HUMAN RIGHTS IN BULGARIA IN 2012

Annual report of the Bulgarian Helsinki Committee
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Introduction

Throughout 2012, Bulgaria was governed by the centre-right party Citizens for the European Development of Bulgaria (GERB). Governing with a parliamentary minority, it received regular parliamentary support from MPs who had broken away from various parliamentary groups and, though not so often, from other right and centre-right parliamentary groups.

2012 saw some positive changes in human rights legislation and practices. In some areas, however, the situation deteriorated. This affected more specifically the independence of the judiciary, the freedom of expression, Muslims’ right to religious freedom and the situation in closed institutions. As in previous years, there were serious problems with regard to excessive use of force by law enforcement bodies, the right to asylum and the discrimination against certain ethnic minorities and people of different sexual orientation.
1. Cooperation with international bodies for the protection of human rights

Bulgaria’s implementation of European Court of Human Rights (ECtHR) judgments was a serious problem in 2012. In compliance with two ECtHR pilot judgments of May 2011 [1], the Judiciary Act (JA) and the Responsibility of the State and the Municipalities for Damages Act (RSMDA) were amended in September, introducing internal legal mechanisms for the compensation of damages caused by unreasonably lengthy trial and pre-trial proceedings. The extent to which these amendments are in line with the requirements in the pilot judgements is yet to be evaluated.

In early 2013, the Committee of Ministers was monitoring a record number of non-implemented judgements by Bulgaria out of a total of 363 judgements of the ECtHR. Some of these were delivered as far back as 2000-02 and the Bulgarian authorities continue to abstain from implementing the general and the individual measures required by the Committee of Ministers.

The Committee of Ministers of the Council of Europe adopted on 1 February 2012 a resolution on the implementation of the Framework Convention for the Protection of National Minorities by Bulgaria. It expressed concern with regard to discrimination against the Roma in the field of housing, medical services, education and the provision of goods and services [2]. In November 2012 Bulgaria submitted its report for the third monitoring cycle under the Convention. By the end of the year, the Advisory Committee had not initiated additional actions with regard to this report.

The UN Committee on the Elimination of Discrimination against Women reviewed in July 2012 the consolidated fourth, fifth, sixth and seventh report of the Bulgarian government, submitted with a great delay (a Bulgarian report was last reviewed under this mechanism in 1998). At the end of the procedure the Committee expressed concern with regard to some issues and addressed detailed recommendations to the Bulgarian government. [3]

The UN Committee on Economic, Social and Cultural Rights reviewed in November Bulgaria’s consolidated fifth and sixth report, also submitted with a great delay (a report was last reviewed under this mechanism in 1999). The BHC submitted an alternative report, developed specifically for the session. In its Concluding Observations, the Committee expressed concern with regard to some issues, including:

- discrimination against the Roma and Turkish populations, as well as against asylum seekers and refugees, in the fields of education, employment, healthcare and housing;

- child labour, especially among the Roma children;

- high unemployment, especially among young people, immigrants, Roma persons and persons with disabilities, as well as the reigning poverty among these groups;

- the lack of an efficient policy on the institutional integration of children;

- the inadequate policy, including penal prosecution measures, with regard to domestic violence;

- the lack of any legal recognition of co-habitation of same-sex couples;

[1] For more details see Independence of the judiciary and fair trial.

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[3] For more details, see Women’s rights.
• the continuing forced eviction of Roma and the inadequate access to housing of the Roma population;

• high school drop-out rates, especially among the Roma children, as well as the educational segregation of Roma children and children with disabilities.[4]

2. Right to life, protection from torture, inhuman or degrading treatment

The National Assembly adopted in May amendments to the Interior Ministry Act, introducing the absolute necessity standard with regard to the use of force and firearms by law enforcement bodies. The amendments were motivated by the many convicting judgements of the Court in Strasbourg (ECHR, the Court), which held violations of Article 2 (right to life) and Article 3 (prohibition of torture, inhuman or degrading treatment or punishment) of the European Convention on Human Rights (ECHR, the Convention) caused by law enforcement bodies. The absolute necessity standard was introduced both with regard to the judgment of the circumstances, in which the law enforcement bodies are allowed to use physical force, restraint and firearms, and with regard to their judgement of the proportionality of the force and firearms in each specific situation. The law prohibits explicitly the use of lethal force to detain or prevent the escape of a suspect who is committing or has committed a non-violent act, in case the suspect poses no threat to the life and health of another person. It requires the planning and the control on the use of physical force, restraint and firearms by law enforcement bodies to include measures on achieving the lawful purpose at a minimal risk to citizens’ life and health.

The effects of the amendments to the Interior Ministry Act are still to be evaluated. In 2012, the BHC continued to receive credible complaints from individuals alleging ill-treatment by police officers and officers at closed institutions. In at least one case, a person lost his life among serious doubts of excessive use of firearms by a law enforcement official. On March 1, a forestry officer at the village of Edrevo, Stara Zagora region, shot dead Yuri Georgiev, of Roma origin. According to the police press release, he was caught stealing lumber. By the end of the year, the investigation initiated by the Stara Zagora prosecution was terminated without charges against the officer.

In January 2013, BHC researchers interviewed all convicted inmates in the prisons in Vratsa, Pazardzhik, Lovech and Stara Zagora whose pre-trial proceedings had begun after 1 January 2011, in relation to excessive use of force during their detention and when they were held at police precincts. The data are not representative of the closed institutions system as


a whole. However, they are comparable to surveys of similar groups of inmates conducted by the BHC in 2010 and 2011, on the same issues and at the same prisons. The data from the three surveys are presented in the table below.

**Use of force by law enforcement officials by year**

<table>
<thead>
<tr>
<th></th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
</tr>
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<tbody>
<tr>
<td>At the time of detention</td>
<td>26,2</td>
<td>27,1</td>
<td>24,6</td>
</tr>
<tr>
<td>Inside the police station</td>
<td>17,4</td>
<td>25,5</td>
<td>18,0</td>
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The data reveals a slight drop in the number of complaints for the use of force by law enforcement officials compared to 2011; as a whole, however, the number of complaints in 2012 continues to be alarmingly high.

The ECtHR held in 2012 a large number of violations in relation to the right to life in severalconvicting judgements against Bulgaria. In the case **Yotova v. Bulgaria** of 23 October 2012 the Court established a violation of Article 14 (prohibition of discrimination) in conjunction with Article 2 of the ECtHR, as well as an individual violation of Article 2. The applicant, Yolanda Yotova, is of Roma origin, born in 1972 and lives in the village of Aglen, near Lukovit, North West Bulgaria. After a shootout in her home, she was declared 75% disabled. There were solid reasons to believe that people of anti-Roma convictions were implicated in the case. However, the national law enforcement bodies did not investigate a possible racist motive. In the case **Dimov and Others v. Bulgaria** the ECtHR found violations of Article 2 of the Convention in two aspects: substantive and procedural. The case concerns the killing of Todor Dimov Todorov in December 2003, during a police raid for his arrest. The death was caused by the police squad sent to the country house where Mr Todorov was hiding. The police launched

15 rocket-propelled grenades at the house in order to make an opening in the wall. The Court established the disproportionate use of force. The Court also held that the investigation into Mr Todorov’s death, which had come to the conclusion that he had died as a result of the detonation of a hand grenade he had activated himself, had been inadequate. In its judgement on the case **Dimov v. Bulgaria** of 6 November 2012 the ECtHR found a procedural violation of Article 2 of the Convention. The case involves the death of the applicant’s mother, who died in a fire at the building of the Trade Union Federation in the city of Razgrad on 22 November 1989. Firemen rescued Mrs Dimova, but she died six days later from injuries sustained in the fire. On the day the fire broke out, criminal proceedings were initiated against unidentified individuals and the applicants joined the proceedings as a civil party. The proceedings dragged into 2007 and ended with a refusal to hold anyone responsible. In a judgment of 4 December on the case **Filipovi v. Bulgaria**, the ECtHR found a violation of Article 2 of the Convention. The applicants are relatives of Nikolay Filipov who was shot by a police officer on 13 May 1999 during a police operation connected with three armed robberies. The police argued that one of their officers had acted in self-defence when the operation had turned into a car chase and Mr Filipov, the suspect, had got out of his car brandishing a firearm. The Military Appellate Court accepted this version and acquitted the officer; the decision was upheld by the Military Cassation Court. The ECtHR however found a violation of the procedural aspect of Article 2 of the Convention, holding that the Bulgarian authorities’ investigation was very limited and did not account for all facts and circumstances.

The ECtHR judgements also found many violations of Article 3 of the Convention. In the case **Lenev v. Bulgaria** of 4 December 2012 the Court held that the applicant, Yuri Lenev, suspected accomplice in the murder of former Prime Minister Andrei Lukyanov, was tortured by police officers in order to obtain a confession. The Court
found violations of Articles 3, 8 and 13 of the Convention. The applicant was arrested in his home on 1 June 1999. A hood was put on his head and he was transported to the town of Koprinka in a van. En route he was ill-treated by the police officers who hit him with fists and hard objects and pressed his feet with the van door. During the trip, Mr Lenev lost consciousness several times. On arrival at the Interior Ministry base, the hood was kept on and the torture continued: sharp objects were inserted under his nails; objects were put between his fingers and pressed; he was kicked and hit with fists and subjected to other forms of physical violence. During his detention, he was under surveillance that had not been authorized as provided by law. The Court established that Mr Lenev’s injuries were typical of intended bodily harm with the purpose of obtaining a confession, and that the Bulgarian courts were unable to provide a plausible explanation of their origin. In the case of Shahanov v. Bulgaria of 10 January 2012, the ECtHR held a violation of Article 3 of the Convention due to the degrading conditions in which the applicant served his life sentence in the Varna prison. According to the complaint, which the Court deemed credible, during his stay in the Varna prison from 2002 until 2009 he had to use a bucket for his physiological needs and was allowed to take a shower only once every two weeks. With regard to this case the ECtHR also found several violations concerning Mr Shahanov’s complaints that the prison administrations in Varna and Plovdiv have on several occasions hindered his contacts with his lawyer by arbitrary surveillance of his correspondence and prohibition of telephone conversations (Article 8). The Court held also a violation of Article 6.1 (right to a fair and public hearing within a reasonable time) and of Article 13 (right to an effective remedy) with regard to the excessive duration of the penal proceedings against him, as well as due to the lack of effective remedy at the national level in relation to his complaints. In its judgement of 10 January 2012 on the case Biser Kostov v. Bulgaria the Court found a procedural violation of Article 3 due to the lack of an effective investigation of the case of battery by the manager and the owner of a supermarket who suspected the applicant in stealing a bottle of vodka. It was later found that Kostov had sustained severe bruises and had ten broken ribs. None of the perpetrators were prosecuted. The Court also found a violation of Article 3 of the Convention in the case P.M. v. Bulgaria of 24 January 2012. The case concerns the rape in March 1991 of the applicant, who was 13 years old at that time. The criminal proceedings initiated at the national level against the perpetrators dragged on for 15 years and ended with the expiry of the limitation period. In the case Dimitar Dimitrov v. Bulgaria of 3 April 2012 the Court found both substantive and procedural violations of Article 3 of the Convention, concerning the battery of an inmate by guards at the Plovdiv investigation detention centre. The investigation at the national level was conducted hastily, without much effort to find evidence different that the official statements of the officers. In the case Chervenkov v. Bulgaria of 27 November 2012 the applicant, Zhiyko Chervenkov, is serving a sentence in the Burgas prison. He was sent there in November 1996 to serve his life sentence under a special regime with the harshest conditions of detention. In June 2007 the sentence execution regime was changed to one with less severe conditions. The Court found that the physical conditions of his detention – excessive isolation, bad hygiene, low quality and insufficient food – constitute inhuman and degrading treatment in violation of Article 3 of the Convention. It also held that the inmate’s correspondence was subjected to arbitrary monitoring, in violation of Article 8 of the Convention. In the case M.N. v. Bulgaria of 27 November 2012 the ECtHR held a violation of Article 3 of the Convention with regard to the raping of a young woman by four men in 1994. Two of the perpetrators were not sentenced due to the expiry of the statute of limitations in 2006. Only one was found guilty and sentenced. The fourth assailant was never identified.
3. Right to liberty and security of the person

None of the major problems with regard to the right to liberty and security of the person in Bulgaria were solved in 2012. In its judgement in *Stanev v. Bulgaria* of 17 January 2012 the Grand Chamber of the ECtHR found a severe inconsistency of the legal framework on placing people with mental disabilities in social care institutions and the right to personal freedom and security under Article 5 of the Convention.[6] The Court held that the placement in such institutions constitutes deprivation of liberty, and is subject to all guarantees under Article 5. The implementation of this judgement would mean either to have courts make decisions on the placement of incapacitated people and subsequently exercise periodical judicial monitoring of the measure, or to exercise fast judicial monitoring over the initial administrative placement, with subsequent periodical judicial review. Regardless of which approach may be chosen, in both cases the judicial reform may be done quickly, within less than a month. However, by the end of the year such reform had not been effected.

There were no legislative reforms also with regard to the placement of children in institutions for children in conflict with the law (CBS and SBS) and in crisis centres for children. The BHC monitoring in these institutions over the year revealed problems with the arbitrariness of the grounds for placement in both types of institutions, as well as with regard to the observation of the deadlines and the incompatibility with the requirement of speed in relation to placement in crisis centres. The legislative framework does not allow for any ex-post judicial monitoring of the placement. For many children, this means spending years deprived of their liberty, with no evaluation of the expedition of such a measure by an independent body. The placement in institutions for temporary accommodation of minors and juveniles also constituted a severe violation of the Convention, as it continued to be a purely administrative procedure that allows no judicial monitoring whatsoever, despite the ECtHR’s convicting judgement in the case of *A. and Others v. Bulgaria* of 29 November 2011.[7]

At the end of 2012 the Ministry of Justice developed an Action Plan for the Implementation of the Concept on State Policy in the Field of Juvenile Justice (2013-2020).[8] The plan reconfirms the government’s decision to completely repeal the Juvenile Delinquency Act as obsolete and a basically repressive approach to juvenile justice. It envisons the elimination of the concept of “antisocial act”, redirecting the children in conflict with the law to the child protection system by the introduction of new mechanisms and measures, the closure of the SBS, transformation of the role of the local committees on combating the juvenile delinquency, and other reforms aimed at making juvenile justice more humane. However, none of the measures in the concept were implemented at the legislative or administrative level during the year.

In 2012 the ECtHR held several violations of Article 5 of the Convention in cases against Bulgaria. In the case *Lolova-Karadzhova v. Bulgaria* of 27 March 2012 the Court held a violation of Article 5.1 and Article 5.5 with regard to the detention of the applicant for almost 30 hours on 18 and 19 October 2006 in order to ensure her attendance at a hearing against her for petty crime. At the hearing, she was acquitted and released. The ECtHR found that her detention constituted a violation of Article 5, as her presence at the trial

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was neither necessary nor mandatory, and by detaining her, the authorities have used a drastic means of ensuring her presence at the hearing. In the case Rahmani and Dineva v. Bulgaria of 10 May 2012 the ECHR found a violation of Article 5 of the Convention in the case of a foreigner detained for deportation who had no opportunity to appeal the lawfulness of his detention in court within a short time. The detention occurred prior to the legislative reform of May 2009 and the applicant could not take advantage of the new mechanism.

4. Independence of the judiciary and fair trial

The independence of the judiciary continued to be a serious problem in Bulgaria in 2012. In its report of 18 July 2012 under the Cooperation and Verification Mechanism[9] the European Commission (EC) concluded that Bulgaria continues to not reform its judiciary. Despite the introduction of several novelties in 2012, these are a mock attempt at correction by superfluous measures which do not affect the structural problems and may be considered literally an imitation of reform.

The former Supreme Judicial Council’s (SJC) term of office expired in 2012. As established by the EC in the above report, it did not solve any of the problems in relation to the judiciary. The evaluation of magistrates and the disciplinary measures against them remained ineffective and marked by abuse. Promotion competitions were not held within the deadlines, due to which many magistrates were temporarily assigned to higher posts on the discretion of administrative managers, and were thus placed in a position of instability and insecurity that made them dependant.

The quality of a magistrate’s work on their cases is not the most important consideration in promotion decisions. The information technology, where existent, is related to doubts of manipulation in the assignment of the cases.

The SJC failed in its primary task: to guarantee the independence of the judiciary. Instead, it demonstrated on many occasions its dependence on strong politicians. The SJC did not react adequately to the attacks launched by the minister of the interior against judges, with regard to specific cases. Under the influence of this minister, the SJC abused severely its disciplinary powers in dealing with the chair of the reform-minded Union of Judges in Bulgaria, a major critic of the minister. On July 12 chairperson Todorova was summarily dismissed for delaying several cases, in which she had no part. Before that she was subjected to defamation by deputy prime minister Tzvetanov and is currently suing him in connection with this. In this situation the SJC not only remained passive but did a favour to the defendant by taking Todorova out of the judiciary in order to victimize her personally, to limit her influence among the magistrates, to decapitate the Union of Judges and to intimidate the other magistrates, showing that resisting the status quo entails punishment. This resulted in an unprecedented rally of judges and public figures in front of the SJC building on the day following her dismissal.

The elections of court chairs and prosecu-
tion leaders constituted a severe deficiency in the functioning of the former the SJC. Between 2009 and 2012 it did not reach even a minimal justification and conviction during the elections; on the contrary, by means of the scandalous appointments in courts of key importance to the government and the economy (Sofia Appellate Court - 2009; Supreme Administrative Court - 2010; Sofia City Court - 2011) it demonstrated that the close relations of the candidates with powerful politicians are decisive, and the lack of professional capacity and moral integrity is not an obstacle.

The SJC was not the only institution that failed as a factor of normalization and reform. The minister of justice refused to conduct a reliable evaluation of the situation of the judiciary and did not formulate a program for real changes. She rejected the proposals for legislative reforms which were widely supported by magistrates and public figures. Instead, only the procedural rules on the selection of the SJC members were changed in June.

The structural correction measures proposed in February [10] by the Union of Judges and other reform-minded organizations were ignored. The measures recommended by EC, the Venice Commission, the Consultative Council of European Judges and the ECHR and disregarded by the minister included: direct election (one magistrate = one vote) for the professional quotas in the SJC, in order to neutralize the manipulative influence of the informal power lobbies with vested interests in the status quo; division of the SJC in two chambers, in order to guarantee the court’s independence from the prosecutors and the investigators; session-based functioning of the SJC, so that its members wouldn’t lose touch with their work as magistrates and with their community, which turns them into an incompetent and encapsulated nomenclature; involvement of regular magistrates in the making of important decisions, including on the nomination of administrative managers.

The new procedural rules by which the government tried to redeem itself for its refusal to fix justice were only applied pro forma, so that the illegitimate influences in the judiciary would remain intact. The publicity of the elections was meaningless as it did not bring into the spotlight the factors behind the corrupt dependence of the candidates. The appointments continued to replicate the status quo.

At the end of 2011 parliament elected new members of the SJC Inspectorate. The procedure was extremely non-transparent, without real competition, without any verification of the candidates’ integrity and qualities, without arguments in support of the flawed decision to select most of the nominees among the prosecutors instead of among the judges. The result of the election was determined in advance by a partisan agreement that rendered meaningless the procedure and the citizen participation. Despite the fact that one of the elected, who was involved in many of the most contradictory decisions of the former SJC, eventually withdrew, this only happened due to EC criticism and the subsequent intervention of the Prime Minister whose influence on constituting the judiciary inspectorate is unacceptable. As a result, strong doubts remain whether the newly elected inspectors possess the professional capacity and the independence required.

