Human Rights in Bulgaria in 2011
Annual report of the Bulgarian Helsinki Committee

The Bulgarian Helsinki Committee is an independent nongovernmental organization for the protection of human rights. It was founded on 14 July 1992.

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Contents

Cooperation with international bodies for the protection of human rights 5

Right to life 6

Protection from torture and inhuman and degrading treatment 9

Right to liberty and security of the person 13

Independence of the Judiciary and fair trial 15

Right to respect for private and family life, home and the correspondence 19

Freedom of conscience and religion 22

Freedom of expression and access to information 26

Freedom of association and of peaceful assembly 33

Conditions in places of detention 34

Protection against discrimination 43

Right to asylum, freedom of movement 49

Rights of people with mental disabilities in institutions 53

Women’s Rights 58

Rights of the Child 60

Rights of people with a different sexual orientation 65
Throughout all of 2011, Bulgaria was governed by the center-right party Citizens for the European Development of Bulgaria (GERB). Governing with a parliamentary minority, it received varying and uncertain parliamentary support from MPs who had broken away from various parliamentary groups, as well as, during the first half of the year, support from the extreme nationalist party Ataka, known for its anti-minority, xenophobic and homophobic rhetoric.

On 23 and 30 October 2011, presidential and local government elections were held in Bulgaria. The presidential elections were won by the ruling party. In most large cities and overall as a percentage of votes cast in the country, GERB also won the local elections. The elections were held according to the new Election Code, whose implementation caused significant organizational chaos. There were also many complaints of administrative and media manipulation of the vote, as well as complaints of vote-buying. The elections were observed by an OSCE delegation and by several other delegations. The Bulgarian Helsinki Committee (BHC) also took part in the election observation. The OSCE delegation confirmed a series of discrepancies with the law and with the practice concerning the norms for a fair electoral process and made recommendations for greater transparency on the part of the electoral administration in making decisions before and during the elections; revision of the voter lists; the possibility for using minority languages in election campaigns; better supervision over the expenditure of funds and the securing of more fair media coverage, including by securing free air time for the candidates.¹

Despite the fact that positive changes were made to the law and institutional reforms were achieved in some spheres, in 2011 serious violations of human rights were also committed in many other spheres, especially concerning the excessive use of force by law enforcement bodies, discrimination against ethnic and religious minorities, freedom of expression and religious freedom.

¹ The OSCE delegation’s report and recommendations can be found at: http://www.osce.org/odihr/elections/Bulgaria/81973.
In 2011, Bulgaria continued to turn its back on the implementation of judgments of the European Court of Human Rights in Strasbourg (ECtHR). In early 2012, the Committee of Ministers of the Council of Europe observed a record number of Strasbourg Court judgments that have not been executed – a total of 345. Some of them, whose implementation the Committee of Ministers was monitoring, were handed down as long ago as 2000-02. In cases concerning the murders of civilians in conditions of detention by police and which require a reopening of investigations, the government stubbornly refused to take any measures whatsoever. The situation is similar with respect to other judgments, including the recognition of the rights of unpopular minority and religious groups. Due to the years-long refusal to take measures regarding the excessive length of criminal and civil court proceedings, in May the Court delivered two pilot decisions in this sphere, which specify concrete measures to the Bulgarian authorities and give a deadline for their implementation.²

In its July session, the UN Human Rights Committee (HRC) examined Bulgaria’s report, which was presented with a delay of over ten years. The HRC put forward a series of criticisms and recommendations, which covered the whole spectrum of rights guaranteed by the International Covenant on Civil and Political Rights.³ In November, the UN Committee against Torture (CAT) examined Bulgaria’s report with respect to the Convention against Torture. It, in turn, formulated comments and recommendations.⁴

In the period 4-11 July Bulgaria was visited by the UN Independent Expert on Minority Issues, Ms. Gay MacDougall. During her visit, she focused on Roma rights, but turned her attention to other ethnic and religious minorities as well. Her report, which also contains a series of recommendations for the Bulgarian authorities, was published on 3 January 2012.⁵

1. Cooperation with international bodies for the protection of human rights

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2 See Independence of the Judiciary and fair trial below.

3 The HRC comments and recommendations regarding individual rights are presented below in the corresponding sections of this report. They are accessible at: http://www2.ohchr.org/english/bodies/hrc/hrcs102.htm.

4 The CAT comments and recommendations are presented below in the sections on Right to life and Protection from torture and inhuman and degrading treatment. They can be accessed at: http://www2.ohchr.org/english/bodies/cat/cats47.htm.

5 The observations and recommendations of the independent expert on minority issues are presented below in the section Protection from discrimination. They can be accessed at: http://www.bghelsinki.org/bg/novini/press/single/pressobshenie-nezavisimiyat-expert-po-pravata-namalcinstvata-na-oon-izpnenieto-na-politikite-zaromska-integraciya-v-blgariya-ostava-pechalno-neadekvatno/.
The legal framework guaranteeing the right to life in Bulgaria contradicts international standards. Article 74 of the Interior Ministry Act (IMA) allows the use of firearms with a potentially lethal outcome during the arrest of a person who is committing or has committed even a petty crime, as well as when preventing the escape of a person who may not pose a threat to others. Bulgaria has been convicted more than once by the ECtHR for the failure of this legal framework to comply with the requirement for absolute necessity for the use of lethal force and firearms. It contradicts Article 9 of the UN Principles on the Use of Force and Firearms by Law Enforcement Officials. Bulgarian law is also deficient in the sphere of allowing adequate participation of victims in investigations. In 2011, the BHC was invited by the Interior Ministry to participate in a working group to prepare amendments to the Interior Ministry Act with the goal of bringing it in line with international standards on the use of force and firearms. Such amendments were prepared, but they were not introduced and voted by parliament by year’s end.

The prosecutor’s office, and in some cases the courts as well, have not responded adequately to cases of loss of life as a result of the use of force and firearms by police and this has led to their impunity. In June, a panel of the Supreme Court of Cassation surprisingly acquitted a police officer who took the life of businessman Angel “Chorata” Dimitrov in November 2005. All previous panels, including of the Supreme Court of Cassation, had handed down convictions. According to the decision, undersigned with one dissenting opinion, the police did not have the intention to kill. The panel cited the coroner’s report, according to which the businessman had been addicted to cocaine and had numerous illnesses – he had suffered from massive lung accretion, his stomach was bloated, he had pathological dilation of the heart and more frequent arrhythmia due to the use of the drug. Thus, his generally aggravated medical condition had allegedly led to “the onset of insurmountable respiratory insufficiency and sudden cardiac arrest.” The panel found that the force used against him by the police was legal, despite numerous serious injuries, including a fractured skull and torn aorta, caused by five police officers during the period of his detention, which has been well attested to.

During 2011, no resolution was reached in another case concerning the January 2009 death of detainee Plamen Kutsarov while being escorted after a special police operation. In this case, two police officers are charged with causing death due to negligence. As of the end of February 2012, the Sofia City Court still had not finished with the court sessions in this case.
Another case of excessive use of firearms by a police officer, which led to the death of Marian Ivanov in July 2010, ended with the final decision to terminate the pre-trial proceedings by the Pleven District Court on 6 January 2011. The court, just like the prosecutor’s office before that, found that the fatal shooting of Ivanov in the head had occurred under the conditions of ostensible, inevitable self-defense by the police officer, who had confused the apartment key which Ivanov held in his hand for a gun, regardless of the fact that the officer had 21 years of experience in the Ministry of the Interior and had received 17 awards. The report on the findings of the Pleven District Court was handed on 25 January 2011, to “Milen Lazarov, cousin,” who then gave it to Ivanov’s parents with a delay, which lead to their missing the deadline for appeal. The decision was not sent to the family’s lawyer. According to the victim’s parents, Milen Lazarov is not their relative, but a random passerby, and according to the family’s lawyer, with whom the BHC spoke in February 2012, his name and “cousin” were filled in by the summoner.

In another case of death resulting from the use of firearms, on 1 May 2011 police officers shot and killed Vasil Tonkev on the Trakia motorway. According to the police, pre-trial proceedings had been underway against him for causing serious bodily harm and trafficking in prostitutes. He had been pursued and shot in the course of a police operation aimed at his arrest, during which he offered resistance. According to information the BHC received from the Pazardzhik District Prosecutor in February 2012, pre-trial proceedings that had been convened at the end of December 2011 in connection with the killing of Vasil Tonkev had been terminated by a decree from the prosecutor’s office. This decree was appealed and was repealed by the Pazardzhik District Court on 24 January 2012, with the court ordering that the case be returned for further investigation.

In 2011, the prosecutor’s office did not make any progress in investigating the death cases spanning over the past ten years that had been established in 2010 as a result of the joint investigation with the BHC in the institutions for children with mental disabilities.

In its comments and recommendations on the examination of Bulgaria’s report from 19 August 2011, the HRC expressed its concern over the lack of conformity of Bulgarian law on the use of force by law enforcement bodies with relevant international standards. The committee recommended legislative reform aimed at bringing the law in line with the Principles on the Use of Force and Firearms by Law Enforcement Officials. In turn, in its comments and recommendations on the examination of the Bulgaria’s report from 14 December 2011, the UN Committee against Torture called on the Bulgarian authorities to make changes to the law on the use of force and firearms by law enforcement bodies, so as to bring them in line with international standards.

In 2011, the European Court of Human Rights in Strasbourg pronounced several judgments where it found violations of the right to life. In the cases of Iordanovi v. Bulgaria of January 27 and Genchevi v. Bulgaria of February 10, the Court found violations of Article 2 (the right to life) of the European Convention on Human Rights (ECHR, the Convention) in cases of ineffective actions and failure to act on the part of the authorities in investigating cases of deaths. The Iordanovi case concerns the death of a man in police custody from a diabetes-related complication, while the Genchevi case concerns the death of Yovcho Genchev, the applicants’
father and spouse, who was found dead in a field close to his native village, with indications that violence had been used against him. Investigations at the national level in both cases led to the conclusions that the authorities were not responsible for the deaths. In the Iordanovi case, the Court highlighted the fact that the detainee’s lawyer had turned the authorities’ attention to his client’s health problems and his need for medical care. It found a violation of Article 2 of the Convention due to the fact that the authorities had not made the necessary efforts to preserve the detainee’s life. Additionally, the termination of the proceedings by the prosecutor and the confirmation of that decision by the Military Court appear hasty. In the Genchevi case, the Court found that the actions taken to investigate Yovcho Genchev’s death were not thorough and effective. In addition, the investigation had dragged on for fifteen full years, without producing any results.

In the case of Anna Todorova v. Bulgaria of May 24, the Court established a violation of Article 2 of the Convention in connection with the death of the applicant’s son, Zhivko Todorov. In 1994, the car in which the young man was travelling in collided directly with the trailer of a truck. According to the Court, the authorities did not act with the necessary expeditiousness and effectiveness in investigating the causes for Todorov’s death. In the case Dimitrova et al. v. Bulgaria of 27 January, the Court established a violation of Article 2 of the Convention due to the lack of an adequate investigation into the death of a young man of Roma origin, Georgi Gerassimov, who on 30 May 2003, entered into an argument with an individual to whom one of Georgi’s friends owed money. When the police arrived at the scene of the incident, he was lying on the ground seriously injured, after which he was taken to hospital. Georgi was admitted to the hospital in a coma with a serious cerebral contusion and four head injuries. He died on 4 June 2003. The pre-trial proceedings began that same day, which ended with a plea-bargain, approved one year later by the court, in which the individual responsible for his death admitted his guilt and received a three-year suspended sentence. The Court noted that the authorities did not conduct a thorough and effective analysis of the evidence collected during the time of the investigation, while they also committed numerous oversights and did not allow the applicant to participate in the investigation.
In 2011, protection from torture and inhuman and degrading treatment faced particular challenges. On the one hand, positive legislative changes were adopted in April with the ratification of the UN Optional Protocol to the Convention against Torture. By June 2012, Bulgaria has to establish a national preventive mechanism, which will be the Ombudsman. On invitation from the Ministry of Justice, the BHC took active part in preparing the ratification documents and the amendments to the Ombudsman Act.

On the other hand, there are serious grounds for suggesting that police arbitrariness and the use of unnecessary force on the part of police against individuals showed an increase over the year. The BHC received many credible complaints from individuals regarding ill-treatment on the part of police, some of which amounted to torture. Such practices were justified several times by the Minister of the Interior and the Chief Secretary of the Ministry. In numerous cases when incidents of police brutality were made public in the media, Interior Minister Tsvetanov, with rare exceptions, took the side of his subordinates. The Chief Secretary of the Interior Ministry in turn announced more than once that police brutality in Bulgaria was a myth and that such a problem does not exist. The prosecutor’s office also contributed to police officers’ ill-treatment of individuals with impunity. According to information from the Supreme Cassation Prosecutor’s Office provided to the Trud daily, during 2011 not a single employee of the Interior Ministry was convicted for police brutality. In comparison, twelve police officers were convicted in 2010 and ten in 2009.

The Bulgarian Penal Code continues to lack a specific item on torture in accordance with the definition in Article 1 of the UN Convention against Torture. Certain forms of physical violence committed by private individuals are investigated upon receiving a complaint from the victim, in violation of Article 12 of the Convention against Torture. This causes especially serious violations in cases of domestic violence of women, when the victims do not turn to formal court procedures, which

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they have to lead through their own efforts or through lawyers whom they have hired. The Bulgarian law also contradicts international standards with respect to the requirement for absolute necessity in the use of force and firearms by law enforcement bodies in the defense of the life and physical inviolability of those against whom it is used.\textsuperscript{13}

In January 2012, BHC monitors interviewed all convicted inmates at the prisons in Vratsa, Pazardzhik, Lovech and Stara Zagora whose pre-trial proceedings had started after 1 January 2010 on the use of force against them during the time of their detention by the police and in the police stations. This data is not representative of the system of detention centers as a whole, but can be compared with data from similar research conducted by the BHC on similar questions in the same prisons during January 2010 through interviews with detainees whose pre-trial proceedings had begun after January 2009. The data from the two sets of interviews are presented in the table above.

The data shows an increase in cases of detainees reporting the use of force both at the time of detention and inside the police station. This increase is especially large (more than 8 percent) among respondents who complained of the use of force inside police stations, where it is legal only in exceptionally rare cases.

In its comments and recommendations upon examining Bulgaria’s report of 19 August 2011, the HRC expressed concern over the lack of a text about torture in the Penal Code, as well as over the large number of cases of torture and ill-treatment by the police, especially against members of the Roma minority. The committee recommended the creation of an independent mechanism for the oversight of investigations of complaints about unlawful actions committed by representatives of the police. The HRC also expressed concern about the standard legal procedure connected with the criminal investigation of cases of domestic violence and especially the fact that in some cases of physical harm such a procedure was not implemented as a matter of course, but after receiving a complaint from the victim.

On 14 December 2011, the UN Committee against Torture published its well-focused comments and recommendations on the examination of Bulgaria’s report on its implementation of the Convention against Torture. In the document, the Committee summarized the basic problems with the Bulgarian authorities’ lack of implementation of this international convention and made detailed recommendations. The more important among them include:

\begin{itemize}
  \item The introduction of an item in the Penal Code in accordance with the definition in Article 1 of the Convention.
  \item A change to the legislative framework on the use of force and firearms by law enforcement officials.
  \item Introduction of effective legal defense from the moment of detention.
  \item Speedy, independent and thorough investigation of all cases of illegal or disproportionate use of force and firearms by law enforcement officials.
  \item Securing the independent monitoring of all detention centers, including by nongovernmental human rights organizations.
\end{itemize}

\begin{table}[h]
\centering
\begin{tabular}{|l|c|c|}
\hline
 & 2010 & 2011 \\
\hline
At the time of detention & 26.2 & 27.1 \\
Inside the police station & 17.4 & 25.5 \\
\hline
\end{tabular}
\caption{Use of force by police officers by year}
\end{table}

\textsuperscript{13} See Right to life above.
• Securing adequate material conditions, treatment and rehabilitation for patients in institutions for individuals with mental disorders, as well as reform of the legal framework for depriving people of their legal competence and placing them under guardianship.

• Improvement of conditions in detention centers, including through the construction of new prisons and renovation of the existing facilities.

• Abolition of underground investigation detention centers.

• Protection of those individuals deprived of their liberty from all forms of violence, including at the hands of other inmates.

• Prohibition of the use of solitary confinement with a punitive aim.

• Abolition of the strict regime of treatment for prisoners with life sentences during the first five years of their sentence.

• Introduction of a penal provision for the crime of domestic violence in the *Penal Code*, which shall be investigated as a matter of course.

• The adoption of measures in the fight against hate speech and the incitement of discrimination and violence against ethnic minorities.

In 2011, the European Court of Human Rights pronounced several judgments where it found violations of Article 3 (prohibition against torture and inhuman or degrading treatment) of the ECHR in complaints brought against Bulgaria. In the case *Kashavelov v. Bulgaria* of 20 January, the Court found violations of Article 3, as well as of Article 6.1 (the right to a fair trial) and Article 13 (effective domestic remedy) of the Convention in the case of a prisoner sentenced to life imprisonment. The Court found a violation of Article 3 on account of the constant use of handcuffs every time the prisoner was taken out of his cell. The Court shared the viewpoint of the CAT that the routine use of handcuffs on a prisoner for a period of 13 years in a secure environment is not justified and is a violation of Article 3.

In the cases of *Iliev et al. v. Bulgaria*, *Nalbantski v. Bulgaria* and *Radkov v. Bulgaria* of 10 February, the Court found violations of Article 3 of the Convention in connection with the extremely unsatisfactory material conditions of the detention facilities in which the applicants were held. It also found a violation of Article 13 of the Convention due to the lack of effective domestic remedies.

