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**Human Rights in Bulgaria in 2014**

Sofia, March 2015

The report can be freely quoted upon condition that the source is acknowledged.

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1. POLITICAL DEVELOPMENTS IN BULGARIA IN 2014

In 2014, Bulgaria was governed by three consecutive governments. Having lost its parliamentary support, Prime Minister Oresharski’s government resigned on July 23. On August 6, the President appointed by decree a caretaker government headed by constitutional law professor Georgi Bliznashki.

Early parliamentary elections were held on October 5.

The elections were held under the old Election Code, which contains certain restrictions that contradict international law. Both the Election Code and the Constitution prohibit individuals deprived of liberty and individuals placed under guardianship to vote.

The Code also prohibits political campaigning in a language different than Bulgarian. During the election campaign, several representatives of the Movement for Rights and Freedoms (MRF), including its chair, Lyutfi Mestan, were fined on several occasions for addressing their voters in Turkish. During the elections, the Organisation for Security and Cooperation in Europe’s Office for Democratic Institutions and Human Rights (OSCE/ODIHR) sent a limited election observation mission. Its final report was published in January 2015. In it OSCE/ODIHR once again recommended the elimination of the prohibition of political campaigning in minority languages.\(^1\) The report also includes other recommendations, such as to take more serious measures against vote-buying, to promote women’s political involvement, to guarantee fair coverage of the campaign by the media, to ensure transparency of media ownership, to provide an effective mechanism to appeal election results. Most of these recommendations, including the one on the elimination of the prohibition of minority language campaigning, were already made during previous OSCE/ODIHR election observation missions, but were disregarded by the authorities. On the contrary, during the election campaign some media thrived on hunting for candidates using languages different than the official one in their electoral messages, while the competent state authorities readily imposed high fines on violators.

The parliamentary elections were won by the Citizens for European Development of Bulgaria (GERB) party. GERB was, however, unable to get a majority in the newly formed parliament and had to form a coalition with other parliamentary parties. Following a month of negotiations, in early November GERB signed a coalition agreement with the Reformist Bloc, a centre-right coalition of parties. Later, two more political parties, the Bulgarian Socialist Party (BSP) spin-off ABV, headed by former President Georgi Parvanov, and the Patriotic Front coalition, signed separate agreements to support the coalition government. The Patriotic Front is a neo-totalitarian formation consisting of the National Front for Salvation of Bulgaria (NFSB) and VMRO and some other less nationalistic parties. Both NFSB and VMRO are known for their anti-minority rhetoric and for the denial of basic political democracy principles and human rights. In public appearances, as well as in broadcast on the SKAT cable channel, their representatives often instigate hate, discrimination and violence on ethnic and religious grounds, more specifically against Roma,

Muslims and asylum-seekers.\textsuperscript{2} In its electoral political agenda, the Patriotic Front called for the demolition of all illegal buildings in Roma neighbourhoods (approximately 70\% of the housing in these areas) and involuntary placement of their residents in trailers “on unused state land outside large communities”.\textsuperscript{3} “24/7 police presence” is envisioned for these concentration camp-like facilities. The agenda also includes Islamophobic calls.\textsuperscript{4}

The Patriotic Front is not the only neo-totalitarian formation in the Bulgarian parliament. The Ataka party, known for years for its racist and xenophobic rhetoric,\textsuperscript{5} also received parliamentary representation, albeit with a relatively low result. The Reformist Bloc played an active role in recruiting the Patriotic Front as a coalition partner. The influence of a neo-totalitarian formation such as the Patriotic Block on the country’s governance poses a serious obstacle to the implementation of badly needed adequate policies in the field of human rights. The negative effects became evident immediately after the constitution of the new government in the racist rhetoric that was used both in parliament and at other public forums by both representatives of this political formation and a cabinet minister.\textsuperscript{6}

On December 7, minister of healthcare Petar Moskov said on the occasion of an attack against an emergency medical service team in a Roma neighbourhood that emergency medical service teams would enter Roma neighbourhoods “only if an agreement is reached with the local community’s ‘opinion leaders’ to personalise the responsibility of the said population, or accompanied by police. When possible and as possible”. This racist threat spurred a storm of indignation among the Roma community and rights activists. Several organisations and individuals addressed the prosecution insisting that the minister is held responsible for instigating racial hatred and discrimination. At the end of February 2015, the Sofia City Prosecutor’s Office refused to initiate penal proceedings, accepting that Moskov’s actions did not constitute targeted and deliberate instigation of racial discrimination, violence or hatred based on race, nationality or ethnic origin.