A new SJC was elected in September 2012. The election was defined by illegitimate political expedience – to preserve the influence of the powers that be – and not by considerations in principle. The nomination decisions were made without any transparency and the real grounds for the nominations were concealed. The unwillingness to allow any competition beyond the partisan nominations resulted in denying access to the elections to the candidates nominated by a coalition of NGOs. The special election committee

failed to perform any background checks of the candidates. While it looked public, the hearing was very much pro forma: the chair prohibited the asking of questions pertaining to specific personal relations and interests and the questions submitted by a coalition of NGOs were ignored. After the hearing the special election committee refused to conform to its obligations and formulate conclusions about every candidate, opting instead to draft a four-page document that repeated the stipulations of the law and provided a cursory summary of the debates. This made the informed voting in plenary impossible.

As to the professional quota in the SJC, the preservation of the two-tier election through delegate assemblies allowed for the exercise of administrative and lobbyist pressure. Vote counting and election documenting rules were only introduced at the delegate assemblies, leaving doubts that some assemblies were manipulated. Administrative managers, who are very much interested in preserving the status quo, prevailed strongly among the delegates. As a result, the election of most of the new SJC members is plagued by doubts of political and lobbyist relations and improper motives to run for office, given their lack of experience and achievements in judiciary reform and their lack of position on the issues faced by the judiciary.

In October 2012 parliament had to elect two members of the Constitutional Court. The nominations were non-transparent in terms of procedure and motivation, while the favourites of the majority were known in advance: a fact that demonstrated that the procedure was staged and its outcome predetermined. The special committee failed to conduct a background check of the candidates in terms of corruption factors and held an extremely pro forma hearing. The committee ignored a signal containing published information on abuse of power and corruption by one of the candidates, longtime deputy chair of the Supreme Administrative Court (SAC) Veneta Markovska. Despite serious doubts in her integrity, she was elected with a landslide majority. The critical response of the EC resulted in a second hearing at the special committee during which the dubious facts were once again ignored. In the following days, while parliament rejected the doubts in Ms Markovska’s integrity, and while the minister of the interior attacked the journalists for creating problems and used his ministry’s apparatus to establish where the signal originated from, more blemishes on Ms Markovska’s reputation came to light. At the oath taking ceremony at the Constitutional Court, the President referred to newly received information from the prosecution about Ms Markovska and left the ceremony. This was used by the person leading the ceremony as a pretext to prevent Ms Markovska’s oath taking. The SJC relieved Ms Markovska on her request, without verifying the signals for trade of influence on her part.

The Markovska case brought to light abuses in the distribution of cases and the forming of the last instance juries at Supreme Administrative Court. The issue was brought up in press publications and the Union of Judges in Bulgaria and other NGOs asked for an immediate check. The SJC refused with the argument that according to its working program the case distribution issue was to be reviewed in 2013.

The deputy chair of the Appellate Specialized Prosecutor’s Office (ASPO), Ms Galya Gugusheva, was nominated in Ms Markovska’s stead. Information about controversial real estate deals in which her family had engaged was immediately published. Her nomination was withdrawn, but the question remained how despite these dubious facts she was elected, just five months before that, in July 2012, to head ASPO, an institution created specifically for combating organized crime. The SJC’s ethics committee refused to request disciplinary proceedings against her. At the same time, the SJC demoted her to a regular prosecutor at ASPO on the grounds of “doubts with regard to her moral integrity, which resulted in the withdrawal of her nomination for the Constitutional Court”.
As a result of this contradiction, Galya Gugusheva – whose reputation is already tainted – will continue to work on cases and therefore compromise them.

A new prosecutor general was elected on 20 December 2012. The election was a test for the new SJC. The Council adopted procedural rules that gave grounds to doubt that a specific outcome is being prepared. Unlike in the past, the SJC decided that the vote would not be carried out by means of a single paper ballot, which would have provided simultaneous and equal participation of all candidates. Instead, the vote was to be electronic, with the votes cast for each subsequent candidate after the result of the previous candidate has been announced. There were serious concerns that the electronic system does not guarantee the secrecy of the vote. Despite the internal opposition in the Council and the multiple appeals by civic organization to use a single ballot, the majority at the SJC turned a blind eye. Furthermore, the votes were to be cast in the order of receipt of the nominations, instead of in the usual alphabetical order. A nomination for Mr Sotir Tzatzarov, prepared in advance, was filed immediately after these rules were adopted (in an alphabetical vote, he would have been the last name on the list). He was known to the media for months, even before the election of the new SJC, as the favourite of the prime minister and the minister of the interior. That the outcome of the election was predetermined was also evident in the public statements in his support on behalf of the latter.

Some informed doubts with regard to Mr Tzatzarov’s integrity, values and independence from the executive power were announced during the procedure. Information was made public about a dubious real estate deal of his wife. Human rights organisations raised the question of his contribution as court chair to a significant number of ECHR convicting judgments against Bulgaria, as well as of his justification of the arbitrary use of surveillance. The issue of his very close cooperation with the Interior Ministry was also brought up, including his regular meetings with the prosecution and police chiefs, and the fact that he was awarded a firearm by the Interior Ministry. During his hearing at the SJC Sotir Tzatzarov acknowledged that he had accessed – without being entitled such access – the materials on the libel suit of judge Miroslava Todorova against the interior minister. Questions about Tzatzarov were not permitted during his hearing by the SJC. Some questions were never asked, on others the SJC accepted incomplete and vague answers.

After the hearing the SJC refused to discuss the candidates and the public doubts in them. As first in the list for the electronic vote, Mr Tzatzarov received the necessary majority and the minister of justice who was presiding the meeting announced that the procedure was over without voting the remaining candidates. This was a violation of their passive electoral right, as well as a violation of the active electoral right of six SJC members who did not support Mr Tzatzarov, and prevented the only possibility to verify the result. Despite the procedural flaws and the public doubt and indignation, the President immediately signed the decree for Mr Tzatzarov’s appointment in order to counter the escalating civil protests, ignoring the appeals not to do so and the many justified findings that the election was politically predetermined. Thus, this important election was effected as secretly agreed in advance result, not in the benefit of the public.

In 2012 the judiciary continued to lack norms on sound, acceptable individual workload per magistrate. This allowed a huge misbalance in the workload of the different courts and prosecutor’s offices and within the individual judiciary bodies. The excessive workload of some magistrates makes them easy targets for selective victimization, for illegitimate purposes, especially in the context of the non-transparent and inconsistent disciplinary practices. The fact that the SJC inspectors only check the timing of judicial decisions was a factor for the worsening of the quality of justice in favour of its “speed”.

The SJC and SAC disciplinary practices became even more controversial. In 2012, the review of disciplinary cases was transferred to another division by order of the SAC chair. The Judiciary Act stipulates that the decisions which judges will review a certain matter are made by the respective court's plenum, and not single-handedly by its chair. Thus, this unlawful decision of the SAC chair Georgi Kolev, who is also close to the governing party, increased the insecurity with regard to the rule of law on magistrates’ disciplinary cases. This contradicts the basic requirements of Article 6 of the European Convention on Human Rights on the lasting and principle-based legality of court, whose constitution may not be allowed to depend on the administrative powers of a single person.

Over the year the verbal aggression against the independence of the judiciary by high-ranking representatives of the executive power not only did not cease, but escalated to new heights. In August, the International Commission of Jurists concluded with regard to judge Miroslava Todorova’s dismissal that “the repeated verbal attacks on the judiciary by members of the Government, in particular by the Minister of the Interior, [...] pose a threat to judicial independence in the country”.[11]

Interior Minister Tzvetanov’s threat in 2011 to name police operations after judges who have imposed detention measures lighter than “detention on remand” was met with indignation by human rights organisations and supranational institutions. Nevertheless, in January the Ministry of the Interior delivered on its threat by naming a police operation for the detention of an individual accused of violating the conditions of his house arrest with an abbreviation of insults, at first sight addressed to the personality of the accused, which however also read as the name of a judge of the jury that had changed the detention measure to house arrest. In its report of 18 July 2012 the EC stated that “The independence [of the judiciary] has also come in question following a series of direct political criticisms of individual judges” and furthermore that “The overall impression is of a failure to respect the separation of the powers of the state which has direct consequences for public confidence in the judiciary”.

Although the SJC publishes an annual work programme which includes planned activities in important areas, the program was not discussed in advance with civil society and the magistrates. Furthermore, it was adopted in camera. In fact, despite the formal establishment of a Civic Board with the SJC, the latter demonstrated complete disregard to the criticism of human rights organisations, regardless of how well-founded and acute it were, when it had a great interest in a certain act. The election of the designated prosecutor general is a good example of this. The actual implementation of the SJC work programme is therefore uncertain. In conclusion, as EC stated in its July report, the direction of reform has been lost.

In turn, the Ministry of Justice did not deliver on its promise to evaluate the implementation of the Strategy on the Continuation of the Judiciary Reform as the basis for the elaboration of an action plan required under the Strategy itself. The new draft amendments to the Judiciary Act (JA) do not address the most important issues of the reform. The government does not even try to make it look as if it were considering the need of efforts towards overcoming the structural problems of the judiciary, much less to make such an effort.

National legal mechanisms on the compensation of damages caused by unreasonably long trial and pre-trial proceedings were introduced during the year as a result of two pilot ECHR decisions from May 2011.[12] Under the mechanism, compensations may be paid to individu-


als and legal persons who were parties in completed civil, administrative and penal proceedings. The compensations are paid by the minister of justice upon the submission of an application by the parties to the SJC Inspectorate. It is also possible to award compensation under the Responsibility of the State and the Municipalities for Damages Act (RSMDA) after the completion of the administrative procedure. The first mechanism, the one under the Judiciary Act, is controversial. There are several problematic aspects in its regulation. In the first place, the procedure is controversial from the point of view of the principle of the exceptionality of the court jurisdiction.\[13\] Under this procedure, a non-judicial body — a governmental one, not even a quasi-jurisdiction — takes decisions on judicial matters, namely whether a rights violation has occurred and, if so, on the amount of the compensation. If according to the Constitutional Court the first issue may be decided upon also by quasi jurisdictions under judicial monitoring — such as, for example, the Commission for the Protection of Competition, whose decisions may be appealed in court [14] — until now it has never allowed that the second issue be reviewed by an entity other than a court. The amendments to the Judiciary Act allow the minister of justice, who is an executive body, to make decisions on both matters without judicial monitoring. It is true that the minister’s decision is not binding for the applicant if the latter does not accept the offer. At the same time, however, the RSMDA does not give the applicant access to a court to establish the violation and award the due compensation before the completion of the administrative procedure under the Judiciary Act. In other words, the administrative procedure is a barrier to access to court; in fact, it restricts this access. Secondly, the minister as a deciding body is in a situation of conflict of interest: the state, which he/she represents, decides whether and how much it owes to the individual. Thirdly, the procedure provides for a ceiling to the awarded compensations. Despite the fact that the foreseen amount of 10,000 BGN (5,100 Eur) is more or less comparable with ECHR case law on cases involving unreasonably lengthy proceedings, in the first place, ECHR case law is under constant development and, secondly, cases need to be reviewed individually without restricting a priori the discretion of assessing the specific circumstances in each case. Fourthly, the Judiciary Act stipulates that the minister should make his/her decision on the violated right and on the compensation due on the basis of ECHR case law, but does not provide any further explanation of this norm. However, ECHR case law is multifaceted, not necessarily invariably consistent, characterized by internal contradictions and differences in the standards with regard to the levels of compensation. (At an annual meeting with human rights lawyers this year, the ECHR judges explicitly rejected a proposal to develop and publish uniform rules of the Court on awarding compensations for non-pecuniary damages. They argued that the Court must preserve its freedom of discretion.)

In conclusion, even if the new mechanisms under the Judiciary Act and the RSMDA reduce the number of cases of delayed proceedings reviewed by the ECHR, they would hardly contribute to reducing the violations themselves. In this respect the Judiciary Act assigns leadership responsibility to the SJC, stipulating that it should analyse the causes leading to the violations and adopt measures toward their elimination every six months. Therefore, the SJC’s structurally defined inefficiency as a body responsible for judicial reform will also have an effect on this activity: it is very unlikely that adequate measures for overcoming the excessive duration of proceedings will be formulated and implemented any time soon.

As in previous years, in 2012 the ECHR

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[13] By Constitution, justice is delivered (only) by the courts (Art. 119, para. 1), while under the Civil Proceedings Code all civil lawsuits are reviewed by the courts (Art. 14, para. 1).

found many violations of the right to a fair trial under Article 6 and other related provisions of the Convention in cases against Bulgaria. In the case Zdravko Stanev v. Bulgaria of 6 November 2012 the Court found a violation of Article 6.1 in conjunction with Article 6.3 of the Convention (right to legal assistance). The applicant was refused free representation by a lawyer in penal proceedings that ended with a fine. In the case Tsonyo Tsonev v. Bulgaria of 16 October 2012 the ECHR held a violation of Article 6.1 in conjunction with Article 6.3 of the Convention on similar grounds. In this case the applicant was sentenced to nine months in prison for theft of medicine from a pharmacy. The Supreme Court of Cassation rejected his request to appoint him a counsel.

In the case Askon AD v. Bulgaria of 16 October 2012 the ECHR found a violation of Article 6 due to the refusal of the Supreme Court of Cassation to review new evidence submitted during the proceedings. In the cases Decheva and Others v. Bulgaria and Hristova and Others v. Bulgaria of 26 June 2012 the Court found violations of Article 6.1 of the Convention and of Article 1 of Protocol 1 due to a violation of the principle of legal security and because it was impossible to conform with court decisions on property restitution, as well as because it turned impossible for the applicants to restitute their property. In the case Fileva v. Bulgaria of 3 April 2012 the Court held a violation of Article 6.1 of the Convention because the prosecution had resumed criminal proceedings against the applicant after she had filed a lawsuit against the prosecutor’s office under the Responsibility of the State and the Municipalities for Damages Act. In the case Nikolova and Others v. Bulgaria of 21 February 2012 the Court held a violation of Article 6.1 of the Convention in a case of excessive duration of proceedings against the applicants. In the case Stoyanov v. Bulgaria of 31 January 2012 the Court found a violation of Article 6.1 of the Convention because the applicant was sentenced in his absence and because he was denied a retrial. In the case Zhelyazkov v. Bulgaria of 9 October 2012 the ECHR held a violation of Article 2 of Protocol 7 (right of appeal in criminal matters) because the applicant was unable to appeal his sentence for a minor public-order offence for insulting and trying to hit a prosecutor.

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

On 24 April 2012 the ECHR announced its judgement on the case Yordanova and Others v. Bulgaria. The case concerns the attempt of the Sofia Municipality to eliminate a Roma neighbourhood, Batalova Vodenitsa, in 2005-2008 on the grounds that the residents were illegal dwellers without providing them with alternative housing. The Court found that the measure was disproportionate, especially considering the specific vulnerability of the applicants as part of the Roma minority. The Court therefore held a violation of Article 8. The ECHR applied Article 46 of the Convention and recommended amendments to the Municipal Property Act, in order to prevent further evictions for the reinstatement of ownership of municipal and state land without an evaluation of the proportionality of the measure.

The judgement in Yordanova is innovative in the ECHR case law as a whole. The novelty is its interpretation of Article 8, which includes important elements of
a basic social right, the right to a home, and incorporates the specific vulnerability of the Roma minority in the analysis of the measure’s proportionality. In February 2013 the Human Rights Centre at the University of Gent (Belgium) Department of Public Law [15] selected this judgement as best ECtHR judgement for 2012. The judgement has a serious systemic effect on the housing situation of the Roma in Bulgaria, given the large number of Roma who live in a situation similar to that at Batalova Vodenitsa. Unfortunately, by the end of the year the Bulgarian government had not initiated any actions to amend the Municipal Property Act. Furthermore, in 2012 municipal authorities in at least one Bulgarian municipality effected similar forced evictions on the same grounds, leaving many people homeless. On September 25 the mayor of Mugizh ordered the demolition of 32 Roma houses in the town, home to some 150 Roma. They were not provided any alternative housing. The mayor announced his intention to demolish another 120 houses in the spring.[16]

The use of special surveillance means (SSM) for secret tapping and correspondence monitoring continued to be a serious problem during the year. The many convicting judgement of the ECtHR did not result in any amendment of the deficient legal framework. In October the standing subcommittee on the control of special surveillance means of the Parliamentary Committee on Legal Matters announced in its annual report that special surveillance means are used routinely and not exceptionally in investigations. The subcommittee stated that circle of bodies that may request use of special surveillance means and access to traffic data is too wide. During the discussion of the report—which is not public—Lyutvi Mestan, MP from the Movement for Rights and Freedoms, said that the special surveillance means are becoming a major tool for political and police violence. [17] Based on its alarming findings, the subcommittee formulated a series of recommendations for amendments to the legislative and the institutional framework. These include:

- A change in the regime of permissions and inclusion of an individual line on the use of special surveillance means in case of threat to national security;
- Introduction of a motivated judicial decision when deciding on the use of special surveillance means;
- Enhancing the rules on storing information obtained through special surveillance means, in order to reduce the number of people with access to this information, and introduction of a compulsory log for those who have been granted;
- Harmonization of special surveillance means registries and documents;
- Reduction of the number of bodies and persons who have the right to request use of special surveillance means;
- Approval by the respective overseeing prosecutor of the investigating body’s access request.

None of these recommendations had been implemented in practice by the end of 2012.

In addition to Yordanova and Others v. Bulgaria, the ECtHR ruled in several other cases against Bulgaria in which it held violations of Article 8 of the Convention. Some of these cases concerned arbitrary use of special surveillance means. These cases included Savovi v. Bulgaria of 27 November 2012, concerning clandestine surveillance of the home and office of a former high-ranking police official; Hadzhiiev v. Bulgaria of 23 October 2012,

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[15] For more details, see http://strasbourgobservers.com/about/.
concerning the impossibility of the applicant to receive information on whether he was subject to clandestine surveillance, and his consequent inability to file a compensation claim; **Natsev v. Bulgaria** of 16 October 2012, on which the ECtHR held violation of Article 8 of the Convention and of Article 13 in conjunction with Article 8 due to the arbitrary surveillance of the applicant by special surveillance means and the lack of the possibility to be notified that the surveillance was an illegal act on behalf of the law enforcement agencies.

In the case **Meirelles v. Bulgaria** of 18 December 2012 the ECtHR held a violation of Article 8 of the Convention against the applicant, Ivana Meirelles, who was subjected to systematic abuse by her partner since the very beginning of their relationship, and by his family after the birth of their child. In September 2009 she was expelled from the family home and later deprived of custody over the child. In the case **Hristozov and Others v. Bulgaria** of 13 November 2012 the ECtHR failed to find a violation of Article 8 of the Convention in a case of refusal by the Bulgarian authorities to allow the applicants, ten terminally ill cancer patients, to use experimental medicine. The medicine was produced by a Canadian company and at the time was not permitted for use in any country, but was allowed for palliative use in some countries. [18] In the case **Madah and Others v. Bulgaria** of 10 May 2012 the ECtHR held a violation of Article 8 and Article 13 of the Convention with regard to the extradition of a foreigner. The applicants are an Iranian national, his wife and their son. In 2001 the husband was granted permanent resident status and started a family. In December 2005 he was given an extradition order on account of posing “a threat to national security” as a suspect in drug trafficking with the purpose of financing a Kurdish separatist organisation. The extradition order was confirmed in 2008 by the Supreme Administrative Court. The Court pointed out that the national bodies had not considered the effect of the extradition on the applicant’s family life and that of his relatives.

