smolyan court decided to terminate the activities of the Union for Islamic Religion and Culture, an NGO. The official reason was that the organization is involved in religious activities it has no right to perform, although by concept it is a religious educational organization, and it preaches ideas that “are not traditional” for Islam in this country. The organization became known by helping high school students from Devin file a complaint with the Commission for Protection against Discrimination because the Smolyan school authorities had banned them from wearing Muslim headgear in school.

During the year, there was a series of cases of hostile attitude to some religious communities, both on behalf of individual citizens, political and public powers and on behalf of local governments. The main subjects of such hostile attitude were, in an existing deplorable tradition, the Jehovah’s Witnesses.

The most severe case of manifestation of religious hatred was the early morning assault on September 11, 2008 against 53-year-old Hasan Salih Tahir, a Bulgarian Muslim from the village of Bogdanitsa, some twenty kilometers to the south of Plovdiv. He was attacked from behind, beaten until unconscious, and left helpless in the street where he was later found by other Muslims going for the morning prayer at the mosque. The assault was in the street, very close to the mosque. The victim’s jaw was broken, he had injuries on the face and hands. Most probably, this was a hate crime although at this time there is no information whether the perpetrators have been identified and indicted. The night before the incident, a group of 15-20 half-naked young people gathered in front of the mosque, shouted and cursed the people coming out of the prayer home. They threw a stone that hit a boy on the head. The people gathered for the prayer complained to a policeman who passed-by but police did not come; the hooligans stayed, shouted and insulted the people with impunity.

In February the Chief Mufti’s Office was “decorated” with graffiti insulting the Muslims on the newly-painted walls of the building. This is not an isolated case. Data provided by the chief secretary of the Chief Mufti’s Office, Husein Hafazov, there were more than 50 cases of desecration of Muslim prayer and administrative buildings in the past 10 years, i.e. between 1997

15 For more details, see “On People and Violence”, an interview with Hasan Salih, The Obektiv, No. 159 of October, 2008.
and 2007. This holds true for all area mufti’s offices but most of all for those in Kazanlak, Pleven and Varna. The perpetrators were caught in only two or three cases; for all the remaining cases, the perpetrators remained “unidentified”. The Chief Mufti’s Office told BHC that in their opinion in most cases the police remains apathetic to such manifestations and has a rather formalistic approach to the investigations. Both in the case of the insulting texts on the building of the Chief Mufti’s Office in Sofia and in a series of similar cases the press announced the desecration but there was no official reaction to denounce it.\(^ {16}\)

On June 13, 2008 it became known that the Ruse Municipal Council has made a decision whereby it requires mayor Bozhidar Yotov “to initiate the necessary measures to terminate the sound aggression emanating from the sound system of the Sais Pasha mosque”.\(^ {17}\) According to the majority in the local parliament, the sound system on top of the minaret is “a local source of noise” and the mayor was obliged to take measures to eliminate this noise as required by the legislation on the protection from environmental noise. The decision was adopted on initiative by the councilors of the Ataka Party upon collection of signatures initiated by the same party and after the visit to Ruse of the leader of Ataka, Volen Siderov. Thus for the first time in Bulgaria signals inviting the believers to prayer, i.e. the singing of the imam from the minaret, which are in their essence the same as the ringing of church bells, were categorized, in an obviously discriminatory manner, as a “noise”.

Several cities in Bulgaria continued to have municipal ordinances that restrict the right to public expression of religious beliefs. They may affect many religious groups, especially new ones that have still not been officially recognized or groups that are officially recognized nationally under the *Denominations Act*, but have not registered division in a given city. Under Article 19 of the *Denominations Act*, they may have local divisions if their by-laws provide for this, and the registration of a local division is left at the discretion of the religion itself. This ongoing problem concerns, more specifically, the Jehovah’s Witnesses and several other minority religious communities. In Burgas, the respective municipal ordinance prohibits in Article 1, para. 1 “the public expression of religious beliefs by representatives of religions that have not been registered under the *Denominations Act*”. Violations are penalized by a fine of up to 5,000 BGN (2,500 EUR). In Plovdiv, the local *Ordinance on the Protection of Public Order* in its Article 7, para. 1 prohibits “demonstrations, religious and other mass and public events without prior notification of the Municipality”. Religions may „organize public activities outside their prayer homes under the terms of this ordinance”, i.e. after they notify the municipality. On the grounds of this ordinance and on a very wide interpretation of its provisions, the police issued on August 8 2008 a “protocol of warning” to a member of the Jehovah’s Witnesses who was talking to individuals at the Plovdiv rowing canal. In Burgas, the above-mentioned ordinance was invoked in the summer of 2008 when a member of Jehovah’s Witnesses was warned by police that should he continue talking to citizens in the Sea Garden and offering them religious literature, he will be fined with a large fine. In October, two members of the Witnesses were warned in Gabrovo that they have no right to talk to citizens in public places between 2 and 4 p.m. In Razgrad, a family of foreigners belonging to the Witnesses received a phone call from an individual who introduced himself as a high-ranking police officer and told them that unless they put an end to their propaganda activities, they would be deported.

The public defamation campaigns against the Jehovah’s Witnesses continued in some cities; it seems that these attacks are tolerated by local governments, if not inspired by them.

\(^ {16}\) For more information, see „The institutions remained silent on yet another desecration of a Muslim building”, interview with Husein Hafazov, *Obektiv*, no. 152, March 2008.

\(^ {17}\) *Sega*, June 13 2008.
In 2008, the Varna municipal government continued to do everything to hinder the construction of a Jehovah’s Witnesses prayer home. This has been going on for eight years, with the municipality and mayor Kiril Yordanov himself constantly coming up with obstacles for the continuation of the construction. On July 16 the Supreme Administrative Court confirmed the decision of the Varna Administrative Court rejecting the Jehovah’s Witnesses complaint against the municipal order for the suspension of the construction of their prayer home. The mayor’s statement that as long as he was mayor there would be no Kingdom Hall in Varna, is a public secret in the city.

On April 9 2008 the municipality of Burgas sent a circular letter to all schools in the city. The letter, signed by Yordanka Ananieva, deputy-mayor and chair of the local Committee on Fighting Juvenile Delinquency, warned that “Christian religions that are not traditional for our country have become more active with regard to the upcoming Easter holidays”. The principals were mandated to bring to the attention of their students the text attached to the letter under the heading “Information” and to report to the municipality. The text includes untrue allegations and slander against the Jehovah’s Witnesses, the Church of Jesus Christ and the Latter Day Saints, and the Evangelical Pentecostal Churches of Bulgaria. For example, with regard to the Witnesses it claims: “In many cases, the result from this instigation (i.e., the propaganda of the Jehovah’s Witnesses) is depression, mental disorders and suicide”. With regard to the activities of the Pentecostal Churches, the brochure says: “Often visitors of their gatherings have entered unnatural state of trance, rambling in what is claimed to be ancient languages, and the probability of mental disorders after such séances is great”. The conclusion of the quoted “Information” is clearly slanderous: “What is typical of the above-mentioned cults and other similar religious formations is that they divide the Bulgarian nation and oppose it on a religious basis”. Despite the protests of the affected religious communities, it is not known that the municipality has apologized for its slanderous statements. An interesting detail in this case is that in a decision of November 3 2008 the Burgas Administrative Court leaves without review the complaint filed by the Jehovah’s Witnesses against the said letter of the municipality, on the ridiculous grounds that “the evidence submitted does not allow a conclusion of identity between the Jehovah’s Witnesses described in the information and the Jehovah’s Witnesses in Bulgaria”.

Throughout the whole late fall of 2008, a campaign including collection of signatures, rallies and publications in local and national media against the intention of the Jehovah’s Witnesses to build a prayer home in this city. The campaign was actively supported by the Ataka newspaper. It involved the local orthodox clergy, the local IMRO and Ataka chapters, and was obviously tolerated by the local government.

In Veliko Tarnovo, a court allowed a lawsuit filed by the relatives of a female member of the Jehovah’s Witnesses. They wanted her to be stripped of legal powers and placed under guardianship on the grounds of having a “mental disorder” because she was a member of the Jehovah’s Witnesses. It is a public secret in the city that the real reason behind this lawsuit is the desire of the relatives to acquire the woman’s property. The lawsuit was widely covered by the local press which published statements of the relatives.

7. Freedom of Expression

The situation with freedom of expression in Bulgaria deteriorated in 2008 due to a combination of old problems and new trends concerning all manifestations of this human right. There was no change whatsoever in the media functioning trends monitored by the BHC throughout the years. Generally, they fall in 12 categories that the BHC monitoring identified in 2008 as well:
- Unclear ownership of the media, non-transparent sources of the capital, hindering the identification of many of the players in this field and the assumption of clear responsibilities;
- self-censorship of the journalists, especially in the private media, due to both economic and political interests;
- aggressive interventions of PR agencies that transform the media into a space for evident corporate interests;\(^{18}\)
- increase in the advertising field, both directly and through intermediary mechanisms and their controlling effect on the content of publications and the independence of journalists;
- various forms of political pressure by the state and by individual parties represented in parliament;
- strongly expressed and widely disseminated racism, xenophobia, sexism and prejudice towards religious and sexual minorities;
- failure of the media regulator, the Council for Electronic Media, to enforce the law on the control over the radio and TV operators that violate it;
- inaction of the ethics committees in press and electronic media in cases of obvious violations of their codes of ethics;
- shrinking civic discourse in the media;
- significant arbitrariness on behalf of state and municipal bodies with regard to the access to information;
- violence against journalists, inaction of the investigating authorities;
- ongoing attempts at Internet censorship.

Apart from these old problems, which the BHC has outlined on numerous occasions, 2008 saw a new manifestation unseen so far that puts them on a totally new level. It includes extreme forms of physical violence against people because of their speech, severe intervention of the state to control Internet publications and dismissal of journalists from popular media for disrupting economic interests.\(^{19}\)

One of the most blatant cases of contract killings was the murder on April 7 of Georgi Stoev, author of novelized descriptions of underground events and personalities, including such involving people who in the past had assumed high positions in government. Himself a member of the organized crime structures, Stoev claimed and wrote that it was created by former nomenclature cadres of the communist regime and secret police officers. On several occasions he stated in public that he was ready to testify against prominent underground figures, but the prosecution and Interior Ministry did not respond to his wishes. By the end of 2008, the perpetrators of this crime remained unidentified.