In the case of *Auad v. Bulgaria* of 11 October, the Court found violations of Article 3, Article 5 (right to personal freedom and security) and Article 13 (right to an effective remedy) of the Convention against an stateless individual of Palestinian origin, against whom an order of expulsion as a threat to national security was issued.

In December 2009, the applicant unsuccessfully challenged the order in court. The Bulgarian courts reached the conclusion that the information collected by the law enforcement bodies was sufficient to justify his expulsion from the country and held that it was not necessary to conduct further investigation and to look for further evidence. Mr. Auad claimed that if he were deported to Lebanon, he would face a high risk of ill-treatment or death. The Court found that such a risk indeed existed and that Bulgaria did not grant an effective guarantee against the arbitrary deportation of people who are subjected to it. With respect to the violation of Article 5, the Court found that the bases for detaining the applicant were not valid throughout the whole period of detention, since the Bulgarian authorities did not implement the procedure with due diligence.

In the case of *Hristovi v. Bulgaria*, the Court established a violation of Article 3 on the ground of the lack of an effective investigation into the applicant’s complaints...
of police threats and ill-treatment. The case concerns threats made to the family during a police operation on 17 February 2004, during the arrest of Alexander Hristov, who was suspected in the counterfeiting of currency. The family claims that on the date in question during 2004, masked police officers broke into their home, attacked Mr. Hristov with fists and kicks and threatened everyone with murder. More specifically, one of the police officers pointed his weapon at Ms. Hristova and her daughter, who was five years old at the time, and ordered her to make the child stop crying.

One of the most serious problems with inhuman and degrading treatment in Bulgaria – domestic violence against women – was the subject of a case before the UN Committee on the Elimination of Discrimination against Women.

In the case V.K. v. Bulgaria of 17 August, the Committee decided that Bulgaria’s failure to effectively defend a woman against domestic violence violated the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The decision was taken on the basis of Article 2 (b), 2(e) of CEDAW and Article 5(a) in connection with Article 16(1) and General Recommendation No. 19. The applicant filed a complaint regarding domestic violence, which she was subjected to by her husband – F.K., which began with psychological, emotional and economic abuses, and continued with physical violence. V.K. filed a complaint for protective measures and financial support with the Warsaw District Court, but the proceedings did not produce a result. During this time, the violence continued, which also included a strangulation attempt.

Subsequently, the husband filed a request for a divorce along with a claim for custody of their two children. The police had been called numerous times due to F.K.’s abuses of his wife. The applicant managed to receive an order for immediate protection under the Domestic Violence Protection Act, but despite this, the national courts refused to provide permanent protection on the basis of the fact that there was no immediate threat to the life or health of the woman and her children, since they had not been subjected to domestic violence in the months before the request for the order was made.

The Bulgarian courts’ refusal to issue V.K. a permanent order for protection was a central point in the Committee’s finding that the member-state had violated Article 2 of CEDAW. Also, taking the facts into account, the Committee established that a refusal to provide a permanent protective order was based on gender stereotypes connected to domestic violence, and also that the divorce proceedings were influenced by the same gender stereotypes connected with the roles and behaviors expected of men and women within the framework of family relations.
4. Right to liberty and security of the person

In 2011, nothing changed in the legislative framework guaranteeing the right to liberty and security of person. It remains in contradiction with international standards on a series of points. For one of them, this discrepancy was clearly demonstrated yet again in the decision of the Grand Chamber of the European Court of Human Rights in the case of Stanev v. Bulgaria of 17 January 2012. In this case, the Court decided, contrary to the government’s claims, that the placement of people under guardianship against their will in social institutions for people with mental disorders constitutes deprivation of liberty. The Court established that the Bulgarian law and practice, which prescribe such placement administratively without oversight by the courts and without seeking the consent of the individuals subject to such placement when they have limited competence, does not contain the guarantees stipulated in Article 5 of the ECHR (the right to liberty and security of the person). For this reason, it found violations in a series of points of this decree. Bulgaria is obliged to bring the legal framework concerning the placement of people with mental disabilities in social institutions in accordance with the requirements of the Convention.

The law and practice of placing children in several types of institutions also continues to contradict the requirements and guarantees concerning the right to liberty and security of the person. This relates to placements in social-pedagogical boarding schools and educational boarding schools for children in conflict with the law, which are frequently made on arbitrary grounds and without the necessary legal guarantees; placement in institutions for temporary accommodation of juveniles and minors, which is done administratively without court oversight; and administrative placements in crisis centers for children, which allows for excessively long stays before a judicial body becomes involved and makes a pronouncement.

Another aspect that has remained inadequate is the legislative framework and enforcement concerning the imposition of detention on remand in the course of the criminal proceedings, which allows for excessive dependence on the weight of the accusation and neglect of the evaluation of the reasonableness of the suspicions which led to the arrest and the legitimacy of the goal being sought by the detention.

At the beginning of August, the Bulgarian government adopted a Concept for State Policy in the Sphere of Juvenile Justice. In it, the Juvenile Delinquency Act is defined as containing an outdated and fundamentally repressive approach to juvenile justice and is not in accordance with the Constitution. The Convention is accessible at: http://www.justice.government.bg/new/Documents/Bills?Conception.pdf.
violations of Art. 5, items 1, 3, 4 and 5. The applicant was arrested and detained by the police under suspicion of smuggling a significant quantity of cigarettes. The Court found that his detention on remand was unlawful. It found a violation of Art. 5, items 4 and 5 of the Convention due to the fact that the applicant was not in a condition to dispute the legality of and necessity for his detention by the police and that he did not have the means for defense through which he could have received compensation for supposed violations of the Convention.

In the case of A. et al v. Bulgaria of 29 November, the Court found violations of Article 5, items 1 and 4 due to the placement of two of the applicants in a crisis center for children and in an institution for the temporary housing of juveniles and minors. However, it refused to find violations in connection with the placement of the applicants in the Podem educational boarding school because of their presumed “antisocial behaviour” (running away from home, running away from school, and prostitution). Basing its decision on the publication by a Bulgarian author, in contradiction to the findings of the UN Committee on the Rights of the Child and to the Bulgarian government’s Concept for a state policy in the sphere of juvenile justice, the Court found that even though unclearly defined in the law, this concept of “antisocial behaviour,” at least insofar as it relates to the actions which served as the basis for the applicants’ placement in an educational boarding school, is sufficiently clarified with respect to content and the grounds for deprivation of liberty for the purposes in Art. 5, item 1d in the practice of its application.
5. Independence of the Judiciary and fair trial

In 2011, the independence of the courts suffered serious attacks, both from the executive branch, primarily in the person of the Deputy Prime Minister and Minister of the Interior Tsvetan Tsvetanov, as well as from the Supreme Judicial Council (SJC) and its Inspectorate (ISJC). Parliament also contributed to the creation of dependencies within the judicial system. No institution took an appropriate corrective position in response. At the same time, judicial reforms did not progress and no optimization of its management was achieved, in particular regarding the magistrates’ work-loads and their evaluation.

On 30 May, the SJC elected Judge Vladimira Yaneva to the post of chairperson of the largest and most important court in the country, the Sofia City Court (SCC); Yaneva is distinguished solely for her connections to Deputy Prime Minister Tsvetanov, whose aggressive policy of gaining command of the judicial system via controllable people in key positions and the intimidation of the rest has become notorious. This scandalous appointment provoked unprecedented civil tension and the most influential judges’ organization, the reform-minded Bulgarian Judges Association (BJA), demanded the SJC’s resignation, after which two of its members, well-respected judges, left the body in sign of protest. Other distinguished organizations and media outlets joined in applying pressure, but to no effect. Neither the SJC nor the minister of justice nor the prime minister nor parliament demonstrated any institutional responsibility for solving the crisis with the fully discredited SJC. Instead, on 2 July, Deputy Prime Minister Tsvetanov threatened to name police actions after the given names of judges to punish them for not imposing detention on remand on individuals suspected by the Interior Ministry. With this public statement, which was symptomatic of his ambition to subordinate the courts, he confirmed his intentions to continue his political pressure on the judiciary. Several days later, the BHC demanded his resignation over this, but he declined to submit it. The justice minister, the prime minister, parliament and the SJC remained uninvolved.

In June, the ISJC conducted a special unprecedented check of the whole criminal division of the SCC with the goal of blurring the responsibility of the newly appointed court chairperson for her confirmed abuses in cases (in connection with a concrete complaint against her) and, at the same time, to penalize with disciplinary measures prominent representatives of the BJA, which was positioning itself as a significant opponent of the government with tangible civic influence. Before the ISJC suggested disciplinary punishment against the emblematic chairwoman of the BJA, Miroslava Todorova, the head inspector and members of the SJC openly announced in the media their negative attitudes towards her and her expressions of her critical opinion about the state of the judicial branch. Their remarks reflect-
ed their punitive tendency to the detriment of her freedom of expression and discredited the disciplinary process by destroying the presumption of her innocence. This disciplinary process, as a result of which Todorova and other systematically overburdened judges were recommended for punishment due to delaying cases, revealed the fundamental structural defects of the SJC’s evaluative activity; no improvements in this sphere in 2011 were noted – first of all, the absence of qualitative criteria for evaluating the degree to which magistrates are overburdened and the fact that non-judges are making decisions about judges’ fulfillment of their duties. The SJC’s attitude towards these defects continues to be expressed with passive denial, and this body has done nothing over the past year to correct them.

At the same time, in July Stefan Petrov, the chair of the Committee for Establishing Conflicts of Interest at the SJC refused to investigate Judge Yaneva’s confirmed conflict of interest in a case concerning the partnership Sofiyski Imoti (Sofia Real Estate) and deals which her father had completed through her by proxy (she first delayed the case, then wrongfully terminated it according to the higher instance court). Instead, the SJC transferred responsibility for this question to the central Committee for Averting and Establishing Conflicts of Interest. At the end of August, however, this body did not discover any such conflict. In the words of its chair, Zlatanov, there was no connection between the case that Yaneva had examined concerning charges of dereliction against the leadership of the partnership and the purchase of the property from it on the part of her father. According to Zlatanov, such a connection did not exist, because Yaneva was only a proxy for her father on the deal, and the properties purchased by him through her were not the “subject” of the case and especially – the purchase had become “much before the case itself.”

The SJC’s selective disciplinary policy was also reflected in other refusals by that body to investigate magistrates for abuses about which the media published information, such as, for example, the case of Svetla Danova, a member of the SJC.

Neither the SJC nor the ISJC found grounds to investigate the unprecedented recusal by Judge Ivan Radenkov from the Supreme Administrative Court on an appeal against the selection of Judge Yaneva as chair of the SCC. The recusal came after the panel’s deliberation had ended and the decision had been made, hence it essentially represented an act of “sabotage” against justice, since it was an attempt to thwart the enactment of the court order. An investigation of the judge’s motivations was necessary also because publications had appeared in the media stating that the chairman of the Supreme Administrative Court, who had also been promoted by Minister Tsvetanov, had attempted to influence the judges’ internal deliberations.

In September it was discovered that the Sofia City Court under its chair Yaneva, who is linked to Deputy Prime Minister Tsvetanov, had issued several times more permits for the use of special surveillance means (SSM) in comparison with her predecessors and had not issued a single refusal. The new chair’s policy of liberal interference in the personal inviolability of citizens is expected and primarily in harmony with Deputy Prime Minister Tsvetanov’s line of working over citizens using SSM.


17 Ibid.
18 See the publication at: http://www.capital.bg/blogove/pravo/2011/06/22/1111033_chlen_na_vss_zamesen_v_imotni_izmami/.
19 According to a publication in the Capital daily, based on official data received under the Access to Information Act: http://www.capital.bg/politika_i_ikonomika/bulgaria/2011/09/30/1166588_vupros_na_vruzki/. Also see Right to respect for private and family life, home and the correspondence below.
At the beginning of September 2011, Parliament amended the **Ordinance for Fighting Petty Hooliganism**, which introduced the possibility for appealing court decisions that impose punishment for petty hooliganism. These amendments followed a decision by the European Court of Human Rights, in which it found violations of Art. 2 of Protocol No. 7 of the ECHR.

In its comments and recommendations upon examining Bulgaria’s report of 19 August 2011, the Human Rights Committee expressed concern over the violation of the independence of the judiciary on the part of bodies outside of it. The Committee recommended refraining from such practices and adopting campaigns for raising awareness and recognizing the value of an independent judiciary.

In January 2011, a delegation from the European Association of Judges visited Bulgaria at the invitation of the Bulgarian Judges Association. The purpose of the mission was to investigate the BJA complaints of unjustified interference on the part of the executive in the work of the judiciary. The delegation published its report in April. In it, it found that expectations of heavy sentences and accusations of judges’ corruption and incompetence by the minister of the interior put the independence of the judiciary at risk and seriously undermined the rule of law. The delegation called on the SJC to improve the quality and transparency of its work and to be more active in its defense of the independence of the judicial system as a whole and of its members.

In May 2011, Bulgaria was visited by Mrs. Gabriella Knaul, UN Special Rapporteur on the Independence of Judges and Lawyers. The report from her visit was still not published as of late February 2012, but she made several preliminary conclusions.

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**Note:** The report of the delegation of the European Association of Judges is accessible in Bulgarian at: [http://www.judgesbg.org/?m=72&id=14](http://www.judgesbg.org/?m=72&id=14).
It demands that they be adopted within twelve months of when the decisions come into effect, i.e. the middle of August 2012.

In *Makedonski v. Bulgaria* of 20 January, the Court found violations of Art. 6.1 due to the excessive length of the criminal proceedings against the applicant, as well as of Art. 2 of Protocol No. 4 (freedom of movement), due to the unjustified ban on leaving the country, which was imposed on him in 1994. In the case of *Dichev v. Bulgaria* of 27 January, the Court found violations of Art. 6.1, as well as of Art. 1 of Protocol No. 1 (protection of property) in connection with the fact that the applicant had not received compensation for a garage that was expropriated by the mayor of Sofia in 1979. In the case *Andreev v. Bulgaria* of 10 February, the Court found a violation of Art. 6.1 due to the fact that the administrative decision defining the size of the compensation for five decares of land on the outskirts of Sofia upon which a road was built and which belonged to the applicant, was not examined on its merits by the court.

The criminal proceedings in the cases of *Dimitrov and Hamanov* lasted nine years and eight months and five years and three months, respectively, while the civil proceedings in *Finger* lasted nine years and ten months. The court found the existence of “a practice that is not compatible with the Convention” in the country on the basis of the large number of cases the Court has also ruled on concerning the length of proceedings, as well as the large number of pending cases before it. The Court imposed the adoption of general measures in the form of effective domestic remedies for protection against the excessive length of court proceedings.

6. Right to respect for private and family life, home and the correspondence

During 2011, the right to respect for private and family life, home and the correspondence was again seriously violated due to the great frequency of and arbitrariness in the use of special surveillance means (SSM) by the security services. The *Special Surveillance Means Act* (SSMA) and the *Code of Criminal Procedure* (CCP) do not provide adequate guarantees against arbitrary telephone tapping and the secret monitoring of other communications. The SSMA is ambiguous in its definition of the nature of the violations and categories of persons against whom such measures can be taken in the section which stipulates the use of special surveillance means with respect to “individuals and entities related to national security” (Art. 12, item 3). The concept of “national security” is very broadly defined in Bulgarian law and is used with a broad interpretation. The use of SSM in the protection of national security is not linked with the committing of a crime. Control over the use of SSM is exercised by a parliamentary committee which does not have any authoritative capacity whatsoever and in which the political parties are represented. It cannot give obligatory instructions, but only prescriptions for improving the procedure.\(^{22}\)

At the beginning of June with the votes of the governing party and their supporters, parliament overturned two drafts from opposition parties that would have established greater control over the use of SSM.

In 2011, the Sofia City Court (SCC) continued to issue a large number of permits for the use of SSM. Since the new GERB government has come to power, the number of permits granted by the SCC for the use of special surveillance means has increased significantly. Their number in 2009 was 3,647; in 2010, it was 6,213, with 15 refusals; while for the whole of 2011 the total number of permits granted was 6,008, with only two cases of refusals.\(^{23}\) In comparison, for the entire 2005, this same court had granted 2,119 permissions.\(^{24}\) The permissions granted by the SCC constitute more than one-third of the permissions for wiretapping granted in Bulgaria. After the appointment of the minister of the interior’s family friend Vladimira Yaneva as chair of the SCC on 30 May 2011,\(^{25}\) by the end of August, the SCC had granted a total of 2,733 permissions for the use of special surveillance means, or an average of 911 a month. The effectiveness of using information obtained via SSM in Bulgaria is very poor. In 2011, barely 14 percent of cases served as evidence in court.\(^{26}\) The percentage of such information that forms the basis for con-
victions is ever smaller. During her visit to Bulgaria in May, Mrs. Gabriella Knaul, UN Special Rapporteur on the Independence of Judges and Lawyers, commented on the mass wiretapping in Bulgaria with concern. She declared that information obtained through special surveillance means should be used only as complementary evidence, not as main evidence. And she raised the question of how necessary it is to eavesdrop so often, since fewer than two percent of the information thus obtained forms the basis for convictions.27

During 2011, the Protection of Personal Data Act was amended. With the amendments, Bulgaria law adopted the principles grounded in the Framework Decision 2008/977/JHA regarding the protection of personal data processed in the framework of police and judicial cooperation in criminal matters.