On 14 November 2012 the UN Human Rights Committee announced its decision on the case **Naydenova and Others v. Bulgaria**. The case concerns the forced eviction of Roma from the Dobri Zhelyazkov neighbourhood in Sofia, ordered by the Sofia Municipality in 2006. The stated grounds for the eviction order was the fact that the plaintiffs lived in illegal dwellings. In July 2011 the Committee imposed interim measures to stop the eviction. In its final decision, it held a violation of Article 17 of the International Covenant on Civil and Political Rights (respect for private and family life, family and correspondence). The Committee required Bulgaria to provide information on the implementation of the decision within 180 days of its announcement.

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[18] Palliative use: access to unauthorized medicinal products outside clinical trials, more specifically for terminally ill patients.
6. Freedom of conscience and religion

2012 marked a peak in the deterioration of the situation of the rights of Muslims in Bulgaria. The process, which began in October 2010 with searches of the homes and offices of 13 imams, muftis and educators [19], continued with an unprecedented indictment and taking the case to court with charges under Articles 108, 109 and 164 of the Penal Code (PC) in September 2012. The main charges are under Article 109 in conjunction with Article 108 for participating in or leading a group preaching “antidemocratic ideology”. The Penal Code provisions that stipulate criminal liability for the preaching of an antidemocratic ideology are remnants from the totalitarian times when they were used to suppress any expression of dissident ideas. According to the prosecution, in this case the antidemocratic ideology is related to adherence to and preaching of Salafist Islam, opposition to the division of powers, liberalism, appeals not to vote in parliamentary elections and opposition to the equality of men and women. The indictment does not include a charge that such preaching involved any violence. No such evidence was presented during the trial which began in September and had not finished by the end of the year. A significant portion of the allegations concerning the sermons of the accused were collected by police undercover agents who were questioned as protected witnesses. Most of the disclosed witnesses withdrew their testimonies given during the pre-trial phase, and some of them stated that the investigators exerted pressure on them.

The trial of the Muslim clergymen generated exceptional tension among the Muslim population in the Rhodopes. Hundreds of believers attended the first sessions of the court to express their solidarity with the defendants. On many occasions the Chief Mufti’s Office expressed in public declarations its support for them and assured that none of their actions contradicted the laws of the country and the Muslim religion. The Smolyan area mufti, one of the defendants in the case, expressed his conviction that the repressive actions of the police and the prosecution arose out of the lack of knowledge of Muslim customs and from the attempt to instill the belief that observing them (for example, burying the deceased in a shroud instead of in a coffin) is a manifestation of Islamic fundamentalism.[20]

The trial of the Muslim preachers and activists spurred also the reaction of the nationalists who systematically and with impunity added fuel to the fire of the anti-Muslim attitudes. The leader of VMRO – an extreme nationalist party which together with the Ataka party organized a counter rally in front of the Pazardzhik courthouse – announced that the defendants are “a handful of instigators funded by the Arab countries “who” are introducing the radical Islam to our country and are imposing the sharia on us”. Another extreme right party, Ataka, came up with a slogan: “Islamists, back to Anatolia”. A judicial decision on the case is expected in 2013.

As in previous years, the attacks of extreme nationalists and islamophobes against Muslim religious temples in Bulgaria continued in 2012 too. Based on data provided by the Chief Mufti’s Office, the more drastic manifestations of vandalism include:

- In the morning of 18 January 2012 unknown persons broke a window of the Sultan Beyazid Veli mosque in the town of Aytos. An official from the area mufti’s office saw the broken window while coming for morning prayer and notified the police. The police came on site. A letter of notification was sent

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to the chief of the Aytos Area Police Directorate, asking for assistance. The perpetrators remain unknown.

- At 9:05 p.m. on 19 January 2012 unknown persons threw two Molotov cocktails at the windows of the Varna area mufti’s offices. The mosque’s imam, Mustafa Hasanov, was at the boiler room and witnessed the act but couldn’t identify the arsonists. The First Area Police Directorate in Varna was immediately notified. The perpetrators remain unknown.

- Around 11:30 p.m. on 21 January 2012 unknown persons broke stones the windows of the mosque in Velingrad. Around 10:40 p.m. on 9 November 2011 the glass of the entrance door to the temple had been broken for the second time within the year. The stone was relatively big. The mosque’s board of trustees filed a complaint at the local Area Police Directorate. At the same time, all monuments in the Muslim graveyard were broken. The perpetrators of all these acts remain unknown.

- In the evening of 13 February 2012 unknown persons broke the entrance door of the mosque in Yambol. The imam saw the damage when he came for prayer the next day and notified the police. The perpetrators stole the metal door, broke into the donations box and stole the money. Pre-trial proceedings were initiated against the perpetrator who remains unknown.

- In the night of 15 April 2012 an unknown perpetrator broke a window of the Blagoevgrad mosque. This is another in a series of vandalisms against the Muslim temple in the city. The area mufti, Aydun Mohamed, filed a complaint at the Blagoevgrad Municipal Police Directorate. The perpetrators remain unknown.

- At 2:00 a.m. on 2 July 2012 a group of young people pulled out the two lighting poles at the main entrance of the Chief Mufti’s Office in Sofia. The security cameras recorded this. When the damage was established the next day, the Sofia Directorate of the Interior was informed and responded to the crime scene. They were given a copy of the security camera recording. The perpetrators remain unknown.

- During the evening prayer on 24 July 2012 at the village of Ositenovo, municipality of Pavel Banya, Stara Zagora region, unknown persons fired at the mosque’s loudspeaker. The mosque’s imam and the chair of the mosque’s board of trustees filed a complaint with municipality of Pavel Banya’s local Area Police Directorate. The police found out that fireworks were used and that the loudspeaker was damaged. The perpetrators remain unknown. Informed sources from the village say that political party representatives and officials were involved. After this and many similar acts, the village imam is afraid for his life and fears to use the mosque’s loudspeakers.

In January 2013 the Chief Mufti’s Office informed the BHC that they had information about four other 2012 attacks against people because of their Muslim religion: two in Plovdiv, one in Varna and one in Kazanlak. These cases were not registered because the victims did not file complaints, and the information was received via unofficial channels. On 6 October 2012 in Sofia two Afghan refugees were assaulted by 12 skinheads in the vicinity of the National Palace of Culture. One of the victims was taken to hospital comatose.

At the end of the year a group of Gotse-Delchev municipal councilors from the ruling party tabled a proposal to hold a referendum on whether a new mosque should be built in town, as proposed by the local Muslim board of trustees. The proposal spurred a wave of nationalist manifestations and created tension among local Muslims. On 15 January 2012 the Chief Mufti’s Office published a declaration in which it called the idea manipulative and
in contradiction with international standards on the protection of the freedom of religion. [21]

Other minority religions were also subjected to activity restrictions and discrimination throughout the year. On December 18 the Sofia Municipality ordered an attack at the protest picket of supporters of the so-called “alternative synod” of the Bulgarian Orthodox Church. Since its representatives were moved out of the churches by force in 2004, it had a camp established in downtown Sofia. [22] Assisted by the police, municipal staff confiscated the tent, the trailer and all documents and church utensils of the protesters and took them to an unknown location. Several days later, on December 25, the Sofia City Court rejected the registration application of the “alternative synod” on the grounds that the name “Bulgarian Orthodox Church — Holy Synod with Commissioner-Chair” contradicts Article 13, para. 3 of the Constitution — which defines Eastern Orthodox Christianity as “traditional” in Bulgaria — and Article 10 of the Religions Act — which allows the existence of only one orthodox Christian religion in the country. The decision was appealed in the Sofia Appellate Court whose ruling is pending. The refusal of registration to the “alternative synod” is an additional obstacle to the implementation of the 2009 ECtHR judgement in which the Court held a violation of Article 9 of the Convention due to the attempts of the Bulgarian authorities to use administrative force to impose a certain leadership of the Orthodox religion. [23]

In 2012, as in previous years, the Jehovah’s Witnesses were subjected to restrictions and discrimination. In January 2013 the BHC received credible complaints from the management of this religion about incidents during attempts for contacts in several Bulgarian cities, including Plovdiv, Sofia and Gabrovo. These included physical attacks by former skinhead members of the Ataka party. In a case in Sofia, a Jehovah’s Witnesses representative was beaten with a cane during a sermon. Despite the complaints filed with the police, no pre-trial proceedings were initiated. Some TV channels, including SKAT and TV7, aired broadcasts which presented the activities of the religion in an extremely prejudiced manner. TV7 refused to give the affected parties right to reply, although they asked for it.

7. Freedom of expression and access to information

2012 marked a sharp drop in the freedom of expression in Bulgaria. The traditional media compromised completely their fourth power status. The non-critical attitude to the government, and especially to the prime minister, prevailed in most Bulgarian media. Economic and political links, oligopolisation, media wars, non-transparent ownership and funding, pressure that reaches into journalists’ private life, severe self-censorship, ineffective media self-regulation, increasing sensationalism of the press, funneling of European funds to specific media, disguising paid articles as editorials: these are only some of the problems which affected the freedom of expression in Bulgaria over the past year.

ers without Borders world press freedom index, and now ranks 87th—its worst position in the democracy period—and the country with the least free media in the EU. [24] In comparison, in 2006 it ranked 35th. Die Welt quoted the general manager of Reporters without Borders, Olivier Basille, saying that corporate interests were behind many Bulgarian newspapers, some of which were used by offshore companies to launder money; this is complimented by the distorted advertising market in Bulgaria, where state institutions advertise in politically loyal editions. [25] Bulgaria continued to drop in the US-based NGO Freedom House’s annual ranking to reach the 78th place, behind countries such as Benin, Guyana and Namibia, remaining in the group of countries with “partly free media”. [26] An April 2012 study of the South East Europe Media Organisation (SEEMO) [27] shows that the majority of the Bulgarian reporters consider it normal not to publish materials that may hurt the business interests of the owner of the media; the media in the country turn their back to social problems that are priority topics for their counterparts in other EU countries, such as violence between the sexes, discrimination and homophobia. IREX, an American organisation that keeps a media sustainability index for the media in 21 countries, concluded in its 2012 report that the indications of political and corporate pressure, the sale of news content and the overall drop in the quality of media publications damage journalism in Bulgaria. [28] The organisation points out that self-censorship has become the norm in most media and that the editors actively impose content restrictions, allowing the sale of news content to politicians and corporate sponsors.

In the fall of 2012 the European Commissioner for Digital Agenda, Neelie Kroes, sent a letter to prime minister Boyko Borisov [29] to express her concern with regard to the respect for the freedom of speech and the situation with media ownership in Bulgaria. Kroes had had an earlier meeting with Bulgarian media representatives and defined the violence against journalists in Bulgaria as absolutely unacceptable, self-censorship as worrying and the lack of transparency as a big problem. [30] In her letter to Borisov Commissioner Kroes wrote: “I hereby urge you to undertake adequate measures so that you can guarantee to the Bulgarian citizens that they will be able to take advantage of the diverse and pluralistic environment that they deserve”. However, in January 2013 Kroes announced that the European Commission will not be becoming involved in the overcoming of the media issues in Bulgaria, “although it understands their acuteness”. [31] The problem of the state of the media was often present in foreign diplomats’ statements: German ambassador Matthias Höpfner—who was censored by The Monitor daily [32]—criticized on many occasions the concentration of ownership, the self-censorship and the paid publications. US ambassador Marcie Ries also mentioned problems with regard to self-censorship. [33]

Freedom of expression in Bulgaria was the topic of many foreign press publications. The NeueZürcherZeitung, a Swiss newspaper, published an article entitled “Media

[31] http://www.dnevnik.bg/evropa/novini_ot_es/2013/01/22/1988482_neli_krus_ostavi_na_bulgarskite_politici_i_obshtestvo/
[33] http://www.capital.bg/biznes/media_i_reklama/2013/01/30/1993670_bulgarskite_medii_vse_po-nesvobodni/
concentration: pluralism in Bulgaria under pressure” [34] which focuses on information provided by the Bivol investigative website that prime minister Boyko Borisov had exercised pressure on media tycoon Lyubomir Pavlov, owner of Media Group Bulgaria Holding, to sell the Trud and 24 Chassa newspapers to the New Bulgarian Media Group. The New York Times also pointed out the worsened media freedom and the media wars in Bulgaria.[35]

In 2012 the Media Democracy Foundation carried out, with the support of the Bulgarian Helsinki Committee, a study of freedom of expression in Bulgaria[36]. The study established, among other issues, an increase in the political and corporate links of the media, continuing oligopolisation, greater intensity of media wars, still non-transparent ownership of some media, use of the media by their owners as a tool in support of business and political interests, intervention of the owners in editorial policies, active sales of news content by the editorial offices, existence in some media of lists of people who need to be covered only in a positive manner, severe self-censorship among the journalists. The study established an overall worsening of the quality of media content, limited media pluralism, replacement of journalistic content with PR messages. In anonymous interviews with representatives of national and regional media carried out for the purposes of the study the journalists stated:[37]

- “The government mostly [exercises influence over the media]. [...] Even the prime minister himself has called to ask that something is published.”

- “It happens often [to have journalists sign articles with an alias]. Mostly because you don’t want to have your name connected to what has been written.”

- “Yes, he meddles [the owner]. [...] At the end of the day the newspaper is collected in a folder and read to him over the phone, all the titles, heading by heading. Many times something drops out at 6:30 p.m.”

- “When we write against someone, we first need to check whether they advertise with us.”

- “Knowing the position of the newspaper with regard to someone in government, it’s up to you to impose self-censorship as to what we can write, and what we can’t.”

- “I know there was a case when someone published in their personal Facebook profile an opinion on an issue of public importance and then he had serious problems with his media.”

- “We had contracts with different ministries, that is, everyone was obliged to write a certain number of news about the respective ministry. The same was applied to people and companies, there was even a table where we had to fill in the number of news items we had written during the week, and if we hadn’t, that would land you in serious trouble.”

- “The media are officially being bought with European money. This is appalling.”

The interviewed journalists generally state that currently the restriction of freedom is much stronger in the private media. While in the past the out-of-Sofia journalists were most vulnerable, indications are now present that the pressure on those working at large central media is growing.

The Media Democracy Foundation discusses the possible solutions in its 2012 annual report [38]: “When the state and

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[34] http://www.nzz.ch/aktuell/international/meinungsvielfalt-in-bulgarien-unter-druck-1.1755226
[37] ibid.
[38] http://www.fmd.bg/?p=7440
the media owners refuse to initiate positive changes, the civil society organisations have to become more proactive. The measures may include assistance to investigating journalists and quality media, incentives and monitoring of media self-regulation, development of media literacy programmes, etc.”

In 2012 the government continued to funnel funds to the benefit of media demonstrating a favourable attitude to the government (by means of advertising and media coverage contracts).[39] Of course, there are territories of media freedom which receive no funding from the state budget.

The situation with regard to libel and defamation, which are still subject to criminal prosecution, did not improve over the course of the year. There was no progress on the cases of attacks from previous years. The intimidation of journalists continued in 2012:

- On 25 May the car of the editor-in-chief of the Vyara daily and investigating journalist at the Struma newspaper, Lydia Pavlova, was blown up in Dupnitsa. The two-month investigation of the regional police was terminated on the grounds that the perpetrators are unknown. Prior to the incident, there were several attacks against Pavlova’s son, aimed at exercising pressure on the journalist.[40]
- On 31 July the Varna correspondent of the Capital weekly and Dnevnik.bg, Spas Spasov, who has been publishing articles on the Alley First project for years, received a gift, Sun Tzu’s The Art of War. The book had an inscription by Marin Mitev, co-owner of the TIM company: “He who you cannot make a friend or defeat, better leave him alone!” — Sun Tzu. Spas Spasov published the threat.[41]

The attempts at manipulating the media reached new heights in 2012. The media within the New Bulgarian Media Group “informed” stubbornly about “the evil deeds of the green octopus” and those of former Vitosha natural park director and environmentalist Toma Belev. At the same time, by the end of June the Electronic Media Council had received 46 letters from citizens who were expressing their indignation with the biased coverage of the protests against the amendments to the Forests Act by bTV and the attempts of this private television channel to depict the protesters as degraded[42] In fact, a significant number of media did not cover the appointments in the judiciary and the attempts of the civil society to initiate specific reformist actions, or if they did, it was in an inadequate and manipulative manner. Leading politicians dared to attack those media that would still focus the attention on what was happening in the judiciary and conducted journalistic investigations.[43] TV7 anchorperson Nikolay-Barekov went so far as to tear an issue of the Trud daily during a broadcast.[44]

The crisis in investigative and critical journalism deepened. There is a great insufficiency of topics related to social diversity. Topics concerning the Macedonians and the Pomaks in Bulgaria are still lacking, the Islamic religion is neglected and often represented in a biased manner, the Roma topic does not go beyond the clichés and

[43] Replacement monitoring report of the nongovernmental sector; http://www.capital.bg/getatt.php?filename=0_1993457.doc
the prejudice. The media generally provided distorted coverage of the trial against the Muslim clergymen in Pazardzhik[45], without giving the floor to the accused and their families and without providing diverse expert opinions. The deportation of the Jews from Vardar Macedonia and Western Thrace is a topic under media blackout.

Hate speech towards ethnic, religious and sexual minorities continued to have a strong presence in some media. The floor continued to be given to extreme nationalists and people embracing neo-Nazi views. In November a political party placed an anti-Muslim billboard in Plovdiv. Ethics committees in the press and in the electronic media once again failed to strongly oppose hate speech. In October 2012 the journalist Spas Spasov alerted the prosecutor general of Kevork Kevorkyan’s racist article ““Scum”’[46]. In the article, Kevorkyan uses multiple insults and suggestions based on the ethnic origin of specific young Roma. In the article he calls them “idiots”, “animals”, “scum”. On 4 February 2013 Spasov received a reply from the director of the National Police Directorate[47]. It states that “an in-depth investigation was carried out. It did not establish that an indictable offence had been committed.”

ACCESS TO INFORMATION

The experience of the Access to Information Programme (AIP)[48] in 2012 showed that information under the Access to Public Information Act was most often sought by citizens (181 instances), journalists (66) and non-governmental organizations (53). Information was most often sought from central bodies – in 108 instances, and from local government institutions – 96 instances. 81 court decisions and rulings were announced over the period with regard to lawsuits with AIP support. In 56 instances the court ruled in favour of those seeking information, and in 25 instances in favour of the administration.

THE NOTION OF PUBLIC INFORMATION

The question of the nature of the requested information appeared controversial in several lawsuits filed with AIP support in 2012, as the refusal of the administrations was justified by the claim that the information requested does not constitute public information under the Access to Public Information Act and therefore should not be provided.

The Supreme Administrative Court (SAC) upheld in a decision of 5 January 2012 the ruling of the Sofia City Administrative Court (SCAC) repealing the refusal of the director of the Bulgarian National Radio (BNR) to provide information on the number, the makes and the models of the vehicles owned by the BNR. In the grounds to the decision the magistrate pointed out that the provision of this information would undoubtedly allow the applicant to form an opinion on BNR activities concerning the acquisition of property with state budget funds.[49]

In a decision of 17 January 2012 the SAC repealed a decision of the Sliven Administrative Court and the refusal of the manager of the Sliven Water and Sewer Company to provide copies of minutes from general assembly meetings. In the grounds to the decision the judges pointed out that the requested minutes constitute public service information.[50]

PREVAILING PUBLIC INTEREST

In 2012, in a series of lawsuits supported by the AIP, different courts held prevailing public interest as grounds to repeal decisions of the administration.