On September 22 2008 several masked persons, who said they were policemen, used hammers and metal rods to break the arms and legs of Ognyan Stefanov, editor-in-chief of the Frog News website. This journalist is often linked with the Dangerous News website. The latter published a series of materials on the operations of the Bulgarian security services, as well as on President Georgi Parvanov’s personal life. Several weeks earlier the National State Security Agency (NSSA) used informal pressure to force the owners to close down the site, which they did. A journalist was detained and interrogated by NSSA for a long time, and Stefanov’s son received threats. Ognyan Stefanov’s name was mentioned again when several days later a scandal burst with regard to NSSA requiring printouts and tapping mobile phones; his phones, together with other ones, had been tapped.\(^{19}\) By the end of the year, the perpetrators remained unidentified. Frog News deputy editor-in-chief stated that after the assault Stefanov has received anonymous phone threats that “the same may happen again”.\(^{20}\)

Georgi Koritarov, the popular anchor of Nova Televiziya’s morning broadcast, was dismissed

\(^{18}\) For more details, see BHC, “Restructuring Publicity”, Sofia, 2005.

\(^{19}\) See Respect for Private and Family Life, Home and the Correspondence above.

suddenly in November. The station’s management quoted unclear reasons, such as “the failure of the anchor to observe the principles of journalistic pluralism and the use of the television for personal purposes”. According to Koritarov, he was dismissed because several days earlier he affected the interests of Lukoil by giving the floor to a businesswoman who revealed illegal and disloyal actions on behalf of the company. Lukoil disseminated a press release, in which it stated that “[Koritarov’s] dismissal is to a great extent the result of our insistence, for which we would like to thank the management of Nova Televiziya”. This company is a generous advertising client of many Bulgarian media. On November 21 the BHC addressed CEM in a special declaration, asking the regulator to exercise its statutory powers “with regard to the serious doubts for unprofessional reasons in the dismissal of one of the leading Bulgarian television journalists”.

The concentration of capital in electronic and printed media continued throughout the year. The electronic media conglomerates, such as Diema, Ring and TV2, created a huge concentration of media time which provides greater opportunities on the advertising market. In some cities, the cable networks have been bought by one or two owners, thus placing the audience in a situation of an informal monopoly. The change in ownership of Nova Televiziya and TV7 resulted in a domination of the entertainment culture, while genres relevant to the democratic debate were displaced. Following Georgi Koritarov’s discharge, the discussion format remained only in bTV’s Seismograph and Nova Televiziya's Na Chetiri Ochi. Due to their small audience, the new RE:TV and Evropa, oriented more to information and journalism, could not change the situation with regard to the pluralism of voices in the information space. Even the appearance of the new online publications did not have the expected effects for the democratization of public space.

A new player, New Bulgarian Media Group, added to the monopolistic position in the press of the WAZ publications, which have been dominating the advertising market for more than 10 years. Apart from buying newspapers – Monitor, The Telegraph, Politika – this group already owns a stake in the IPK – Publishing and Polygraphic Complex. The relations between the new players and the Movements for Rights anf Freedoms is a public secret and poses a serious threat to the ethics standards on information by the introduction of corporate and political interests. The extreme nationalist party Ataka continued to use SKAT television and the Ataka newspaper as megaphones.

In December, the Council for Electronic Media (CEM) conducted monitoring of the national radio's Horizont programme and Nedelya 150 broadcast. The CEM report notes that the people of unequal status, the sexual and the ethnic minorities are still kept out of national air – deficiencies that the BHC has noted with concern on many occasions. In January, the CEM organized a discussion on hate speech in the media, which clearly indicated the weak and ineffective role of the regulator in penalizing this type of speech. The self-regulation bodies also remained passive to this serious problem in the Bulgarian media. In a scandalous and embarrassing case, the most prominent journalism award for young journalists, Chernorizets Hrabar, was awarded in May 2008 to Kalin Rumenov, who often uses racist speech against the Roma. The award was established by the Publishers’ Union. Several international organizations protested at the end of August against the granting of the award to a racist. On September 10, representatives from the WAZ media group, owner of the largest dailies, joined the protest.

22 For more details, see BHC, How and Why Did Radio New Europe Stop Broadcasting, Sofia, 2007.
Several days later the Publishers’ Union and the Chernorizets Hrabar Academy, which acts as a jury, revoked the award.

Freedom of speech in Bulgaria was the subject of an important ECHR judgment, Kandzhov v. Bulgaria, of November 6 2008. Mr Kandzhov was arrested in 2000 for raising posters against the then minister of justice, Theodosii Simeonov, asking for his resignation and calling him “cabinet's top idiot”. Mr Kandzhov was detained for four days on charges of hooliganism and slander and sentenced probationary to four months in prison. Later, he was acquitted by the upper instances which did not accept that the use of the word “top idiot” discredits the minister. The ECHR held that Mr Kandzhov’s arrest was illegal and constituted a severe breach of Article 5 of the Convention, as at the time slander was only persecuted on the basis of a complaint by the victim and therefore slander charges could not be grounds for detention; in terms of the charges of hooliganism, the arrest was illegal as Mr Kandzhov did not use violence and did not breach public order. The Court also held that Mr Kandzhov’s arrest was a very severe violation of the right to free expression under Article 10 of the Convention. The applicant has the right to raise posters calling for the minister’s resignation; this right also includes the right to strong criticism of high-ranking public officials. Government actions in a democratic society should be constantly scrutinized by the public, which requires the high-ranking officials to abstain from penal repressions against their critics.

Freedom of the press provoked another ECHR judgment, Ivanova v. Bulgaria, of February 14 2008. The applicant, a journalist with the 24 Chassa daily, published in 2001 an announcement that Mr M.D., a prominent member of parliament, is on the “credit millionaires” list compiled by the Bulgarian National Bank. M.D. filed a slander lawsuit against Ms Ivanova and the court found her guilty of publishing untrue information and of not duly checking her sources prior to the publication. She was fined 500 BGN (250 EUR) and sentenced to pay Mr M.D. compensation in the amount of 2,000 BGN (EUR). The ECHR refused to hold a violation of freedom of speech, invoking the balance between freedom of speech and other people’s reputation, in the light of the fact that the case concerned factual allegations which, unlike evaluating statements, are subject to verification. The Court underlined that freedom of the press should be exercised with due responsibility and diligence in the provision of reliable information. The Court considered several factors: Ms Ivanova has formulated her statement in such a way that the readers were misled to believe they were directly based on BNB’s official list, and has failed to indicate that she was simply reiterating someone else’s allegations; she failed to prove the truthfulness of the facts alleged by her; she had not exercised due diligence in verifying the facts and has moved hastily to publish a piece of journalistic news; the wide dissemination of the article; the fact that local courts had released her from penal liability and had imposed a minimal fine and compensation, consistent with her income.

8. Access to Information

Important amendments were made to the international legal and the national legislative frameworks in 2008. At the same time, lawsuits continued to be filed against the refusal of national institutions to provide information. Many of them concern access to information pertinent to commercial relations between public institutions and companies. Often denied even to investigating journalists, this information would help establish practices of transparency and honesty and would help prevent corruption.

Amendments were made to the regulations on the protection of personal data. Rules and procedures for enhanced access to data concerning the electronic messages of the people were established by a normative act, an ordinance of the

24 This chapter is based on information from the Access to Information Programme, see The State of Access to Information in Bulgaria in 2008, available at www.aip-bg.org
minister of interior and the chair of the State Agency for Information Technology and Communications (SAITC). The ordinance was contested in court by Access to Information Program (AIP), an NGO, as contradictory to the Constitution and the European Convention on Human Rights.

International legislation

Following a two-year campaign, on November 27 2008 the Council of Europe adopted the world's first international legally binding document guaranteeing the access to information from public institutions. This is the European Convention on Access to Official Documents. The Convention will be opened for signing by the member states of the Council of Europe in 2009.

The elaboration of the convention began in January, 2006 and was accompanied by a wide-scale campaign by the three monitoring organizations – Access Info Europe, Article 19 and OSI Justice Initiative. The convention is aimed at setting common standards that would guarantee the access to information in each of the countries.

In Bulgaria, AIP engaged in advocacy in an international campaign for the inclusion of higher standards of access to information in the texts of the convention. On September 24 2008, AIP sent a letter to the members of the Bulgarian delegation at the Parliamentary Assembly of the Council of Europe. The letter appealed to the members of the delegation to support the opinion of the rapporteur from the Committee on Legal Matters and Human Rights, Mr Klaas de Vries, at the regular meeting of the Parliamentary Assembly of the Council of Europe (September 29 – October 3, 2008). The meeting’s agenda included a discussion and a vote on a draft opinion on a convention of the Council of Europe on access to official documents.

Bulgarian legislation

Amendments and supplements to the Access to Public Information Act (APIA) were promulgated in the State Gazette on December 5 2008. In March 2008, the Parliamentary Committee on Combating Corruption initiated consultations on the development of a bill on amending and supplementing APIA, in order to more clearly regulate the restriction of the right to access pertaining to commercial secrets. The team of the Access to Information Program was invited to take part in the consultations, in the capacity of non-governmental representatives with the greatest experience in the field of freedom of information. On May 28 2008, Martin Dimitrov and a group of Union of Democratic Forces members of parliament submitted to the National Assembly a bill on amending and supplementing the Access to Public Information Act. Another bill on amending and supplementing APIA was submitted on July 4, 2008 by the Committee on Combating Corruption. The texts of the two bills were consolidated and at the end of the year APIA was amended. The main aspects of the amendments include:

1. Expansion of the circle of obligated persons by the inclusion of: territorial units of government bodies; physical and legal entities receiving financing from funds, projects or programs of the European Union; commercial entities financed or controlled by the state;

2. Introduction of a requirement for the institutions to publish public information online;

3. A clear connection between the term “commercial secret” and the possibility of unfair competition between traders, and introduction of an obligation to indicate circumstances resulting in this;

4. Introduction of a check for prevailing public interest in divulging information that would constitute a commercial secret;

5. Transformation of the option to provide partial access into an imperative.

Available at: [http://www.aip-bg.org/documents/coe_convention_aod.htm](http://www.aip-bg.org/documents/coe_convention_aod.htm).
The amendments are fully consistent with the European standards, including with the newly adopted Council of Europe Convention on Access to Official Documents.