In its comments and recommendations on the examination of Bulgaria’s report of 19 August 2011, the Human Rights Committee expressed concern over the widespread practice of telephone tapping under the Special Surveillance Means Act and recommended that this method of collecting evidence be used only as complementary evidence in criminal cases. The committee also recommended that individuals who had been illegally wiretapped be informed of this and that they should be given access to adequate domestic remedies. Another area of concern for the Human Rights Committee in connection with the right to private and family life was the forced evictions of Roma families from their only homes. According to the Committee, such practices “represent potential serious violations of a series of internationally recognized human rights.” They recommended securing alternatives to evictions and alternative housing for those affected by such evictions.

During 2011, the European Court of Human Rights found violations of Art. 8 of the ECHR (the right to respect for private and family life) in several cases against Bulgaria. In the case Dimitrov-Kazakov v. Bulgaria of 10 February, the Court found a violation of Art. 8 and Art. 13 in conjunction with Art. 8 of the Convention. The applicant complained that his name had been entered into the police registers of suspects to be called in cases of rape after he had been interrogated in a similar case, but had never been charged with any such crime. He had been subjected to a series of interrogations by the police connected with complaints of rape or kidnapping of young girls.

The Court also found a violation of Art. 8 of the Convention in the case of Baltaji v. Bulgaria of 12 July. The applicant is a Moldovan national who complained about his expulsion in 2003 from Bulgaria, where he had been permanently resident since 1994 with his family. The Court also found a violation of Art. 13 due to the fact that Bulgarian law does not afford him any effective remedy to protect his right and found a violation of Art. 1 of Protocol No. 7 due to the lack of procedural safeguards that should prevail in the event of expulsion of a foreigner.

In the case Lyubenova v. Bulgaria of 18 October, the Court found a violation of Art. 8 of the Convention in a case which concerned the custody of a minor boy by his mother, who had temporarily given him to her in-laws to bring up. The applicant was living at the home of her in-laws in Dupnitsa, where she gave birth to a son. In March 1997 her husband left for the United States and she joined him some months later, entrusting the care of her son to her in-laws. There she was subjected to acts of domestic violence and upon her return to Bulgaria one month later, the applicant was

admitted to a psychiatric hospital for two months. Later she started work at a shop in Sofia; however, her in-laws resisted her numerous attempts to see her son and hid him from her. In March 2002, she complained to the Bulgarian child protection services. Later she won a case in the District Court for custody of her child, but the decision was overturned upon appeal and the child remained with the parental grandparents without contact with the mother. Finding a violation of Art. 8, the Court noted the inadequacies of Bulgarian law, which does not allow any temporary measures to facilitate contact between the mother and child at the material time.
Citizens’ religious rights continued to be a serious problem throughout 2011. The internal conflict within the Muslim church, caused by the 2010 court recognition of leadership not supported by the majority of Muslims,\textsuperscript{28} died down after the Sofia Appellate Court registered another governing board on 20 April 2011, led by the Chief Mufti Mustafa Alish Hadzhi, elected at a special Muslim conference. However, expressions of anti-Muslim sentiment in Bulgaria continue to be one of the most serious problems for those who profess Islam. During the year there were unprecedented acts of aggression and persecution against them. The criminal proceeding against muftis and imams, begun after agents of the State Agency for National Security (known as DANS in Bulgarian) burst into their homes and offices in October 2010, continue.\textsuperscript{29} At the end of December 2011, charges were brought against 12 of them under Art. 109 in conjunction with Art. 108 of the Penal Code (membership in a group espousing fascist or other anti-democratic ideology), as well as under Art. 164, para. 1 (instigating hatred on a religious basis). The pre-trial proceedings are underway.

During the year, the Muslims in Sofia were subjected to systematic attacks by activists from the Ataka party. While this party supported the parliamentary ruling party, the Sofia Municipality allowed its public gatherings without hindrance, regardless of the fact that they regularly incited hatred, discrimination and violence on a religious basis. On 29 April 2011, with a provocative aim, representatives of Ataka played the sound of bells ringing and Christian chant over loudspeakers in the vicinity of the Sofia Banya Bashi mosque. This was repeated over the following weeks, while the authorities remained completely inactive. On 20 May 2011, before Friday prayers, in the immediate vicinity of the mosque’s fence, a group of 150 Ataka supporters organized a protest meeting against the mosque’s loudspeakers. They chanted offensive words at the worshippers, calling them “Janissaries,” “dogs,” “cutters,” “fezzes,” and “Islamists.” They called: “Get out of Bulgaria!” “Stop this shameful howl in the center of Sofia!” and “Let’s cleanse the land of our forefathers!” The protesters alluded to the intolerableness of the Friday call to prayer from the mosque, but obviously this was only a pretext for publically expressing anti-Muslim propaganda, since this call has been broadcast from the minaret of the mosque for centuries. Minutes later, the protesters approached the mosque and began to hurl eggs, paving stones and other hard objects that had clearly been prepared in advance at the worshippers. Some of the Ataka supporters attempted to jump over the fence of the mosque and to place their own loudspeakers inside. This caused a fight between


\textsuperscript{29} For more details on the DANS operation, see BHC, \textit{Human Rights in Bulgaria in 2010}, annual report of the BHC, March 2011.
the protesters and the worshippers, some of whom began to throw back the stones that had been hurled at them. As a result of such throwing, five worshippers were injured, one of whom suffered serious head trauma. Some of the activists from Ataka also were injured by thrown stones. This is an unprecedented incident, the likes of which have never occurred in front of the Sofia mosque even during the communist era with its atheism and anti-Muslim policy in the final years of its existence. After the incident, the prosecutor’s office began two pre-trial proceedings against an unknown perpetrator and against identified participants in the incident. By the end of February 2012, however, not a single person had been convicted in these proceedings. The leader of the Ataka party, who was present and took active part in this provocation, did not become the object of a criminal investigation.

During the year, incidents involving vandalism of Muslim houses of prayer continued across the country. Some of the more drastic incidents include:

- On the night of 14 February 2011, unknown perpetrators broke into the mosque located in the center of the city of Silistra and wrote offensive graffiti on the walls, such as “Death to Islam” and other vulgarities. Then they broke the windows and the window casings and threw beer bottles inside.
- On 1 April around 8 p.m., during the time of the evening prayer in the Dzhumaya mosque in Plovdiv, a group of youth pounded on the windows and urinated on the façade of the mosque. The following day, “whores” and a swastika were written on the walls of the mosque.
- On 20 April 2011, “Get out, Turks – Bunovo Train Station – 1985, 9 March” was written on the walls of the mosque in the city of Pleven [referring to a fatal train bombing, which was the most notorious act of terrorism in Bulgaria perpetrated by ethnic Turks in response to the repressive policy of forced assimilation imposed in the 1980s by the communist authorities – translator’s note].
- On 29 April 2011, the Blagoevgrad mosque woke up to find swastikas painted on its walls.
- In April 2011, “Turn the Gypsies into soap” was written on the walls of the mosque in the city of Pazardzhik.
- On 12 May 2011, a medical student from Turkey was punched in the face by a skinhead in Pleven after he and two other individuals attempted to pull her headscarf off.
- On 28 May 2011, a group of unidentified individuals burst into the prayer room of the Banya Bashi mosque in Sofia during prayer time with yells, menaces and threats, but they were chased away by the worshippers.
- On 28 May 2011, the worshipper Aydan Aliev was attacked as he was leaving the Banya Bashi mosque in Sofia.
- On 12 June 2011, in the courtyard of the Banya Bashi mosque in Sofia, a worshipper was beaten by unknown assailants shortly before morning prayer. He was left unconscious in a pool of blood and was taken to the emergency room by other worshippers.
- Around 15 June in Sofia, a female refugee from Iraq was attacked by a group of youths at the bus stop for bus No. 111. She was shoved, spit on, and her headscarf was forcibly removed.
- On 23 June in the vicinity of the Sofia mosque, a group of youths beat a man and a woman who were speaking Turkish.
- On 11 July 2011, unknown individuals attempted to break the entrance door of the Sultan Bayazid the Great mosque in the city of Aitos, seriously damaging it.
During the year, debate also flared up around Muslim girls wearing headscarves in school. On 17 October, the Muslim student Sayde Mehmed was removed from school in the village of Gorno Kraishhte for five days, even though she is of an age when she must obligatorily attend school. Her removal came about on the basis of a decree from the school’s *Handbook for Activity*, which reads that “a student does not have the right to express his or her ethnic, faith-based or religious affiliation through clothing.”

Members of other minority religious groups also were the subjects of violations of their right to profess their religious, as well as other human rights. On 17 April, a meeting called by the Burgas branch of the nationalist political party VMRO with the goal of protesting the Jehovah’s Witnesses developed into a brutal clash. The attack on the religious community was carried out on the day of its religious holiday, which is officially recognized in the country. The VMRO activists were joined by members of the “Blue Sharks” fan club of the Chernomorets Football Club, the fan club of the Neftohimik Football Club, and Rodolyubets (Patriot) Association, as well as others. Several assailants were charged with indecent acts motivated by hooliganism, which greatly disturbed public order. In September 2011 they received light sentences after signing plea bargains – ranging from six months’ probation to a fine of 200 leva (100 Eur). The prosecutor on the case declined to explain to BHC why the state prosecution had agreed to these symbolic sentences. He merely clarified that the requirements of the law had been upheld, which allows the punishment to be minimal.

The Jehovah’s Witnesses have also complained of various forms of harassment in Yambol, Pernik and Kyustendil, where DANS, under the pretense that the church followers are a threat to national security, actively became interested in their

With the exception of the attack on the Iraqi refugee and the desecration of the grave of the daughter of Sultan Murad in the Orlandovtsi neighborhood in Sofia, in all other cases complaints were filed with the police. However, the perpetrators have not been identified.

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30 See Protection from discrimination below.
The attitude of many regional media to the Jehovah’s Witnesses and the Mormons is highly negative. Throughout the year, there were many negative reports about them on television and in newspapers. Several times reporters followed missionaries and photographed them against their will. They asked them uncomfortable questions and attempted to accuse them of things they had not done.

In its comments and recommendations on the examination of Bulgaria’s report from 19 August 2011, the HRC expressed concern over the demonstrations of religious intolerance against religious minorities in connection to the attacks on Muslim houses of prayer and on that topic especially noted the attack on the Banya Bashi mosque in Sofia. The Committee recommends the adoption of actions for the effective prevention, investigation and punishment of hate crimes, especially against the Roma and Muslims, as well as the organization of national awareness raising campaigns on the rights of ethnic and religious minorities.

On 27 January, Bulgaria was convicted by the European Court of Human Rights of violating the right to religious freedom in the case of Boychev et al v. Bulgaria. It concerns a religious gathering of representatives of the Unification Church that was interrupted by a police check without satisfactory legal grounds. The Court also found a violation of Art. 13 in conjunction with Art. 9 due to the fact that the Bulgarian courts had not examined the complaint on its merits, limiting themselves solely to the evaluation that the police intervention was in accordance with Bulgarian laws.
8. Freedom of expression and access to information

FREEDOM OF EXPRESSION

In 2011, the state of freedom of expression in Bulgaria continued to deteriorate. In the traditional press freedom index of Reporters Without Borders, Bulgaria fell a whole ten places. At the moment, the country occupies 80th place (its worst ranking ever) and occupies the last place within the EU in press freedom. The country also continues to be unable to enter the category of states with free media in the annual classification of the US-based NGO Freedom House. Out of a total of 196 countries, Bulgaria ranks 77th (76th in 2010) and remains in the group of countries with “partial media freedom.”

Political and economic pressure on the media, unclear ownership and financing, ineffective media self-regulation, the unsettled status of political advertising, commercialization, the “yellowing” of once-serious media, the channeling of European funding towards certain media which respond by not challenging the authorities – these are some of the problems affecting freedom of expression in Bulgaria in 2011.

During the year, a series of international observers commented negatively on the state of freedom of speech in Bulgaria. In the words of the executive director of Reporters Without Borders, Olivier Bazil, “[given] the situation in Bulgaria, and especially the establishment of control over the media on the part of the gray economy, the independence of and respect for the profession, especially in regions outside of Sofia, remains particularly alarming.”

In an article, the former US Ambassador to Bulgaria James Pardew noted: “Democracy took a step backward in the latest presidential and municipal elections in Bulgaria. The campaign leading up to those elections in this NATO and EU nation exposed an alarming decline in the freedom and independence of print and electronic media and political intimidation at levels not seen in decades in the country.” Matthias Barner, types/freedom-press.

32 http://www.freedomhouse.org/report-
Corporate Commercial Bank, where state companies’ deposits accrue, finances Irena Krusteva and Delyan Peevski’s New Bulgarian Media Group, which in turn holds a huge percentage of the media market and is being investigated as a monopoly. On the other hand, the media are cautious in their criticism of laws passed to the advantage of specific oligarchs.

The question of the unclear ownership of a series of media remains open. According to media analysts, the problems that must be most urgently solved are precisely the lack of transparency in ownership (since the norms in the Law on the Depositing of Printed Works are merely decorative), as well as monopolization (before allowing deals, an analysis should be made of media pluralism, not just an economic analysis by the Committee for the Defense of Competition).

The annual report of the Media Democracy Foundation, which evaluates the state of the media market in Bulgaria, notes that during 2011 we have witnessed an ever more dangerous intimacy between the spheres of politics and the media. According to the report, “[t]oday, too, the political gestures of those in power, irrespective of their scale, invariably remain in the focus of media interest but the actual standards of news value have changed.”

Control of media content occurs for political reasons (lack of criticism of the government) and economic reasons (protecting the interests of advertisers and of oligarchs close to the government). This control is implemented through ownership, on the one hand – for example, the director of the Konrad Adenauer Foundation’s Media Program for Eastern Europe, wrote in his analysis that in Bulgaria and some other countries in the region, alliances easily formed between politics, the media and the business sphere, and also that “[d]irect interference by oligarchs, who not only represent their own business interests but are also closely linked to political parties, is fairly standard.”

Trading in influence continues to be a basic motivation for investments in the media business. More and more, the media is being transformed into an instrument of pressure or support; it is not a means of information, but a weapon in the struggle for political or economic dominance. During 2011 as well, journalists and editors reported the existence of pressure, censorship and self-censorship in the Bulgarian media. Just as last year, studies show the overwhelmingly noncritical/positive attitude of most Bulgaria media towards the government and especially towards the prime minister.

The results of a questionnaire given over the period of August-September 2011 among journalists from the Association of European Journalists attested to the poor media environment, dependencies, censorship and self-censorship. One-hundred and thirteen journalists participated in the questionnaire. Eighty-two of them provided direct testimony of violations of the right to free speech; economic interests had hindered 28 journalists from conducting their work normally. Fifty-eight indicated political pressure on the media outlet they worked for as the main problem with free expression. Examples of economic and political pressure given by the journalists who participated in the questionnaire included “close connection in the publications in many media with whether certain companies advertise with them”; “the risk that an advertising contract will be threatened if the media continues to write critical pieces”; “instructions to write critical pieces”.

37 A BHC focus-group from February 2011, which included reporters, editors and media experts.
Once again, during 2011 the media environment was characterized by a reduction in quality investigations and analyses. The rise of “yellow” and commercial media continues, since owners aim at an ever more mass audience in order to sell their influence to this audience. It continues to pull away from the aims and functions of classical journalism; the sector loses ever more meaning and confidence. The Media Democracy Foundation’s annual report established that serious commentators and publicists, investigative journalists, analyses, in-depth interviews, expert discussions and documentaries are being replaced by talk shows or reality formats, by entertaining shows, which, according to the foundation, “colonize the public television sphere, instrumentalize journalism, and reformat the perception of and requirements towards reality.”

In the months before the presidential and local elections in 2011, many media began to openly sell their editorial content, transforming from a means of information into an instrument for propaganda. This media published “news” from the campaigns, but only if they were paid for. The problem is that in a gross violation of journalistic ethics, these paid publications were not clearly labeled as such. Thus, the media in practice lied to its audience that the editors considered that event important. An investigation in Capital showed that when signing a contract for PR coverage, the political parties or candidates explicitly want the text of the contract with the media outlet to state that there shall be no label or information indicating a paid publication.

In connection with this it is crucial to reexamine the question of paid political advertisement in the Election Code.

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38 http://www.aej-bulgaria.org/2011/10/
41 http://www.capital.bg/biznes/media_i_reklama/2011/10/14/1177283_predatelstvoto_na_mediite/.
This is also one of the conclusions resulting from an observation conducted by the Media Democracy Foundation in the period of the election campaigns: that a phenomenon has also arisen in the media sphere which is identical to the phenomenon of vote-buying – a parallel gray economy which trades in media messages and influence.\textsuperscript{42} The Organization for Security and Cooperation in Europe (OSCE), which observed the elections in Bulgaria, also notes that the imposition of what are in practice completely paid forms of media coverage in elections leads to the almost full disappearance of editorial viewpoints and journalistic commentaries related to the campaign.\textsuperscript{43}

In 2011 in Bulgaria there was no improvement with respect to the status of insult and slander, which continue to be investigated as criminal matters. Instead of reforming the law so as to have fewer restrictions on the right to freedom of expression, in the beginning of 2011, the governing party announced its intentions to create a special law against slander. BHC reacted sharply to the idea of such a law, saying that it would introduce standards that are in contradiction with international norms for the protection of human rights.\textsuperscript{44}

In 2011, there continued to be cases of attacks on journalists and media. In February, a bomb exploded outside the editorial offices of the Galeria newspaper in Sofia. In September, a team of bTV reporters were attacked during a demonstration on Unification Square in Plovdiv around the events in Katunitsa; while a journalist from the same media, Mirolyuba Benatova, was the object of hundreds of threats (including threats against her life) because of her report from the Plovdiv-area village. During October in the Gotse Delchev neighborhood of Sofia, a car used by the journalist Sasho Dikov was blown up. No concrete results have been announced in the investigations of any of these incidents. No progress was noted in cases of attacks from the previous years. There is no progress in the investigation of the murder of Bobi Tsankov from 2010 or of Georgi Stoev from April 2008; or of the beating of Ognyan Stefanov from September 2008; of threats to douse Maria Nikolaeva with acid made in 2007; or of the attack on Asen Yordanov; or the 2006 bombing of Vasil Ivanov’s home.