The SCAC repealed in a decision of 19 April 2012 the refusal of the director of the

[48] This part of the report is based on the annual report of the Access to Information Programme. The entire report can be assessed at http://www.aip-bg.org.
National Information and Documentation Centre (NIDC) to provide information on the diploma of the former executive director of the Agriculture State Fund. The court held that given the media publications that the former director’s diploma was fake, there was an undoubted prevailing public interest and the information had to be provided. [51] 

In a decision of 29 October 2012 the SAC repealed a decision of the SCAC and the refusal of the Ministry of Physical Education and Sports (MPES) to provide information on the contracts signed by the ministry and the Bulgarian Ski Federation in the period 2007–2011. The court held that the presumption of prevailing public interest in the disclosure of information on contracts signed by entities subject to the Access to Public Information Act is laid down in the additional provisions of the act, and that it is up to the institution to prove the lack of such interest. [52] 

PERSONAL DATA 

In a decision of 24 February 2012 the SAC repealed the refusal of the chair of the Communications Regulation Commission (CRC) to provide information whether the appointed secretary general had the professional experience needed for the post. In the grounds to the decision the judges pointed out that the length of the professional experience is unrelated to privacy and the integrity of the person, but is an objective fact. [53] 

In a decision of 29 October 2012 the SAC upheld a SCAC decision repealing the refusal of the Ministry of Justice (MoJ) to provide information about the names and positions of the members of the committee that had approved the list of non-profit legal entities that would receive state budget funding in 2010. In the grounds to the decision the magistrates pointed out that the names of the civil servants and the positions occupied by them are unrelated to privacy and the integrity of the person. The court quoted the case law of the Constitutional Court, according to which the protection of the personal data of persons occupying public office is considerably lower than the protection of the personal data of the other citizens. [54] 

CLASSIFIED INFORMATION: PROFESSIONAL SECRET 

In a decision of 18 October 2012 the SAC repealed a decision of the SCAC and the refusal of Aviation Squad 28 to provide information on the cost of the prime minister’s domestic flights in the period 2009–2010. The court held that the requested information does not fall within the classified information categories constituting a professional secret. Furthermore, the data requested concerned the cost and not the destination and the timing of the flights and therefore the access did not infringe the interest of the state. [55] 

ACCESS TO INFORMATION: ACCESS TO DOCUMENTS 

Despite the fact that according to the case law from the past several years access under the Access to Public Information Act may be asked for both information and documents – as documents are also information, albeit recorded in a specific form – in 2012 the court once again had to repeal refusals of the administration stating that APIA allows the seeking of information, not documents. 

For example, in a decision of 28 December 2012 the SCAC repealed the refusal of the Directorate for National Construction Supervision (DNCS) to provide the applicant access to information on the demolition of several illegal buildings. The court stated in the grounds to its decision that the APIA allows to seek access to specific docu-

ments as they are an information carrier.[56]

**IMPLIED DECISIONS**

In 2012 many institutions continued not to reply to access to information applications (the so-called implied decisions). The case law with regard to repealing implied decisions under the APIA remained extremely consistent. According to the case law, the only possible option for an entity subject to the APIA to act on reception of a valid access to information application is to issue a motivated decision granting or refusing the access to information and to inform the applicant in writing.

In a decision of 23 February 2012 the SCAC repealed the implied decision of the manager of the National Social Security Institute (NSSI) to provide information about the overall amount paid to NSSI staff different than their salaries (bonuses, Christmas and Easter allowances, etc.) in 2008, 2009 and 2010. The court pointed out that an implied decision with regard to an application for access to information is inadmissible and that this alone provides sufficient grounds to have it repealed.[57]

In a decision of 7 November 2011 SCAC repealed the implicit decision of the prosecution not to provide information on which questions addressed to the prosecution are answered personally by the prosecutor general, and which by prosecutors on his behalf. The applicant also requested information whether the prosecutor general had received the applicant’s signal for violations in the deal for the sale of the notorious Alley First in Varna, and what he intended to do with regard to the signal. The court held that the implicit decision is inadmissible under AI and that this alone provides sufficient grounds to have it repealed.[58]

In 2012 the ECHR held a violation of Article 10 of the Convention in two cases against Bulgaria. In the case Yordanova and Toshev v. Bulgaria the Court found that the Bulgarian courts were unable to find the right balance between the right to freedom of expression and the protection of the reputation when they convicted a journalist and the editor-in-chief of the Trud newspaper in a civil lawsuit for defamation filed by a former employee of the Ministry of the Interior and of the National Investigative Service. In the case Kostov v. Bulgaria (II) of 24 July 2012 the Court held a violation of Article 10 of the Convention with regard to the confinement of the applicant, an inmate at the Belene prison, to an isolation cell as punishment for complaining to the prosecution about the prison administration’s refusal to give him a Christmas parcel from his family. The complaint to the prosecutor was deemed defamatory by the prison administration, as it contained strong language.

8. **Conditions in places of detention**

**PRISONS AND PRISON DORMITORIES**

In September, after visiting the prisons in Sofia, Burgas and Varna, justice minister Diana Kovacheva admitted that the conditions in Bulgarian prisons were tragic. The visits convinced the minister that the situation in prisons is dire, and that the permanent overcrowding results in disregard for basic human rights.[59] This was not the

[59] http://m.inews.bg/c.327_i.219114.html
first time when the executive admitted the problem with the situation in the country’s prisons. Previous governments had made similar statements, declared their will to improve the conditions in places of detention, and later did nothing with the usual excuse that there was no money available.

A typical example in this respect is the 2008 Strategy on the Development of Places of Detention (2009-2015), its action plan and investment programme for construction, reconstruction and modernization of prison facilities, investigation detention facilities and probation services. The investment programme called for public tenders for the design and construction of new prisons in Sofia, Varna, Pleven, Veliko Tarnovo and the Haskovo region, with a total capacity of some 6,000 inmates. Strange as it is, four years later none of the measures under the strategy have been completed. In January 2012 the newly appointed deputy-minister of justice, Plamen Georgiev, replicated to some extent the intentions of the previous government. He announced the construction of new prisons in Sofia, Varna and Pleven, and of a prison dormitory in Burgas. Funding was meant to be raised from the European funds and public-private partnerships.[60]

The deputy-minister himself demonstrated on several occasions resolve to change the status quo in the prison system. In the spring of 2012, when cellphones, a tablet, a mobile internet device and other prohibited items were discovered in the Burgas prison cells, he initiated the dismissal of the director-general of the Central Penitentiary Administration, who was retired before he could accumulate the necessary seniority for retirement.

By 31 December 2012, a total of 9,493 individuals were incarcerated in Bulgarian prisons. The figure below shows the number of inmates in prisons and prison dormitories by 31 December for the last 13 years:

![Number of inmates by 31 December, by year](image)

Source: Central Penitentiary Administration

In comparison to the previous year, the number of inmates has decreased by 392. In some prisons, this resulted in lower overcrowding; however, in prisons where overcrowding was high in previous years (Sofia, Burgas and Varna) the number of inmates did not change significantly in 2012.

The new Enforcement of Sentences and Guarded Detention Act (ESGDA) adopted in 2009 called for regulations containing standards on living area, heating, lighting and other indicators of living conditions. In September 2010 the government adopted a Program on the Improvement of the Conditions in Detention Places and, under the law, had to provide a minimum living space of at least 4 m² per inmate within three years, i.e. by September 2013. Realizing that it wouldn’t be able to meet this obligation, the government formulated amendments to the act, justifying them with the severe economic situation which made the provision of the necessary living space impossible. The introduction of the 4 m² per inmate standard was thus postponed by six years, for 1 January 2019. The government declared that in the meanwhile it would try to solve the overpopulation issue by building a new prison and renovating the existing ones.

The number of the accused and the defendants in prison was also lower in 2012 compared to previous years. The figure below shows the number of accused and defendants in prisons over the past nine years.

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Number of accused and defendants in prison by 31 December, by year

![Graph showing number of accused and defendants in prison by 31 December, by year.]

Source: Central Penitentiary Administration

Each prison has dormitories of an open type, while several prisons (Sofia, Lovech and Stara Zagora) have also dormitories of a closed type. The legal opportunities for the transfer of inmates from prison facilities to dormitories of an open type are quite limited in some prisons and not used fully in other. The opportunities for the transfer of inmates to dormitories of a closed type are better, but the number of such dormitories is insufficient. Such a dormitory was opened in 2012 at the Pleven prison. With a capacity of 80 inmates, it will help reduce the overcrowding of prison facilities. For several years there have been plans to create such dormitories in the most overpopulated prisons, in Burgas and Varna; these plans have not been implemented with the usual excuse of lack of funding. The figure below shows the number of inmates in dormitories of an open and closed type over the past four years:

Number of convicted inmates in dormitories of an open and closed type by 31 December, by year

![Graph showing number of convicted inmates in dormitories of an open and closed type by 31 December, by year.]

Source: Central Penitentiary Administration

The reduction in the number of inmates in dormitories of an open type indicates that the mechanism for the alleviation of the legal status of inmates in prison facilities is not fully used. The increase in the number of inmates in dormitories of a closed type reaffirms the necessity of creating closed dormitories at prisons that have none.

The BHC findings from 2011 with regard to the huge overcrowding in the prison facilities in Burgas and Varna were confirmed by the Council of Europe’s European Committee on the Prevention of Torture (the Committee) following visits in the two prisons from 4 May through 10 May 2012. The Committee stated in its report that the Burgas prison was accommodating 940 inmates for an official capacity of 371, and that the living space per inmate was less than 1 m² in common dormitories. With regard to the use of buckets for physiological needs during the night, the Committee recommended that all prisoners be provided ready access to a proper toilet facility at all times, including at night, and that the resort to buckets be abandoned.[61]

In 2012 Bulgarian prisons continued to serve as homes for poor individuals, incapable of organising a proper defense. A significant number of the inmates were serving minimal sentences of three months, six months, up to one year, handed down for repeated offences or for violation of a previous suspended sentence or probation. In most prisons, about half of the sentences are handed down for volume crime (theft and robbery) most often conducted by inmates of low educational and social status. The accommodation of these inmates in prison, on multiple instances, has no longer correctional and re-educational purposes; it is rather considered by the administration as public prevention, that is, isolation of those who are most dangerous

to society, in minimal living conditions.

In 2012 the BHC established an alarming increase in the number of complaints and cases of illegal use of physical force and restraint by prison guards. This happened most often in the Sofia prison, but BHC received complaints of beating from the prisons in Lovech, Pazardzhik, Burgas and Varna, as well as from the psychiatric hospital at the Lovech prison. Experts from the Council of Europe’s Committee on the Prevention of Torture also announced worrying data after their visits to the Burgas and Varna prisons from 4 through 10 May 2012. The Committee’s report contained information on a great number of complaints from inmates who had been slapped, hit and kicked or had been assaulted by groups of prison staff. The Committee therefore immediately issued an immediate observation under Article 8, para 5 of the European Convention on the Prevention of Torture, which spurred the Bulgarian authorities to initiate an investigation into the abuses at the Burgas prison. The CPT also recommended that measures are taken at the highest political level to ensure that there is zero tolerance of ill-treatment of prisoners in all prisons in Bulgaria, that all prison staff are periodically reminded that ill-treatment of inmates is not acceptable and such acts will be punished accordingly.\[62\]

Prison medical services are becoming an ever increasing problem. This is evident from the growing number of inmate complaints about medical services’ volume and quality. This is once again due to the lack of financing and the insufficient medical staff. The isolation of the medical services from the national healthcare system – in terms of facility standards, administration, reporting, prevention and prophylactics – is another, equally important, cause for the problems. Prison medical centres still cannot meet the requirements of the Medical Institutions Act. Prison administrations do not deny the growing proliferation of drugs behind bars and the related increase in HIV and hepatitis infections, and the measures that are taken to prevent access do not constitute an effective barrier. The amendments to the ESGDA at the end of 2012 solved the issue of the terminated health insurance of most inmates. In the future they will be considered as insured for health purposes as of the time of their detention.

The development of the educational services at the penitentiary facilities is a priority activity that somewhat compensates the lack of inmate employment. In 2010 the school network incorporated the Pleven and Pazardzhik prisons; the prisons in Burgas and Varna were integrated in 2011, with the creation of external classes of already existing schools. In the 2012/2013 academic year, the total number of students numbered 1,744, that is 200 more than during the previous academic year. The prisons in Plovdiv, Belene and Bobvodol are the only ones that have no inmate education facilities. Under the amendments of the ESGDA of December 2012, schools at penitentiary facilities will be financed by the state budget not through the Ministry of Justice, as was the case so far, but through the Ministry of Education, Youth and Science.

At the end of June, five foreign nationals serving sentences at the Sofia prison began a hunger strike. Their protest was motivated by the failure of the group’s social inspector to perform his duties, and his disrespectful attitude to them. In fact, the true reason behind the hunger strike, which went for more than a month for some of the inmates, was the lack of clear rules on the change of regime and on early conditional release on parole and the subsequent subjectivism and unequal treatment of some foreign nationals. Bulgarian citizens also have a problem with early conditional release on parole. This is most often the reason for them to express dissatisfaction with the cumbersome mechanism for changing their legal status. In many cases the alleviation of inmates’ legal status is directly proportional to their material status. In 2012, the media an-

\[62\] \textit{Ibid}, §17.
nounced cases of corruption among prison staff, such as priority inclusion of inmates in the list for early conditional release on parole, awarding leave and annual vacation, provision of employment, etc. During the visit of the European Committee for the Prevention of Torture in May 2012, the director-general of Central Penitentiary Administration announced that 50 prison staff have been dismissed over the past two years on corruption charges. During their visits to the Burgas and Varna prisons the experts were shocked by the large number of accusations in corruption, and had a very strong impression that corruption was endemic in both prisons. The Committee therefore recommended that the Bulgarian authorities take decisive action to combat the phenomenon of corruption in all prisons.[63]

Arbitrary disciplinary practices pose a serious problem in places of detention. Of all punishments stipulated by the ESGDA, the placement in a solitary cell is the only one that is subject to judiciary monitoring. This allows the prison administration to impose the remaining punishments in an arbitrary manner and without any external monitoring. Over the year the BHC received information about arbitrary disciplinary measures against many inmates. This is an especially severe problem among the foreign nationals at the Sofia prison who do not understand Bulgarian and have worse access to legal assistance in disciplinary proceedings. In the case Kostov v. Bulgaria (II) of July 2012 the ECtHR held a violation of Article 10 of the Convention on account of the applicant’s arbitrarily confinement to a solitary cell for complaining about prison administration actions. The complaint allegedly contained offensive language.[64]

In 2011 the National Assembly ratified the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment by which the state assumed the obligation to create within one year of ratification a national preventive mechanism. The mechanism’s main function is the monitoring of all places of detention. The new structure was established with the Ombudsman of the Republic of Bulgaria and became operational on 1 July 2012. Shortly after its establishment, the National Preventive Mechanism announced the dates of its planned visits to each closed institution, which to a great extent rendered useless the aim of the unannounced nature of such monitoring visits and will hinder the necessary prevention of torture.

INVESTIGATION DETENTION CENTRES

The investigation detention centres are the worst part of the penitentiary facilities. This has generally been acknowledged by the professional management of Central Penitentiary Administration in previous years. Indeed, problems concerning the physical facilities of the detention centres that had remained unsolved for decades are only transferred to each subsequent government. By 31 December 2012 there were 1,024 accused held at investigation detention centres, a figure that has remained unchanged from 2011. The figure below shows the number of accused held in detention centres over the past 11 years.

Number of accused in the investigation detention centres at 31 December, by year

![Number of accused in the investigation detention centres at 31 December, by year](image)

Source: Central Penitentiary Administration

There are a total of 42 investigation detention centres in the country, of which 28 in the regional capitals. The latter are considerably more crowded than those

[64] See Freedom of expression and access to information.
in smaller communities. This is why the practice of holding more detainees than the capacity allows continued in 2012 in some detention centres (Varna, Ruse, Stara Zagora, Plovdiv, G. M. Dimitrov – Sofia). Under such circumstances it is impossible to provide individual beds for new detainees, so they have to use the floor until a detainee is released. Overcrowding was traditionally high in detention centres in border communities (Svilengrad, Petrich and Slivnitsa) where accommodation can also exceed capacity. Investigation detention centres are used to accommodate not only people who have been imposed the “detention on remand” measure, but also those detained by prosecutor’s order for 72 hours and those transferred “by delegation”, which results in even greater overcrowding. In 2012, the total number of detainees held at investigation detention centres reached 21,192. In order to avoid overcrowding of some investigation detention centres in larger and border communities, the amendments to ESGDA of December 2012 provided an opportunity in Article 241, para 4, for detainees to be accommodated in another detention centre which is closest to the area of the pre-trial or trial proceedings, on proposal of the head of the regional office and by order of the respective court. The length of the stay at investigation detention centres depends on the activity of the bodies involved in pre-trial proceedings. Often, however, detainees have informed no procedural actions have been effected while they were held at detention centres for three, four or even five months. This indicates the punitive character of the stay, in conditions that can be regarded as torture or inhuman and degrading treatment. This stay determines to a great extent the future conviction of the detainees. This is evident from the fact that acquittal after the imposition of the measure “detention on remand” occurs only very rarely and in single cases. In 2012, there were 1,938 persons held at investigation detention centres for a period of two to six months, and 566 were held for a period of more than six months. The Central Penitentiary Administration database contains no information on the number of detainees who were held for more than a year.

The deplorable living and sanitary conditions at detainees’ cells resulted in many complaints addressed to both Bulgarian courts and the European Court on Human Rights in Strasbourg. Many of these lawsuits ended with convicting decisions. The decisions should encourage the authorities to initiate measures to improve the material conditions; however, the repairs at the detention centers are mostly current and minor and don’t change the quality of stay. Detention center management reported in this respect that the lack of funding resulted in delay of planned reconstructions, overhauls and current repairs, facility construction and equipment. The cells in most detention centers still have no windows, no ventilation and have artificial lighting only. In the Gabrovo, Slivnitsa, Petrich and Pazardzhik the cells are underground. Cell area in some detention centers still have no windows, no ventilation and have artificial lighting only. In the Gabrovo, Slivnitsa, Petrich and Pazardzhik the cells are underground. Cell area in some detention centers (Vratsa, Sliven) is extremely small and the uncovered space per detainee doesn’t exceed 1 m². Only nine detention centers have restrooms in the cells. In all other detention centers the detainees have to bang on the doors in order to be taken to the restroom; when the guards have something else to do they have to use buckets for sanitary purposes. Only 16 detention centers have open-air walking facilities. Some of the remaining detention centers have indoor premises for physical exercise, while in another 18 there are neither open-air nor indoor premises for physical exercise and the detainees have no opportunity to exercise for months.