In January 2008, the Interior Ministry and SAITC adopted Ordinance No. 40 on the storing and the provision of data by mobile and Internet operators. The ordinance was met by a wave of criticism by civil society and business, due to the serious breach of the privacy of correspondence. According to the text of the ordinance, it has been adopted in implementation of Directive 2006/24/EC. Under this directive, enterprises providing public electronic networks and services must keep the data for each electronic call - date and time, place and parties in the communication – and for each electronic message (via Internet). In a complaint filed on March 19 2008, with the Supreme Administrative Court (SAC), the Access to Information Program raised the issue of the lawfulness and the compliance with the Constitution of the said ordinance. In a decision of July 17 2008, a three-member SAC jury rejected the complaint without ruling on the arguments thereof for contradiction with Articles 32 and 34 of the Constitution and Article 8 of the European Convention on Human Rights. The decision was appealed in a cassation complaint and in a December 11 2008 decision a five-member SAC jury admitted that the provisions of Article 5 of the ordinance contain no restriction with regard to the data to which access is allowed via a computer terminal, and that the expression “for the needs of operative search purposes” is too general and provides no guarantees for compliance with Article 31, para 1 of the Constitution, which guarantees the privacy of personal life. Also, there are no conditions that prevent abuse of the possibility of breaching constitutionally guaranteed civic rights. No reference is made to the special laws – the Penal Proceedings Code, the Special Intelligence Means Act and the Protection of Personal Data Act – which specify the prerequisites in allowing access to certain data pertaining to personal life and personal data. On these grounds, the five-member jury repealed the decision of the lower instance, as well as the contradictory Article 5 of the ordinance.

**Practices under the Access to Public Information Act**

For 12 years the Access to Information Program has been monitoring the practices with regard to freedom of information in Bulgaria. The experience shows that the requested information varies greatly. Most of the cases consulted by the team of the programme reflect specific violations of the right to access to information. Others are related to violations of the right to protection of personal data. There are also cases of violations of the right to seek, receive and disseminate information in a more general sense. The AIP monitoring over the past year indicates that information seekers more often desire to have their violated right to access to information protected in court.

In one such case, AIP helped appeal a denial by the chief secretary of the municipality of Vratsa to provide access to the job descriptions of the mayor, the chief secretary, the director of social activities and housing, and the manager of the Sportni Imoti municipal enterprise. In another case, the chief secretary of the Municipality of Vratsa refused to provide access to a contract signed between the Municipality and the Regional Directorate of MIA for the protection of public order within the municipality. The reason for the refusal was that the requested information concerns the interests of a third party (i.e., the police) which has not given its explicit consent to provide the information. The main argument in the complaint was that under Article 31, para. 5 of APIA, third party consent is not required in cases when the third party is an obligated entity and the information pertaining to this party is statutorily public. These conditions are met in the case, as the third party itself – the Regional Directorate of MIA – is an obligated entity under APIA in its capacity of a state body as defined by APIA.
Progress was achieved in 2008 in connection with the administration not implementing court decisions. Upon the filing of an application developed by AIP, the Supreme Administrative Court fined the interior minister 200 BGN (100 EUR) for non-compliance, over a period of one year, with an obligation under the Access to Public Information Act arising from a SAC decision. The minister’s non-compliance included the lack of response to a request by Yordan Todorov, a journalist from the 168 Chassa weekly, after his initial refusal was repealed by a July 2007 decision and the file was returned to him for a new decision. In their motives, the magistrates rejected the minister’s explanation that the delay was due to a delay in the procedure of soliciting consent from the third party affected, since at the present moment (July 2008) there was no evidence that minister has responded to the journalist’s request. The July 9 2008 decision of the court is the first decision in the AIP practices by which an executive power body is fined for non-compliance with an obligation under APIA.

In another case completed in 2008, the court held that the information about the contract signed by the State Tourism Agency (STA) and a private company for the provision of a booth to present Bulgaria at the World Travel Market 2007 in London, is public. This conclusion was reached by a jury of the Sofia City Administrative Court in its decision of June 11 2008. The STA chair had justified his refusal with a simple statement that the information concerned the interests of a third party (the said company) which had not given its consent to provide this information, as well as that the latter constituted a commercial secret, as the contract contained a confidentiality clause. The motives of the decision stated that information on presenting Bulgaria as an attractive tourist destination is of special importance to many citizens. It also stated that the contract had been terminated and that the parties were bound by its clauses only until the moment of its termination. In this respect, the jury found that the STA chair was therefore not bound by the confidentiality clauses and should have provided the information requested.

An important decision with regard to the protection of the right to information was the one in which a five-member SAC jury adopted an extended interpretation of the expression “description of the information requested”, thus putting an end to the erroneous judiciary practice by which when the initial request for information has been formulated as a request for the provision of access to a document, it would not constitute a request for access to public information, as it did not contain a description of the information requested as defined by APIA. Thus, the July 24 2008 decision repealed the decision of a three-member SAC jury and the refusal of the minister of culture to provide Yurii Valkovski access to public information concerning a copy of the order for the assignment of a working group on the development of an ordinance required under the Culture Protection and Development Act. In the justification of their decision, the magistrates indicate that the three-member jury had incorrectly accepted that the way the initial request was formulated – for the provision of a copy – did not constitute request to access public information, as it did not contain a description of the said information complaint with APIA. Such a conclusion is in contradiction with the provisions of Article 26, para 1, item 3 of APIA, under which one of the forms of providing access to public information includes paper copies, which if taken literally is sufficient to accept that since the request concerns a copy of an order, it constitutes a valid request to access public information. Also, the name of the information – on the appointment of the working group on the development of a draft ordinance required by Article 5, para. 4 of the Culture Protection and Development Act, contains a description of the information requested in the indicated format – a copy of the order.

In another decision of October 22 2008, the court held that the information on the amounts paid by a municipality for publications in local media – decisions, orders, announcements, invitations, protocols and other municipal documents – is public under APIA and should be provided upon request. Such information may not be refused on
the grounds that access affects third party interests that have not given their explicit consent, as in such cases the media, albeit commercial companies involved in free economic activities, are also involved in activities with regard to the promulgation and dissemination of municipal acts, financed with funds from the municipal budget. The media are therefore not third parties as defined in Article 31, para. 2, of APIA, but obliged entities under Article 3, para. 2, item 2 of APIA. This conclusion was made by a SAC jury with regard to the lawsuit filed by the Center of the Non-Governmental Organisations in Razgrad Association against a refusal by the mayor of Razgrad. The SAC magistrates repealed, on the above-mentioned grounds, a decision of the Razgrad Administrative Court and ruled to repeal the refusal of the mayor and to return the file to him for execution of the judiciary instructions on the implementation of the law.

In a decision of September 11 2008, a jury from the Sofia City Administrative Court repealed the refusal of the chief secretary of the Ministry of the Environment and Waters (MOEW), Tamer Beysimov, to provide the Ecoglasnost National Movement access to the minutes from the meeting of the National Council on Biodiversity held on November 25 2007, when only two votes determined the exclusion of the buffer zone in Rila from NATURA 2000. Furthermore, the court required MOEW to provide the requested document within 14 days of the day the decision took effect. Nature preservation activists expect that the transparency achieved through the Bulgarian court will help save the Rila buffer zone from the concrete mixers.

9. Freedom of Association and Peaceful Assembly

The restrictions imposed by the authorities on the right to peaceful assembly were lesser in 2008 than in the previous year. Nevertheless, as in other years, peaceful assemblies of the Macedonians in Bulgaria were restricted. On March 4 representatives of the UMO Ilinden Association notified the mayor of Sandanski that they were planning a public event to be held at Yane Sandanski’s grave at the Rozhen Monastery from 10:30 am to 3:00 pm on April 20. The purpose of the event was to commemorate the anniversary of the death of Yane Sandanski by presenting wreaths and staging a literary and musical performance. On March 17 they received a response from the mayor, allowing them only half an hour for the event, from 10:30 to 11:00 and only with regard to the part involving the laying of wreaths. The justification was that other events organized by the Yane Sandanski high school were to take place on the same day and at the same time. UMO Ilinden activists learned that these activities were in fact planned for the next day. The mayor’s order was appealed to the Sandanski District Court; the court denied a lawfulness review on the grounds that the mayor has not banned but had only restricted the event in time and that only mayor’s bans are subject to lawfulness review. On April 20 vehicles of UMO Ilinden activists were stopped on their way to the Rozhen Monastery for checks. Some 30 police officers were present at the place of the event. One of them tried unsuccessfully to remove the band from the wreath that was placed on the grave.

On July 27 2008, the UMO Ilinden Association was able to hold the planned commemoration of the 105th anniversary of the Ilinden Uprising at the Samuilova Krepost locality, once again with strong police presence. On September 12 2008, UMO Ilinden activists held in Blagoevgrad a rally in memory of the Macedonians killed in the Bulgarian genocide alleged by Macedonia. Before the rally had even started, the police seized one of the organisation’s banners, which read “12.09. – day of the genocide against the Macedonians in Bulgaria”.

When UMO Ilinden activists placed wreaths and a poster reading “UMO Ilinden” on the Gotse Dlechev monument, a civilian took the poster and

tried to trample it. The activists managed to take it and the individual started cursing and insulting them. This happened some 40 meters away from the police officers present at the event. During the commemoration police asked UMO Ilinden supporter Atanas Urdev to give them his camera. Urdev refused and was taken to one of the Blagoevgrad precincts where his camera was forcefully taken away. When the police took the film out, the camera was returned to Urdev and he was released.

Representatives of the UMO Ilinden PIRIN political party, supported mainly by Macedonians, announced that none of their peaceful assemblies during the year has been banned and that they were able to hold such assemblies both indoors and in the open. However, they also announced that many police officers were present at their open-air events in the first half of the year and filmed them with cameras.