On 31 January 2011, individuals identifying themselves as employees of DANS burst into the office of the Irannik-M Publishing House in Blagoevgrad. Without showing a written search warrant or giving an explanation, they confiscated 2,500 copies of the just-printed informational bulletin Macedonian Voice, published by an organization for Macedonians in Bulgaria.\textsuperscript{46} Subsequently, DANS denied that there ever was such an operation. There have been no developments in investigations of the case, which was opened after the owners filed a complaint.

In 2011, hate speech towards ethnic, religious and sexual minorities continued to figure strongly in some media.
including those which have signed the Code of Ethics of the Bulgarian Media. The media continue to “give the floor” to extreme nationalists and people with neo-Nazi viewpoints, in an attempt to reflect their “point of view” on a given topic. Some media have openly and systematically denied the ethnic distinction of Macedonians in Bulgaria. Ethics committees in the press and in the electronic media, as well as the Council for Electronic Media have yet again failed to categorically oppose hate speech. The recommendation from the BHC report from 2010 stated that functioning self-regulation of the media is one of the keys to freedom of expression; for this reason, it follows that the commissions should responsibly fulfill their function and should self-regulate in every case of large-scale violations of points from the Code of Ethics – not only with regard to hate speech and discrimination, but also with respect to accuracy, the presumption of innocence, and the mixing of editorial and paid content. This recommendation remains valid at present as well. At the same time, the question of media self-regulation is becoming ever more complex. In 2011, a media war broke out, which began around a dispute about the publications of the WAZ Media Group. In February 2012, the tension culminated with the creation of a new publishing structure – the Bulgarian Media Union, which unites the publishers of Monitor and Telegraph, of Presa, Tema, Standart, Klasa, Zemya, Republika and others. The publishers of Trud and 24 Chasa, of Sega and Economedia remained in the old Union of Publishers in Bulgaria. There is also talk about writing a new Code of Ethics. For now, it remains unclear how media self-regulation will function henceforth.


**RIGHT OF ACCESS TO INFORMATION**

Over the past year, more than 330 individuals, journalists and NGOs brought their cases of violations of the right of access to information to the Access to Information Programme (AIP) for advice and legal assistance. The overwhelming majority of these cases reflect practices of not respecting the obligations of institutions under the Access to Public Information Act (APIA). Another group of cases is connected to violations of the right of protection of personal information, regulated by the Protection of Personal Information Act. Albeit less frequently, the AIP has also consulted on cases connected with the right to seek, receive and impart information.

According to data on cases brought to the AIP for assistance, the largest number consists of people seeking information who turned to the central bodies of the executive power and towards institutions of local government (mayors and municipal councils). Rarer are cases concerning the seeking of information from public law subjects and organizations, regional bodies of the executive power, and bodies of the judiciary power. From AIP’s practice in 2011, it is clear that the number of tacit refusals has remained high. In the case of motivated refusals, the majority cite harming the interests of a third party and the protection of personal data. Refusals were also received based on Art. 13, para. 2 of APIA and trade secrets.

In 2011, a court practice was again observed concerning the extended circle of obliged subjects under the APIA. The cases should be noted in which the Sofia City Administrative Court (SCAC) explicitly declared the Chamber of Architects in Bulgaria as well as a community center in the capital (Rayna Knyaginya) to be obliged subjects under the APIA, even though both organizations claimed that they were not obliged to provide information under the APIA.
In 2011, the Supreme Administrative Court as the court of second instance also examined quite a few cases against the National Electricity Company (NEC) which had been filed in 2010 by the Institute for Green Politics Foundation (as well as one filed by the Institute for Market Economics), and which had been terminated without exception by the SCAC on the grounds that NEC is not an obligated subject under the APIA. Almost all the courts’ pronouncements were upheld by the SAC, but nevertheless there was one case in which the supreme magistrates held that NEC was required to provide information under the APIA – specifically about the Belene Nuclear Power Plant, since it had received financing from the state budget for its realization.

In 2011 again, in several cases supported by AIP concerning access to contracts and other trade information, various courts found that there was an overriding public interest in providing access to the information and on that basis overturned the administration’s refusals. It is notable that the balance test and evaluation of the presence of overriding public interest were conducted throughout the year primarily by administrative courts in the country. Twice using these grounds, the Lovech Administrative Court overturned refusals by the mayor of Lovech to provide contracts between the municipality and private companies. In one case, the Smolyan Administrative Court also used these grounds to overturn a refusal by the city mayor to provide information about the cost of two municipal contracts with private companies. In another two cases, the court again overturned the administration’s refusals after finding that there was overriding public interest in requests for access to information whose provision might eventually reveal violations.

Over recent years, a lasting court practice has been established on the question that under the APIA, access to information but also to documents may be requested, since documents also represent information, but written in a concrete form. Despite this, in 2011 the court was twice forced to overturn refusals from the administration, which argued that under the APIA information could be requested, but not documents as well.

In 2011, there was again a series of cases challenging refusals by the administration which cited the necessity to protect personal data in the requested information. In two cases the court overturned the administration’s refusal to provide information about the names and positions of the members of specific committees. In one case, a refusal to provide information about individuals invited to several official receptions at the president’s office was overturned. Yet another refusal by a ministry to provide information about whether its employees had received additional remuneration in the form of material incentives or other types of premiums was overturned. Three identical cases were filed against refusals by the Ministry of Finance to provide information about the distribution of the state subsidies due to independent MPs.

In several cases from 2011 and two in the final month of 2010, the court overturned refusals by the administration to provide access to its reports on inspections conducted. In these cases the administration claimed that the reports represented information of a preparatory nature, which did not have independent significance and thus that they should not be provided, since they contain opinions and recommendations. On the whole, the judges in these cases united around the position that access to whole reports cannot be refused on such grounds, since the reports contain not only opinions and recommendations, but also findings which have an independent significance and definitive character, since they do not depend on the adop-
tion of subsequent acts, but rather reflect the specific factological situation at the moment of the inspection.

In 2011, the abiding court practice of overturning silent refusals continued. In these cases the courts invariably found that under the APIA, a silent refusal is legally impermissible inaction on the part of the administrative bodies and that the only legally recognized possibility for an obligated subject upon receiving a proper request is to explicitly state a decision to provide the information or to refuse to provide access.

During 2011 the European Court of Human Rights handed down two judgments against Bulgaria where it established violations of the right to freedom of expression - *Kasabova v. Bulgaria* and *Bozhkov v. Bulgaria* of April 19. The cases concern two journalists who were accused of slander and were forced to pay large sums in compensation for the statements they made in their articles published in newspapers and concerning officials responsible for the procedures for acceptance into specialized secondary schools. The Bulgarian courts commuted Ms. Kasabova and Mr. Bozhkov’s criminal liability to administrative fines and sentenced them to pay 3,797 EUR and 3,221 EUR, respectively, in fines, damages and expenses. Both journalists have been struggling for years to pay the sums – the first amounts to nearly 70 minimum monthly salaries, while the second is more than 57 minimum monthly salaries.
9. Freedom of association and of peaceful assembly

The situation with the right to freedom of association and of peaceful assembly did not undergo any fundamental changes in 2011. Representatives of some minority groups continued to experience problems from the authorities when exercising their rights.

Representatives of the organizations of Macedonians in Bulgaria reported to the BHC that their traditional gatherings had taken place without problems, with a few exceptions. The traditional celebrations by OMO Ilinden during April, May and August were carried out as planned. Only during the celebration of the anniversary of the death of Gotse Delchev on 4 May in Blagoevgrad were the activists from the Macedonian organizations not allowed to raise placards and banners, nor were they allowed to wave the Macedonian flag.

Throughout the year, arbitrary refusals to register the associations of Macedonians in Bulgaria continued. To date in Bulgaria there is not a single registered association of Macedonians. The legal saga of the Nikola Vaptsarov Cultural Educational Association continued in 2011 too, with the case being transferred from the Sofia Appellate Court to the Blagoevgrad District Court. Damyan Rizakov, the chairman of the association, shared that the summons for the reexamination of the case in Blagoevgrad in 2011 did not reach him. There were also similar developments in attempts to register the Association of Repressed Macedonians. In July 2011, the Supreme Court of Cassation refused to hear a cassation appeal by the association on insignificant technical grounds and shortly thereafter the group filed a complaint with the European Court of Human Rights.

Throughout the year, the Court pronounced several judgments concerning the rights of the Macedonians in Bulgaria to freedom of association and of peaceful assembly. In the cases United Macedonian Organization Ilinden et al. v. Bulgaria (No. 2), Singartiyski et al. v. Bulgaria, and United Macedonian Organization Ilinden and Ivanov v. Bulgaria (No. 2), the Court unanimously decided that there were three violations of Art. 11 (the right to association and assembly) concerning the refusal to register OMO Ilinden and for hindering the organization of several peaceful gatherings of Macedonians in Bulgaria. In the case United Macedonian Organization Ilinden – Pirin et al. v. Bulgaria (No. 2), the Court did not find a violation of Art. 11 and Art. 14 (prohibition of discrimination) of the Convention regarding a refusal to register that party, citing the failure of its founders to fulfill the law’s technical requirements.
10. Conditions in places of detention

**PRISONS AND PRISON DORMATORIES**

In 2011, the state of human rights in prisons and investigation detention centres in Bulgaria continued to elicit serious concerns. In most prisons and detention centers, the accumulated problems can no longer be solved with renovation activities. Over the past two decades, no government has dared secure funds for the construction of new prisons. After 2009, plans were discussed for the release of terrain for a new prison in Sofia, but again in 2011 no funds were secured and no concrete steps were made in such an unpopular undertaking.

Northeastern Bulgaria also has urgent need of a new prison. In the Varna Prison, only inmates from the city itself serve their sentences there, but despite this, its facilities are maximally overpopulated. For this reason, inmates from regions close to Varna – Dobrich, Shumen, Silistra, and Razgrad – serve their sentences in prisons far from their place of residence.

In 2011, the tendency noted over the past three years towards increasing the number of inmates in prisons and investigation detention centres in Bulgaria has continued. At the end of the year, the number of inmates in Bulgarian prisons was approximately 500 more in comparison to the end of the previous year. Figure 1 below shows the number of inmates in prisons and prison dormitories as of December 31 by year.

Source: Central Penitentiary Administration
For the second year in a row, the number of convicted inmates in prisons has increased – in 2011 this increase was significantly larger in comparison to the previous year. This problem yet again raises the question of the need for a strategy and effective actions against overcrowding in prisons and dormitories of a closed type. There has also been an insignificant increase in the number of accused and defendants in prisons as illustrated by Chart 2 below.

Chart 2. Number of accused and defendants in prisons as of December 31 by year (2000-11)

![Bar chart showing the number of accused and defendants in prisons from 2000 to 2011.](image)

Source: Central Penitentiary Administration
Chart 4. Number of convicted individuals in dormitories of open and closed types as of December 31 by year (2009-11)

Source: Central Penitentiary Administration

prisons. Chart 3 shows the number of convicted individuals in recent years.

The placement of detainees in dormitories of an open type is one of the mechanisms for reducing the overcrowding in prison facilities. This number remained on the same level as the previous year, which means the mechanism is not being used with maximum effectiveness. Chart 4 above presents the number of inmates in such dormitories over the past three years:

With the adoption of the new Enforcement of Sentences and Detention on Remand Act (ESDRA) in 2009, it was envisaged that the standards for living space, heating, lighting and other measures for living conditions would be included in the subordinate legislation. In September 2010, the government approved the Program for the Improvement of Conditions in Penitentiary Facilities. It introduced the requirement for the Bulgarian government to secure minimal living space of no less that 4 sq. m. per inmate within a timeframe of three years after its adoption. The programme contains concrete measures for the improvement of conditions and for the reduction of overcrowding. It was indicated that for its implementation, 20 million leva (10 mil Euro) would be necessary over a three-year period. At the beginning of 2011, the Central Penitentiary Administration indicated that capital expenses and funds for upkeep had been reduced significantly, which seriously challenges its ability to fulfill the measures imposed by the programme. On the other hand, at the end of 2011, the minister of justice prepared a draft for the amendment and supplementation of ESDRA, which envisaged extending the deadline for securing a minimum living space of 4 sq.m. per inmate until January 2019, which again demonstrates its inability to secure the necessary minimal living standards for inmates in the foreseeable future. Against the background of several demonstrations of good intentions for improving the material conditions in prisons, the executive power still did not adopt real measures for their implementation. Due
to this, again in 2011, the BHC established with alarm that change has not occurred in most of the prisons. The overcrowding in Burgas, Varna, Plovdiv, Pleven and the dormitories in Kremikovtsi remain an exceptionally serious problem, which carries in its wake violations of a series of inmates’ rights. Anywhere from 860 to 880 prisoners were placed in the prison facility in Burgas throughout the year in different periods, even though the facility has an official capacity of 371. In just one of the corridors on the fourth floor during August 2011, a total of 240 inmates were living together. In one of the cells of approximately 55 sq. m., 44 inmates were housed in 40 double- or triple-bunk beds. Four of the inhabitants of the cell were forced to sleep on the floor between the beds, and during the day their mattresses were rolled up and placed under the beds. The picture in the other cells on this corridor was similar by years’ end. The only open spaces in the sleeping quarters were the narrow walkways between the beds. The cells in the whole prison, as in the prisons in Varna and Stara Zagora, still do not have independent sanitary facilities. Since the doors of the cells are locked at night, the inmates in these prisons are forced to tend to their physiological needs in buckets in direct proximity to the beds and in front of the remaining inhabitants of the cell.

One of the basic priorities of the Central Penitentiary Administration in 2011 was the introduction and observance of medical standards and the full staffing of medical centers. Despite this, the quality and scope of medical services in prisons continues to present serious problems, while the number of inmate complaints connected with healthcare has not decreased. The basic reasons for these problems are the shortage of funds, lack of sufficient medical personnel, and the isolation of prison medical services from the system of national healthcare in terms of standards, administration, scope of medical checks, prophylactics and prevention. Thus, for example, the medical center at the prison in Varna in 2011 had been staffed with a medical assistant and a psychiatrist over a long period of time, while the doctor was absent on medical grounds. The medical centers continue to fail to comply with the requirements of the Medical Institutions Act, while supervision of their activity, as well as inspections of sanitary-hygienic conditions which have a direct effect on the health of the inmates, are not independent of the prison system. Another medical problem results from the prison administrations’ inability to prevent access to narcotic substances behind bars. This has led to an increase in the number of inmates with drug addictions and hence to an increase in cases of hepatitis and HIV-positive inmates, which requires the introduction of a greater number of programs for therapeutic impact on drug addicts.

Over the previous years, the leadership of the Central Penitentiary Administration (CPA) has admitted that the lack of funds for security equipment and for material incentives for employees are the main reasons for the smuggling of drugs, alcohol, mobile phones and other prohibited items. This also explains the participation of prison employees in various corruption schemes such as the priority inclusion of inmates on the list for conditional early release, the granting of leave, securing jobs and so forth. In 2011, however, the new leadership of the Central Penitentiary Administration has begun making an effort not to allow prohibited items behind bars. From an interview with the director of the CPA in October 2011, it became clear that “corruption practices in penitentiary facilities have been tolerated for years. This is the reason that some of the employees have developed a sense of impunity. Over four years immediately preceding 2010, when the leadership of the CPA was changed,
only five employees were dismissed from the system of prisons and investigation detention centers for violations. At the end of last year, along with the Chief Directorate for Criminal Police, we undertook a series of operations based on complaints about our employees engaging in unregulated contact or corrupt practices. The results are evident. At this moment, a total of 36 guards and officers from the whole country have been dismissed for violations. The offenses for two of them are connected with the use of alcohol. The others have been caught smuggling telephones, alcohol or other prohibited items into the buildings of the prisons and detention centers.

The decrease of inmate employment has motivated the prison leadership to seek possibilities for opening new schools for improving inmates’ educational levels and for acquiring professional qualifications. In 2011, besides in the prison schools, inmate education was also organized at the prison classes in Pleven and Pazardzhik.

Unlike the convicted male inmates who are serving their sentences in a total of 11 prisons around the country, women and juveniles convicted of crimes continue to be discriminated against, in that they are forced to serve their sentences not in the vicinity of their place of residence, but in one single facility for each population – in the city of Sliven for women, and in Boychinovtsi for juveniles. This greatly hinders visits and social contacts for those inmates whose loved ones and relatives live far from the prison.

In 1998, in place of the death sentence, a new punishment was introduced into Bulgarian legislation – life sentence without parole. This punishment exceeds the acceptable limit of suffering and humiliation and deprives the convict of all hope of a free life, especially when we take into account that not a single inmate sentenced to this punishment has been pardoned. Its presence in the Penal Code is in contradiction to European penitentiary practice and violates Article 3 of the European Convention on Human Rights, for which reason it must be removed from the system of punishments in Bulgaria.

INVESTIGATION DETENTION CENTERS

Just as in the case of prisons, the measures taken by the executive power to solve the numerous problems with investigation detention centers continue to be only declarative. The dozens of convictions against Bulgaria due to poor material conditions in investigation detention centers and recommendations by international human rights bodies have also failed to motivate the authorities to take measures to make the material conditions more human. Over the preceding years, plans were prepared for the construction of new detention centers in the cities of Petrich, Gabrovo, Lovech, Plovdiv and Shumen, and for the improvement of conditions in existing detention centers in the cities of Vidin, Ruse, Haskovo and Razgrad, but these projects remained unrealized.