CORRECTIONAL AND EDUCATIONAL FACILITIES FOR MINORS AND JUVENILES (CBS AND SBS) AND INSTITUTIONS FOR TEMPORARY ACCOMMODATION OF MINORS AND JUVENILES

Placement in a correctional boarding school (CBS) is the most severe measure with regard to the children in conflict with the law. Placement in a social pedagogical
boarding school (SBS) is the lesser measure, but the two do not differ significantly. The number of SBS was reduced from 24 to 3 in the period between 1997 and 2012, and the number of CBS was reduced from 9 to 4. According to the National Statistical Institute, 551 children were placed in CBS and 2,503 in SBS in the 2000-2001 academic year, while in 2012 their number was 185 and 149, respectively. CBS are used to accommodate children who have committed anti-social acts, while SBS are used to accommodate children “who are in danger of committing anti-social acts”. Theft and running away from home or from a specialized institution are the main reasons for placing children in both types of boarding schools. Vagrancy, aggressive behavior, hooliganism, begging, racketeering, property damage are among the other reasons for the placement of children in CBS and SBS.

The sharp drop in the number of boarding schools and of the children in them is due to legislative changes that restricted the arbitrariness of placement. These changes introduced compulsory judicial review of the imposed measures. Despite the judicial review, children who have been placed in these boarding schools on purely social grounds are still mixed with children who have committed anti-social acts. The geographic isolation and the remoteness from large cities hinder the social adaptation of the children, the provision of quality medical services, the hiring of qualified teaching staff, etc. This reflects on the educational process which cannot be maintained at the level of the mainstream schools.

In 2012 the Council of Ministers adopted the Action Plan for the Implementation of the Concept on State Policy in the Field of Justice for the Child. The section on the CBS/SBS system states that the educational process at these institutions is conducted pro forma. The concept envisions the elimination of the possibility for placement of children who have committed acts that do not constitute a crime when committed by adults (statutory offences). SBS are to be closed. The plan makes the assump-

tive measures related to the establishment of a new juvenile justice system and the modernization of the approach to, and the treatment of, children in correctional educational institutions in the spirit of the international standards on the rights of the child.

Five institutions for temporary placement of minors and juveniles (ITPMJ) operate in Bulgaria. These are located in the cities of Sofia, Plovdiv, Varna, Burgas and Gorna Oryahovitsa, and report to the Ministry of Interior. They accommodate children who have committed anti-social acts, children without a domicile, vagrant or beggar children, as well as children who have left without permission compulsory education or involuntary treatment facilities. The stay cannot exceed 15 days and the placement is ordered by a prosecutor. In exceptional cases the stay may be prolonged to two months. The police call the placement of children in these institutions a protective measure; in essence, however, it often has penal functions. The regulations on the placement of children in ITPMJ contradict the Child Protection Act which requires that the placement of children in specialized institutions, such as ITPMJ, is ordered by the court. The placement of children in these institutions cannot be appealed in court. In contradiction with the international standards on the rights of the child, the placement procedure eliminates the right to legal assistance from the time of detention, during the stay or after the measure has been imposed. During their stay at ITPMJ, the children are deprived of their right to education and do not attend school. In November 2011 in a judgement on the case A, and Others v. Bulgaria, the ECtHR held that the placement of one of the applicants, an underage Bulgarian citizen, in an ITPMJ constitutes a violation of Article 5.4 of the Convention, as the Bulgarian legislation does not provide access to court to appeal the lawfulness of the placement. Despite this judgement, in 2012 the executive did not initiate the necessary steps to amend the regulations on the placement of children in such institutions. Only the Concept on the State Policy in the Field of Justice for the Child includes a proposal to allow for the transformation of the ITPMJ in crisis centers where children with risky behavior may be placed on the grounds of specific criteria and under judicial supervision.

CRISIS CENTRES

On 23 February 2012 the State Child Protection Agency (SCPA) and the Social Assistance Agency (SAA) adopted a Methodology for the Provision of the “Crisis Centre” Social Service. The methodology defines how a crisis center is established and operated, as well as the minimum requirements on the quality of service and service standards. It stipulates that the crisis centres accommodate children victims of violence, children with deviant behaviour, children victims of domestic violence, and children victims of international and domestic human trafficking for the purpose of sexual and labour exploitation. The methodology sets the maximum duration of the stay at a crisis center to six months, although the recommended duration is three months. By 31 December 2012, there were 14 operational crisis centers in Bulgaria. This is by four more than in the previous year. The total capacity of the crisis centres has thus been increased from 109 to 128.

Depending on the target groups of children who are to receive support and protection, there will be three types of crisis centers under the methodology:

- for children aged up to 18, victims of violence;
- for children aged up to 18, with deviant behaviour and in conflict with the law;
- for children aged up to 18, victims of domestic and/or international trafficking for the purpose of sexual or labour exploitation.

According to a crisis center director, this division was non-existent at the end of 2012. Another novelty introduced by the methodology is that despite the statutorily defined six-month duration of the “crisis centre” service, its recommended duration becomes three months (as recommended by the BHC). Depending on the individual case, the duration may be extended but may not exceed six months.

In early July, five years after the creation of the first crisis center for children victims of trafficking and violence in Bulgaria, the BHC presented a report entitled “The Crisis Centres for Children in Bulgaria: between the Social Service and the Institution”. The report was the result of monitoring of all crisis centers and a study of the legislation and the practices related to their activities. The purpose of the publication was to compare crisis center operations with the international standards on the rights of the child. In its report BHC focused on a series of severe violations. Most of these involve disregard for the profile of the centres, where children victims of trafficking and violence are accommodated together with children who have committed “anti-social acts” (pick-pocketing, prostitution, running away from institutions) and with children with social needs. The lengthy stay results in lasting institutionalization of the children and in educational deficit. These problems remained unsolved in 2012. The placement procedure for the crisis centers for children – described in the BHC report as vicious – remained unchanged. The Child Protection Act provides an opportunity to effect the judicial placement within two months of the date of the factual administrative placement – which is called temporary – and thus contradicts the requirement for a speedy decision under article 5.4 of the Convention. In fact, even this deadline is not always observed, especially by the courts in large cities whose workload is higher. The law still allows secondary placement, as well as subsequent placements in different crisis centers.

The insufficient capacity of the social services poses a serious barrier to the effective work with the children victims of trafficking and violence. The social services are incapable of covering all children at risk and thus many potential users of the “crisis centre” service cannot make use of it. It is unclear where many of the children will be sent after the end of their stay. This decision is most often made by the Social Assistance Directorates at the last moment. The fact than many children are kept at crisis centre just because there is nowhere else to send them is yet another indication of the deficiencies of the social assistance for children.

9. Protection against discrimination

The new members of the Commission for Protection against Discrimination were finally appointed in July 2012. The Commission is a specialized body that reviews individual complaints and implements state policy in the field of protection against discrimination in Bulgaria. Before the appointments, the old Commission had worked for a long time after the expiration of its term. The new commissioners were appointed in the old manner, mostly with regard to their political affiliation and not of their professional skills. Candidates from the major political parties were appointed, including from the extreme nationalist and xenophobic Ataka party. The transfer of the cases to the new commissioners resulted in significant delays.
The courts’ case law with regard to the Protection against Discrimination Act (PADA) continued to be controversial and inconsistent throughout the year. In 2012 the Supreme Administrative Court (SAC) announced several important decisions. As in previous years, SAC continued to develop its case law on the protection of equality in healthcare, thus implementing basic social and economic rights by means of the PADA tool. For example, SAC announced in a final ruling that the National Health Insurance Fund (NHIF) must provide the necessary support treatment in the period preceding the pregnancy of women of fertile age suffering from phenylketonuria, as well as of women suffering from other lifelong metabolic disorders such as diabetes.[67] The case against NHIF was first filed with the Commission for Protection against Discrimination (CPD) by a patient organization, the Association of Parents of Children Suffering from Phenylketonuria, on the grounds that NHIF did not provide for free the special dietary foods needed by adult phenylketonuria patients, including women. The court held that in this respect the National Framework Contract constitutes direct discrimination.

SAC also held that the minister of labour and social policy is responsible for discrimination against the biological parents of children with permanent disability due to his inaction with regard to the legislation (legislative and sub-legislative acts) which leads to a less favorable treatment of these parents compared to the treatment of foster parents of such children, as they receive no payment for the care provided to the children.[68] The time the biological parents dedicate to care for their children is not considered labour for the purposes of their retirement insurance. The court held that, just like the foster parents, they are forced to leave their paid jobs in order to provide effective care for their children; unlike foster parents, however, this leaves them without income. SAC mandated that the minister prepare a package of legislative changes and submit it to the Council of Ministers, recommending that the latter submit it to Parliament. The case was first filed with CPD by an NGO representing the biological parents of children with permanent disabilities.

SAC announced a final convicting ruling against NHIF in another case, for introducing a degree of disability above 65% as eliminatory criteria for access to free medication.[69] The court held that the “Requirements on the treatment of patients with relapsing-remitting multiple sclerosis [...]” published by NHIF constituted direct discrimination against the plaintiff, as free access to medication was only provided in case the disability exceeded 65%. The court ruled that the fact that the specific patient was not denied medication because in the meanwhile NHIF had revoked its controversial rule was irrelevant. However, SAC wrongly recategorized the type of discrimination found, indirect instead of direct. In other 2012 cases this court continued to consider indirect discrimination which is in fact direct (different treatment based on a protected class, in this case, degree of disability). This poses a serious problem as in this way the court, in contradiction with the law, provides an opportunity for the justification of actual direct discrimination by defining it as indirect through a proportionality test. Under PADA, only indirect discrimination is subject to such justification while direct discriminations is totally prohibited, except when the different treatment falls within an explicitly defined exception.

SAC announced also a final ruling against the minister of justice because the Central Penitentiary Administration continued [67] Decision No. 10161 of 11 July 2012, five-member panel, admin. case No. 3859/2012, confirming the decision of the three-member panel.
[68] Decision No. 11111 of 30 August 2012, three-member panel, admin. case No. 5665/2011. Foster parents receive such payment under contracts with local authorities, social assistance bodies or specifically authorized commercial companies.
[69] Decision No. 14362 of 15 November 2012 on admin. case No. 9167/2012, confirming the decision of the Sofia City Administrative Court (SCAC) at second instance. The SCAC decision confirms CPD’s decision against NHIF.
to maintain interior inaccessibility at the Pazardzhik investigation detention center.[70] The case was initially filed by a detainee in a wheelchair who couldn’t use the bathroom and the restroom without assistance (the doors were narrow and had thresholds). SAC confirmed that the equal treatment of people with disabilities requires that they have equal access, without assistance, and that the detention center was a “public place” under the PADA.

SAC’s 2012 case law with regard to the Roma was controversial. The court refused to accept that the aggressive statement of a village mayor targeted at the Roma plaintiff’s live-in partner – “Why are you living with these Gypsies?” – constituted racial harassment.[71] According to the court, “the simple expression in front of a third person of a personal opinion about an entity does not correspond to the elements of discriminating attitude”. To justify the controversial statement, the court points out the irrelevant fact that the mayor had not acted in an official capacity when she made the statement. In another case, the SAC confirmed the convicting decision against a commercial company operating a publicly-owned establishment, which refused access to Roma clients.[72] The case is an indication that such things are still happening in Bulgaria. SAC’s case law was controversial also with regard to the protection from hate speech. The court announced a final decision against Boyan ‘Rasate’ Stankov, notorious for his hate propaganda, because of his extreme racist statements against African refugees in broadcasts on Darik Radio and Nova TV.[73] SAC held that the constitutional right to opinion is restricted “namely to penalize manifestations of racism and xenophobia”. However, this correct ruling contradicts the above-mentioned ruling of the same court that “the simple expression of an opinion” against the Roma is not illegal. In the case against Rasate, SAC held that “expressions containing propagation of hatred, odium, animosity and humiliation of people of different skin color” constitute discrimination. In this case the court rightly held that such expressions do not need to target a specific individual in order to constitute a violation of the law. However, in the case against TV anchor Yulian Vuchkov for statements while on air against the gays, SAC ruled differently, including because the controversial statements “did not target a specific individual”. In this case the court denies that the expressions used, such as “perversions”, constitute abuse and instigation of discrimination as they contained “an opinion of the anchor person”. [74] According to the court, the expressions contained his “disapproval” of the gays but no “hatred and aggression”. Even if such statements were undesirable, they were not aimed at insulting the dignity of people or creating hostile and abusive environment. There was no proof that the TV anchor’s statements could influence his audience to discriminate against non-heterosexuals. The latter was upheld by the court regardless of the fact that the statements were made in front a large TV audience and were later publicized by other media, thus reaching an even greater audience. In its motives, SAC referred to publicity as a factor in the collision between the right to opinion and the right to dignity and non-discrimination. Paradoxically, however, it concluded that “the statements made do not cause hatred an intolerance as an end it itself”. These motives are highly controversial, insofar as they mean that causing hatred and intolerance to people of minority sexual orienta-

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[70] Decision No. 9537 of 02 July 2012 on admin. case No. 8488/2011, confirming the decision of a three-member SAC panel at second instance.
[71] Decision No. 14426 of 19 November 2012 on admin. case No. 7049/2012, repealing SCAC’s convicting decision.
[72] Decision No. 2617 of 22 February 2012 on admin. case No. 13911/2011, confirming the decision of SAC’s three-member panel.
[74] Decision No. 16558 of 27 December 2012 on admin. case No. 12446/2012, three-member panel. See also Rights of people with a different sexual orientation.
tion could be justified when it serves a purpose. The court fails greatly as it holds that “intemperate speech” is lawful because it was aimed at “the manifestations and not the essence of the acts”. The court thus legitimizes the homophobic attitude that gays may be whatever they want to be, as long as they remain hidden and not in front of society’s eyes.

In a particularly weak final decision, SAC refused to accept that the VMRO party propagated intolerance to the Jehovah’s Witnesses by calling them “cult members”. [75] The court denied that expressions such as “Satanists!” and “Cult members, be gone!” by party supporters constitute abuse on religious grounds. The lower instance, SCAC, called this “a theological dispute” and SAC confirmed this unreasonable conclusion. This was not attitude based on a protected indicator but an “expression of political views”. It concerned “public opposition between representatives of two different organizations, obviously due to the different understanding of the ways and means of exercising religious activities in Bulgaria”. According to the court, party members had the right of opinion and the right to “act as corrective”. This biased decision justifies the aggression against non-traditional minority religious groups, actively instigated and supported by the said party. The decision marks a serious refusal to implement PADA and legitimize attitudes that completely contradict the provisions and the purposes of the law.

SAC continued its erroneous interpretation of the law. In a series of decisions, this court held that in order to have discrimination, the different treatment must be based only on a protected class. [76] In fact, it is sufficient that the protected class had influenced the different treatment, even if it was based on other reasons (the “mixed motives” standard). If the treatment would have been different but for the protected class, it is discriminating even when it was motivated by other factors as well. The disregard of this standard by SAC for years is a weakness of Bulgarian case law.

On the other hand, in at least one 2012 decision, SAC broke this vicious practice by explicitly stating that “discriminating treatment occurs regardless of whether the protected class is the only reason or one of the reasons behind the less favourable treatment”. [77] This decision is exceptional from another point of view, too. It is probably the first decision of a Bulgarian court in which the principle of the allocation of the burden of proof in anti-discrimination cases. The court’s motives in this respect are exceptionally professional. The ruling is a great improvement, insofar as it is the first professional interpretation of the law in this respect in the seven years since PADA entered in force. The case concerns sexual discrimination against a female soldier. It is significant in this respect, too, as it creates a precedent in the protection of women against professional discrimination in the armed services. The plaintiff complained that, unlike some of her male counterparts, she was denied for years promotion to officer rank and a respective service promotion within the Military Police at the Ministry of Defense. The court upheld CPD’s decision that this constituted sexual discrimination because the defendant could not prove that the treatment was based on legal grounds. Given the proven comparison with the male soldiers, the court held that sex of the woman was the real reason. SAC held that it was proven that “established standards of […] discriminating perception” existed among service leadership, according to which “having a female officer at the Control and Security Department was not expedient”. The court ruled that the motives of the superiors were irrelevant insofar the less favorable treatment of the woman because of her sex was an objec-

[76] See, for example, Decision No. 8277 of 11 June 2012 on admin. case No. 3852/2012, five-member panel.

[77] Decision No.274 of 9 January 2012 r. on admin. case No. 1319/2011, presented by Judge Sonya Yankulova.
tive fact. In SAC’s opinion, the prohibition of such direct discrimination is absolute, insofar as the treatment is not part of the explicit exceptions under PADA, which is not the case. The court upheld CPD’s instruction that the unequal treatment of military personnel based on their sex be terminated. The service’s director was fined. This decision positioned SAC as the source of one of the most correct and teleological rulings under PADA since it entered in force in 2004. [78]

10. Right to asylum, freedom of movement

Restricting the access to the status and international protection proceedings was the greatest problem with regard to exercising the right to asylum in 2012. At the end of 2011, after more than four years of strategic lawsuits, the government finally adopted amendments to the secondary legislation [79] and repealed the automatic detention at special foreigner accommodation homes (SFAH) of asylum-seekers filing their protection applications at the national borders. Although it was considered an important achievement with regard to asylum regulation, in fact the amendment resulted in a sharp drop in the number of protection applications filed at the borders. By the end of May 2012, only one protection application had been filed with the Ministry of Interior’s Directorate-General Border Police (DGBP), while the total number of the people registered at the borders was barely 112 of all the 1,387 asylum seekers for the whole year. The main objective reason was the extremely insufficient capacity [80] of the State Agency for Refugees (SAR) to meet and accommodate newly arrived refugees. By law, the Border Police has no right to detain people longer than 24 hours. After the expiration of this time, DGBP must transfer the foreign nationals seeking asylum in our country to another competent (judicial or administrative) body, in this case the State Agency for Refugees. However, since 1999 SAR constantly refuses to accept an unlimited number or asylum seekers at the borders, on the grounds that it does not have sufficient places to accommodate them. The above-mentioned secondary legislation was adopted in 2007, on SAR initiative, and gave DGBP the authority to send the asylum seekers to the special institution for temporary accommodation of foreigners (SITAF). There, they could wait the SAR to authorize their release, accommodate them in a registration and admission center and give them access to refugee procedure. This regulation and

[78] ibid.

[80] 425 places at the Sofia Registration and Admission Center (RAC), 80 places at the Banya Registration and Admission Center and 300 places at the Pashgor Transit Center, to a total accommodation capacity of 805 asylum seekers. Alternative accommodation outside SAR territorial units is possible under Article 29, para. 6 of the Asylum and Refugees Act, but only if the asylum seekers pay the rent and the utility costs and if they give up their right to monthly social assistance.
practice were strongly criticized by human rights organisations [81] as they strengthened legislatively the restriction of asylum seekers’ freedom of movement, to the convenience of the refugee administration which could thus avoid delivering on its statutory obligations to provide adequate accommodation. When it was repealed at the end of 2011 and DGBP’s authority to accommodate asylum seeking foreigners at SITAF was revoked, the Border Police faced a choice: either to violate the prohibition to return asylum seekers (the non-refoulement principle under Article 33, para. 1 of the Geneva Convention Relating to the Status of the Refugees and Article 4, para. 3 of the Asylum and Refugees Act) or to avoid the formal registration of such persons as asylum seekers so as to be able to send them as illegal immigrants to SITAF where, albeit with certain delay and at the price of their freedom, they could apply for protection to the State Agency for Refugees through the administration of the Ministry of Interior’s Migration Directorate. It was not until the opening on 3 May 2012 of the SAR Transit Center at the village of Pastrogor (at the Bulgarian-Turkish border) that the DGBP resumed accepting protection applications. Nevertheless, not all asylum seekers could make use of their rights, as the State Refugee Agency continued to refuse to accept most of the newly arrived protection seekers. Thus, only 9% of all new arrivals who had sought protection at the border were immediately registered by the DGBP and were granted direct access to the status awarding procedure. The remaining 91% were detained at the SITAF of Ministry of Interior’s Migration Directorate.