In April, the government initiated yet another campaign of summoning UMO Ilinden PIRIN members to the police precincts to check their signatures under the articles of association. These summons were in essence a continuous harassment of the Macedonians in Bulgaria. On New Year’s eve (2008/2009) the UMO Ilinden PIRIN club in Gotse Delchev was painted with “HOMO” signs and swastikas. This is the third assault on this club since 2005. On previous occasions the police had been notified, but did not take any action.

In 2008, the Committee of Ministers of the Council of Europe once again identified the lack of a solution to the issue with the registration of a political party of the Macedonians as a systematic problem. This problem will continue to be reviewed until the ECHR decisions on UMO Ilinden PIRIN et al. (2005, final 2006) and UMO Ilinden et al (2006) are executed. The Council found a similar problem with Zhechev v. Bulgaria (2007) and its execution.

The lack of an effective legal means of protection against violations of the right to peaceful assembly (see Green Balkans v. Bulgaria, 2007) is another systematic deficiency of the Bulgarian judiciary system. This problem will continue to be studied in UMO Ilinden and Ivanov (2005, final 2006) with regards to the development of the new Assemblies, Rallies and Manifestations Act by the Ministry of Justice.

10. Conditions in Places of Detention

In 2008 the conditions in many places of detention in Bulgaria were inhuman. Despite the large number of judgments of the European Court of Human Rights and the recommendations of the European Committee for the Prevention of Torture included in the report for the Committee’s visit in 200627 (published in February 2008), the system did not show the necessary dynamics towards change.

Prisons

A total of 13 prisons exist in Bulgaria - eight for multiple offenders, three for first-time offenders, one for women and one for juveniles. The prisons have a total of 23 dormitory facilities of open, transitory and closed type. Between 2000 and 2005, the number of inmates grew steadily, leading to overcrowding in most prisons. A reverse process began in 2006 and 2007 and continued in 2008. By December 31 2008, the number of inmates in prisons was 9,408, a reduction by 8.4% over the previous year. The figure on the next page shows the number of inmates in prisons and prison dormitories for the period 2000 – 2008:

There was also a reduction in the number of remand prisoners in prisons after 2005. The figure below shows the number of remand prisoners in the prisons over the last five years:

The figure above shows the number of inmates in the prisons over the last five years.

The 2002 amendments to the Execution of Sentences Act resulted in a gradual increase in the number of people deprived of their liberty in prison dormitories. To this end, regime requirements for accommodation at dormitories of open type were relaxed. This resulted in a gradual increase of the number of inmates in such dormitories. The figure below shows the number of inmates in dormitories of open and transitory type for the 2004 – 2008 period:

By the end of 2007, the number of inmates in dormitories of transitory type was steadily increasing. In 2008, however, it went down for the first time, as a direct consequence of the overall reduction of the number of inmates over the past several years. The same relation is observed with regard to the dormitories of open type, where the reduction began in the preceding year. Despite the reduction in the number of inmates, the insufficient living area continued to be a major problem for the penitentiary system. The strategy for greater use of prison dormitories did indeed help alleviate overpopulation in most prisons for multiple offenders and in the dormitories of closed type. At the same time, the capacity of some dormitories of open and transitory type proved insufficient and in some of them the number of inmates exceeded their capacity.
The physical conditions in many prisons were inhuman. The situation was most critical in Pleven, Varna, Plovdiv and Burgas, where the personal space per inmate in multiple offender cells was not more than 2 m$^2$, and the open-air space was less than 1 m$^2$. In the most overpopulated prisons, 15 to 20 inmates share a cell, which required double and even triple bunks. The cells in eight of the twelve prisons do not have their own lavatories. During the day, a lavatory is used by 30 to 50 inmates, and during the night the inmates have to use buckets. The main buildings of most prisons were constructed before World War II. Despite the urgent need of reconstruction and repair, the funds allocated for such purposes over the past years are insufficient. After Bulgaria’s accession to the European Union, the management strategies for a comprehensive reform of the prisons are still not implemented and the efforts of the professional management of the prisons to get the funds needed for the construction of new prisons or at least for repairs of the existing facilities have not achieved the desired results. Nevertheless, procurement procedures were initiated for the most urgent activities and the construction of toilets at the cells and of meeting rooms in some prisons began. In 2008, there were two new aspects with regard to the prison system:

1. In early December 2008, the government adopted a strategy for the development of the places of detention (2009-2015), an action plan for the strategy and an investment program for construction, reconstruction and modernization of prison facilities. In the short term, the improvement of prison conditions will include standardization of accommodation terms, as well as improvement of the interaction between the different institutions, in order to optimize the measures for the regulation of prison populations. The justification of the strategy states that the living area in the cells is approximately 2 m$^2$, compared to the recommended standard of 6 m$^2$; there is no drinking water in most cells, lighting openings are small and do not provide sufficient inflow of fresh air and sunlight. The main purpose of the strategy is to modernize and reform the penitentiary system in line with the European standards and to make the execution of penalties more humane.

2. At the end of the year the government concluded the work on the coordination and the formulation of a bill on the execution of penalties. The bill was submitted to the National Assembly on December 17 2008. Together with the strict regulation of living area and living conditions for each inmate, the bill bans all forms of torture, cruel or inhuman attitude, reduces the regimes and the types of dormitories, and enhances the role of the ombudsman for independent oversight.

Staff and material deficits and the inability to provide the necessary volume of specialized assistance created serious obstacles to the delivery of medical services in prisons. They still remain isolated from the national healthcare system in terms of facility standards, administration, reporting, statistics and volume of medical check-ups, prophylactics and prevention. With a few exceptions, the medical centers in prisons to prison wardens hinders the independence of the medical centers and the inspections of the sanitary and hygienic conditions which are directly related to the health status of the inmates.

The working conditions for inmates should not be different than those outside the prisons. Occupational safety and hygiene are lower in prisons due to the lack of objective external control. Norms and wages should not be a result from subjective judgment by officials, furthermore that this labour does not entail social security benefits and the respective insurance for occupational incidents.
Investigation detention centers

By December 31, 2008, there were 43 investigation detention centers in the country with a total of 723 detainees, an insignificant reduction over the last years. However, detention center premises are used for other purposes as well. In 2008 they were used to accommodate 20,860 persons, of whom: detainees under guarded arrest – 5,296; detained for 72 hours – 1,496; individuals with nationwide search warrants in their name – 470; detainees transferred “be delegation” for investigation or court proceedings – 14,970. During previous years, several scores of investigation detention centers were closed as they did not allow for reconstruction, as a result of a governmental program for the improvement of the conditions in detention facilities. The program called for the closure of 33 investigation detention centers but in 2008 the closure of detention centers was suspended.

As a whole, the physical conditions in the investigation detention centers are worse than those in prisons. A confirmation to this end is the large number of convicting sentences over the past several years, both by local courts and by the European Court of Human Rights, which continue to deem detention center conditions inhuman and degrading. The above-mentioned strategy for the development of the places of detention (2009-2015) covers also the investigation detention centers whose reform was not a priority for the government so far. In order to make the conditions in the detention centers more humane, it is necessary to effect reconstructions and renovations as to provide normal lighting, ventilation, opportunities for detainees to perform physical exercise and visitation facilities. This, however, is very difficult due to a series of structural peculiarities, such as the lack of external windows providing natural light and fresh air to the premises, as well as the lack of toilettes at most detention centers. The detention center in Plovdiv, one of the most heavily used, is to be relocated to a renovated building within the prison in the spring of 2009. Some detention centers in regional capitals are heavily used due to their use as premises for detainees under convoy. The situation in the border detention centers in Svilengrad, Petrich and Slivnitsa, where urgent actions are needed, is even more serious.

Apart from the lack of toilettes and windows, the open-air facilities are also a problem for the detention centers. Such facilities exist in only 16 detention centers. Another 10 have indoor facilities for physical activities. In the remaining 18 there is no possibility to provide premises and the only opportunity for exercise for the detainees is when they get access to the toilet. Another problem for the detention centers is the inability to offer the detainees purposeful activities and access to radio and television broadcasts and reading materials.

Both the quality and the volume of the medical services in the detention centers need to be optimized. These services are still not integrated within the national healthcare system. The specific profile of the persons held at the detention centers requires serious medical expertise. In 2008, there were four death cases in the places of detention; 899 inmates are addicted to drugs.

Juvenile reformatory institutions

Placement of children in social educational boarding schools (SBS) and correctional boarding schools (CBS), the two types of juvenile reformatory institutions in the country, is defined in Bulgarian legislation as a “correctional measure”. In essence, however, it is a penal procedure ending with deprivation of liberty.

The system of SBS and CBS in the country changed dramatically over the past several years. Out of 8 CBS and 24 SBS in 2000, only 4 CBS and 5 SBS remained functional at the end of 2008. The reduction of the number of such institutions began after the enactment of legislative amendments which require the placement to be confirmed by a court, upon decision of a local municipal committee. However, even the judicial
sanction does not guarantee that children’s rights will be respected.

The examples below, discovered by BHC in 2008, illustrate the problems faced by the procedure and the practice of placement in SBS and CBS:

1. Placement in SBS of a child aged over 16, in contradiction with the Juvenile Delinquency Act;
2. Detention of a juvenile in SBS after the end of the academic year, in violation of a court decision that explicitly states a final timeline for the placement;
3. Placement in CBS without all required documents, including placement documents;
4. Placement and lasting institutionalization of a child without a personal identification number;
5. Placement of children in CBS for short periods that make the placement meaningless;
6. Placement in CBS and SBS of children whose homes are at a great distance from the boarding schools. Such placement is in essence exile and is not in the best interests of the child.

The existence of CBS and SBS in their current form creates a series of problems arising from the mixing of different categories of children in these facilities – children placed on purely social indications and children who have been involved in anti-social actions. The remoteness of these institutions from the cities is a hindrance to the opportunities for communication and social adaptation of the children, leads to problems with the delivery of medical services, finding sponsors, providing transport, hiring skilled teaching staff, etc. All this has a negative impact on the teaching, which is considerably less effective than in the mainstream schools. Due to all this, the state institutions responsible need to review the meaning of having such correctional facilities and to seek alternative measures for problematic children.