The number of accused individuals placed detained in detention centers under the CCP as of 31 December 2011, was 1,025, but only a month earlier – as of 31 November 2011, that number was 1,269; that is, almost equal to what it was at the end of 2011. With the exception of the final month of the year, the overpopulation of detention centers during the year was similar to the level during 2010, while during the final month, a 244-person decrease in the number of detainees was registered. Figure 5 shows the number of accused in detention centers in Bulgaria by year.

In addition to those placed under “detention on remand” under the CCP, the detention centres also hold a large number

of detainees transferred “by delegation” for trial or pre-trial proceedings. The total number of individuals who passed through detention centers during the year is around 20,000. The overcrowding of detention centres in large cities that serve as regional centers is much greater than in detention centres in smaller cities. As in previous years, the greatest overcrowding was found in detention centres in Ruse, Dobrich, Varna, Stara Zagora, Shumen, Pleven and other cities, where the practice continues of placing a greater number of individuals in cells than their capacity allows. Extensive overcrowding at given periods of time was also characteristic for the detention centers in border towns (Petrich, Slivnitsa and Svilegrad). The marked increase in the period of detention in detention centres for more than two months and more than six months is an alarming tendency that continued in 2011 too, while the material conditions in the more than 43 detention centres in Bulgaria remained exceptionally poor. During the preceding ten years this was the reason for numerous complaints by detainees, who argued that the very stay at detention centres was in and of itself inhuman and degrading. In the detention centres in Gabrovo, Petrich, Slivnitsa and Pazardzhik, detainees are held in underground cells. In most of the detention centers, the cells do not have windows, and the only lighting is artificial. The dimensions of the cells in some detention centers (Vratsa, Sliven) are exceptionally small. The open space per detainee is less than one sq. m. In a total of 18 of the detention centers, open-air premises are lacking and detainees do not have any opportunity whatsoever for physical exercise for months on end. Only 16 of the detention centers have open-air premises. Another 10 are equipped with indoor premises for physical exercise. Only nine of the detention centers have in-cell sanitation facilities. In all the other centers, access to sanitation facilities depends on the goodwill of the security personnel and in cases in which it is not possible for employees to open the cells upon every request for access to the sanitation facilities, the detainees are forced to meet their physiological needs inside the cell in front of all of the other inhabitants. In cases in which the cells have been filled beyond
capacity, for long periods of time detainees must sleep two to a bed or some detainees must sleep on the floor of the cell.

The deplorable living conditions in Bulgarian detention centres fulfill a punitive function more than any other function. Holding detainees in them for the most part achieves the aim of breaking the detainee, such that he is ready to make any statement whatsoever that is convenient to the investigation. Quite frequently no procedural activity is undertaken with the detainees for extended periods of time (for more than six months in hundreds of cases per year), which gives their stay in the detention centre of a punitive nature before the official imposition of punishment by the court and to a great extent predetermines the future sentencing.

**JUVENILE CORRECTIONAL AND EDUCATIONAL FACILITIES AND INSTITUTIONS FOR THE TEMPORARY PLACEMENT OF JUVENILES**

Over the past decade, the number of correctional boarding schools (CBS) and social educational boarding schools (SBS) in Bulgaria decreased significantly – from 24 CBS and SBS in 2000 to eight in 2011. According to data from the National Statistical Institute, during the 2000/01 school year, 551 children were being educated in SBS, while 2,503 were being educated in CBS. During the 2010/11 school year, 213 children were being educated in SBS, while 142 were being educated in CBS. Juveniles over the age of eight and those that have committed or who have demonstrated the “preconditions for committing” anti-social acts are placed in CBS. Juveniles who have committed anti-social acts and for whom the educational measures under the *Juvenile Delinquency Act* have not proven sufficiently effective and who do not have a suitable social environment for their normal education are placed in SBS. In the majority of cases, the leading reasons for placing children in both types of boarding schools is theft, followed by running away from home or from a specialized institution where children are placed as a protective measure under the *Child Protection Act*. The other basic reasons for placement in CBS and SBS include: vagrancy, aggressive behaviour, hooliganism, begging, racketeering, property damage, etc.

The large decrease in the number of boarding schools is due to legislative changes that have been made and which have limited the arbitrariness of placing children in such institutions following the introduction of court sanctions. As far as the method of its application is concerned, this measure has not undergone essential changes, for which reason it cannot guarantee the observation of the rights of children at risk. In the SBS and CBS, we still find the mixing of children who are placed there according to purely social indicators with those who have committed anti-social acts. The boarding schools’ distance from large cities hinders the children’s opportunities for social adaptation, quality medical service, securing of transport, hiring of qualified pedagogical staff and so on. In the end, this impacts the academic and educational process, which cannot be maintained at the level of other general-education schools. All of this makes it necessary to reexamine the reason for the existence of SBS and CBS in their present form. It is also necessary to seek alternatives to correctional influence with respect to children in conflict with the law.

In August, the government adopted a *Concept for State Policy in the Sphere of Juvenile Justice*.

It envisages the abolition of the legislation and institutions connected to the system of combatting juveniles’ antisocial acts and which are repressive in nature and the adoption of a system for the protection of children in conflict with the

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49 See *Right to liberty and security of person* above.
law through social and educational measures in accordance with the recommendations of the Committee on the Rights of the Child. By the end of 2011, however, no such steps for the practical realization of this concept had been taken.

The Ministry of the Interior places children who have committed anti-social acts, children without a domicile, vagrant or beggar children, as well as children who have left compulsory education or involuntary treatment facilities without permission in the five institutions for the temporary placement of juveniles (ITPMs) in Sofia, Plovdiv, Varna, Burgas and Gorna Oryahovitsa. Stays there cannot exceed 15 days and must be ordered by a prosecutor’s office. In exceptional cases, the length of the stay can be increased to two months. The placement of children in such institutions is defined by the police as a protective measure, but in its essence it has a punitive character. The legislative basis for placing children in ITPM contradicts international norms for the protection of the right to personal freedom and security, which require court supervision of this type of deprivation of freedom. The placement of children in such institutions cannot be appealed. In contradiction to international standards for children’s rights, the placement procedure denies the child’s right to legal defense from the moment of detention, during the period of stay or after the imposition of such a measure, while during their stay at the ITPM, children are deprived of their right to education and do not attend school. In connection with this, in November 2011, the European Court of Human Rights established in its judgment on the case of A. et al v. Bulgaria that the placement of one of the applicants – a juvenile Bulgarian national in an ITPM – constituted a violation of Art. 5, item 4 of ECHR, since the Bulgarian legislation does not provide any effective remedy through which the applicant could dispute the legality of her placement before a court.

**CRISIS CENTERS FOR CHILDREN**

As of 31 December 2011, ten crisis centers for children suffering from violence or who were the victims of trafficking were functioning in the country. This number is two less than the preceding year – one was closed and one left the category of crisis centers for children, since it now accepts adults as well. In this way, the total capacity of crisis centers has been reduced from 123 to 109. There has also been a decrease in the number of orders issued by directors of regional directorates for the placement of children within them from 259 in 2010 to 248 in 2011.

In early July 2011, five years after the opening of the first crisis center for children victims of trafficking and violence in Bulgaria, the BHC presented a report entitled *Crisis Centers for Children in Bulgaria – Between the Social Service and the Institution*. The report was the result of the monitoring carried out on all crisis centers for children and a study of the legislation and practice connected to them. The goal of the publication was to compare the functioning of the crisis centers with international standards for children’s rights.

The procedure for placing children in crisis centers is flawed. The *Child Protection Act* gives the opportunity for the court-ordered placement to be carried out within two months from the day of the actual administrative placement, which is called “temporary” – this does not comply with the short deadline for a court decision in the sense of Art. 5, item 4 of the ECHR. In practice, this deadline is not always observed, especially by courts in the larger cities which have larger caseloads. In individual cases, children’s stays at crisis centers have exceeded the maximum length of six months allowed by the law. The law also allows for repeated placements, as well as subsequent placements in different crisis centers. This placement has the nature of
deprivation of freedom – the children are constantly locked in and do not have the right to leave without a chaperon. If children run away, the police conducts a search for them. The European Court of Human Rights in its judgment in the case of A. et al v. Bulgaria of 29 November 2011, established that the placement of one of the applicants, a juvenile Bulgarian national, for nine months in a crisis center for children constitutes deprivation of liberty and found a violation of Art. 6, item 1 of the ECHR (the right to freedom and security) due to the fact that the legal requirements regulating such placement were not observed.

Another basic problem is that the crisis centers mix children who are victims of trafficking and violence with children who have committed “antisocial acts” – pick-pocketing, prostitution, runaways from institutions, as well as children with social needs. In 2011, there were individual cases of the placement of children with mental disorders at crisis centers, despite the impossibility of securing adequate care for them there.

The lack of capacity in the social services is a serious hindrance to effective work with children who are victims of trafficking and violence. These services are not in a condition to cover all children at risk and thus many of the potential users of the “crisis center” service cannot take advantage of it. For a significant number of the children placed in crisis centers, it is not clear where they will be redirected after the end of their stay there. Such decisions are made by the Directorates for Social Assistance at the moment. The fact that some children are held in crisis centers simply because there is nowhere else to house them is indicative of the flaws in the Bulgarian system of social assistance. Despite the debate provoked by the BHC report, and the Agency for Social Assistance’s admission of the problems delineated therein, during 2011 not a single one of these problems was solved.

In its comments and recommendations upon examining Bulgaria’s report of 19 August 2011, the HRC expressed concern about the overcrowding of prisons and other detention centers, as well as over the material conditions and healthcare in them. The committee recommended strict adherence to the UN’s Standard Minimum Rules for the Treatment of Prisoners, the construction of new prisons and the introduction of alternatives to incarceration.

In its turn, the UN Committee against Torture, on examining Bulgaria’s report, expressed concern over the state of Bulgarian prisons and the treatment of inmates and those placed in other detention facilities.50

50 See Protection against torture and inhuman and degrading treatment above.
In 2011, protection against discrimination underwent contradictory development in Bulgaria. With its decisions in several cases, the Supreme Administrative Court (SAC) showed progress in applying the standards of anti-discrimination legislation. Some of its other decisions, however, demonstrated a retreat from these standards. The state of ethnic discrimination worsened significantly in practice during the second half of the year with unprecedented public demonstrations of ethnic intolerance against the Roma minority.

In 2011, the development of the court practice under the Protection against Discrimination Act continued. The SAC issued a series of decisions which marked important progress in the court protection of the fundamental right to equality, especially in the sphere of socio-economic rights.

The SAC rejected several appeals from the minister of health against decisions of the Commission for Protection against Discrimination (CPD), which found that the minister had discriminated against various groups of patients by excluding them from the state guarantee to realize their healthcare-related rights. Thus, for example, the court denounced the legislative exclusion of women over 43, respectively 45, from certain methods of assisted reproduction, finding that the formal age criterion was unjustified, and that an individual evaluation of the reproductive health of every woman was necessary. The court confirmed that healthcare must necessarily be provided while observing the equality of the patients as a basic principle. Giving an example of a liberal respect for the individuality of the person, without a view to social or professional prejudices, the court pronounced: “[T]here is no definite age boundary, after the passage of which changes necessarily set in, leading in every case to negative consequences [...]” And furthermore: “Every woman, without limitation due to age, deserves an opportunity to try a treatment, having been informed in advance of the chances of success and the alternatives[...]” The court also confirmed the equality body’s decision that the failure to include people suffering from the rare illness “idiopathic pulmonary hypertension/chronic pulmonary heart disease” in the circle of individuals with the right under the Positive Medication List (Ordinance No. 34 on

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51 The SAC exercises bi-institutional court control over the decisions of the Commission for the Protection from Discrimination, which is the specialized independent national equality body.
the procedure for payment from the state budget for the treatment of Bulgarians for diseases outside the coverage of the mandatory health insurance) to be provided with the necessary medications at the government’s expense, is inequality in violation of the law. The court confirmed that the state was obliged to secure such financing.

The SAC also ordered the Ministry of Health to provide vitally necessary medications to people suffering from Wilson’s Disease. The minister was also ordered to include Alzheimer’s Disease in the appendix to the ordinance for defining diseases whose domestic treatment is paid for by the National Health Insurance Fund (NHIF).

At the same time, however, this court refused to find the minister of labour and social policy responsible for the fact that the state has failed to fulfill its obligation to secure the necessary social services for people with disabilities within society, such that they are not institutionalized. The SAC held that there was a failure to fulfill the legislative obligation to exhaust the possibilities for care of people with mental disabilities within society, before locking them up in so-called “homes,” which cripple human life – but they declined to find that the legal responsibility for this lay with the minister, without clarifying whose it was.

In a series of cases, the SAC found that the maintenance of an architectural environment or infrastructure which people with limited mobility, with or without disabilities, cannot use independently without the help of others constitutes discrimination in violation of the law. Those convicted include banks, a state executive agency, the NHIF and the Regional Health Insurance Fund, the Sofia transport company and the Ministry of Justice (Central Penitentiary Administration for the state of the investigation detention facility in Pazardzhik). The court found that efforts made to provide partial access do not have legal significance if full equality is not secured, which presumes the absolute independence of people with mobility difficulties; organizational measures for compensating such inaccessibility also do not hold legal significance. The court is firm and consistent in finding

57 Ibid.
58 Decision No. 16660 of 16 December 2011, in adm. case No. 13532/2011, five-member panel.
59 Decision No. 15992 of 5 December 2011, in adm. case No. 12812/2011, five-member panel.
60 Decision No. 2845 of 24 February 2011, in adm. case No. 4946/2010, VI division, three-member panel; Decision No. 10662 of 18 July 2011, in adm. case No. 6131/2011, II collegium, five-member panel.
61 Ibid.
that the defense of an individual’s dignity requires that that person be able to operate independently, without being dependent on anyone’s help.\(^{69}\) It also does not matter who is the owner of the building; the one who is obliged to make it accessible is the one who uses it to make public services available.\(^{70}\)

The SAC, however, has developed a problematic practice as far as churches are concerned. In contradiction to the Protection against Discrimination Act, and in some cases, EU law, the court has essentially freed religious organizations from the legal prohibition against discrimination under the pretext of their right to organizational autonomy. Thus, the court held that the Bulgarian Orthodox Church is not responsible for its refusal to allow a priest to serve in the clergy of a certain diocese – because of his beliefs, according to him.\(^{71}\) The court confirmed the unacceptable pronouncement by the equality body itself that the latter was not competent to rule as to whether discrimination exists, because religious institutions were separate from the state.\(^{72}\) The priest was forced to choose between conforming to the rules of the religious organization he had chosen or to leave it.\(^{73}\) The court also scandalously ruled, “in the implementation of religious practice, protection of civil rights by the state cannot be applied, sought or most of all secured.”\(^{74}\) It further argued that the Bulgarian Orthodox Church was not “an organization, which, in the implementation of its activities […] encroaches on the civil rights of individuals, but is a religious organization. The implementation of religious practices by it does not create a relationship regulated and protected by the state.”\(^{75}\) Thus, according to the SAC, the Bulgarian Orthodox Church is outside the law. It is not an organization that must observe it, unlike all the others in society; it can deal with people inside its parameters without a view to their civil rights; having once entered into its parameters, they cease to be citizens of the state and become the disenfranchised objects of the church’s whim. The court scandalously held that the equality body is incompetent to apply the law to the church, since if it had done so, its decision would have been insignificant.\(^{76}\)

The SAC also freed the Bulgarian Academy of Sciences from the action of the antidiscrimination law

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\(^{69}\) Decision No. 4624 of 1 April 2011, in adm. case No. 314/2011, VII division, three-member panel, p. 4.

\(^{70}\) Decision No. 5622 of 20 April 2011, in adm. case No. 8693/2010, VII division, three-member panel, entered into force; Decision No. 14212 of 3 November 2011, in adm. case No. 11153/2011, five-member panel.

\(^{71}\) Decision No. 8296 of 13 June 2011, in adm. case No. 6841/2010, VII division, three-member panel, entered into force.

\(^{72}\) Ibid.

\(^{73}\) Ibid.

\(^{74}\) Ibid., p. 2.

\(^{75}\) Ibid.

\(^{76}\) Ibid., p. 3.

\(^{77}\) Decision No. 15714 of 29 November 2011, in adm. case No.16152/2010, VII division, three-member panel, entered into force.

\(^{78}\) Ibid., p. 2.
when it found that the academy’s “special status” as a “national autonomous organization” gave it the right to be led only by its internal statutes and by-laws in addition to the Bulgarian Academy of Sciences Act.  

In two important cases, the SAC offered protection from discrimination on the basis of sexual orientation. The court confirmed the Commission for the Protection from Discrimination’s decision that the ordinance for public order adopted by the Pazardzhik Municipal Council violated the law, insofar as it prohibited “the public demonstration and expression of sexual and other orientation in public places.” The court found that this ban constituted harassment, because it created a hostile, offensive and threatening environment for people with a non-heterosexual orientation and harmed their dignity.

The SAC also ruled against the editorial staff of a newspaper that violated the ban against discrimination with homophobic publications. The court confirmed the equality body’s decision that these offensive publications constituted harassment, and also that subsequent publications, in which the activists who had submitted a complaint to the CPD about the original homophobic publications were maligned, constituted in turn victimization as a separate violation of the law. The court did not accept the editorial staff’s objection that part of the publications in question were an interview; insofar as the editors had not distanced themselves from the opinions expressed in the interview, but rather, on the contrary, had also allowed themselves to use indisputably disparaging expressions

84 Ibid.
85 Decision No. 11359 of 13 September 2011, in adm. case No. 13772/2010, five-member panel.
86 Ibid., p. 2.
87 Decision No. 15089 of 17 November 2011, in adm. case No. 15276/2010, VII division, three-member panel, entered into force.
88 Ibid.