The detention of protection seekers at Ministry of Interior facilities and the duration of the detention also caused concern. The State Agency for Refugees was unable to initiate adequate measures to organize alternative accommodation of protection seekers in locations outside its territorial units. This resulted in an average duration of their detention at SITAF of 33 days. In an attempt to solve this problem, SAR began to administer declarations by protection seekers detained at SITAF by which they gave up the accommodation at registration and admission centers in exchange of faster release and registration. However, the declarations create an absolute legal obstacle to accommodation, which is why after their release from SITAF the protection seekers who had signed such declarations faced a catastrophic situation: no home, no valid address, no social assistance and, in many cases, no valid identity document.

Furthermore, in 2012 administratively detained foreigners were not allowed right to legal counsel from the time of detention, as required by Article 30, para. 4 of the Constitution. Given this situation and the lack of legal assistance and legal counsel from the time of detention, the state did not provide any legal and procedural guarantees that the statements made by the foreigners before the investigating bodies were recorded adequately and completely. Despite the large amount of the budget allocated to the Ministry of Interior, the Border Police once again did not have funds for translation within the police investigations against illegal aliens; only the translation during pre-trial proceedings concerning illegal border crossing under Article 279 of the Penal Code were paid. This is why many of the protection seeking foreigners in 2012 – 241 persons, including a separated child, or 66 of the monitored 365 cases – were sentenced for illegal border crossing. The investigation ordered by the Prosecutor’s Office of the Republic of Bulgaria showed that the presence or the lack of a valid identification document was the only objective criteria in the rulings, insofar as penal proceedings may be carried out and sentences handed down only with regard to persons whose identity has been established beyond any doubt. The written protection applications were therefore not considered in any way by the investigation and the prosecution, in violation of Article 275, para. 5 of the Penal Code and Article


In many respects the interviews carried out by the administration to define the need for protection and status were inconsistent with the established international legal and institutional standards. Although already collected by the administration, the written and other evidence provided by protection seekers in support of their stories were not admitted and considered in decisions to refuse protection. In some cases, when the refusal of protection was appealed, the refugee administration failed to give the court the complete administrative file. The background notes about the countries of origin, developed as part of the motives, were in most cases outdated; in some cases, their dates were changed by having them registered for a second time under the files for the same backgrounds notes.

The lack of any legislative or practical measures aimed at overcoming the lasting problem with the representation of separated children seeking protection, was particularly worrying. The proceedings involving such children continued to be carried out without the appointment of a guardian or a trustee who could make sure that their rights and legal interests are not violated during the assessment of their protection applications. The lack of guardian or trustee not only blemished the validity of the administrative procedures but also made it impossible for these children to exercise a series of rights after their applications were approved and status was awarded; these rights concerned their civic registration, the issuance of identity documents, the reception of social assistance, the access to education and training, etc.

The rate of approvals remained low in 2012 as well. The applications of 445 asylum seeking foreigners were turned down. Of these, 174 were from Iraq, 34 from Iran, 27 from Syria and 16 from Somalia, that is, countries with proven mass violations of human rights and large-scale attacks on civilians’ life and security. Only 18 (1%) of the 1,387 asylum seekers during the year were granted refugee status and only 159 (11%) all applicants during the year were granted subsidiary protection (humanitarian status). The total rate of approval was therefore 12%, an 8% drop compared to the 20% in 2011.

As to the freedom of movement, in 2012 the administrative courts came up with a series of decisions that marked a significant improvement with regard to the right to family life of immigrants married to Bulgarian nationals. The court rejected the restrictions imposed by the national legislation on the right of residence of such people, referring to the Community standards and the case law of the Court of Justice of the EU. The courts instructed the administration that regardless of the discriminating provisions of Article 2, para. 2 of the Foreigners in the Republic of Bulgaria Act (FRBA), the Bulgarian nationals – both under Article 17, §1 of the Treaty Establishing the European Community (TEC) and under Article 20 of the Treaty on the Functioning of the European Union (TFEU) as Bulgarian nationals (respectively, nationals of a member state) – have the status of nationals of the Union and therefore have the rights intrinsic to this status, which needs to be considered when granting derivative rights to members of their family who are nationals of a third country. The courts referred to the interpretation of Article 20 TFEU in the Court of Justice’s decision of 8 March 2011 on the case C-34/09 (Ruis Zambrano), according to which Article 20 TFEU does not allow measures resulting in deprivation of citizens of the Union of the possibility to exercise in reality the rights awarded to them by this status. The courts mandated that the bodies of the Ministry of Interior’s Migration Directorate must in all cases respect the right to respect for private and family life, as established in Article 8, para.1 of the European Convention on Human Rights, by awarding the foreign members of Bulgarian families (Article 24, para. 1, item 18 of FRBA) the right of residence in Bulgaria when the respective conditions have been met. The courts instructed also
that the decisions on such applications need to also consider the provisions of Article 7 (respect for private and family life), Article 21 (prohibition of discrimination on the grounds of nationality) and Article 24 (the rights of the child, right to protection and care as necessary for their well-being) of the Charter of Fundamental Rights of the European Union.

In 2012 the ECtHR held a violation of Article 2 of Protocol No. 4 in the case Sarkizov and Others v. Bulgaria of 17 April 2012. Upon being released from prison, the applicants were banned by the Bulgarian authorities to leave the country. The Court also held a violation of Article 2 of Protocol No. 4 (freedom of movement - to freely leave a country) and of Article 13 (right to an effective remedy) of the Convention in the case Stamos v. Bulgaria of 27 November 2012. The Bulgarian authorities banned the applicant from leaving the country for a period of two years due to a violation of US immigration laws.

11. Rights of people with mental disabilities

On 17 January 2012 the ECtHR’s Grand Chamber announced its judgment on the case Stanev v. Bulgaria. It concerns the placement of a man with a mental disorder at the institution for persons with mental disorders in the village of Pastra, municipality of Rila. The Court held a violation of Article 5.1 as Mr Stanev was illegally deprived of freedom and institutionalized without his consent, only on his guardian’s will. The Court also held that at no time did the applicant pose any danger to himself or to others that could justify his placement in the institution and his subsequent stay. The Court held a violation of Article 5.4 of the Convention due to the impossibility to appeal the lawfulness of the placement before a national court, as well as a violation of Article 5.5 due to the lack of a mechanism for seeking compensation for unlawful deprivation of liberty. The Court held that the Bulgarian guardianship and custody system does not provide the incapacitated people access to court on their initiative in order to appeal their incapacitation. It therefore held a violation of Article 6.1 of the Convention.

With regard to the conditions in which Mr Stanev was living, the Court found that they were degrading, in violation of Article 3 of the Convention. The lack of an effective national remedy against such treatment, available to the applicant, made the Court find a violation of Article 13 in conjunction with Article 3 of the Convention.

In January 2012 the parliament ratified the UN Convention on the Rights of People with Disabilities (CRPD). The decision in the Stanev case and the ratification of CRPD gave the Ministry of Justice grounds to initiate the development of a concept for legislative changes related to the legal capacity and the rights of the people with disabilities. Non-governmental organizations were involved in the process. The concept was adopted in October and posted at the main entrance of the Council of Ministers for public consultation.[82] The concept is focused on the introduction in the Bulgarian legislation of measures in support of the people with mental disabilities that are not related to incapacitation. These include first of all preliminary measures in the form of a conditional statement of will, which is registered by a

notary and can be both preliminary declarations and preliminary powers of attorney authorizing another person to perform specific activities while the authorizing person is without disability. Secondly, the concept calls for the introduction of supported decision-making by a professional supporter without incapacitation of the person. According to the concept, custody remains the only form of restricted legal capacity; guardianship, respectively full incapacitation, is excluded. The concept leaves unclear some issues concerning the rights of people with mental disorders, such as their right to vote (restricted by the Constitution), to marry, to associate, etc. Nevertheless, it’s a step towards a profound legislative reform that could have a considerable effect on the rights of the people with mental disorders. No legislative changes had been effected in the areas covered by the concept by the end of the year.

There was no change in 2012 in the situation of the people with mental disorders at the institutions of the Bulgarian Ministry of Labour and Social Policy[83]. By 31 December 2012, there were 55 institutions with a total of 4,016 people in them. This is 137 less than in 2011 and could be due to demographic and/or accidental factors. [84] 1,978 were on the waiting list for placement in these institutions. Of all people in institutions, 2,173 were placed in 27 institutions for adults with developmental delays, 1,039 were placed in 14 institutions for adults with mental disorders and 804 were placed in 14 institutions for adults with dementia.

There was almost no change in the situation of the people with mental disorders who use community-based services. Only three new sheltered homes were opened in 2012: two for adults with developmental disabilities and one for adults with mental disorders. By 31 December 2012, there were a total of 814 people with mental disorders in sheltered homes.[85] Of these, 240 were placed in 25 sheltered homes for adults with mental disorders, while 574 were placed in 68 sheltered homes for adults with developmental delays. By the end of 2012, there were a total of eight transient homes for people with mental problems; of these, two were people with mental disorders (9 inhabitants) and six for people with developmental delays (60 inhabitants). A total of 250 inhabitants were accommodated at 21 accommodation centers of family type for people with mental problems.

The statistics show a dramatic inconsistency between the needs for community-based services and the existing capacity. It should also be noted that a significant portion of the community-based services were created as parts of institutions. Such an opportunity was created with the 2010 amendments to the Medical Institutions Act, which allowed the stationary psychiatric assistance institutions to provide social services under the Social Assistance Act. Since then some psychiatric hospitals created “sheltered homes” or other services. In fact, these are parts of the psychiatric institutions, often with the same closed regime as hospital wards. Similar “community-based services” were also created in many institutions for people with mental disorders or developmental delays.[86]

The conditions at the institutions for adults with mental disorders and mental retardation continued to be dramatically inconsistent with the needs of the people placed in them. Since the legislation governing the placement in such institutions was not changed during the year, many of the patients were in fact arbitrarily deprived of liberty. At the end of 2012 and in early 2013, BHC researchers visited

[83] The data quoted here and below are from a reference on the social services under activities delegated by the state. The reference was prepared for BHC by the Social Assistance Agency (SAA) by letter No. 92-69 of 14 February 2013.
[85] Data taken from the above-mentioned SAA reference.
several institutions for adults with mental disorders and developmental delays in different Bulgarian regions. They did not find any significant improvement in the care for the inhabitants. In most cases the inhabitants were doomed to hanging around without purpose and watching television. In rare cases they were offered meaningful activities, and psycho-social rehabilitation was unthinkable. Only in a very few cases did the researchers find improvements in some facilities and in the nutrition. In some institutions, as for example the institution for adults with developmental delays in the village of Batoshevo, municipality of Sevlievo, the conditions as a whole could be defined as inhuman and degrading.

In December the Ministry of Health amended two ordinances, No. 39 and No. 40, restricting the access of people with mental disabilities living in the community to community-based mental care and created conditions for their priority transfer to psychiatric hospitals. These ordinances allow general practitioners to issue special forms to refer the patients for further treatment at psychiatric hospitals and mental health centers (the former dispensaries) regardless of their will. By these forms the general practitioners solve permanently the problems with the referral forms for their psychiatric patients and save referral forms for specialist psychiatrists practicing outside the institutions. This is a serious blow to this category of doctors who risk losing patients, and to the people with mental disabilities who would prefer to be treated outside the institutions. The reform spurred protests and accusations in lobbyism to the Ministry of Health by the psychiatrists practicing outside the institutions.

The lack of progress in the prosecution investigation of the death and injury cases established during the joint checks of the BHC and the prosecution in 2010 was a serious problem affecting the rights of the children with mental disabilities in institutions.[87]

12. Women’s rights

2012 was marked by both progress and a series of challenges and problems in the field of women’s rights. As usual, the progress was due to the pressure by the civil society and the non-governmental organisations. The existing gender inequality in Bulgarian fell once again in the spotlight of the international community.

CONCLUDING OBSERVATIONS OF THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

The concluding observations of the Committee on the Elimination of Discrimination against Women (CEDAW) were published in July.[88] Many of the conclusions give rise to concern and require quick intervention by the state, as well as greater cooperation between the state and the non-governmental sector. The Committee expressed its concern with the fact that stereotypical models are constantly instilled in the country, over exaggerating the traditional role of the woman as mother and wife, and still influencing her educational and professional choices. The Committee pointed out that the media and the advertising sector systematically

[87] See Rights of the child below.
create a sexual and commercial image of women. It also stresses out that domestic violence in Bulgaria is widespread and that there are neither legal mechanisms for its prevention, nor asylums and advisors for the victims; there are also no special provisions that criminalize marital rape. The Committee asked Bulgaria to amend Article 10 of the Protection from Domestic Violence Act (PDVA), which stipulates that the application for protective measures shall be filed within one month of the act of domestic violence, appealing for an extension of this timeframe.

The report pays special attention to Article 158 of the Penal Code which provides an opportunity for the termination of the criminal proceedings in cases of sexual assault if the crime is followed by a marriage of the perpetrator and the victim. Article 158 concerns even cases of molestation with minors committed with the use of force or threat, as well as by using the helpless state of the victim. The Committee called the state to repeal this controversial provision and to guarantee that all cases of sexual assault against women and girls will be effectively investigated and the perpetrators will be persecuted and sentenced in line with the severity of the crime.

The Committee explicitly notes its concern with regard to the lack of sufficient information from Bulgaria on the women in unequal situations — ethnic minorities, elder women and women with disabilities — who are often subjected to multiple discrimination, especially with regard to access to education, employment, healthcare, protection against violence and access to justice. The Committee required the member state to provide in its next report statistical data on the situation of these groups of women.

THE ROLE OF BULGARIA IN THE ADOPTION OF A EUROPEAN COMMISSION DIRECTIVE ON QUOTAS FOR WOMEN IN PUBLIC COMPANIES’ BOARDS

In mid-September 2012, nine EU member states united forces to block commissioner Reding’s proposal for a directive on the establishment of quotas for women on European public companies’ management boards. These member states included Bulgaria, the Czech Republic, Latvia, Estonia, Lithuania, Hungary, Malta, The Netherlands and the United Kingdom. In their letter to European Commission President José Manuel Barroso and commissioner Reding they stated that even though they did not support the adoption of legislative measures at the European level, a problem does exist “that the women are very few and that efforts must be made towards the inclusion of the women and this must happen at national level”. The states blocking the proposal added that “the efforts must continue...this must happen in the future”.

In a reaction to Bulgaria’s position, several national women’s non-governmental organisations began a wide-scale campaign by sending official letters, messages and articles to the media and lobbying at meetings and events, such as the meetings of the Gender Equality Council. The open letter of 21 September 2012 was signed by the Alliance for Protection against Domestic Violence, the Bulgarian Gender Research Foundation and the Bulgarian Women’s Lobby and sent to the President, the chair of the National Assembly, the Prime Minister, the minister of justice, the minister of labour and social policy, the ombudsman and the Commission for Protection against Discrimination.

In mid-November it was announced that Viviane Reding’s proposal for a directive was unblocked due to a change in Bulgaria’s position. The draft directive aims for a 40% share of women on public companies’ boards which concerns the non-executive directors.[89] For comparison, according to official EU statistics, by the end of 2012 the share of women in such positions in Bulgaria was 15%.[90]

DOMESTIC VIOLENCE

Domestic violence continued to be a problem in Bulgarian society throughout the year. The victims were mostly women and children. As in previous years, it was practiced with impunity. The Bulgarian criminal justice system persecutes light and medium bodily harm inflicted by close relatives only if the victim files a complaint. This hinders the use of the system to combat domestic violence.

In March 2012 the government approved a National Programme on Prevention and Protection against Domestic Violence for 2012. The programme covers the following aspects: provision of social services to victims of domestic violence; improvement of the coordination between the interested parties; education on domestic violence at schools; training of teachers, magistrates, social workers and police officers. According to the programme, minimum standards on social services for victims of domestic violence were to be elaborated by the end of the year. This did not happen. The programme also envisaged the creation of a national coordination mechanism in support of victims of domestic violence; its purpose was to achieve a more effective interaction between the institutions in support of the victims. The mechanism was still being finalized in January 2013. With regard to prevention the programme envisaged a national mobile group for psychological support. The group was to work with children, victims of violence or people at risk of violence, and to support the school teams in places where psychologists are not available. No evidence was found of the existence of such a group or its operation. The program does not foresee changes in the criminal prosecution procedure for domestic violence within the criminal justice system.

The 2009 changes to the Penal Code criminalized the violation of an order for protection against domestic violence as a misdemeanor punishable by up to three years in prison and a fine of up to BGN 5,000 (app. 2,500 Euro). However, the number of perpetrators convicted is relatively small compared to the scale of this offense. Several sentences involving violation of orders for protection against domestic violence were handed down in the first nine months of 2012. The orders require that the offenders abstain from domestic violence and stay away from the victims, their homes and social networks. The judicial decisions contain different punishments: the fines imposed are in the amount of BGN 1,000 (app. 500 Euro), and in some cases of repeated offenses a suspended imprisonment of 6 to 42 months was imposed.

In August 2012 the Bulgarian Gender Research Center proposed officially to the Ministry of Justice amendments to the Penal Code entailing an increase by one-third of the punishments for bodily harm in cases of domestic violence. On 10 December 2012 the ministry confirmed the creation of a workgroup with a mandate to formulate the provisions in 2013 but nothing had been done in this respect by the end of January 2013. Information provided by the Ministry of Justice in the fall of 2012 stated that a pilot training course on domestic violence cases for junior judges and prosecutors will be initiated by the National Institute of Justice. No such course had been organized by the end of January 2013.

RIGHTS OF WOMEN GIVING BIRTH

The problems with regard to the violation of the rights of women giving birth in Bulgaria also continued to provoke debates in society and the expression of strongly polarized opinions. Both non-governmental organisations and victim mothers announced unacceptable interventions in the rights during childbirth. For the time being, however, the state bodies and the

representatives of the medical profession are running away from any constructive dialogue that could change the existing practices.

Most of the criticism with regard to giving birth at a hospital is related to the psychological and physical violence exercised on a large scale against the women giving birth, such as rude attitude, rough language, interventions inconsistent with the good medical practices recommended by WHO, disregard for the will of the woman giving birth, violations of the informed consent procedure. Several events were organised to increase the awareness of the public of this problem. The most important one occurred at the end of October, during a protest in front of one of the large maternity hospitals in Sofia, under the motto “Let us forgive the violence experienced at the maternity wards”.

At the same time, the topic of home births with the assistance of medical personnel was subject to more intense discussions both in Europe and in Bulgaria. This is due to a great extent to the unprecedented ECtHR judgment on the case Ternovszky v. Hungary at the end of 2010. According to the judgement, the right of the expectant mother to choose the circumstances in which to give birth is part of her right to private life, and it includes the access to qualified medical personnel to assist childbirth at home. Any limitation of this right would constitute a violation of the European Convention on Human Rights.