**Institutions for temporary placement of minors and juveniles and crisis centers**

A total of five institutions for temporary placement of minors and juveniles exist in Bulgaria, in Sofia, Plovdiv, Varna, Burgas and Gorna Oryahovitsa. These report directly to the Interior Ministry and are used for the placement of children who have been involved in anti-social actions, children without a domicile, vagrant or beggar children, as well as children who have left without permission compulsory education or involuntary treatment facilities. In essence, the stay in such institutions constitutes short-term deprivation of liberty. The duration of the stay may not exceed 15 days and is ordered by a prosecutor. In exceptional cases, the stay may be extended to up to two months. The regulation of the placement of children in such institutions contradicts not only the Child Protection Act (CPA), under whose Article 26 the placement of a child in a specialized institution is ordered by a court, but also the European Convention on Human Rights, which provides that every deprivation of liberty must be accompanied by immediate access to court for judgment of its lawfulness. A contradiction with the local and the international legislation exists also with regard to children’s right to legal defense from the moment of detention. The BHC was unable to find a single case of placement in an institution in which legal counsel had been provided prior to, during, or after the measure was imposed.

The placements in crisis centers, established in Bulgaria in the fall of 2006, constitute an even more drastic contradiction with the standards on the rights of the child. Children who were victims of trafficking are placed in such centers for a period of up to six months. BHC monitoring of these centers shows that the placements are done only by an instruction or an order of the directors of the Social Assistance Directorates. Again, in contradiction with Article 26 of the CPA, these placements are not ordered by a court, despite the fact that the crisis centers are specialized institutions. The arbitrariness of the placement
creates serious problems for the children in these centers. Not only children who were victims of trafficking, but also children who have had anti-social acts, are accommodated in these centers. In individual cases, upon the expiration of the six-month period, the placement is extended for another six months by a second order. In essence, the placement in such crisis centers is – to an even greater extent than the placement in CBS and SBS – a deprivation of liberty, as the children are not allowed to leave the center unaccompanied, and if they escape, an nationwide search warrant is published. As in the case with the institutions for temporary placement of minors and juveniles, the procedure for placement of children in crisis centers does not entail the provision of legal counsel.

11. Protection Against Discrimination

The practices of the Commission for Protection Against Discrimination (CPD) with regard to the Protection Against Discrimination Act (PADA) continued to evolve in 2008. The commission made significant progress in its development as a rights protection body. A series of decisions it handed down are at a rights protection level rarely achieved by a Bulgarian institution. Still, certain errors – some of them serious – need mending.

Achievements

The CPD systematically invoked international law, including Community law. It explicitly gave international norms precedence over domestic ones, as required by the Constitution. In one case, the CPD held – in an unprecedented for a Bulgarian body way – that the authorities may not use domestic laws to justify their non-compliance with international norms, by quoting the Vienna Convention on the Law of Treaties. The Convention explicitly provides that the authorities have the obligation to repeal all domestic legal norms that contradict international anti-discrimination law.

The CPD has a series of rulings that are effective and aimed at achieving the purpose of the law. The CPD explicitly invokes the result prescribed by Community law directives as a starting point for the interpretation of the applicable norms. For example, the CPD comes with a wide, teleological interpretation of the instance of harassment. When judging whether the respective actions or words have humiliated the victim and have created a hostile environment for him/her, the Committee is governed by a contextual analysis of all circumstances and by the logic of life. In some cases, the sound judgment and the understanding by which it takes into consideration the destructive effects of certain actions exceed by far the achievements of case law in this respect. Quite a few court decisions involve formalism and restrictiveness when solving harassment cases.

The CPD is decisive in penalizing employers who have not taken measures to protect their employees from sexual or other harassment at the workplace. Its arguments that the employer must immediately put an end to the harassment and notify the victims of the measures taken, are strong. The CPD takes to court employers who, instead of protecting staff complaining of harassment, persecute them. It adamantly reveals the employer’s prejudice against the victim and in favour of the harasser. The CPD interprets the term “persecution” (victimization) in line with the purpose of the law to provide effective protection – widely, by including in its scope any penalizing and isolating actions and inactions. For example, in one case the CPD explicitly underlines that the reading in front of all staff of a complaint from an employee against the employer constitutes persecution against the person who has filed the complaint.

In many cases the CPD conducts contextual analysis of the facts, uses sound real life logic to establish a link between facts and consequences and judges them without any formalism and scholastics. Thus, in a case involving unequal pay to teachers at social professional education facilities for people with disabilities (SPEF), the CPD explicitly considers the fact that the chances
for socialization and employment of people with disabilities are directly related to the quality of the educational opportunities for them. Although the case was not formally for educational discrimination against SPEF students but for labour discrimination against their teachers, the CPD acknowledged the link between the two and solved the second issue in the light of the first – a sound, rights protecting approach.

In a series of cases the CPD explicitly recognizes that primary and secondary legislation is discriminatory. In some cases it does not hesitate to use its powers to instruct the institutions responsible about the needed legislative amendments.

The CPD approach to assuming and officially collecting evidence is effective, pragmatic and flexible. It requires and obtains videos and Internet content and subjects them to review. In this, its practices are superior to those of the courts; the latter often have a rigid and scholastic attitude to such sources of information, which hinders the establishment of some categories of facts. The CPD is also liberal in constituting the parties in the proceedings. It identifies the interested parties officially, on the basis of their actual pertinence to the respective issues.

The CPD issues on a regular basis instructions to the offenders to initiate specific measures to eliminate the discrimination or its consequences. It systematically orders termination of discriminatory practices and bans them for the future. For example, it instructs media to introduce self-control and discrimination prevention mechanisms and to periodically report the results to the commission. A novelty is that in 2008 the CPD publicly, through the media, ordered several discriminators to apologize for their actions and to publish the CPD decision establishing their responsibility. This is definitely a positive development towards pro-active and recovering sanctioning with a public education effect.

There is also a visible development in the commission practices with regard to the distribution of the burden of proof. The CPD is more and more active in requiring the defendants to provide convincing proof of their actions and to prove legal, non-discriminating reasons behind them. The CPD often explicitly announces that defendants’ explanations are unfit and refuses to accept them, even when supported by some evidence, if their statements are inconsistent or unjustified by life and the evidence cannot be fully trusted.

The CPD is developing a strong practice against racist hate speech. It rules with strong motives against the trend of journalists indicating the Roma origin of alleged criminals. Invoking the international standards, the CPD defines this as hate speech and qualifies it as harassment in violation of the PADA. The commission analyses media self-regulation in this respect and firmly reveals measures that are formalistic and declarative. The CPD’s consistent approach is that freedom of expression is restricted by the constitutional imperative to respect human dignity, and the prohibition of harassment is a means of observing this imperative. The same approach is also applied with regard to rough political speech that lowers whole categories of citizens who are not public figures, on the basis of their political affiliation.

In line with international law, the CPD rules that racial segregation may exist even without forced separation, when the separation is a product of objective trends. This liberal interpretation is commendably devoid of following the letter of PADA, which provides a narrowing definition of racial segregation.

**Deficiencies**

The CPD still allows serious internal contradictions in its practice. In some cases, it refuses to rule whether discrimination is present, only because the controversial treatment is included in secondary legislation, although in other cases it doesn’t hesitate to rule not only against secondary but also against primary
legislation. In one case, the commission directly rules that it has no competences to establish discrimination in secondary legislation, as such acts are subject to judiciary control only. Such an interpretation hinders seriously the implementation of the PADA.

In quite a few cases the CPD refuses to rule and to apply the PADA, accepting that it is not competent to do so. The Committee does this when there is another legislative act applicable to the case and/or another body responsible for some aspect of the controversial relations. These refusals are a serious deficiency as they hinder the universal application of the special PADA which should derogate the other laws, even more so the secondary legislation, with regard to discrimination.

The CPD does not conceptualize correctly the statutes of indirect discrimination. In some cases, it deems as indirect discrimination behavior that is in fact direct discrimination – less favorable treatment on the basis of a protected attribute. In one case, the commission explicitly ruled that indirect discrimination is worse treatment whose causal relation with a protected attribute is hidden. Such an interpretation is fundamentally wrong and in reality makes the indirect discrimination meaningless as a separate statute. Unlike direct discrimination, indirect discrimination exists when the treatment is the same for everyone but in reality puts certain groups defined on the basis of a protected attribute in a less favorable position, disproportionately more than others. The CPD does not reflect this in its practice and in reality is not applying this legal statute, thus seriously reducing the protection under PADA.

In some cases the CPD explicitly rules that for the discriminator to be held responsible, his or her actions need to be intentional. This is in direct contradiction with the statutory definitions of direct and indirect discrimination, in which intent is not included. The requirement that the discrimination should be intentional in order to constitute a violation of the law illegally deprives the victims of protection in many cases when the exclusion or the restriction is not due to a desire of the discriminator to harm the victim, but to deeply rooted (unrealized) stereotypes on the place and the roles of the people depending on their sex, age, health condition and other protected attributes.

In some cases the CPD unjustly requires proof for the allegations in order to move on a complaint. When the plaintiff fails to provide such evidence, including because it does not exist (but still needs to be collected), the CPD refuses to admit the complaint. Such a practice is a problem because it places a barrier to defense, instead of the CPD using its wide competences to collect evidence in the interest of the effectiveness of the law.

In one case, the commission refused to review a complaint for discrimination on the basis of disability, as the plaintiff had not provided a decision of a specialized occupational medical committee as proof of his disability. Such an approach is in a serious contradiction with the understanding of the disability, which the CPD otherwise maintains in other decisions. By requiring medical proof for the disability attribute, the CPD ignores the definition of disability under the Integration of People with Disabilities Act, which states that it is the factual existence of a dysfunction that is decisive and not its medical diagnosis. Instead of following this definition, the CPD ties the protection under the PADA with medical proof of the disability. Such an approach is also in contradiction with the PADA itself, which prohibits discrimination even when it is based on an assumed attribute. In other words, it is sufficient that an individual has been treated worse because they have been assumed as having disrupted functionality, regardless of whether this is true or not, or whether the disability has been diagnosed. In this respect, the existence of a decision of a specialized medical committee is irrelevant.