The cooperation of the authorities with international human rights organisations in 2014 posed a serious problem. By the end of 2014, the number of non-implemented decisions of the European Court of Human Rights (ECtHR) against Bulgaria pending review by the Committee of Ministers of the Council of Europe totalled 325. This was less than in 2013 but still among the highest per capita among the Council of Europe member states. The Advisory Committee on the Framework Convention for the Protection of National Minorities of the Council of Europe and the European Commission against Racism and Intolerance (ECRI) published their reports in July and September, respectively.\textsuperscript{7} Both reports criticised harshly the policy of the Bulgarian authorities to minorities, migrants and people of non-heterosexual orientation. The ECRI report focused on the impunity of hate crimes, hate speech, discrimination against the Roma and other minorities, as well as against migrants, lack of integration policies, the refusal to recognise certain minorities, more specifically Macedonians and Pomaks, and the obstacles to the review of asylum applications. The report of the Advisory Committee criticised the refusal of the Bulgarian authorities to expand the

\textsuperscript{4} See \textit{Freedom of Conscience and Religion} below.
\textsuperscript{6} See \textit{Protection from Discrimination} below.
\textsuperscript{7} Available at \url{http://www.coe.int/en/web/minorities/country-specific-monitoring#Bulgaria} and at \url{http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Bulgaria/BGR-CbC-V-2014-036-BGR.pdf} (accessed 6 April 2015).
personal scope of the Convention over the Macedonian and the Pomak minorities. It also gives a lot of attention to the insufficient capacity of the Commission for Protection against Discrimination and of the courts to effectively protect minority representatives from discrimination. Responding to the reports, the Bulgarian authorities reacted harshly to the recommendations and showed no inclination to implement them. On the contrary, they criticised ECRI for exceeding its mandate and recommended that the Advisory Committee stop insisting on the necessity to expand the personal scope of the Convention.

2. RIGHT TO LIFE, PROTECTION FROM TORTURE, INHUMAN AND DEGRADING TREATMENT

Despite the fact that in 2014 the BHC did not receive information of murders committed by law enforcement officers, the legal framework and practices related to the use of force and firearms remained unchanged. On the other hand, as part of a special project related to monitoring juvenile detention facilities, in the course of the year BHC researchers established cases of systematic ill-treatment at places for deprivation of liberty of juveniles.¹⁸

In January 2015, BHC researchers interviewed at the Vratsa, Pazardzhik, Lovech and Stara Zagora prisons inmates whose pre-trial proceedings were initiated after 1 January 2013 on the use of force during their detention by the police and their subsequent transfer to police precincts. The data are not representative of the correctional system as a whole but are comparable to the data from similar surveys carried out by BHC on similar issues in 2010, 2011, 2012 and 2013 by interviewing similar groups of inmates. The data from the four studies are presented in the table below.

TABLE 1. Use of force by police officers, by year

<table>
<thead>
<tr>
<th></th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>At the time of detention</td>
<td>26.2</td>
<td>27.1</td>
<td>24.6</td>
<td>22.0</td>
<td>23.0</td>
</tr>
<tr>
<td>Inside the police station</td>
<td>17.4</td>
<td>25.5</td>
<td>18.0</td>
<td>23.3</td>
<td>22.4</td>
</tr>
</tbody>
</table>

In comparison to 2013, the data does not reveal any positive dynamics in the complaints from use of force by police officers during detention and inside the police station where it is completely unacceptable. As a whole, the complaint levels in both cases are very high. According to the data, over 1/3 of detainees who were subsequently sentenced to effective imprisonment were ill-treated either at the time of detention or afterwards, or in both cases. Some cases involve inflicting severe pain with the purpose of coercing information or for punishment, i.e. torture.