84 Ibid. when it found that the academy’s “special status” as a “national autonomous organization” gave it the right to be led only by its internal statutes and by-laws in addition to the Bulgarian Academy of Sciences Act.  

In another case, however, the court refused to extend protection against hate speech to the Apostolic Reformed Church and its accompanying organization, finding acceptable the negative statements made with regard to Protestant communities by an activist from the Bulgarian Orthodox Church in a newspaper interview. Since there was a lack of “specificity” in the statements under dispute (the interviewee spoke generally, against Protestants as a whole), there was also the absence of an intention to create a hostile environment for them, and hence such a result was lacking.

It is positive that the SAC now admits that “the self-determination of every individual is that individual’s sovereign right and, insofar as the basis for another conclusion does not exist, the ethnic belonging of an affected individual does not require further evidence.” The court has also adopted the “mixed motive” standard and has found that “it is not necessary for different treatment to be based on an ethnic trait alone in order for discrimination to be present.”

The SAC, however, has been inconsistent in its case law regarding the conflict between the Protection against Discrimination Act and other legal norms that concern discrimination. In one case, the court categorically held that the stipulated age restriction on applying for the position of “assistant” in the amended Scientific Degrees and Titles Act constituted direct discrimination in violation of the unified law and confirmed the CPD’s sanctioning of the university that

89 Decision No. 248 of 10 January 2011, in adm. case No. 12076/2010, five-member panel.  
90 Decision No. 9824 of 1 July 2011, in adm. case No. 9292/2010, VII division, three-member panel, entered into force.  
91 Ibid.  
92 Decision No. 10294 of 8 July 2011, in adm. case No. 12449/2010, VII division, three-member panel, entered into force.  
93 Ibid.
had applied this norm. In other cases, however, the court ruled that there was no discrimination because a legal norm had been applied which stipulates the disputed exclusion on the basis of a given trait.

The deterioration of the situation concerning discrimination on ethnic and religious grounds during 2011 was the result of mass outbursts of hate speech and the acts of violence against ethnic and religious communities that accompanied them, which were unprecedented in scale and gravity. In April and May, the prayer houses of the Jehovah’s Witnesses in Burgas and of the Muslims in Sofia were the object of attacks by activists from extreme nationalist parties and informal groups supporting them.

The most massive public expression of racial discrimination and violence throughout the year were the massive anti-Roma riots following the murder on 23 September 2011, in the village of Katunitsa in the Plovdiv Region, of a nineteen-year-old Bulgarian by a man of Romani origin - thought to be a close associate of the local shady Roma businessman Kiril Rashkov (also known as “Tsar Kiro”) - who ran the victim over with his van. The perpetrator was arrested and was sentenced on 1 March 2012 to seventeen years in prison for premeditated vehicular homicide. The authorities began a series of punitive operations against members of the Rashkov family. Kiril Rashkov himself was convicted and sentenced to three and a half years of effective imprisonment for issuing a death threat to a close friend of the murder victim’s family, while Rashkov’s grandson was given an 18-month effective sentence, also for issuing a death threat. In December, the Roma businessman’s daughter-in-law was sentenced to a one-year suspended sentence and a 5,000-leva fine (2,500 Eur) for raising 33 turtles (of rare breeds protected by the law), which were found in a search of the family’s home.

The September 23 murder set off massive anti-Roma protests and violence, which engulfed not only the village where the incident had occurred itself, but many other cities around the country. The protests were organized spontaneously via Facebook and other social networking media, and tens of thousands of activists from the two extremely nationalistic and xenophobic parties, Ataka and the VMRO, took part as well as non-party extremist and football hooligans. Three properties of the Rashkov family in Katunitsa were burned down on the night of the incident before the eyes of the police, who remained inactive, and several of their vehicles were seriously damaged. Over the following days, massive anti-Roma protests were held with the clear or tacit consent of the authorities throughout the entire country. Several Roma were attacked and seriously injured, while Roma properties, including homes, were set on fire or vandalized. Angry crowds shouted “Turn the Gypsies into soap, put the Turks under the knife!” “Death to the Gypsies!” “Turks – get out of Bulgaria!” and other racists and xenophobic slogans. The leader of the Ataka party, Volen Siderov, organized several protests and called for the reinstatement of the death penalty, destruction of the Roma ghettos, and the adoption of legislative amendments that would allow the use of lethal weapons by citizens in defending their property and for the creation of civil militias.

At the end of September, Prosecutor General Boris Velchev ordered that pretrial proceedings be opened on the basis of
Art. 162 and 163 of the Penal Code for every complaint about the incitement of ethnic and religious hatred, and that the case files be completed in the shortest possible period. At the end of January, the BHC requested information from the Prosecutor’s Office about the number of the initiated pre-trial proceedings, indictments made and convicted individuals in connection with the events in Katunitsa. On 9 February 2012, the BHC received the requested information. From this it became clear that as of that date, a total of 16 pre-trial proceedings had been opened under Art. 162 and 163 of the Penal Code, but that only one individual had been convicted (the information did not provide data about the sentence given, but it most likely refers to the 10-month suspended sentence given to a young man in Varna for the creation of a Facebook page entitled “Slaughter for the Gypsies” and for publishing an invitation to participate in an event entitled “To Arms”92). Two other indictments had been made. There was one other conviction for brazen hooliganism, but it was unclear whether it was tied to racist provocation and violence or for something else, for example, resisting the orders of a police officer. Thus, the most massive and aggressive racial riots since the beginning of the democratic transition are on their way to going unpunished. As in other cases in the past, the system for punitive jurisdiction shows speed and effectiveness when pursuing crimes committed by members of the Roma minority, but remains inactive in the face of public incitement of racial hatred, discrimination and violence.

In its comments and recommendations upon examining Bulgaria’s report of 19 August 2011, the HRC expressed concern over widespread discrimination against the Roma, especially in the sphere of access to education, justice, employment, housing and commercial establishments. The committee recommends the adoption of energetic actions on the part of the government to overcome the existing inequalities.

On 3 January, the UN Independent Expert on Minority Questions, Gay MacDougall, published her report from her visit to Bulgaria in July 2011. In it, she noted serious problems with the integration of the Roma minority. According to her, the Roma “experience discrimination and exclusion in all spheres of life, which leaves them totally marginalized and permanently poor.”93 She recommended the adoption of a system of measures for their integration into the sphere of education, employment and housing policy. The independent expert also expressed her concern over the growing number of violent incidents, threats, vandalism to houses of prayer and hate speech regarding the Muslim and other religious minorities. She expressed criticism of the government’s refusal to recognize the existence of the Macedonian and Pomak minorities.

In 2011, the European Court of Human Rights pronounced a judgment against Bulgaria which established discrimination. In the case of Anatoliy Pomomaryov and Vitaliy Ponomaryov v. Bulgaria of 21 June, the Court found violations of Art. 14 in conjunction with Art. 2 of Protocol No. 1 of the European Convention on Human Rights due to the fact that the two boys, who are of Russian origin and who live in Bulgaria as temporary residents with their mother, who is married to a Bulgarian national, had to pay a fee for their high-school education, unlike Bulgarian nationals and foreigners with permanent residency in the country. In the Court’s assessment, this unfavourable treatment was unjustified.


12. Right to asylum, freedom of movement

During 2011, the legal guarantees and practical possibilities for exercising the right to asylum and international protection in Bulgaria remained on an exceptionally low level. The government failed to fulfill the international obligations it had taken on to provide adequate protection to people in need of it, in accordance with Art. 27 of the Constitution and Art. 1A of the Geneva Convention relating to the Status of Refugees of 1951 and the New York Protocol of 1967. Administrative practice under the national Asylum and Refugees Act (ARA), which was adopted in 2002, has created a series of institutional and practical hurdles for foreigners seeking protection, while the courts, with few exceptions, have upheld the restrictive standards applied by the State Agency for Refugees in the evaluation of requests for protection, including with respect to people who in 2011 fled from countries in which there was armed conflict and who had an indisputable legal and factual basis for receiving protection and asylum in Bulgaria.

Access to court oversight in accordance with Art. 16 of the Geneva Convention was restricted by a regulation in Art. 92 of the ARA, according to which those seeking protection are exempt from any state fees and expenses, with the exception of expenses for expert appraisals. Although regional administrative courts in principle respected requests to be exempted from such
fees, those seeking asylum did not receive the same treatment from the Supreme Administrative Court. In 2011, without the agreement of the UN High Commissioner on Refugees and civil organizations, the government administration introduced changes into the jurisdiction regarding appeals of refusals to grant protection and from 24 May 2011, the cassation instance for appeals of refusals in standard proceedings became the Third Division of the Supreme Administrative Court, rather than the Five-Member Panel, as it had been until then. In the view of the years' long practice of the division in question as an appellate instance predominantly for the application of political, not rights-related standards, with the exception of a few individual judges who uphold the positions of the law regardless of the circumstances, this has made court control over refugee cases in standard proceedings formal to a significant degree.

Despite this and insofar as during 2011 legal aid on refugee cases for appealing refusals of protection was once again not systematically organized in such a way so as to guarantee their timely hearing before a court, those seeking protection continue to count on the assistance of non-governmental organizations. Thus, the BHC prepared and assisted in the submission of 239 appeals against refusals of protection and represented 96 refugees pro bono before the national courts, overturning 36 administrative acts (10 on admissibility and 26 on merits). Regardless of that, the lack of effective court control reflects negatively on the recognition rate. The administrative proceedings on refugee requests for protection were held without taking into consideration the facts of specific petitioners' refugee stories and without considering their specific needs for a certain type of international protection. In 2011, 266 foreigners seeking protection received refusals, of whom 151 were from Iraq, 35 from Syria and four from Somalia – countries with documented violations of human rights and encroachments upon the life and security of civilian populations on a large scale. Only 10 people (or 1 percent of the total of 890 asylum seekers who submitted requests during the year) were recognized as refugees and were given this status and only 182 (or 20 percent of those who submitted requests during the year) received subsidized protection (humanitarian status), which marks a combined 21 percent recognition rate.

Interviews conducted by the administration to determine the need for protection and status did not correspond in many respects to internationally established legal and institutional standards. Those seeking protection as a whole were deprived of the possibility to pose further questions through their legal representatives, when such had been assigned in order to clarify circumstances. Translators for certain rare languages like Somali, Tamil or Sorani were not secured, and for this reason, the interviews with protection seekers from these language groups were conducted in another language which they did not have a sufficient command of. Written or other evidence submitted by the protection seekers in support of their story were not gathered by the administration in the proper way and using the procedural methods, nor were they properly noted in the protocol, for which reason in many cases they were not taken into consideration when the decision was made or even not presented before the court upon appeal. These results are based on the 77 monitoring visits, the examination of 142 individual cases, and consultations with 1,810 beneficiaries conducted by the BHC during 2011.

The Border Police allowed civil observation of all places for 24-hour police detention, including the transit hall of the Border Control Checkpoint of Sofia Airport, and assisted in the clarification of all cases
BHC secured access to territory and procedure for 549 people, of whom 483 received assistance in being released from special institutions for the temporary placement of foreigners (administrative detention) and of whom only 66 were given immediate access to procedure and placement in the territorial branches of the State Agency for Refugees. Thus, 62 percent of the 890 people who submitted requests for protection during 2011 were guaranteed the right to seek asylum in Bulgaria due to assistance and defense provided to them by BHC, whereas it should be secured by the Bulgarian state.

The social conditions in the Refugee Administration’s registration-reception centers are not on a satisfactory level. These conditions, along with existing problems in carrying out the administrative-procedural activities in cases for granting status, forced a significant portion of those seeking protection to abandon their asylum cases in Bulgaria and to continue on towards other countries with better standards of reception and recognition. In 2011, 191 protection seekers abandoned their cases and left Bulgaria for these reasons.

Regarding the freedom of movement established in Art. 13 of the Universal Declaration on Human Rights and Art. 12 of the International Covenant on Civil and Political Rights and in Art. 35 in connection with Art. 27, para. 1 and Art. 26, para. 2 of the Constitution, certain positive changes occurred in 2011. The campaign launched in 2009 by the BHC and other nongovernmental organizations against the illegal detention of refugees seeking protection to abandon their asylum cases in Bulgaria and to continue on towards other countries with better standards of reception and recognition. In 2011, 191 protection seekers abandoned their cases and left Bulgaria for these reasons.

Art. 16, para. 3 from the Ordinance for Coordination and Responsibility, approved by decree of the Council of Ministers No. 332/28.12.2007, in force since January 14, 2008 (State Gazette,

Concerning people seeking protection on the border or within the territory of Bulgaria. At the same time, however, at certain places, the observing lawyers’ access to those being held within the framework of 24-hour detention was not fully unimpeded and those seeking protection were interrogated and directly taken away to investigation detention centers without giving them the chance to speak with lawyers or other representatives of NGOs before that. The Border Police, despite the large size of the budget approved for the Interior Ministry, for yet another year did not have funds for translation within the framework of the police case files against foreigners unlawfully staying in Bulgaria, and only paid for translations upon the opening of pre-trial proceedings for unlawful crossing of the border under Art. 279 of the Penal Code.

Thus, it should be borne in mind that again in 2011, foreigners administratively detained were not guaranteed the right to legal defense from the moment of detention, in accordance with the standard in Art. 30, para. 4 of the Constitution. Given this situation and given the lack of legal aid and legal defense from the moment of their detention, the state does not secure any legal and procedural guarantees that statements made before the investigating bodies are recorded adequately and in full. For this reason, a large part of the foreigners seeking protection – 194 people, or 63 percent of the 350 foreigners in total who submitted requests for protection at the border in 2011 – were convicted for illegally crossing the border in violation of Art. 31 of the Geneva Convention relating to the Status of Refugees and Art. 279, para. 5 of the Penal Code.

In this situation, requests for protection were registered in the proper way solely through the cooperation and with the assistance of lawyers or representatives of non-governmental organizations which secured translation. In this way in 2011 the
Despite this, until 31 December 2011, those seeking protection continued being sent to the centers for administrative detention in Busmantsi and Lyubimets (part of the Migration Directorate of the Interior Ministry), and, as was noted above, only 66 foreigners seeking protection received direct access to registration and placement in registration-reception centers for refugees without being detained prior to that. The courts refused to correct this violation on the part of the administration and out of a total of 343 complaints submitted against unlawful detention on the part of asylum seekers detained in the centres for administrative detention in Sofia or Lyubimets, only 31 people were freed by the court; the rest of the complaints were rejected.

On 17 February, in the case of Pfeifer v. Bulgaria, the European Court of Human Rights held that Art. 2 of Protocol No. 4 (freedom of movement) and Art. 13 (the right to an effective remedy) of the Convention had been violated. The case concerns a ban imposed upon the applicant, prohibiting him from traveling abroad for several years – and more particularly to Germany, where his wife and daughter were living, while there were ongoing criminal proceedings against him in Bulgaria. In 1992, the Bulgarian authorities began an investigation of the applicant due to suspicion of his involvement in the murder of a man from Pleven. Later he was accused of robbery accompanied by murder. After the whereabouts of the applicant were established by Interpol, he was arrested in June 1998 and extradited to Bulgaria in November. In April 2000, Mr. Pfeifer was sentenced to 16 years in prison. Upon appeal, his conviction was overturned, and the case was sent back to the prosecutor. After the imposition of the travel ban, which came into force in February 2001, Mr. Pfeifer had submitted 11 requests for its repeal between June 2001 and December 2004, but they were all rejected.
13. Rights of people with mental disabilities in institutions

2011 can be noted as particularly important for the rights of people with mental disabilities. The European Court of Human Rights examined a case of key importance, with the potential to change the understanding of the essence of institutions for the mentally ill, to encourage an understanding of their injurious influence on the personality, and to provoke change in the whole system of social services leading to its humanization. On 9 February 2011, the Grand Chamber of the Court held a public hearing on the case of Stanev v. Bulgaria. The applicant is a Bulgarian national placed under partial guardianship and placed in a social care institution in the village of Pastra against his will. The basic questions examined by the Court were directly related to the procedure for the placement of the applicant in the institution and its legality from the point of view of the European Convention on Human Rights (ECHR); confirmation of the degrading conditions there; of the violation of his right to a fair trial and the lack of effective means for legal defence. In its judgment, pronounced on 17 January 2012, the Court found that the placement of the applicant in an institution only on the basis of the wishes of his guardian, who was a municipal employee at that time, constituted a violation of his right to freedom within the meaning of Art. 5.1 of the ECHR. The Court established that the requirements under Art. 5.1(e) of the Convention were not met, which would have justified the applicant’s detention – he did not present a danger to himself or to others. The Court found that the lack of judicial control over placement in institutions is a violation of Art. 5.4 of the ECHR. The lack of legal means for disputing its legality, as well as for disputing the length of the stay there, was noted as a serious defect in the Bulgarian system for the placement of people with mental disabilities in institutions. Other shortcomings of the same magnitude include the lack of an automatic, periodic court reexamination of the placement and the lack of understanding in Bulgarian domestic law of placement in institutions as a deprivation of liberty, which leads to the lack of a legal mechanism for disputing its validity. A violation of Art. 5.5 of the Convention was found due to the lack in domestic law of a mechanism through which people placed in institutions could seek compensation for their unlawful detention. The Court examined the data on the conditions in institutions and found that they are degrading and the fact that the applicant was forced to endure them for more than seven years constitutes a violation of the prohibition on inhuman, degrading treatment under Art. 3

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95 The complaint was filed under N 36760/06. The judgment is accessible in English on the ECHR’s website, http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en.
96 Even during 2002-03, the European Committee for the Prevention of Torture recommended its closure due to the severe, degrading conditions there in its report, based on a visit to the institution. At the moment the present report was being prepared, the institution continued to function.
of the ECHR. The Court also found a violation of Art. 13 in conjunction with Art. 3 of the ECHR due to the lack of a legal possibility for the applicant to seek compensation. A violation of Art. 6.1 of the Convention was also found due to the system of guardianship which exists in Bulgaria and which hinders those placed under guardianship from having direct, personal access to a court so as to be able to dispute their guardianship.