There are also other cases in which the CPD requires the attribute on which discrimination is alleged (for instance, political affiliation) to be
proven in order to admit the complaint. Apart from the fact that protection must be provided to an equal extent in case of assumed (and not factual) attribute, the issue of the attribute as a factor for discrimination is an essential issue and should not pose a barrier to the review of the case.

The commission practice with regard to the attribute as an element of the facts concerning the alleged discrimination and as a procedural prerequisite for the review of a complaint varies. In some cases, when an attribute is not indicated clearly, the CPD refuses to move on the file. In many other cases, however, it reviews the facts and rules on their essence, including by finding discrimination when no specific attribute for the controversial treatment has been named or established. Such unequal application of the PADA hinders the achievement of equality before the law.

The trend of the CPD reviewing and establishing discrimination without a specific protected attribute culminates in the development of the so-called “discrimination while exercising the right to employment” and “workplace harassment” as separate, non-attributed, forms of violation. The CPD introduced the latter in 2008, and the former in preceding years. Neither of them is based on legal grounds. The PADA doesn’t regulate such forms. In any case, the attribute is an element separate of the area in which discrimination is observed (employment, services, etc.). In all cases of direct discrimination and harassment, the controversial treatment needs to be on the basis of a specific protected attribute. By not respecting this, the CPD is watering the boundaries of discrimination, thus extending the scope of the law to uncontrollable levels.

The CPD is also bending the limits of the law by interpreting the “personal status” attribute too widely. In reality, every circumstance or feature falls in the scope of this term as defined by the CPD (for example, conflicts between relatives or the expression of a critical opinion). When everything is a potential protected attribute, this not only makes the concept of such attributes meaningless but such an approach is in contradiction with the legislative intent.

The CPD is not using its powers of self-referral in a consistent and strategic manner. It uses self-referral in individual, unrelated, sometimes petty or accidental issues, omitting the top priority problems in the field of discrimination, such as the segregated Roma education, the lack of housing rights and the isolation of the Roma and the institutionalization of people with disabilities, among many others.

The CPD still often rules with insufficiently motivated decisions, some of them one-sided and even arbitrary. For example, the Committee shows prejudice towards complaints filed by inmates.

12. Right to Asylum, Freedom of Movement

In 2008, BHC continued its monitoring and advocacy activities with regard to the right to asylum and international protection for persons fleeing persecution on the basis of their race, religion, nationality, affiliation with a specific social group or political convictions. The right to asylum and protection in Bulgaria is regulated by Article 27, paras. 2 and 3 of the Constitution, the UN Convention relating to the Status of Refugees of 1951 and the UN Protocol Relating to the Status of Refugees of 1967, as well as by the special Asylum and Refugees Act (ARA). Under the national regulations, Bulgaria provides four forms of protection to foreigners who have fallen victims to persecution and violation of their basic rights: asylum, refugee status, humanitarian status and temporary protection.

The right to asylum is a statute regulated by Article 27, para. 2 in relation with Article 98, item 10 of the Constitution. Under these provisions, and under Article 7, para. 2 of the ARA, it may be granted by the President of the Republic. Since it was established, this institution has never granted asylum. It has not developed capacity to review
and decide on asylum applications. The approach of the current presidential administration, under which foreigners filing asylum applications are required to submit official documents issued by their countries of origin, is a violation of the prohibition stipulated in Article 63, para. 4 of ARA. In late 2007 and early 2008, the Supreme Administrative Court (SAC) announced several decisions by which it terminated proceedings on complaints against refusals of the State Agency for Refugees. The justification was that the initial request was for asylum and the agency’s decision is null and void as it infringes on the competences of the president. Such an interpretation, apart from requiring the foreigners to assign legal qualification to their requests in breach of the usual practices of the courts, also violates basic principles of international protection by transferring the responsibility for the provision of such protection from an administrative body required to make a decision to a representative institution which is not required to make a decision and is incapable of providing the legal rights and guarantees that accompany the proceedings.

Refugee status and humanitarian status are the forms of protection granted by a specialized administrative body, the State Agency for Refugees (SAR) with the Council of Ministers on the grounds of Article 27, para 3 of the Constitution, Article 1A of the Convention on the Status of Refugees and Articles 2 and 3 of the European Convention on Human Rights. The difference between the two statuses is defined not only by the reasons for their granting, but also by the rights the foreigners with the respective status have. According to Article 32 of the ARA, a foreigner who has been granted refugee status has the rights and the obligations of a Bulgarian citizen, with several explicit exceptions. Under Article 36 of the ARA, foreigners who have been granted humanitarian status have the rights and obligations of permanently resident foreigners. This difference in the rights is one of the possible reasons behind the fact that in 2008 the number of recognized refugees was relatively low in comparison to the number of foreigners who were granted humanitarian status – only 3.6% or 27 of a total of 746 new asylum seekers. In comparison, 381 foreigners or 51% were granted humanitarian status over the year. The overall share of recognition in 2008 was 54.6%, i.e., significantly higher that the 34.4% in 2007.

On the background of this positive development, however, it should be noted that the number of people seeking asylum in Bulgaria has plummeted by 23% in comparison to 2007. This is due to the worsened access to the territory and the procedures for asylum seekers. Such worsening may be to a great extent explained by the provisions of the Ordinance on the responsibility and the coordination of the State Agency for Refugees, the Border Police Chief Directorate and the Migration Directorate of the Ministry of Interior, adopted by Council of Ministers’ decree No. 332 at the end of 2007 and in force since January 15 2008. Under Article 16, para. 1, item 3 of this ordinance, the border police must have the foreigners who have applied at the border handed over to the Migration Directorate for accommodation at the special institutions for foreigners. The ordinance allows exceptions from this rule only in the case of foreigners from vulnerable groups, such as unaccompanied minors, pregnant women and persons with mental and physical disabilities, who are handed over directly to the SAR. This provision is exceptionally restrictive and violates the SAR right – granted under Article 58, para. 4 of the ARA – to access to procedure, as well as the rights granted to the asylum seekers during the procedure, such as the right to accommodation and food, social assistance, health insurance, accessible medical assistance and free medical services, psychological assistance and, most of all, the right to freedom of movement.

The freedom of movement, enshrined in Article 13 of the Universal Declaration on Human Rights and Article 12 of the International Covenant on Civil and Political Rights, is every person’s right to move freely and to choose a domicile within the boundaries of any country, as well as the right to leave his country and to freely return to it. In the
national legislation, this right is guaranteed in Article 35 in relation with Article 27, para. 1 and Article 26, para. 2 of the Constitution. The ordinance quoted above resulted in a legal and factual situation whereas asylum seeking foreigners were obligatorily placed in conditions of administrative detention at specialized institutions. This detention is legally effected by the issuance of an act for enforcement of an involuntary administrative measure by the police. However, the involuntary accommodation measure is effected in order to ensure the involuntary deportation or extradition of the detained foreigner. This means that involuntary accommodation may not be imposed if there is no deportation measure. Thus, both the ordinance and the practices with regard to its implementation were in direct violation of the principle of non-refoulement under Article 33, para 1 of the Convention on the Status of Refugees in relation to Article 67 of the ARA. Given the fact that the legal prohibition to deport asylum seeking foreigners until a final decision is made on their application, the involuntary accommodation is meaningless, the rules introduced by the ordinance result only in unnecessary restriction of the freedom of movement of the asylum seekers who have filed their applications at the border and in this sense constitute state arbitrariness. As in previous years, one of the main problems with regard to the human rights of foreigners in general was the duration of the deportation procedures conducted by the Migration Directorate of the Interior Ministry. The average duration of the involuntary stay (detention by administrative procedure) at the special institutions for involuntary accommodation of foreigners varies between three and six months; however, the special institution in Busmantsi is currently occupied by some foreigners whose administrative detention by the police has continued for more than 24 months. As a rule, none of these detentions is subjected to immediate judiciary control for lawfulness. In the most dramatic cases of long-term detention, there is also an apparent inaction on behalf of both state services, while the foreigners continue to be deprived of their right to liberty and freedom of movement, in violation of Article 5.1.f and Article 5.4 of the European Convention on Human Rights. Surprisingly, in 2008 the third division of the Supreme Administrative Court changed the previously positive judiciary practice of repealing prolonged accommodation and ruled the complaints against involuntary accommodation orders inadmissible, regardless of the duration of the accommodation. This practice resulted in a total denial of justice to the foreigners accommodated at the special institutions for temporary accommodation of foreigners, for whom judiciary review, albeit belated, was the only means of control in preventing police arbitrariness. Due to the contradiction between this approach and previous case law, the Chief Prosecutor’s Office referred to SAC with a request for an interpretive decision, on which the Supreme Lawyers’ Council nominated a BHC lawyer as its representative. The interpretive decision is still pending.

On April 24 2008, the ECHR ruled on S.G. et al. v. Bulgaria. The Court once again criticized the formalistic approach of the Bulgarian courts when reviewing complaints against orders for the deportation of foreigners on national security grounds. The applicant in this case had settled in Bulgaria 1992 and had a permanent residence permit. In 2005 the authorities ordered his deportation to Turkey for being a threat to national security. The order is based on a classified police report and did not include any specific facts apart from the general statement that according to the said report S.G. was implicated in trading in drugs. The Bulgarian courts dismissed S.G.’s complaints against the deportation order, motivating their decisions only with the classified report, without any other verification of the facts or of other evidence. The ECHR criticized the Bulgarian authorities’ approach to deport without specific facts or indications why the persons pose a security threat. This creates an obstacle to adequate defense in the appealing of the orders by the persons concerned. The court paid special attention to the excessively formalistic approach of the courts when reviewing such complaints, basing their decisions
completely and solely on unconfirmed information in a classified report. The court held that despite the fact that the applicant has had a formal opportunity to appeal, he was in fact deprived of minimal protection against abuse, which was a violation of his right to personal life under Article 8 of the Convention.

During the year the Committee of Ministers of the Council of Europe continued its review of several cases related to previous deportation of foreigners. It postponed for 2009 the review of the execution of the individual measures on the ECHR decisions on *Al Nashif at al. v. Bulgaria* (2002) and *Musa et al. v. Bulgaria* (2007) concerning the possibility of the applicants to enter Bulgaria.