¹⁸ See BHC, Children Deprived of their Liberty in Bulgaria: Between Heritage and Reform, Sofia, 2014.
Between 24 March and 3 April 2014 Bulgaria was visited for the ninth time by a delegation of the Council of Europe’s Committee for the Prevention of Torture (CPT). Within its mandate the delegation visited for the first time two prisons and the correctional facility for juvenile offenders in the town of Boichinovtsi and conducted follow up visits to two other prisons. The report from the visit was announced on 29 January 2015 and was much harsher and more critical than reports from previous visits. One of its main aspects was the concern that most of CPT’s recommendations over the years were not implemented, including some dating back from its first visit to Bulgaria in 1995. The recommendations were related to all aspects of deprivation of liberty, the most important ones concerning established practices of ill-treatment by security personnel in some visited prisons. While with regard to the prison in Belene the delegation informed about a large number of plausible claims of people who had been slapped, hit or kicked, the situation in the prisons in Burgas and Sofia is presented as much worse, as the delegations heard multiple claims of inmates being deliberately ill-treated by security personnel. The delegation was stunned by the situation at the correctional facility in Boichinovtsi, where most juveniles complained of having been abused by the staff. The findings in this case are that, as in the other visited prisons, the security staff resorted to physical abuse as an informal punishment for violations of the rules. In addition, in the prison in Burgas the delegation heard claims that the staff had instructed some inmates to physically abuse their cellmates as an informal punishment for various disciplinary offences. Apart from the violence among inmates, other problems that were established include overcrowding, living conditions, penitentiary healthcare, number of staff, as well as the disciplinary practices, the segregation and inmates’ contacts with the outside world. Most worrying are the findings of the CPT about the level of corruption which is described as “endemic”. This impression was the strongest in the prisons in Burgas and Sofia where the delegation was bombarded by inmates’ claims that they had been asked to pay staff for many statutory services or to obtain certain privileges. In conclusion, CPT finds that not only the situation has not improved since its previous visits in 2010 and 2012, but it has actually worsened. Also, with the exception of the prison in Vratsa, the data indicate that there are no constant actions on behalf of the authorities to improve the situation in the penitentiary system.

In confirmation of the CPT findings, two cases of blatant abuse of inmates by prison guards in the prison in Sofia became public in 2014. In one of them, on 6 July 2014 a large group of prison guards entered a cell inhabited by sentenced foreigners and began beating them with fists, kicks and batons. The assault went on for about 15 minutes. The prison guards then left the cell and locked it, preventing the inmates from seeking medical assistance. Upon receiving a complaint from the inmates, BHC sent a researcher to the prison who, having verified the facts, notified the Ombudsman of the Republic of Bulgaria and the Sofia District Prosecutor’s Office, which in November 2014 initiated pre-trial proceedings for minor bodily injury inflicted by an official in the performance of his duties. No indictment had been issued by the end of the year.

The second case dates back to 31 October 2014 when a group of prison guards continuously assaulted with fists and kicks two inmates who were not resisting. The beating was aimed at coercing information about hidden drugs. One of the victims was taken out of the prison in a wheelchair and was transferred to the prison hospital for examination. Upon seeing him, the doctor expressed his indignation at the prison guards by saying: “Shame on you!” The inspection carried out by the Ombudsman concluded that the use of force and restraint in this case had been unlawful and that the behaviour of the officers constituted a violation of the prohibition of torture and cruel or inhuman treatment. In addition, the Ombudsman stated that the Execution of Punishments and Detention on Remand Act does not foresee an exhaustive definition of the types
of force and the circumstances in which they may be used, and therefore recommended the adoption of detailed procedures on the use of force. The prosecution’s decision on the case is pending.

BHC monitoring carried out in 2014 established that adolescents placed in reformatory institutions testified about the use of force against them in police detention. Around 51% claimed that they had been subjected to mental and physical abuse during interrogation, including racist insults, threats of ill-treatment and even death. An adolescent detained in Radnevo police precinct testified that he had been hit with a wooden club on the back and arms and threatened to have his fingers cut off with an axe during interrogation. There were also a significant number of cases in which children testified that they had been coerced into making confessions for acts they did not commit. Thus, an adolescent detained at Montana police precinct was reportedly beaten with a cable and an electric truncheon. An adolescent detained at Sliven police precinct was reportedly hit with a truncheon and had his ears pulled with tongs. The abuse against adolescents continues until they are coerced into confessing testimony; attempts to complain about the abuse committed against them are unsuccessful. What is more, detainees are not provided with medical assistance after being subjected to physical abuse. In some cases the scars from the ill-treatment remain for a long period after the abuse itself, which in others the adolescents suffer serious medical issues. Thus, an adolescent detained at Nova Zagora police precinct developed hernia after being beaten with truncheons; he had to undergo surgery as a result. A boy detained in Varna police precinct was subjected to a severe beating with gloves in the area of the kidneys and blows to the back and feet with a truncheon. As a result he had difficulty walking and continues to experience difficulty while urinating. Some of the children reported that other people are present at the time of committing the abuse, like, for instance inspectors from the Juvenile Pedagogic Units, who remain impassive. BHC teams witnessed the attitude of an officer from 3rd police precinct in Sofia to adolescents detained in this specific station. Asked to identify their profile, the officer stated “some moron”. When asked what measures are enforced when detained adolescents fail to observe the established order, the same officer replied: “I’ll tie him up like a monkey”.