At the moment, thousands of people are in the situation of the applicant in Stanev v. Bulgaria or at risk of falling into that situation. This speaks to a systemic defect in mental healthcare in Bulgaria, which has led to daily and serious human rights violations. Those most affected are people who are already placed in institutions. Their exact number as of 31 December 2011 was 4,153, while those waiting to be placed in such institutions numbered 2,342. Across Bulgaria, 15 social care institutions for adults with mental disorders function, with a capacity of 1,169 places, of which 1,102 were occupied as of 31 December 2011, alongside 28 social care institutions for adults with learning disabilities, with a capacity of 2,277 places, of which 2,215 were occupied as of 31 December 2011. There are also 14 institutions for the elderly with dementia functioning in the country, with a capacity of 836 places. Only 106 people with mental disabilities were deinstitutionalized during 2011. Of those, only eight have started leading an independent life within the community. All of the others have been placed in social services of the residential type. There is no information that special services aimed at overcoming institutional dependency and developing skills for life within the community have been offered to any one of them.

In 2011, 57 new people were accepted into social care institutions for people with mental disorders, while institutions for people with learning disabilities accepted 129 new residents. That is, 80 more people were accepted than were released. The number of people actually placed in institutions of these two types has decreased insignificantly in comparison to last year, but this is not due to deinstitutionalization, but rather to deaths occurring there: in 2011, 42 passed away in social care institutions for people with mental disorders and 81 in social care institutions for people with learning disabilities.

In 2011 no significant change in the state of community-based services in the community took place. Towards the end of the year, 23 sheltered homes existed throughout the country for adults with mental disorders with a total capacity of 231, of which only six new places were established. There are 66 sheltered homes for adults with learning disabilities, with a total capacity of 557, but only five new places were established in 2011. Other existing community-based services for people with mental disabilities as of 31 December 2011 are: placement centers of a family type (PCFT) for adults with learning disabilities – services providing round-the-clock care, including housing and food.

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97 According to information provided by the Agency for Social Assistance under the Access to Information Act with letter No. 92-60/13/02/2012.
98 The statistics, as well as detailed lists of institutions are accessible on the Internet page of the Agency for Social Assistance: http://www.asp.gov.bg/ASP_Client/ClientServlet?cmd=add_content&lng=1&sectid=24&s1=22&selid=22. The statistics were also confirmed in letter No. 92-60/13/02/2012 of the ASA.
99 The information was received under the Access to Information Act with letter No. 92-60/13/02/2012 of the ASA.
100 Ibid. in the letter it was not indicated how many of the deinstitutionalized individuals had mental disorders and how many had learning disabilities.
101 Services providing round-the-clock care, including housing and food.
102 The number of people placed in institutions as of 31 December 2010, was 3,498. See: BHC, Human Rights in Bulgaria in 2010, annual report of the BHC, March 2011.
103 The information was provided by the ASA in letter No. 92-60/13/02/2012.
104 Ibid.
six in number, with a capacity of 55 places, and seven PCFT for adults with mental disorders, with a capacity of 95 places, of which only five were newly added; 55 day centers for elderly people with disabilities (DCED) with a total capacity of 1,550 places, and 36 centers for social rehabilitation and integration (CSRI) for adults with learning disabilities, with a capacity of 1,295 places, two CSRI for adults with mental disorders, with a capacity of 62 places.

The extent to which the number of people counted by the Agency for Social Assistance as being deinstitutionalized into society adequately reflects reality and the extent to which the above services really are opened in the community is under dispute. Even in 2010 the tendency was noted to open protected and transitional residences, as well as other types of social services, not in the community itself, but outside it, on the grounds of institutions. In July 2010 an amendment to the Medical Institutions Act was made. A new paragraph 4 of Art. 5 was added to the law, according to which treatment facilities for stationary psychiatric assistance can provide social services under the Social Services Act. As a result of this, in 2011, the psychiatric hospitals opened “sheltered homes” on their grounds, into which people from social institutions for people with mental disabilities were moved. These types of services, although formally belonging to services in the community, are not such services in practice. No matter where the hospital is located, the sheltered home functioning in the courtyard or even in the hospital building itself is subject to the same isolated regime as the medical institution. The situation of the people placed there is even worse than that of the patients. Treatment in a psychiatric hospital is either fully voluntary, or is mandatory, established by court order. This is not the case with users of social services. It is highly possible for them to be placed there involuntarily, without a court decision and with an unlimited stay. If they are placed under guardianship (regardless of what form), their consent for placement will not be required. There will be no time limit to their placement (as there would be for people undergoing voluntary or compulsory treatment), nor will there be judicial examination of the need for such placement. From this point of view, placements in this type of social services are most likely done through committing violations of human rights corresponding to the violations established in the Stanev case, regardless of the fact that the social services are formally considered “community-based.”

The situation is similar with social services opened in the courtyards of the social care institutions. Here are several examples of such “community-based” services established by BHC monitors during their visits to institutions during 2011: in the social care institution in the village of Prekolnitsa, a “sheltered residence” was opened in the immediate vicinity of the institution’s main building. Sixteen of the women housed in the institution were moved there. Thus, they were “deinstitutionalized,” while the capacity of the institution was reduced to 44. The situation is similar at the social care institution in the village of Malko Sharkovo, where the “sheltered residence” was built in the immediate vicinity of the institution’s main building. Sixteen of the women housed in the institution were moved there. Thus, they were “deinstitutionalized,” while the capacity of the institution was reduced to 44. The situation is similar at the social care institution in the village of Radovtsi, where the “sheltered residence” was built within the institution itself. In the social care institution in the village of Malko Sharkovo, where the “sheltered residence” was built within the institution itself. In the social care institution in the village of Radovtsi, a similar social service was founded. There is no data regarding how many total services of the CPFT and CSRI type were opened in a similar manner throughout the country, imitating community-based services.

In other institutions, no attempts were made even at formal “deinstitutionalization.” In most of them, the tendency

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105 Of them, 40 (with a capacity of 1,153) are designated for people with learning disabilities, while 10 (with a capacity of 274) are designated for people with mental disorders.

106 From the systematic checks conducted by BHC monitors in institutions, it has been established that only app. 10 percent of them are placed under guardianship.
towards the improvement of material conditions can be noted. But the lack of qualified personnel remains a widespread problem. In many institutions, regular pay-rolled positions for key specialists have gone unfilled for years, while in others, even if such positions are filled, the competency of the personnel shows serious deficits. As a rule, psycho-social rehabilitation programs are lacking which would help in the building of skills for independent life among residents or at least provide them with meaningful activities. In places, the state of healthcare is in a critically poor condition. Thus, for example, in the social care institution for adults with mental disorders in the village of Zabernovo, BHC monitors found a high mortality rate for 2011. It can be explained by the institution’s excessive distance from the nearest municipal center where there is emergency care, the lack of a rehabilitator and a kinesiotherapist, and the serious condition of the residents, some of whom also have physical disabilities, for which they do not receive specialized care. Another negative example is the social care institution in the village of Fakia. At the moment, young men and women are placed in this institution upon leaving the institution for children with learning disabilities in the village of Koscharitsa. Regardless of the good material conditions of the facilities, the situation there is critical. The lack of adequate medical and psychiatric care leads to serious, permanent crises, from which the residents practically never recover. Some of them seriously injure themselves, but the personnel find this inevitable, a phenomenon for which there is no possible remedy. The management of the institutions is also critically bad. In the social care institution in the village of Petkovo, for example, BHC monitors found that one of the renovated building was left empty, while some of the residents were placed in the old building, whose rooms did not have doors. The explanation for this situation was connected to confusion concerning the management of the public tender for the renovation. In this institution, too, people, regardless of whether they were in the old and unsightly building or in the renovated one, spent their time sitting around and smoking, as is the case everywhere in such institutions.

Among the factors causing systemic problems in the sphere of social services for people with mental problems is the ongoing lack of specialized statistics and adequate analysis of the need for social services. In 2010, data was published on the webpage of the National Center for Health Information, according to which for the year in question 155,741 persons were “under the observation of psychiatric institutions, clinics, wards, offices and dispensaries.” Despite the presence of this information, an analysis that would evaluate its significance and would establish what services these people really need is lacking. In the meantime, all the administrative regions, in fulfillment of the regulation in Art. 36a of the Handbook for the Application of the Social Services Act, during 2011 the process for creating strategies for the development of social services formally ended. The prepared strategies are not focused on securing social services for people with mental disabilities, but they are also not excluded, thus it follows that they should be envisaged, along with other services for vulnerable groups. From the contents of the strategies for the development of social services, however, one cannot form an impression of the way in which the regional administrations have reached their conclusions about the quantity and quality of the social services needed by people with mental disabilities that must be developed for the period of 2011-2015, and in some of them it is not clear at all what, in fact, needs to be done. Thus, for example, the strategy for the Burgas Region indicates that the

107 The information is accessible here: http://www.nchi.government.bg/statistika/B_5.pdf. There is no indication of the territorial distribution of the illnesses.
In its comments and recommendations upon examining Bulgaria’s report of 19 August 2011, the HRC expressed concern over people with mental disabilities’ lack of access to a system for the defense of their rights, as well as over the lack of independent inspections of institutions for the placement of people with mental disorders. The Committee recommends reform of the legislation concerning the limitations on legal competence, with the aim of taking into account the necessity and proportionality of the measure with a view to the person’s individual abilities, as well as the introduction of effective mechanisms for procedural control, including the possibility for effective access to a court by individuals whose competence has been restricted in any form whatsoever. The HRC also recommends the creation of less restrictive alternatives to mandatory placement of people with mental disorders in institutions. A special object of its concern was the violence and discrimination against children and adults with mental disabilities in institutions. It recommends effective investigation and punishment of the guilty parties in cases of such abuses, as well as the imposition of effective programmes for the psycho-social rehabilitation of institutionalized individuals.

The existence of multidisciplinary teams, the thoroughness of care, the creation of a system of community-based services for people with serious mental illness, the equality and protection of the human rights of people from this vulnerable group continue to appear unrealistic and unattainable.

Social care institution for adults with mental disorders in the village of Rusokastro will be “reorganized,” without saying what this actually means. One of the most detailed strategies is that of the Sofia Municipal Council. It notes that on the territory of the city of Sofia, the probable number of people suffering from schizophrenia is 6,000, while the probable number of people suffering from some sort of learning disability is 25,000, of whom 2,500 need specialized care throughout their whole lives. On the basis of this data, the conclusion is obvious that in the whole country there have not been enough social services opened even to cover the need for the city of Sofia alone. Despite the unconditional need for a system of services that would guarantee support to people leaving institutions and for services aimed at the families of people with mental disabilities, such services do not exist at all. Such omissions make deinstitutionalization impossible in practice, while the results achieved over the years seem discouraging.

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109 Ibid.: “According to most epidemiological studies, the present rate of schizophrenia is around 0.5 percent of the general population. For the city of Sofia, this means that around 6,000 people suffer from schizophrenia. In the predominant number of cases, the illness has a chronic course and leads to one or another level of social disfunction and loss of capacity for work, which requires the administration of continuous treatment, care and rehabilitation.”

110 Ibid.: “According to data from the World Health Organization, the incidence of learning disabilities varies between 1 and 3 percent. These numbers, averaged against and extrapolation upon for the population of Sofia, show that nearly 25,000 citizens of Sofia have some form of a learning disability. If we accept that 90 percent of cases of learning disabilities represent less serious forms, then cases of moderate, serious and severe learning disabilities number 2,500. Most of these people need specialized care, assistance and training throughout their life.”
The past year, 2011, was marked both by progress as well as by a series of challenges and problems in the sphere of women’s rights. The progress, as always, was due to pressure from civil society and nongovernmental organizations. The problems worsened due to the economic crisis and to fiscal limitations imposed.

**PROTECTION FROM GENDER-BASED VIOLENCE**

At the end of June 2011, a contest was announced for projects in the fight against domestic violence following active lobbying by the Alliance for Protection against Domestic Violence. The contest was created under the *Protection from Domestic Violence Act* (PDVA). Through the contest, 500,000 leva earmarked in the budget of the Ministry of Justice will be disbursed to NGOs working in the sphere of protection against domestic violence.

In 2011, the member-organizations of the Alliance provided help and services to more than 6,000 victims of domestic violence. Nearly 200 victims of violence were placed in the six crisis centers organized by the Alliance in Sofia, Varna, Burgas, Pleven, Silistra, and Pernik.
EQUALITY BETWEEN THE SEXES

For yet another year, no actions were undertaken to create a state body on gender equality, nor for the coordination of state bodies in that sphere.

The inaction of the Bulgarian government was seriously reproached by the UN Human Rights Committee in its mandatory recommendations on Bulgaria’s report from August 2011. The Committee noted that it was concerned that discriminatory practices and messages remain widespread in Bulgaria, including in the media, and that no special legislation for equal opportunities between men and women had been adopted. The UN body made the mandatory recommendation to the country to develop additional policies for the effective application of theories of equality between the sexes; to adopt and impose special legislation for equality between men and women, in this way officially acknowledging the particular nature of discrimination against women and taking adequate steps for its abolition; to undertake the necessary measures for monitoring and terminating the stereotypical messages about men and women in society.

In 2011, the case law and the practice of state and public regulatory bodies experienced contradictory development, including in the struggle against gender stereotyping.

With its decision from June 2011, the three-member panel of the Supreme Administrative Court upheld the decision by the Committee for the Protection against Discrimination, which rejected a complaint by 13 women against openly sexist advertisements for Peshtera mastika, an alcoholic drink.\textsuperscript{111} Despite finding that the applicants were undoubtedly offended by the advertisement, the SAC emphasized that the 13 women were not a sufficiently representative sample of the opinion of all women and that only through an empirical investigation could a full evaluation of women regarding the offensive content of the advertisement be established. The SAC decision was appealed before the five-member panel of the same court, whose decision is being awaited.

In contradiction to the CPD and SAC, in the same case the Ethics Committee of the National Council on Self-Regulation (NCSR), an independent body for self-regulation in advertising and commercial communications, announced in a decision from August 2010 that the television advertising of Peshtera mastika is “dishonest and indecent” and “also demonstrates a lack of respect towards the female individual and human dignity.”

In 2011, several complaints were also submitted to the equality body by employees of the municipal transportation company regarding sexual harassment in the workplace on the part of their boss. The victims also sent signals to the mayor of the Sofia Municipality, to the labour unions, and due to the seriousness of one of the incidents, to the prosecutor’s office as well. The equality body’s decision is expected in 2012.

\textsuperscript{111} Decision No. 10157 of 7 July 2011 of SAC on adm. case No. 12450/2010.
15. Rights of the child

The GERB government set itself several ambitious tasks in the sphere of the right of the child in Bulgaria in 2011: the development of a minimal package of services for children and families at risk; preparations for the removal of children with disabilities from specialized institutions; complete legislative regulation of support for families of children with disabilities, as well as for families at risk, with the goal of preventing child abandonment; guaranteeing the protection of children’s rights to participation in and an opinion on processes which affect their interests in judicial, administrative and political proceedings; the prevention of domestic violence and violence at school, and so on.

A general overview of the political and legislative framework shows certain progress with respect to the development of concepts, programmes, and action plans, as well as the new draft Child Protection Act, which contains progressive ideas and measures for the protection of children. A series of changes were made to the Penal Code, introducing harsher punishments for crimes committed against children.
The government, however, took on a series of engagements for whose realization in most cases no steps were undertaken in 2011. In the sphere of the struggle against discrimination against children, a special unit for the struggle against discrimination against children was not created as part of the Committee for Protection against Discrimination. No progress was made in changing the attitudes towards the place and role of women and girls in the family and in society and their right to development and equality was not guaranteed. The expression and consideration of children’s opinions in making decisions which affect them continued to not be a focus of the activity of state and local bodies for child protection. Although the development of a minimum package of guaranteed services in support of the family (social, health, educational, transport) has been conceived, as has a mechanism for their introduction, such a package still has not been regulated legislatively, nor have resources been provided. Poverty continues to be a basic factor in the lack of access to healthcare, educational, a family environment, social services and the complete development of children in Bulgaria. Inclusive education for children with disabilities, as well as the accommodation of all children in general-education schools continues to suffer from the same defects – a lack of full legal regulation and provision of resources and thus has achieved much slower and oblique progress. Standards for early childhood development were again not introduced in 2011.

Even though the Concept on Juvenile Justice was adopted, which reflects quite accurately the insufficiencies in the existing legal and institutional framework, in 2011 no progress was noted with respect to guaranteeing the rights of juvenile delinquents in accordance with international rights-protection standards. Trainings for police, prosecutors and judges were not held on the observance of children’s rights within the framework of pre-trial and criminal proceedings. Special spaces were not equipped for the stay, hearing, and interrogation of children, including children with disabilities in proceedings which affect them. Guarantees for protecting the rights of children who are victims and witnesses to crimes were also not secured. The national plan for the prevention of violence 2010-2013 was not adopted at the end of October 2011.