The debate on home births is heavily polarized. On one hand, it is being strongly, even aggressively, rejected. This position is often taken not only by citizens but also by government representatives, including the minister of health. A study assigned by the Ministry of Health established that 76% of the Bulgarians had heard or were informed about the discussions on this issue, while 78% of the interviewed opposed to giving birth outside the hospitals. Their arguments are related to the safety of the woman giving birth and of the newborn child, the lack of conditions, the concern that home birth would be significantly more expensive and the problems with responsibility in case of complications. This opinion is also shared by most doctors and hospital managers. However, they have a purely financial interest to keep births there, as even if childbirth is theoretically free, in reality it entails significant regulated and unregulated revenues to the hospitals.

Another part of society, however, categorically supports the opposite opinion. Their arguments are that the woman giving birth should have an active role in this natural process, that she alone has the right to choose what is best for her and her child, that birth outside the hospitals is a worldwide practice, that statistics indicates that in case of low-risk pregnancy it is as safe, or respectively as risky, as giving birth in a hospital, that home birth is often cheaper for the state as it does not require a whole medical team but just a single medical professional. And last but not least, should assisted home birth be regulated, it would encourage competition and therefore would improve service at the hospitals. The latter argument is usually supported, albeit tacitly, by the association of the obstetricians whose experience and capabilities are often disregarded in favour of the doctors.

While the debate is going on, there is

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[94] For more information about the vicious practices at the Bulgaria hospitals, see http://www.rodlimita.com/blog/news-events/po-sveta-i-unas/#more-398.
an increase in the number of unassisted home births. While there is no legal obstacle to this, such births pose great risks. In October 2012 the BHC referred to ECtHR on behalf of a pregnant woman who wanted to give birth outside the hospital (at home or at a birth center) but in the presence of medical personnel.

**SEXIST STEREOTYPES IMPOSED BY THE MEDIA**

In a final decision of March 2012, a five-member panel of the Supreme Administrative Court rejected the complaint filed by 13 women against the openly sexist commercials of the alcoholic drink mastika Peshtera.[99] The court pointed out in its decision that the complaints relating to unequal treatment on the grounds of sex are unproven and concern issues related to values and emotions that have “philosophical expression”. In November 2012 the BHC sent ECtHR a complaint against Bulgaria. The complaint claims that the applicants’ rights to equality, private life and fair trial have been violated.

Another commercial caused a similar debate on the stereotypes imposed by the Bulgarian media with regard to the role of women in society. A scandalous TV commercial was aired in early December. In it, a seductively dressed woman drops a piece of the advertised product in her cleavage, then pulls it out and hands it to a young man. Then they have a conversation with a vulgar sexual message. The Electronic Media Council (EMC) referred to the Commission for the Protection of Competition (CPC) and the National Self-Regulation Council (NSRC) for violation of professional standards in the advertising of the “Bulkaheiz” product. In early 2013, the company which had commissioned the commercial withdrew it on recommendation by the EMC’s Ethics Committee. [100]

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**13. Rights of the child**

I. CHILDREN IN INSTITUTIONS AND ALTERNATIVE CARE IN 2012

**THE DEINSTITUTIONALIZATION POLICY IN 2012**

The slow implementation of the deinstitutionalization policy in Bulgaria continued in 2012. The prevention of the risk of institutionalization, family support and early intervention still remain outside the focus of the reform. The introduction of foster care and the development of services in support of adoptions also do not correspond sufficiently to the needs.

The Bulgarian government committed to deinstitutionalize thousands of children placed in institutions with the adoption of the Child Protection Act of 2000. In reality, the reform was delayed and progressed very slowly over the years. The 2010 [101] Action Plan to the national strategy “Vision on the deinstitutionalization of children in the Republic of Bulgaria” of 24 February 2010 defined deinstitutionalization as a transformation of the institutional framework into a variety of forms of support to the care for the children in a family environment. The strategy is to be implemented by 2025.

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[99] See Decision No. 3616 of SAC five-member panel, 13 March 2012.

[100] See the article “Fikosota withdrew the “Bulkaheiz” commercial”, http://www.24chasa.bg/Article.asp?ArticleId=1721799.

The 2012-2014 National Plan on the Prevention of Violence against Children was adopted on 23 May 2012. It is consistent with the 2008-2018 National Strategy for the Child which envisages improvement of the effectiveness of the actions with regard to signals of violence against children, introduction of procedures and principles on the operation of different institutions in cases of violence against children, and establishment of standardized information collection methods. [102] The plan deals with the issues of violence, the measures needed to combat it and the common framework for its prevention by provision of information, support and services. [103]

The National Child Protection Programme for 2012 was presented at the meeting of the National Child Protection Council on 6 March 2012. Its main goals include: to guarantee children’s right to live in a safe family environment; to reform child care and respect the rights of children in institutions; to improve the effectiveness of the work and the coordination between the child protection institutions at national and local level. [104]

THE ENTRANCE TO THE CHILDCARE INSTITUTIONS REMAINS OPEN, WHILE THE EFFECTS OF THE DEINSTITUTIONALIZATION MEASURES ARE UNCLEAR

According to data from the State Child Protection Agency (SCPA), at the time of the adoption in 2010 of the National Action Plan there were 137 institutions in Bulgaria. [105] Latest SCPA data indicate that by May 2012 there were 127 special-ized institutions with 4,755 children accommodated in them [106]: 31 institutions for medical and social care for children (IMSCC) aged 0 to 3, currently managed by the Ministry of Health; 24 institutions for children with disabilities, currently managed by municipal authorities; 70 institutions for children deprived of parental care (ICDPC), currently managed by the municipal authorities. According to the National Children’s Network (NCN), by the end of 2011 there were 6,226 institutionalized children. Apart from them, there were another 5,580 children [107] who are not counted as institutionalized in official statistics, but are in fact separated from their family environment and study at boarding schools and special facilities.

Most of the children at IMSCC were placed there on social indications: unmonitored pregnancy, mother of many children, single and/or juvenile mother, lack of support by the mother’s partner (who in some cases may not be the child’s biological parent), poverty and difficult living conditions, illness of parents. The lack of a health and social network of services in support of children with disabilities and low birth weight is another major factor for the placement of children in IMSCC. The analysis of the reasons behind the admission to the Malformations and Chronically Ill Children wards confirms this conclusion. Most of the children are transferred directly from neonatology wards or after being raised in a family environment for a short time. Social and medical indications are stated as the main reason for this: the mother or the family “does not have the funds and the skills needed to raise a child with disabilities/health problems”. During its 2012 monitoring in IMSCC, the BHC encountered multiple signals that parents are still being encouraged by medical professionals to leave the child in an institution

[106] Data from the SCPA national information system, based on information submitted by the directors of the homes.
[107] Children placed and educated at CBS, SBS, auxiliary, medical and hospital schools and schools for children with impaired visions and hearing.
after the birth, especially in case of disabilities.

The number of children in institutions still exceeds that of the children living in accommodation centers of family type (ACFT) and with foster parents. Latest SCPA[108] data show that by 31 December 2012 841 children were being raised by foster parents of which 148 in approved professional foster families and 693 in approved voluntary foster families. SCPA data show that 679 children were using the ACFT service in the beginning of 2012. At the same time, 219 young people have left the institutions for children deprived of parental care (ICDPC) due to coming of age, 36 have left the institutions for children with disabilities and 22 have left the accommodation centers of family type. According to official statistics, 89 or almost 48% of the children who have left ICDPC returned to their parents or relatives.

Three children have returned to the family environment after being accommodated at institutions for children with developmental disabilities (ICD) when they reached the age of 18. According to official data, the children with disabilities are 46% of all children in resident care. Five ICDs were closed in 2012: in Dobrich, Kaspichan, Malak Preslavets, Roman and Kalofer. The IMSCC in Shiroka Laka was closed on 1 January 2013.[109]

The slight reduction in the number of abandoned children aged up to three and raised at IMSCC is a fact.[110] The National Children’s Network believes this is due not only to demographic reasons but also to the initiated deinstitutionalization process. The SCPA statistics shows that on the average some 2,000 children were abandoned by their parents in 2010 and 2011 at an early age. The trend remains the same in 2012, according to NCN and UNICEF. According to the Ministry of Health, there are currently over 1,600 boys and girls at the institutions for the smallest abandoned children. In comparison, almost 1,800 children were raised at institutions for medical and social care in 2011.[111]

Eight institutions were identified in eight pilot regions in 2010 as part of the Direction: Family Project. All children in these homes were to be deinstitutionalized and the facilities were to host new social services.[112] According to NCN, a total of 340 children lived in these institutions in the beginning of 2012. Now, they are by 100 less. At the St. Paraskeva institution in Sofia, one of the eight pilot homes for medical and social care which will be restructured by 2014, there are 22 children, twice less than in 2010 when the institution’s restructuring began. No new children have been placed in the institution since the end of 2011. There has been no accommodation at the IMSCC in Kyustendil for three years. In October 2012, there were 11 children in this institution. Admissions have been terminated for another pilot home, too, the IMSCC in Targovishte. It currently accommodates 10 children. The number of children at the IMSCC in Pleven is also being reduced by returning them to their biological parents, (national or international) adoption or accommodation in foster families. According to IMSCC Pleven, the number of children in September 2011 was 165, of whom 92 with disabilities and 73 clinically healthy. In October 2012, they were 135, of whom 85 with physical and mental disabilities and 50 clinically healthy. However, the admission at most of the currently existing 30 IMSCC remains

[108] Reference provided to BHC on 11 February 2012.
[111] According to UNICEF, the number of children aged up to three under institutional care has been reduced as follows: 2,334 in 2009, 1,820 in 2011, 1,600 in 2012.
[112] The pilot regions include: Gabrovo, Montana, Pazardzhik, Pernik, Plovdiv, Sofia, Ruse and Targovishte. The existing medical institutions for abandoned children aged 0 to 3 in these regions have to be restructured into medical family consultation centers, offering new services.
unchanged or growing over the past two years. During its monitoring at the end of 2012 the BHC established growth at four of the six IMSCC visited. For example, statistics for the IMSCC in Buzovgrad shows that over the past five years there has been a trend towards the admission of 20-25 children annually, with an increase in the last two years. 26 children were admitted to the institution in 2011, and by 12 October 2012 there were already 25 newcomers. The statistics for another home, IMSCC Ivan Rilski in Sofia, shows 70 new admissions in 2011 and 65 in 2010.

According to a UNICEF study, every third child currently under state care is aged up to three. While the progress in the last two years is a fact, it is too small for the complete closure of the entrance to the children’s institutions. There is still no adequate overall policy to support more families before and immediately after the birth of children at risk, in order to achieve prevention of abandonment in institutions for babies and children aged up to three. The latest data by the Social Assistance Agency shows that in 2011 the Child Protection Departments worked on 5,005 cases of children at risk of abandonment. Of these, 1,456 or 29% were successful. Monthly financial assistance was provided to an average of 61 families per month, which to a great extent predetermines the low rate of success in the so much desired closure of the entrance to the children’s institutions. In other words, despite the increase in the services for the prevention of abandonment, their effectiveness does not increase at the necessary pace.

The effectiveness of the occurrences at the exit is also dubious. The For Our Children Foundation believes that the state policy has achieved results with regard to the placement of newborn children in foster families, but a significant part of the new services are reduced to repair and improvements at old institutions, where the plaque at the entrance is the newest thing.

Bulgaria occupies the notorious first place in Europe by number of babies abandoned by their parents. Prevention and work with the parents is lacking. The Direction: Family Project is aimed at family support and the creation of alternative services. It envisages the restructuring of eight pilot institutions for medical and social care for children. The initiation of a procedure to provide replacement services for a period of no less than 18 months was scheduled for 31 March 2012 but did not materialize due to delays in the other projects. The reduction in 2011-2012 of the number of children with disabilities who are transferred to another institution marks a positive trend. But what happens at the exit is quite dubious in terms of results. The situation at the exit of the IMSCC remained unchanged in 2012: the number of children adopted from IMSCC is traditionally the highest. According to the official statistics, the children with disabilities aged 0 to 7 are adopted abroad. The next largest group is that of the children reintegrated in their biological families. The third largest group is that of the children with disabilities transferred to ICDD – social institutions for children with developmental disabilities aged 3 to 18. SCPA data show that by the spring of 2012 the project had already involved 1,797 children but only 71 were successfully accommodated in foster families, protected homes or transient homes. Twenty children had returned to their biological families and another 80 re-established contacts with their relatives.

Over the past three months the Childhood for Everyone Project was conducting an evaluation of the families of the children who are currently placed in IMSCC and in institutions for children with disabilities, in order to see how many of them are ready to re-establish contact with their children, and how many would be ready to take them back home. The Childhood for Everyone Project has been operational since 2010 and is focused on the deinstitutionalization of the children with disabilities aged over three. The project envisions the establishment of 149 accommodation centers of family type (AFTC), each of them for 12 children, with a possibility for
two more urgent placements. However, insufficient funding poses a real danger to the replacement of the large institutions by smaller ones. At this stage, ACFT are regarded as a major alternative for the children at HCNR. At the same time, standard-based state financing barely covers the basic needs of the children and in most cases leaves no budget for the necessary specialists, for transport to social and healthcare services in the community, and for access to universal services.

The development of the network of supporting community based social services was postponed for the next programming period, 2014-2020. The development of community based social services—resident and supporting—which are a prerequisite for the adequate closure of IMSCC, is the Achilles’ heel of deinstitutionalization. The reform of the IMSCC is the most sluggish. The closure of the entrance to the institutions for children is rather “an administrative revenge” than a solid change: at stated above, the IMSCC deinstitutionalization process began only in eight selected regions, and even there the deinstitutionalization of the children was postponed as it depends on the development of the services. Prevention (preventive services) is also problematic.

The deadlines for the deinstitutionalization of the children with disabilities most probably will not be observed. The reform envisions the closure by the end of the year of all 24 ICDD in the country and of the eight pilotIMSCC. The current implementation of the two projects for the closure of the institutions for children with disabilities and their replacement by a network of new community based services and consultative centers raises doubts that the intentions would materialize within the desired timeframes. ICDD and IMSCC are still being used to accommodate children with severe or multiple disabilities.

The tendency to save on the money allocated for deinstitutionalization to finance other activities. In the summer of 2012 NCN reacted sharply to the tendency to have the money saved from staff optimization at the institutions for children reallocated to other activities instead of being invested in programmes and activities for the children. Minister Desislava Atanasova’s report and the draft decree stated that the total staff of the IMSCC would be reduced by 462 posts. In NCN’s opinion, this means that BGN 3,259,872 will be saved from the homes for babies within the health ministry. Media publications made it clear that these funds were to be reallocated to Program 11 “Provision of blood and blood ingredients” following the protests of the medical professionals at the blood banks in the country.

In its opinion addressed to the Bulgarian Ministry of Health, the NCN point out: “The same tendency to save from the money for child care was observed last year. The total amount of the state and municipal financing in 2011 was BGN 65.6 million. In 2010, the funding amounted to BGN 72.4 million. In other words, the difference due to the closure of institutions and the reduction of capacity is BGN 6.6 million which “sink” in the central budget instead of being invested in quality child care and support to the families”.

**FOSTER CARE DOES NOT CORRESPOND TO THE NEEDS**

According to UNICEF (Foster Care 2012 Project), the foster families in Bulgaria have reached 900 over a period of five years, three times more than in 2008 when there were only 250. 277 foster families were approved under the UNICEF project and are home to 332 children. Two-thirds of the foster families are composed of two parents aged between 40 and 50, 60% with secondary education. Almost all children under the project are aged up to 6. Despite the progress, the numbers show that the children in foster care are very few compared to the children living in specialized institutions. According to the latest SCPA monitoring report of 2012, 391 were
placed in foster families in 2011; of these, 334 were approved foster families and 61 were voluntary foster families.

The same holds true for the reintegration in the biological families, as well as for the adoptions. The official statistics indicates that barely 1.9% of the institutionalized children in Bulgaria are orphans. 81.1% have parents. The success rate of the reintegration, according to SAA data for 2011, is 67%. The number of the children who have returned to their families is the smallest among the children with disabilities. A joint study of SCPA and the Lumos Foundation carried out in 2012 showed that 71% of the parents break the relations with their children forever when they abandon them.\[113\] And although almost half of them state that they are willing to see their children again after so many years, very few actually do it.

**SLOW LISTING OF CHILDREN FOR ADOPTION**

During its monitoring at the end of 2012 the BHC encountered yet another barrier to the deinstitutionalization. Shocking examples of carelessness by officials and irresponsible violations of the provisions of the Child Protection Act concerning the placement in children’s institutions have hindered adoptions in the Stara Zagora region, for example. The BHC established cases of huge delays in the registration of children in the adoption registers. In some cases, there were delays of up to seven years in the movement of children’s files from the national register kept by the Social Assistance Agency to the international register kept by the Ministry of Justice. The BHC encountered several cases when children were not registered in the national or the international registers for the Sofia and Stara Zagora regions because the documents needed for the registration were not submitted in time. All cases concerned children for whom the opportunities for reintegration in their biological families were exhausted (orphans, children with two unknown parents or children whose biological parents refused to re integrate them after 11 years of abandonment, in some cases children with medium to severe disabilities).

The Stara Zagora Regional Social Assistance Directorate, for example, delayed by years the adoption of children due to inexplicable disregard for the deadlines and the procedures on the listing of children for international adoption.\[114\] In two cases, the adoption procedure of two 12-year-old boys institutionalized immediately after birth was delayed for seven years. One of the boys was born with both parents unknown. The parents of the second boy had not seen him for years. The mother lives abroad. The father refused to take care of his son and confirmed his refusal during a new social interview in 2010. These children’s files had spent years untouched until they were finally filled in and sent for registration in the Ministry of Justice’s registry. The age of the two boys and their specific health problems limit significantly the opportunities for their adoption in Bulgaria. Following the intervention of BHC, and with the assistance of the Ministry of Justice, the procedure was finally initiated in early 2013.

In a case in the city of Sofia, the listing in the national adoption register of a boy with severe special needs who became orphan at the age of six had taken the amazing 23 months and a half. In a third case, in Stara Zagora, a boy abandoned immediately after his birth was registered in the national adoption register just a few months before his ninth birthday. In this case, too, there were no opportunities for reintegration in a biological family: the

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\[113\] The Lumos Foundation, Study of Families’ Desires and Attitudes on Maintaining Contact with their Children Accommodated at ICMR and IMSCC (over the age of 3), 2012.

\[114\] Registration in the register kept by the Ministry of Justice should be carried out if within 6 months of the registration of a child in the national register no less than three prospective adoptive parents resident in Bulgaria have been identified and none of them has committed to adopt this specific child, or when despite the efforts made, no adequate adoptee could be identified.
mother had died years ago and the father refused to take care of the child and disputed his parenthood.

The issue with the slow listing of children for adoption has also been established by the National Preventive Mechanism (NPM) with the ombudsman of the Republic of Bulgaria in 2012. NPM’s observations indicated that some of the children accommodated in specialized institutions met the legal requirements but were never registered in the adoption registries. In this respect, the ombudsman had required the competent institutions (SCPA and SAA) to provide additional information on the reasons for this.[115]

As a whole, the trend remains unchanged for most IMSCC: the adopted children have the largest relative share at the exit of the institutions, followed by those transferred to other institutions. There is a group of IMSCC where the number of the adoptions has increased in 2012. The IMSCC in Plevlen, for example, reports a four fold increase in the number of adopted children with disabilities in 2012. The newly-appointed director of the IMSCC in Plevlen says that over the past year there has been a growing interest in the adoption of children with disabilities by US citizens. The BHC believes that this is due to the advocacy of an adoptive mother who had adopted a child from the institution in November 2011. The child, Katie Mussner, suffered from a monstrous lack of care. Born in 2002, she was institutionalized immediately after her birth. Katie Mussner’s adoption spurred the ensuing changes at the IMSCC in Plevlen: the former director’s dismissal, practices such as feeding the children with disabilities from beer bottles were eliminated, medical care was strengthened, including by on-the-spot visits by teams from the Ţokuda Hospital who take the children in the worst condition for treatment in Sofia.