13. Discrimination against People with Mental Disabilities in Institutions

Based on data provided by the Ministry of Labour and Social Policy (MLSP), at the end of 2008 there were 15 institutions of closed type that provided institutional care to people with mental disorders, and 28 institutions that provided such services to people with developmental disabilities. These institutions continue to exist in isolation, without any significant changes in living conditions, compared to previous years. As a result of the pressure by human rights organizations, there is a growing theoretical understanding on behalf of the state bodies of the necessity to provide humane living conditions and, more specifically, adequate living conditions. The criteria used in 2008 by the Social Assistance Agency (SAA) in the monitoring on the activities of some of these institutions are further evidence that such a change has occurred. We cannot claim that the actual living conditions have improved significantly over the year. Even the SAA reports show that, despite the significant amounts invested, the living conditions in many institutions have not improved. A more worrying fact, however, is the lack of understanding for the need to create a supportive environment in terms of attitude, lack of discrimination, abandoning the stigma, respect for the basic human rights and the dignity of the clients of such services. In this respect, the situation in the institutions is far below the necessary standards.

One of the reasons why these problems are so severe is the fact that the people in such institutions are placed there against their will and are legally incapacitated. In reality, no one cares about the preservation of their rights. Despite the fact that current legislation includes some means of protection of the interests of persons under guardianship, including persons in institutions, these opportunities are easily neglected. Thus, the people accommodated at such places, associated in the public mind with places for the delivery of 'long-term care', continue to be one of the most deprived groups, without any real chance of access to protection of their basic human rights. They were not subject to SAA monitoring, have not attracted the attention of the local governments or of any other institution.

Some specific cases from the last year illustrate the extent of the lack of interest on behalf of the state and the municipal authorities in the fate of the incapacitated people. In 2008, BHC researchers had a meeting with Ms Z.T., currently accommodated against her will at an institution for people with mental disorders outside the

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28 This information is based on the data in letter ref. 92-348/23.12.2008 from MLSP-SAA sent to the BHC under the procedures for access to public information. National Statistical Institute data for 2007 indicate that the number of institutions in that year was 55, including institutions for adults with mental disorders, developmental disabilities and dementia. There is no information that any institutions were closed down in 2008.

29 The 2008-2010 National Report of the Republic of Bulgaria on the Social Protection and Social Inclusion Strategies, adopted by the Council of Ministers of the Republic of Bulgaria on 25.09.2008, states: «In comparison to 2005, 2.7 times more funds were directed to the municipalities in 2008 for social services and activities delegated by the state. This made it possible to significantly increase the maintenance standards for social services.»
community. Ms Z.T. was placed under guardianship by her relatives and isolated from society at their request. The director of the institution established that the woman has preserved not only her intellectual capacity and will, but also possesses good abilities for social inclusion. As in hundreds of other similar cases, by becoming legally incapacitated Ms Z.T. lost her real chances to have her case reviewed and to implement any of her wishes or intentions. Her relatives, as her guardians, have preserved the right to make decisions on her fate. The lack of will on behalf of the mayor of the municipality, who is the guardianship and trusteeship body and therefore the only person empowered to exercise control on the actions of the guardian, hinders any attempt of the incapacitated woman to adequate protection of any of her human rights. The lack of understanding on behalf of the prosecution of the severity of the crimes against people in such a vulnerable position has also been demonstrated on many occasions. In this case, the BHC initiated actions to protect Ms Z.T.’s interests. The behavior of the institutions after they received the signal for the violations against Z.T. illustrates their attitude to the problem. Regardless of their competences and the declarations of concern, none of the institutions empowered to protect Ms Z.T.’s interests had initiated adequate measures so far. Instead, after months of delays, the prosecution sent the file to another district, invoking formalistic reasons. Meanwhile, Ms Z.T. and people in a similar situation continue to live their lives in a restricted environment, isolated from the community, with their rights to freedom and security and to personal life being violated, in inhuman and degrading conditions. Considering the number of institutions outside the community and given the fact that 80% of their population are incapacitated, it becomes clear that thousands of people are in the same situation as Z.T. and that the problem is a systematic one.

In confirmation of the above, we can show many examples from the everyday work of the BHC researchers and legal program. Upon signals sent by the BHC, the Sofia District Prosecutor’s Office investigated over twenty cases of real estate fraud of people with mental disabilities, many of whom placed under guardianship. The BHC undertook the defense of a victim of a real estate fraud, also placed under guardianship, who was forced to live in an institution outside the community as a result of this fraud. There are many similar cases. The inaction and the indifference to the problems of these people on behalf of municipal mayors, prosecution and court, play a great role in making the people in this vulnerable group an easy prey to various forms of fraud and violence. Here is one more example of a case in which the inaction of these bodies resulted in a severe violation of the human rights of a person diagnosed with epilepsy and a developmental disability. M.H. had lived with these two conditions throughout his whole life, but that hadn't hindered him from living in the community, owning property and dealing with his everyday life. In 1993, a relative convinced him to transfer by contract all his properties to her in exchange of her taking care of him. M.H. agreed, but reasonably preserved his right of use on the properties. Immediately after the signing of the contract, the relative filed a request for placement under guardianship and had M.H. accommodated in a social institution. She soon lost any interest in his fate and even filed a request that another guardian be appointed, which the guardianship and trusteeship body accepted without criticism. The newly-appointed guardian is the social worker at the institution in which M.H. was accommodated. The same social worker had already been a guardian of more than 40 other inhabitants of the institution. In the meanwhile, M.H.’s relative initiated a series of actions aimed at disposing of the properties. In the final phase, she filed a request for the elimination of M.H.’s right of use on the properties due to the fact that he has not been using them for ten years because he was living in an institution. The court approved the request without conducting a critical analysis of the evidence which indicated that M.H. had spent these ten years in an institution of closed type against his will. Thus, deprived of all his properties and rights, today M.H. is also deprived of his whole income. By signing the contract, he lost his right to pay a reduced fee for the social service he has to use against his will. Today, he is
living at the institution, without any income or opportunities, deprived of his freedom, of his choices, of a chance to get adequate treatment or adequate legal protection. His guardian sees no problem with his situation. In her opinion, the fact that there are many more people in the same situation explains M.H.’s situation and justifies the actions of everyone implicated.

What is worrying in this case is that in 15 years the guardianship and trusteeship body had not once requested a report from the guardian about his trustee, nor had found anything irregular in regard to M.H.’s placement in an institution. The lack of will for the implementation of the statutory rules for control on the guardians is shocking. In this case, it was necessary to require at least one report by the guardian, which was to be read with care about the fate of the person placed under guardianship. This would have made the _mala fide_ actions visible and M.H.’s defense possible. The devaluation of the people under guardianship accommodated in institutions, the deserting of the mayors of municipalities from the responsibility to exercise control on the actions of guardians, the lack of understanding by the prosecution of the severity of the crimes against people from this group, as well as the lack of understanding that the people in such a vulnerable situation are being neglected, reveal lasting discriminatory attitudes to these people.

In 2008, the deinstitutionalization of people with mental disorders and developmental disabilities, deprived of access to life in the community in the long term, remained a term void of meaning and consistency. The process was painfully slow and sabotaged by both the lack of legislative reforms and discriminatory practices, lack of consistency and understanding of the essence of the process and the real needs. It is not accidental that, despite the large amounts allocated for the implementation of this process, only 42 persons have been reintegrated in the community.\(^{30}\) However, even this number should be questioned as many of the so-called “sheltered houses” in which many of the people from the institutions are being integrated, are built in the courtyards of the institutions, in the same remote locations, at the same conditions that provide no opportunity for future development. The interdepartmental commissions on the deinstitutionalization of the people from institutions for adults with disabilities are an exotic form of inaction masked as action.\(^{31}\) The activities of these commissions remain vague and unclear, and the results are dubious. The decisions made by these commissions are not subject to control and the people affected by them are not involved in any way in the results and often don’t even know that they were the “object” of such judgment. In most cases, these commissions work on a piece by piece principle, without any connection with reality. For example, three persons from the institution for adults with developmental disabilities in the village of Rusokastro, municipality of Kameno, were selected for deinstitutionalization. One of them was a BHC client. The “selection” led to nothing. The response to an official request for information sent by BHC to the Social Assistance Agency\(^{32}\) with regard to this client’s desire to live in the community clearly demonstrated the helplessness of the state bodies and the lack of will for deinstitutionalization. We were told that our client has been “selected” for deinstitutionalization but that there are only two “sheltered houses”\(^{33}\) for people with disabilities in Bulgaria. The alternative that SAA offered was to accommodate this person in another institution of a closed type. Set against this background, the self-assessment of the government with regard to the deinstitutionalization appears curious. The 2008-2010 National Report of the Republic of Bulgaria on the Social Protection and Social

\(^{30}\) Information from the letter quoted above.

\(^{31}\) Letter 92-76/11.04.2008 sent by SAA to BHC states that interdepartmental commissions were formed in implementation of the Concept on the Deinstitutionalization of the Specialized Institutions for Children and of the Social Institutions for People with Disabilities Accommodated at Special Institutions, which will conduct an assessment of all persons accommodated in institutions and come up with a conclusion on the possibility of accommodating them in protected homes or of their reintegration.

\(^{32}\) Ibid.

\(^{33}\) One in Blagoevgrad for men, and one in Varna for women.
Inclusion Strategies, adopted by the Council of Ministers of the Republic of Bulgaria on 25.09.2008, states as a problem of the social policy the low quality of life in the specialized institutions:

„For years the improvement of the quality of life in the specialized institutions is a serious challenge to Bulgaria’s policy. The modernization of these specialized institutions for both children and adults does not entail physical and financial aspects only. Such investments are made in the institutions. The more urgent task is to modernize the care itself by the introduction of new methods of working with the users, staff training, etc. Attracting the non-governmental sector as a leading partner in this process is a challenge with regard to which we were unable to achieve significant progress under the 2006-2008 social inclusion plan.“

We cannot but agree with this conclusion. It demonstrates the helplessness of the state institutions to deal with the situation in the closed institutions. This helplessness dooms thousands of people to life in a situation in which their human rights are severely violated. Given the seriousness of the situation of the people accommodated in institutions and of those under guardianship, on December 3 2008 the World Organization against Torture (OMCT) together with BHC and the Mental Disability Advocacy Centre (MDAC) submitted to the Bulgarian parliament an appeal to put an end to the violations of the rights of people with mental disabilities. The focus was placed, among other things, on the need to change the legal norms regulating the statute of placement under guardianship. In this respect, we should also note that during the last year the European Court of Human Rights gave priority to a complaint supported by the BHC, in which the deficiencies of this system and the severe violations of human rights resulting from its implementation, are reviewed in detail.