Foster care and services in support of adoption such as legislative regulation and the provision of resources continue to develop at a pace too slow to be a real alternative to the institutionalization of children at risk.

The deinstitutionalization of children with disabilities living in institutions also continued slowly and with dubious success. Visits by BHC teams to institutions for children with disabilities at the end of 2011 revealed that the care for children with life-threatening conditions has not improved substantially as a result of the evaluation of the needs and training of personnel in specialized feeding and intensive communication. There is no evidence of substantial improvement in the vital signs of children in the most serious conditions, nor is there improved access to health and educational services for all of those placed in such institutions. According to government data, as of August 2011, six children and two youths in institutions were reintegrated into their biological families, eight children were living with foster families, and 29 children were adopted, nine youths were placed in sheltered residences, eight children were placed in family-type placement centers, and six youths were placed in transitional residences. The creation of

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112 See Right to personal liberty and security above.

social services in the community is planned for the remaining children and youth. The tendency, which has grown over several years now, for institutions for children with and without disabilities to create “alternative services” such as family-type placement centers, day centers for children with disabilities and sheltered homes has given rise to serious concern. There is an impression that this tendency is not reflected in any government account and is not the object of observation and concern on the part of the State Child Protection Agency and the Agency for Social Assistance. This allows for the reproduction of the institutional system of care for children in a system that is an “alternative,” “community-based” one according to official documents, while in practice a large portion of the staff, clients, working methods, and even the facilities remain the same – the only thing that changes are the “labels” on the service provided. This allows for the gross violation of the rights of children to have access to quality education, healthcare, development and a family or family-like environment.

In 2011, the BHC continued to receive signals regarding the violations of the rights of children placed in institutions. They concerned physical and psychological violence on the part of the personnel against the children in their care, a systematic lack of care and support for certain children, a lack of information about the condition or location of particular children or youth. Unfortunately, neither checks by the prosecutor’s office nor supervision by the State Child Protection Agency nor efforts by various nongovernmental organizations managed to clearly identify the problems connected to violence and criminal activity in childcare institutions, nor were the individuals responsible and the protective measures needed by the child-victims identified. Thus, concern remains over the level at which the state and local bodies engaged with protecting children are functioning in practice in particular cases and to what extent they manage to effectively guarantee children’s rights. In the cases observed by the BHC, not a single one has been found in which the coordinated or effective intervention by the state has led to the improved well-being of institutionalized children.

In 2011, no progress was made in investigations of cases of death and other injuries, established as a result of a joint investigation by BHC and the Prosecutor’s Office of the Republic of Bulgaria in institutions for children with mental disabilities in 2010. According to data from the Bulgarian government, provided in response to the concern expressed by the Commissioner on Human Rights of the Council of Europe, only one of these cases has reached a court, but the case ended in acquittal: http://wcd.coe.int/ViewDoc.jsp?id=1909521%Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679.

As a whole, the prosecutor’s office does not conduct comprehensive and full investigations. It does not investigate what level of care individuals received in the institutions they previously resided in, and whether this (nonexistent) care is connected to their current poor condition and/or death. It does not check whether preventative measures were taken with respect to individuals with reduced immunity. The prosecutor’s office does not clarify circumstances and does not collect evidence in cases of untimely hospitalization. The prosecutor’s office does not investigate malnourishment of the residents, nor lack of rehabilitation. Instead, it formally accepts that the children are fed correctly merely due to the presence of food in the kitchens and the preparation of weekly menus. In the same way, if there is a rehabilitation plan, the prosecutor’s office accepts that such a plan has been secured for an individual and that it was adequate, without checking whether this is the actually the case.

115 According to data from the Bulgarian government, provided in response to the concern expressed by the Commissioner on Human Rights of the Council of Europe, only one of these cases has reached a court, but the case ended in acquittal: http://wcd.coe.int/ViewDoc.jsp?id=1909521%Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679.
The prosecutor’s office does not investigate the reasons for epidemics in the institution, nor the reasons that some of the residents come down with inflammatory illnesses of the digestive tract and the possible link between the two. The prosecutors do not investigate whether the biochemical indices of those taking harmful tranquilizers are monitored, or else they accept that they are being monitored, citing witness testimony when, in fact, such monitoring should be established by the relevant medical documents. In some cases, the prosecutors do not follow their own instructions for carrying out an investigation – for example, in a decree for the formulation of pre-trial proceedings, the prosecutor indicates an interrogation of the victim, yet such an interrogation has not been conducted.

In all cases, the prosecutor’s office appoints incomplete teams of forensic experts, which do not include experts in all the illnesses/conditions suffered by the individuals. In some cases, the prosecutor’s office appoints experts in an illness that the individuals do not suffer from. The criteria according to which the prosecutor selects the experts are not clear; the decrees do not contain motivations for this. The Stara Zagora District Prosecutor’s Office is the only one who appointed experts from a municipality different from the one where the residents died, so as to avoid a conflict of interest. Always when investigating the abuse of a living individual through the administration of harmful tranquilizers, the prosecutor’s office appoints a team of forensic experts only to inspect written data, and not to examine the individuals themselves. In some cases, the prosecutor’s office has not appointed the necessary experts – for example, in pre-trial proceedings for rape, an OB/GYN forensic expert team was not appointed. Instead, only a combined team of forensic-psychiatric and psychological experts was appointed in order to establish whether the girl could perceive and reproduce facts, but not to establish what her behaviour, which indicated sexual abuse, could be due to. In other cases, forensic expert teams are completely missing, since the prosecutor’s office has formulated not a pre-trial proceeding but only a preliminary investigation, within the framework of which such experts cannot be appointed.

The prosecutors are frequently uncritical towards the testimony of interested witnesses, such as individuals who are personnel in the institutions, and are too trusting that they have provided “the necessary care.” Thus they fail to gather testimony from non-interested witnesses.

In at least three cases, the prosecutor’s office groundlessly refused to formulate pre-trial proceedings for cases of death and thus missed the opportunity for establishing the cause of the individuals’ deaths via forensic expertise on the bodies. In several serious cases of illegal activities, no proceedings have been filed whatsoever yet – for example, for the immobilized children in Medven. The prosecutor’s office groundlessly halted the formulation of pre-trial proceedings due to the failure to identify the perpetrator, even when this is relatively simple, and sometimes could even be established formally. In two cases, the prosecutor’s office halted the pre-trial proceedings until the completion of the forensics report, but after that for a long time it groundlessly did not restart the proceedings (even though the forensics report should have long since been ready).

In second place, conclusions of the prosecutor’s office in most cases are superficial and incorrect. PORB always lends credence to the experts’ unfounded conclusions that the development of inflammatory processes in the upper respiratory tracts of individuals is due to the individuals’ lack of mobility, instead of the failure to secure rehabilitation and movement. At the same time, an expert reha-
A child and thus no one is responsible for her fatal choking on food. In some cases, the prosecutors establish insufficient and poor care for the residents, but they justify this with “objective” hindrances, such as the lack of money, without analyzing these deficits as the result of someone’s possible culpable action. A large portion of the decrees in which higher-instance prosecutors confirm the refusals to formulate pre-trial proceedings are formal and merely reproduce the conclusions of the first-instance prosecutorial decrees, without independent analysis. Sometimes the motivations reveal prejudice – for example, “… it has been established that [the death] is in direct causal connection with the basic psychiatric illness – oligophrenia.” Thus it becomes clear, that the prosecutor, who attributes the death to oligophrenia in and of itself, considers people suffering from this condition to be legally unsuited for life.

In nearly 70 percent of cases, the prosecutor’s office ignores the connection between a lack of supervision of residents and incidents they suffer – for example, the prosecutor’s office did not investigate at all the personnel’s responsibility in the case of an individual who died from perforation of the stomach due to swallowed objects. In one case, because an explicit rule was not found requiring the medical assistant who accompanied a girl to the hospital to inform the hospital personnel that she choked on food, nor was there a rule requiring the hospital personnel to secure constant supervision of the child so as not to choke, the prosecutor’s office found that no one was obligated to secure supervision of the child and thus no one is responsible for her fatal choking on food.

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16. Rights of people with a different sexual orientation

In 2011, there were no substantial improvements in the rights of people with different sexual orientation and transsexual people in Bulgaria. According to the index of the European branch of ILGA (the International Lesbian, Gay, Bisexual, Transsexual and Intersexual Association), Bulgaria falls into a group of lagging European countries in terms of protecting and guaranteeing the rights of these people. Since the beginning of 2004, the Protection against Discrimination Act has covered discrimination due to sexual orientation in all spheres. However, the law does not cover the trait of sexual identity; that is, transsexual people are not protected from discrimination. This is a deficit in the PDA that must be corrected. Despite the fact that Art. 162 and 164 of the Penal Code stipulate punishment in cases of incitement of hostility/hatred on the basis of race, nationality, ethnicity or religion, the incitement of hate and violence against LGBT (lesbian, gay, bisexual and transsexual people) is not explicitly mentioned in the contents of the Penal Code. Subsequently, hate crimes motivated by the sexual orientation or gender identity of a given individual are not considered a criminal act.

Bulgaria remains one of the countries which does not recognize the actual cohabitation of two individuals of the same gender in any form. Civil marriage remains the only recognized form of union between two individuals in the country and is explicitly formulated in the law as “a voluntary union between a man and a woman.” Bulgarian legislation’s refusal to recognize same-sex couples automatically places them in an unequal position, by depriving them of the civil, social and economic rights provided to married couples of the opposite sex – for example, the right to visitation or information about a sick partner, the right to joint property and inheritance, parental rights over children, and the right to adopt.

DECISION BY THE SUPREME ADMINISTRATIVE COURT

In 2011, the SAC issued two key rulings – both against the Municipal Council of the city of Parazdzhik. The first confirmed the decision by the Administrative Court of Parazdzhik that abolished as unlawful the homophobic regulation in Art. 14 of the former (now repealed) Ordinance for Public Order (Decision No. 4851 of April 6, 2011). Art. 14 banned “the public demonstration and expression of sexual and other orientation in public places.” The second decision confirmed the CPD’s decision that the same Art. 14 is discriminatory (Decision No. 9824 of 1 July 2011). Additionally, the Ombudsman of Bulgaria, the CPD, the prosecutor’s office and the Pazardzhik Administrative Court also took standpoints in opposition to the ordinance.

DECISIONS BY THE COMMISSION FOR PROTECTION AGAINST DISCRIMINATION

In 2011, the activists Radoslav Stoyanov and Dobromir Dobrev submitted a series of complaints against the sports website Sportline.bg for a publication entitled “A Young Boy Bends Down Before a Whole Team of Pederi [an offensive Bulgarian slang term associating gays with paedophilia – translator’s note]” – the complaint was decided in favour of the plaintiffs (Decision No. 152/8 September 2011); the informational site Blitz.bg (Intermedia LLC) for a publication entitled “The US Senate Allows Gays to Serve in the Army” – (decision pending); the Plovdiv newspaper Maritsa for a publication entitled “City’s Leaders under one Roof with Gays” (decision pending); the television host Julian Vuchkov for the show “Times and Attitudes” broadcast on 8 February 2011, on Channel 3, in which homophobic statements were made – the guest in the studio was the prime minister of the Republic of Bulgaria, Boyko Borisov (decision pending); the director Andrey Slabakov for his homophobic statement on the show “Na Inat” on Nova Television on 28 April 2011 (decision pending).

A decision is also expected on case file 13/2011 of Chavdar Arsov v. the Bulgaria Luge and Bobsled Federation. After participating in a Mr. Gay contest, the plaintiff lost his position as a national coach and was deprived of the opportunity to participate in competitions.

A complaint has been filed by the newly formed organization LGBT-Plovdiv against the National Center for Transfusion Hematology (NCTH) due to the printing and distribution of informational brochures containing the text that individuals should not donate blood who are “homosexual or who have had sexual contact with homosexuals” (case file 222/2011). The CPD has also received a complaint from a transgender individual who cannot receive a duplicate of this individual’s high school diploma.

PUBLIC STATEMENTS

In 2011, Bulgarian Prime Minister Boyko Borisov made two heterosexist statements in the public sphere. The first was on the air on Channel 3 on 8 February 2011, where Borisov was the guest of host Yulian Vuchkov. During the programme, Vuchkov touched on numerous and varied topics, including the visibility of LGBT people in society. This part of the conversation he thematically defined as a question of “the praising of perversions” and commented critically on European policies for equal treatment: “Let’s not talk about that... the praise of perversions. I know about the European Union, it is very delicate this European Union, right. You can speak out against those ones, who are normal men, manly men as they say. You can tear them to shreds, but you can’t say a single word about a gay, because they can sue you. Let
the gays live and thrive – let them work, but they can’t manifest their gayness in a disgusting way. And it’s already on a lot of television stations, on lots of programs, in lots of concert halls. Boyko, don’t underestimate that. This is the atmosphere of our life.” Borisov joined in on the topic: “In our party, we’re all normal…. But let’s move on in the same fashion, so as not to make a laughing stock of ourselves in our older years.”

The prime minister made the other statement in “Eye to Eye” on Nova Television on 4 September 2011. In response to the accusation that he governed with a firm hand, he replied: “Better with a firm hand than a limp wrist.”

The film director Andrey Slabakov also made a statement that incited hatred as a guest of the program “Na Inat” on Nova Television on 28 April 2011. There Slabakov explained that “gays” are more dangerous than smoking because they spread AIDS en masse.

At the beginning of December 2011, the director of the National History Museum, Bozhidar Dimitrov, publically defended Kiril, the Bishop of Varna, from public attacks connected with his new luxury automobile, by praising him for his struggle against gays, although he declared that it is “everyone’s democratic right to stick it in wherever they want.”

Throughout the year, the television host Martin Karbovski prepared several reports on the topic of transsexuality and homosexuality, in which he showed the guests he had invited to the studio in a negative light. It is deeply worrisome that politicians and public figures humiliate LGBT people in Bulgaria with impunity, while the media continues to obsequiously provide them with its tribune.

PUBLIC EVENTS

On 17 May 2011, a bicycle parade was organized to mark the International Day against Homophobia. Around 100 people took part in the event, which passed without incident.

On 18 June 2011, in Sofia the fourth annual Sofia Pride parade for equal rights of LGBT people was held. According to data from the organizers, more than 1,200 people took part. The parade itself took place without incident and was held under intensified security measures. Yet again, however, the organizers were illegally forced to pay for police security services. This was sharply criticized by the Amnesty International: “Pride parades are peaceful processions. The right to free assembly and the freedom of expression must be guaranteed by states. It is illegal for such events to be banned or restricted. It is the obligation of the states to secure protection and to guarantee the security of participants, and to protect them from aggressive groups and individuals. It is illegal for their organizers to have to pay for police security services. This was sharply criticized by the Amnesty International: “Pride parades are peaceful processions. The right to free assembly and the freedom of expression must be guaranteed by states. It is illegal for such events to be banned or restricted. It is the obligation of the states to secure protection and to guarantee the security of participants, and to protect them from aggressive groups and individuals. It is illegal for their organizers to have to pay for their own security.” It makes no difference which domestic ordinance forms the basis of such payment – it is illegal under international law for human rights and should be discontinued.

Sofia Pride received the support of a series of diplomatic missions, Bulgarian and international organizations, public figures and media. The support of Georgi Kadiiev, a municipal councilor and candidate for mayor of Sofia, also set a precedent. He requested that the Sofia Municipality become a co-organizer of Pride. Unfortunately, his request was not approved by the Municipal Council. Yet again, there was an attempt by nationalists to organize a counter-march, but in the end the Sofia Municipality did not allow it.

HATE CRIMES

On 20 March 2011, two 22-year-old men were brutally beaten by a group of neo-
Nazis in Borisov Park in Sofia. In the early afternoon, the group of eight men in black hoods attacked the victims without cause as they were walking down the central alleyway with two girls. According to one of the attackers, the reason for the attack was one of the boy’s pink hair.121 This is the latest attack in the region following the exceptionally brutal murder of Mihail Stoyanov, 26, in Borisov Park in 2008. According to the Interior Ministry, the reason for Mihail’s murder was that his killers wanted to cleanse Borisov Park of gays: they beat young men who seemed gay. Two suspects were detained in June 2010. According to the latest information, they are under house arrest. The investigators have information about at least ten more attacks, for which they are searching for evidence.

On 18 June 2011, after the end of Sofia Pride, five volunteers, two young women and three young men, were attacked from behind in a small street in the center of Sofia and beaten by a group of 4-5 young men.122 During the investigation, the police seized video recordings from the moment before the attack. Thorough and repeated interviews with the victims have been conducted, as well as attempts at preliminary identification of the attackers. No perpetrators have been identified.

In June 2011, the national ombudsman, Mr. Konstantin Penchev, recommended the criminalization of acts committed with homophobic motives. The ombudsman sent a letter to the prime minister and the speaker of parliament with the recommendation that the necessary measures be taken such that acts against individuals and against the equality of citizens motivated by homophobia be qualified as crimes. Despite the fact that the letter remained unanswered, it provoked debate in the public sphere and was followed by a series of meetings and initiatives. At the end of 2011, the BHC began preparations for a campaign and for the unification of like-minded partners for the adoption of the relevant amendments to the Penal Code.

121 http://goo.gl/kX01R.
The following employees of the Bulgarian Helsinki Committee contributed to the writing of this report: Aneta Genova, Georgi Voinov, Desislava Petrova, Iliana Savova, Kaloyan Stanev, Krassimir Kanev, Lubomira Marinova, Margarita Ilieva, Slavka Kukova, Stanimir Petrov, Yuliana Metodieva, Yana Buhrer Tavanier. Alexander Kashumov (Access to Information Programme) contributed to Chapter 8, and Radoslav Stoyanov to Chapter 16.