[115] „General problems and recommendations with regard to the institutions for medical and social care”, NPM, 2013. Reference provided to BHC.

II. DEVELOPMENT OF THE PRE-TRIAL PROCEEDINGS ON THE CHILDREN IN INSTITUTIONS IN 2012

NO MEANINGFUL PROGRESS IN THE INVESTIGATION OF DEATHS/INJURIES OF INSTITUTIONALIZED CHILDREN

In 2012 the investigations of cases of death and serious injury of children, discovered during joint checks of BHC and the Prosecutor’s Office of the Republic of Bulgaria (PORB) in institutions for children with mental disabilities in 2010, did not achieve any progress.[116] The tendency of the prosecution to underestimate the cases, to demonstrate prejudice and formalistic attitude continued in 2012. The trend observed in 2011 – towards termination of all criminal proceedings – applies to all cases, and the demands for termination are in most cases unlawful and unmotivated. After two and half years of investigations – from the fall of 2010 to the end of January 2013 – no charges have been pressed in court in any of the 229 pre-trial proceedings and dossiers.

The number of the terminated investigations is growing and the materials on them are already in the archives. Thus, by the fall of 2012 of the 229 cases 149 were either terminated or the prosecution has issued a refusal to press charges. Of these, more than 66 cases are finally closed by an act of the Supreme Cassation Prosecutor’s Office. Thus, over 65% of the cases are on verge of being closed without access to court for the victims, in most cases without good reason. The total number of the victims of alleged criminal assault under the 229 cases monitored by the BHC is at least 375 children and juveniles. At least 270 children and juveniles who have been victimized by the institutions will most probably have no access to judicial protection. This represents at least 72% of the victims subjected to abuse that is being investigated (at least 375).

During its 2013 monitoring, the BHC found new cases of bodily harm and incidents at IMSCC. Two new cases of bodily harm were registered at IMSCC Ivan Rilski in Sofia. In February 2011, S. K., aged 1 year and 7 months, was admitted to the Pirogov Emergency Center in a critical condition. The little boy was bathed with boiling-hot water. On 1 February a nurse at the institution noticed that the child was restless. She removed his clothes to check him and found that his bottom and feet were red from scalding. Nevertheless, a doctor was not called. A year later, in January 2012, a similar incident occurred, albeit with less severe consequences. A child from the institution was diagnosed with first degree burns of the shank. The child was checked in Pirogov and released for treatment with ointments. The new director of the institution claims that the incident was due to a malfunction of the hot water system. The most severe case of bodily harm of a child in that institution remains an incident from June 2003. The right arm of three-year-old D.B. had to be amputated at the wrist. Ten days later, a second amputation had to be performed, this time at the elbow, due to necrosis caused by tying for a long period. The little boy suffered from cerebral palsy, left hemiparesis, and could only use his right hand. The surgeons at the Pirogov emergency hospital who performed the surgery believed that the necrosis was caused by tying for long periods.

By the fall of 2012, BHC monitored a total of 518 acts of the prosecution. Excluding the acts of the Supreme Cassation Prosecutor’s Office and the decrees on acts for which the statute of limitations has expired, there are 372 acts that are subject to possible appeal. In BHC’s opinion, almost 60% of all monitored prosecution acts are deficient. This means that more than 100 victims are not getting effective investigation.

The justification most often used by PORB when terminating the cases is that no crime has been committed. Another frequently used justification is the lack of sufficient evidence that a crime has been committed when a deceased child has not been autopsied, thus making it impossible to establish the real reason behind the death.\[117\] In most of these investigations the prosecution does not make sufficient efforts to collect all possible evidence related to the case but terminates it, mainly on the grounds of formal medical examinations—often performed by experts connected to local hospitals—which conclude that since the cause of death cannot be established beyond doubt, it is impossible to establish a causal relation between the care (not) provided and the death of the child.

Many of PORB’s investigations are not complete, objective and comprehensive, as they should be under the procedural penal law. The motives to the prosecution’s decisions demonstrate obvious prejudice which undoubtedly has an effect on the investigation as a whole. For example: „[…] Unfortunately, there are diseases before which the medicine and society’s social commitment are helpless and cannot save and provide a quality life to primarily disabled individuals, regardless of the level of care provided […]“\[118\] In PORB’s opinion, the disabilities, respectively the deaths, are a logical and direct consequence of the diseases, even when the death could have been prevented and the diseases are not lethal per se. Furthermore, even when criminal inaction on behalf of the staff of the prosecutor’s office itself has been found, at a time when action could have saved the child’s life, the prosecution

\[117\] See decree of the Varna Appellate Prosecutor’s Office of 29 February 2012 on pre-trial proceeding 397/2011, confirming the decree of the Dobrich County Prosecutor’s Office on the termination of the proceedings against an unknown perpetrator for the death of Katya Vihova Yordanova from the ICDD in Krushari. Similar grounds have been used with regard to children from the institutions in Petrovo (Blagoevgrad) and Krushari.

\[118\] See decree No. 1012/2011 of 18 December 2012 of the Plovdiv Appellate Prosecutor’s Office, confirming the termination of the pre-trial proceedings on the death of Vasil Ganchev from the ICDD in Sladak Kladenets.
terminates the criminal proceedings.\[119\]

What were the specific deficiencies of prosecution’s decisions:

INCORRECT INTERPRETATION 
AND APPLICATION OF THE LAW,
RESULTING IN DENIAL OF CRIMINAL PROTECTION

There is a marked tendency to terminate pre-trial proceedings for fractures of immobile children. In these cases, by mechanically accepting the experts’ conclusions, the prosecution does not find medium bodily harm since the law requires that the “movement of the limb” be damaged and this limb has no such function as the child is immobile due to the illness. Such a logic in criminal law means that intentional or accidental bodily harm may be inflicted on children who are immobilized due to their illnesses, or on people in general, without fear of criminal persecution. The prosecution continues to terminate also proceedings for potential bodily harm inflicted on living children by the application of harmful tranquilizers. In these cases the prosecution orders forensic examination on paper only, without an actual examination of the child, and then uses this examination as a referral.\[120\]

DELAYED HOSPITALIZATION,
INADEQUATE REHABILITATION,
UNKNOWN CAUSES OF MALNUTRITION

In obvious cases of delayed hospitalization the prosecution most often ignores it and accepts that the child has died as it had severe disabilities in general and could not fight the disease that required hospitalization. That the hospitalization was delayed or never happened is something that the prosecution does not comment on. In one case, the PORB justified the death of a hospitalized child with the “severe winter conditions” which hindered the timely hospitalization, without even verifying the occurrence of such conditions, or whether such behaviour on behalf of the staff assigned to take care of the children is an isolated case or a common practice.\[121\] The PORB refused to investigate the reasons behind proven malnutrition of the children while they were alive, as well as the possible link between the malnutrition and the ensuing death.\[122\] Instead of investigating whether the low immunity of the children was due to the lack of adequate feeding methods or food ingredients, the prosecution ties the condition of the children with their main illnesses.

The PORB does not investigate why no autopsy was performed in most cases of death, given that legal grounds for autopsy were present.\[123\]

UNCLEAR CRITERIA
FOR THE APPOINTMENT OF EXPERTS.
TAINTED EXAMINATIONS

Some decrees do not make it clear what experts are conducting the forensic evaluations ordered, nor what are the criteria that the PORB uses to select them. When

\[119\] See decree No. 1541/2010 of 24 January 2012 of the Dobrich County Prosecutor’s Office, terminating the criminal proceedings on the death of Fatme Mehmedova from the ICDD in Krushari, p. 9. See also BHC signal of 23 March 2012 to the Supreme Cassation Prosecutor’s Office (SCPO) on the termination of the pre-trial proceedings on the death of Fatme Mehmedova from the ICDD in Krushari. SCPO repealed the decree.

\[120\] See decree No. 1033/2010 of 11 April 2011 of the Stara Zagora County Prosecutor’s Office on the case of Dora Asenova from the ICDD in Sladak Kladenets.

\[121\] See decree of the Vidin County Prosecutor’s Office of 14 December 2012 on pre-trial proceedings No. 2994/2010, terminating criminal proceedings against an unknown perpetrator for inflicting bodily harm to Krasimir Marinov Nikolov from the ICDD in Gomotarsi.

\[122\] See decree of 29.02.2012 of the Varna Appellate Prosecutor’s Office on case No. 397/2011 confirming the decree of the Dobrich Regional Prosecutor’s Office of 31.01.2012 which terminates the criminal proceedings against an unidentified perpetrator on the death of Katya Vihrova from the ICDD Krushari.

\[123\] See signal by BHC to SCPO against the decree of the Sofia County Prosecutor’s Office of 15 March 2012 on pre-trial proceedings No. 5403/2010, confirming the decree of the Blagoevgrad County Prosecutor’s Office of 7 October 2011 terminating criminal proceedings on pre-trial proceedings No. 3733/2010 of the Blagoevgrad County Prosecutor’s Office about the death of Tsvetelina Yanislavova from the ICDD in Petrovo.
experts find lack of proper care for the children and severe consequences for them, the PORB does not accept the findings,[124], thus scandalously ignoring information about obvious crimes, and refusing to investigate them.[125]

**PROCEDURAL VIOLATIONS**

There are also other significant procedural deficiencies in initiating and carrying out investigations. For example, the competent prosecution office initiated a single criminal proceeding and started a single investigation of the death of four children.[126] The prosecution’s conclusions are often based on statements made by parties interested in the outcome of the proceedings, mainly institution staff or medical professionals involved directly in care for the children.

Most decisions of the higher-ranking prosecution offices simply retell the actions initiated by the prosecution of first (or second) instance and confirm its final decision without subjecting it to an independent evaluation with regard to its lawfulness and correctness. The criticism expressed in the BHC signal is ignored. There is a slight positive trend in the oversight activity of higher-ranking prosecution offices: some prosecutors repeal decisions of lower-ranking prosecutors due to the lack of objective investigation of the malnutrition of the respective victim, and issue specific instructions on the investigation of this circumstance.

**14. Rights of people with a different sexual orientation**

2012 could be called a year of a rise of LGBT activism in Bulgaria. Although no real changes were made in the Bulgarian legislation with regard to the LGBT people, some important steps were made and the foundations for other were laid.

[124] See BHC signal of 27 April 2012 against a decree of the Ruse County Prosecutor’s Office of 22 March 2012 on pre-trial proceedings No. 1904/2010, terminating the pre-trial proceedings on the death of Ferdun Nedret Ferdun from the ICDD in Moglino.

[125] See BHC signal of 25 October 2012 to the Veliko Tarnovo Appellate Prosecutor’s Office against a decree of the Pleven County Prosecutor’s Office refusing to initiate pre-trial proceedings for dubious death of children at the IMSCC in Pleven.


In the last several years the people of non-heterosexual orientation were the target of an ever increasing number of homophobic crimes, including murder and assault. Furthermore, at the time of the annual parades organized with the purpose to increase the visibility of the LGBT community, people appear in the media and publicly condemn the people of non-heterosexual orientation, and even instigate violence against them. Although Articles 162 and 164 of the Penal Code envisage punishment for the instigation of hatred or animosity on the basis of race, nationality, ethnic origin and religion, the propagation of hatred and violence against LGBT (lesbians, gays, bi-sexuals and trans-sexuals) is not mentioned explicitly in Penal Code provisions.

In this respect, in early 2012, civic organizations, including the BHC, held a series of meetings with the Ministry of Justice, the Ministry of Interior and the Ombudsman.
Political will to make the necessary changes to the Penal Code was expressed (the Ombudsman gave his support as far back as 2011). The process was further influenced by the support from some diplomatic missions, as well as by the meetings of representatives of the Organization for Security and Co-operation in Europe and the international human rights group Amnesty International with the competent institutions. Despite the expressed willingness to have the draft for the overall amendment of the Penal Code voted in plenary by September 2012, by the end of the reporting period this had not happened. What is encouraging, however, is that despite the delay the draft of a new Penal Code that is currently being elaborated envisions more severe criminal responsibility for crimes related to many of the protected classes under the Protection against Discrimination Act, including sexual orientation. At the same time, sexual identity is currently not included in the protected classes under the PADA, respectively in the draft new Penal Code. This is a deficiency that needs to be corrected.

The question about the status of the couples living without marriage and about the possibilities to have their rights regulated by the Family Code was brought up again in the summer of 2012. Despite the publicly announced intention[127] of representatives of the ruling party, GERB, the real political debate and the draft law never materialized. What was worrying in this case was that once again the intentions targeted only the homosexual couples. Given the growing number of countries which target their efforts on the legislative recognition of the co-habitation of couples of the same sex, Bulgaria remains one of the few EU member states that haven’t somehow regulated these relations. People living in co-habitation with people of the same sex are in an unequal position and have no freedom of choice, as they are deprived of the civic, social and economic rights available to heterosexual couples.

An in-depth study of the legal and judicial framework and case law[128] with regard to the change of sex of trans- and inter-sexual people in Bulgaria was conducted for the first time in 2012. Later, a strategy for the improvement of the situation was presented to the responsible institutions. One of the recommendations to the legislator was to amend the Civic Registration Act. It needs to contain a detailed description of the legal procedure for the change of sex, as well as specific criteria on the basis of which the court may approve change of sex. The analysis proved the need for special regulations on the treatment of cases of inter-sexuality, which are non-existent at the moment.

In 2012 several bodies announced decisions related to public statements constituting hate speech on the basis of sexual orientation. At the end of the year the Supreme Administrative Court ruled on case No. 16558/27 December 2012 in favor of TV anchorperson Yulian Vuchkov. The lawsuit was based on a complaint to the Commission for Protection against Discrimination (CPD). The complaint concerns Yulian Vuchkov’s broadcast, Morality and Time, aired on 8 February 2011 by the Kanal 3 TV station. In an interview with prime minister Boyko Borisov, Vuchkov explained that one of the pressing issues that the government needs to consider is the “praise of perversion”, that gay persons “cannot demonstrate their gayness in a nasty manner” and that “this already happens in many TV channels, in many concert halls”. The court held that Vuchkov had not insulted anyone’s dignity but had only expressed an opinion.

In a decision of 2 March 2012, the Commission for Protection against Discrimination imposed a BGN 2,000 (approx. 1,000 Euro) fine on a Plovdiv-based newspaper,

[127] See http://www.trud.bg/Article.asp?ArticleId=1450523

Maritsa. The complaint filed by activists Radoslav Stoyanov and Dobromir Dobrev concerns an article entitled “City officials under the same roof with gays”. In its decision CPD stated that “the expressions and qualifications used in the article [...] propagate animosity and violate the dignity and the honor of all people of different sexual orientation, create an abusive and hostile environment for them”. The CPD decision of 17 August 2012 on file 13/2011 of Chavdar Arsov v. the Bulgarian Federation of Sleds on Artificial and Natural Tracks. Having participated in a Mr Gay competition, the applicant lost his job as national coach and was not allowed to participate in competitions.

A series of hostile public statements were made during the year, affecting the people of different sexual orientation. The most memorable statement was that of Evgenii Yanakiev, a priest in Sliven. In June 2012 the priest appealed through the media for violence against the Sofia Pride rally: “Our entire society must oppose by all means to the gay parade that is in preparation. This is why I call all who consider themselves Christian and Bulgarian. Throwing stones is a convenient option.”

Despite the appeals of LGBT activists, the Bulgarian Orthodox Church did not distance itself and did not condemn father Yanakiev’s appeal to have stones thrown at the participants in the Sofia Pride. The parliamentary parties also had no position. Stoyanov and Dobrev sent a signal which the Sofia Area Prosecutor’s Office used as grounds to initiate pre-trial proceedings under Article 320, para. 1 of the Penal Code (“He who instigates a crime by preaching to a multitude of people, by disseminating printed materials or in another similar way, shall be punished by deprivation of liberty for up to three years...”) against Evgenii Yanakiev, a priest at the St. Dimitar church in Sliven. By the end of the year, the proceedings had produced no result.

In another case, the leader of the Ataka party, VolenSiderov, in a broadcast[129] on 1 July 2012 at STUDIO ATAKA, also commented on the Sofia Pride and publicly ridiculed the ambassadors of the United Kingdom and the United States who had supported the rally. In his comments, Siderov asked a direct question about the sexual orientation of Bulgaria’s prime minister and minister of interior.

A series of public events involving the LGBT community in Bulgaria were organized in 2012. The fifth Sofia Pride was held on 30 June in Sofia. Approximately 1,500 took part, while hundreds attended the events during the preceding art week. The event was widely supported by prominent Bulgarian artists, public figures and Bulgarian and foreign politicians. For the first the organizers did not have to pay for police protection during the rally; paid security was something about which the police had been criticized for years, including by Amnesty International. A wave of protests was organized throughout the year with regard to the lack of progress in the investigation of the murder of Mihail Stoyanov. Stoyanov was a student of medicine who was murdered for homophobic reasons on 30 September 2008 in the Borisova Gradinapark in Sofia. A biking rally was held for the second time in May, under the motto “Together against Homophobia, Together against Hatred” on the occasion of May 17, the International Day against Homophobia and Transphobia. The premiere of a book entitled “My Revelation” (published by the Deistvie Youth LGBT organization) took place in October. The book is a unique Bulgarian compilation of tales of lesbians, gays, bisexual and transsexual people. The official presentation was organized in six Bulgarian cities, attracted a lot of attention and led to public discussions and debates. The Sofia Queer Forum was organized for the first in November, a festival that uses the means of modern art to study the sex and the sexuality as parallel systems that we use to evaluate ourselves and the oth-

The eight consecutive LGBT Art Fest was traditionally held in December. The festival provided and opportunity of expression to young artists. The programme included many exhibitions, performances and topical debates.

The 2012 progress in the investigations of past assaults against people of different sexual orientation was sluggish. The investigation of the murder of Mihail Stoyanov on 30 September 2008 in the Borisova Gradinapark went on very slowly in 2012. At the end of the year, the prosecution finally submitted the indictment to the Sofia City Court. However, it later turned out that the case was returned once again to the pre-trial phase due to unclear details related to the victim’s death. The two suspects for the brutal killing remain at large, despite the fact that three witnesses confirmed that they had been in the Borisova Gradinapark in the night of the murder and had seen the two suspects killing Mihail. They were all part of a group that claims to be “cleansing the park from gays”. Despite the international campaign[130], the huge media and public interest, the case is indicative of the lack of will by the Bulgarian judiciary to have it solved. Other assaults also were not investigated, neither were the public homophobic instigations of the past. For another consecutive year, no one was detained for the assault after the 2011 Sofia Pride, when five volunteers were attacked in a small street in downtown Sofia and were beaten by 4 or 5 assailants.

Regardless of the tougher security measures in 2012, immediately after the Sofia Pride rally one of the participants was attacked in the area of the Serdika metro station. The 25-year-old was knocked on the ground and kicked by three assailants. Despite the attempts of the organizers and the police to help him, the victim decided not to press charges because he did not believe that the perpetrators would be established.


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