Apart from the above, two events of special importance in the field of the protection the rights of people with mental and intellectual disabilities that occurred in 2008 are also worth mentioning. The BHC achieved an unprecedented success with regard to the case law in the field of guardianship. In a decision of December 12 2008, the SAC repealed the guardianship on G.T., a BHC client. The decision was the culmination of four years of judiciary proceedings. In its decision, the SAC accepted that a developmental disability and “a mental disorder in the wide meaning of the word” are not grounds for incapacitation. This case is one of a kind and changes the case law in Bulgaria, indicates a positive change in the court’s attitude to the problems of the people with mental disorders and developmental disabilities.

A real chance for a legislative change aimed at improving the situation of the incapacitated people was missed in 2008. The new Code of Civil Procedure became effective on March 1 2008. The Code doesn’t entail a change in the rules for incapacitation and reinstatement of capacity. As in its previous versions, there are no provisions that guarantee access to court to the people under interdiction. Also, it doesn’t contain provisions that guarantee adequate legal protection of people against whom an interdiction request has been filed, as well as a reliable mechanism for review of their legal situation.

A Family Code bill was submitted to the National Assembly on April 1 2008. The bill was adopted at first reading in October. Similarly to CCP, the draft Family Code does not contain provisions that would improve the situation of the people under interdiction. The only change in this respect is the creation of registers of the people under interdiction, a measure that is by far insufficient to achieve a real change.

34 For additional information, see: http://www.bghelsinki.org/index.php?module=news&id=1857
35 For additional information, see: http://www.bghelsinki.org/index.php?module=news&id=1348
36 For additional information, see: http://www.bghelsinki.org/index.php?module=news&lg=bg&id=1900
37 See Right to Fair Trial above.
14. Women’s Rights and Gender Discrimination

In the summer of 2008, the Council of Ministers adopted the 2008-2009 National Action Plan on Encouraging Gender Equality. This is the first plan in this area that the government has adopted after Bulgaria’s accession to the European Union. Its purpose is to harmonize the national legislation with the Roadmap for gender equality between men and women (2006-2010). The plan incorporates serious measures for the strengthening of gender equality in business, education, healthcare and culture. Attention is also paid to the decision-making processes and the elimination of sex-based violence and human trafficking. Specific measures are planned for men and women with regard to combining family and professional life. However, the plan doesn’t provide a comprehensive approach to the issue nor specific steps to encourage gender equality, provided with the necessary financial means. It lacks important elements, such as the creation of a specialized state body on the implementation of the gender equality policy, the use of the gender budgeting approach. There are no policies aimed at encouraging gender equality in the work of the trade unions and the employers’ organizations.

The action plan will be implemented within the available budgets of the respective ministries, and not through specialized and targeted funds.

Non-governmental organisations are not included in its implementation, which is a significant deficiency given the lack of knowledge on the topic on behalf of the representatives of the institutions and their need for capacity building in this area.

A new bill on equal opportunities for men and women was developed and approved for submission in plenary by the parliamentary Committee on Human Rights and Denominations. The draft calls for the creation of a specialized body to ensure gender equality in Bulgaria.

The gender equality policy also covered the protection of women’s labour rights. According to the amendments of the Labour Code (in force since January 2009), working women are entitled to paid maternity leave for a period of 410 days for each child. The father also has the right to 15 days parental leave after the birth of the child and when the child is 6 months old, the father may use leave instead of the mother, for the reminder of the 410 days. Guarantees were established for parents who come back to work after having used parental leave. They will be assigned to the same position as before and will benefit from any improvement in the working conditions that has been made during the period of their leave, including the respective increase of salaries and training. The positive effect from the transformation of the maternity leave into paid parental leave for both parents will be delayed by years. The current social and economic realities are such that it will be mostly the women who would leave work to raise their children.

Almost four years after the enactment of the Protection from Domestic Violence Act, the effect of its application is regarded as positive. In almost ¾ of the cases in which a protection application was filed, the courts issued protection orders, mostly to female victims. In order to eliminate certain deficiencies in the law, the Ministry of Justice created a working group to develop a draft for the amendment of the act. The draft calls for: greater protection for the victims of domestic violence during court proceedings; extension of the circle of persons eligible for protection under this act; greater protection for children and people with disabilities; as well as the assignment to the Ministry of Labour and Social Policy of coordination functions and a special budget for the implementation of the act. The newly established alliance of non-governmental organizations for protection against domestic violence in 2008 advocated the financing of the delivery of services to victims of domestic violence, as well as the incrimination of the violation of judiciary protection orders.
The new Code of Civil Procedure also introduced important positive changes in the divorce proceedings. Instead of the compulsory reconciliation meeting, now there is an opportunity for out-of-court settlement. The court quickly and without the possibility of appeal defines the measures during the divorce concerning the alimony, the family home, the use of the property acquired during the marriage, the care for the children. These changes provide women and children with faster and more effective protection against domestic violence and serve as a guarantee for their personal rights.

The first judgment in a domestic violence case (Bevaqua and S. v. Bulgaria) announced by the European Court of Human Rights in June 2008 was along the same lines. The Court held that the domestic violence against mother and child during the lengthy divorce proceedings constitutes a violation of their right to personal and family life and that the Bulgarian authorities, including the courts, the prosecution and the police, had failed to protect the applicants.

Despite the greater legislative efforts, in 2008 there was no adequate governmental policy or program featuring a clear approach to domestic violence as sexually motivated violence. The 2007-08 Prevention and Protection against Domestic Violence Programme does not consider the need of specific protection for female victims of such violence, and for protection of specific groups of women, such as pregnant women, women from minorities, etc. The program doesn’t have a budget corresponding to the needs on a national scale.

In the field of the prevention of trafficking in human beings, an action plan was elaborated in 2008 by the working group on the provision of the national reference mechanism for victims of trafficking. The main elements of the plan include: identification of probable victims of trafficking; cooperation between individual persons and institutions; protection and support to victims; social inclusion and return. The plan is being implemented from the beginning of 2009 through the cooperation of state institutions and non-governmental organisations. Its implementation will be partially funded by the National Commission for Combating Human Trafficking, as well as through individual projects.

15. Rights of the Child

The UN Committee on the Rights of the Child convened in May 2008 to review Bulgaria’s report on the implementation of the country’s obligations under the UN Convention on the Rights of the Child. Many recommendations were addressed to Bulgaria in relation to real deinstitutionalization, provision of access to education to Roma children and children with disabilities, protection of the children with anti-social behavior, victims of trafficking and exploitation. In Bulgaria, these recommendations remained unheard at government level.

Different trends were observed in 2008 with regard to the rights of children in specialized institutions. A positive one was that the rights of the children in institutions and the inability of the government to formulate a clear, comprehensive, long-term policy about them got the attention of the Bulgarian media and many non-governmental organisations. First of all, as a result from the international campaign for the protection of the children with disabilities, provoked by the BBC documentary “Bulgaria’s abandoned children”, Bulgaria’s prime-minister and president denied the problems of these children, saying that everything possible is being done for them. The documentary was shown at the European Parliament where a discussion was held in March 2008 to focus the attention of the international community on the problems faced by all institutionalized children with disabilities in Europe. During the discussion, Bulgarian MEPs also denied the existence of the problem.

By December 2008, 30 children and young people were still living in the notorious Mogilino institution. No measures for their
deinstitutionalization were planned. Of the six small houses for the children of Mogilino, paid for by the Bulgarian taxpayers, only one (for six children) was opened in October 2008, with insufficient financing. Agreements were signed for the remaining houses with the municipalities of Varna, Ruse and Sofia. The institution in Mogilino must be closed finally by June 2009.

Unfortunately, the public discussion and the media coverage of the problems faced by the children in specialized institutions didn’t result in the formulation of a clear, long-term, coordinating policy of the government. A girl from the institution in Tran was killed in 2008; the movie “Baklava” came out, revealing the problems in a Burgas childcare institution; a French film about the children in the institutions in Medven and Rudnik was shown; many materials were broadcast and published about physical and sexual abuse of children in the institutions. Nevertheless, when asked by the BHC to inspect all institutions for children with disabilities, the Bulgarian prosecution failed to find any evidence of crimes against children.

Still, as result from the international pressure, the Bulgarian prime-minister planned amendments to the Child Protection Act and the related legislation, aimed at making the entry into children’s institutions more difficult and at making the care for children with disabilities more individualized and improving its quality. To this end, the minister of labour and social policy convened an interdepartmental working group with representatives of all relevant ministries and non-governmental organizations providing care for children. The drafts developed by the state institutions and the NGOs differed significantly and in October 2008 it became clear that the proposals of the NGOs are not accepted by the government.

The government announced that six children’s institutions will be closed as part of the deinstitutionalization police; by the end of 2008, they were not closed and the responsible bodies weren’t doing anything to close them.

The state financing for the children in the institutions was increased in 2008, but this did not lead to better quality care. The government refused to increase the child allowances and the family benefits so that parents would not be forced to abandon their children at institutions for social and financial reasons.

In October 2008 the international NGO Mental Disability Advocacy Centre (MDAC) won a lawsuit against Bulgaria under the European Social Charter (revised) concerning non-compliance on behalf of Bulgaria with its obligation to provide education to the children with mental disabilities accommodated in institutions. On the occasion of the decision, the BHC and MDAC held a round table with the participation of representatives of all key ministries and non-governmental organisations which presented their experience with the challenges of inclusive education for children with disabilities. Unfortunately, despite the attempts of the BHC and MDAC to help the government draft and implement an action plan aimed at complying with the obligation to provide education to the children with disabilities, it continued to ignore its commitment.

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