In 2014, BHC received information about multiple cases of physical violence against children by guards at investigation detention facilities. Nonetheless, data provided by the Central Penitentiary Administration at the Ministry of Justice indicates that there were only 15 disciplinary sanctions against staff with regard to incidents in 2014. At the same time, there is no effective remedy consistent with juveniles’ needs. There is also no state body to monitor whether the rights of the juveniles in the investigation detention facilities are respected. The penitentiary system itself does not recognise or address the problems of the juveniles held in Ministry of Justice detention facilities.

The extremely restrictive regime of detention at the investigation detention facilities in itself is a prerequisite for the existence of a very high risk of abuse and violence. In interviews with juveniles placed in different institutions BHC collected information on many cases of violence in the investigation detention facilities. For example, a juvenile said that during his stay at the investigation detention facility in Sofia a guard beat him with a plastic pipe on the shoulders. After the beating, another guard hit him with a ream of documents in the face. Another boy at the same detention facility said that after his arrest he was cruelly beaten by three guards with batons and kicks, and that his injuries were so severe that he could not get out of bed the following day. The incident was never registered, not even by the medical officer who carried out an examination two days later. A boy from the investigation detention facility in Burgas said he had been kicked
(four or five times) inside the cell in which he was placed. At the investigation detention facility in Sliven a boy was placed in a cell with two other juveniles. They were talking without making excessive noise. Staff told them to stop talking. The boy responded that he had the right to talk and asked that the window of the room be opened because it was very hot. When he went to the lavatory the next morning, the same officer who had reprimanded him the day before assaulted him with slaps, kicks and fists. The child said that the beating took place in the lavatory where there were no cameras. During his detention at the same facility, another juvenile was slapped and kicked for asking to go to the lavatory. Another juvenile detained at the investigation detention facility in Sliven said that he had been slapped and kicked in the back and the face. The reason: he was supposed to keep quiet. When he asked for water, he was beaten again. The violence always occurred in the lavatory. A boy from the investigation detention facility in Plevlen reported that he was beaten by five officers in the hallway, in front of the cameras. He was handcuffed, thrown on the floor and kicked in the head and ribs. A boy of Roma origin was held at the investigation detention facility in Plovdiv in a cell with another juvenile who was, in his own words, “a Nazi”. A conflict between the juveniles led to a fight but the duty officer did nothing to end it. When they fought again, however, the officer intervened by hitting both boys with a baton. The use of restraint was never reported and the boys were not provided access to a medical officer.

In 2014, BHC received information about many cases of violence and sexual abuse of children in juvenile reformatory institutions – correctional boarding schools (CBS) and social pedagogical boarding schools (SBS). The physical and social isolation of the boarding schools, lack of staff, deficient staff training and lack of sensitivity to the problems of juveniles placed in these types of institutions breed an environment of animosity and violence. Staff treatment of juveniles often reaches the margin of inhuman or degrading treatment. Staff indifference and inaction when informed about cases of violence was established throughout all boarding schools. It is more difficult to establish consent in sexual contacts among juveniles in the context of the involuntary placement in closed institutions, and the probability of coercive contacts is greater than in free life. CBS and SBS staff do not possess the necessary sensitivity and approach to the problem and are not specifically trained to recognise indications of sexual abuse. Raising sexual awareness in order to prevent sexually transmitted diseases and access to contraceptives are not in place which reflects especially on the girls. Violence at CBS and SBS is not limited to isolated incidents but is part of the functioning of the system that has no alternative. It’s a matter of institutionalised violence, an absolute indication of the degraded existence of the correctional and educational facilities.

In 2014, ECtHR found one violation of Article 2 of the European Convention on Human Rights (ECHR) (right to life) and a number of violations of Article 3 (protection against torture, inhuman or degrading treatment) in cases against Bulgaria. In Dimitrov and Others v. Bulgaria of 1 July 2014 (application no. 77938/11), the Court found a violation of Articles 2 and 3 of the Convention. The application was filed by the relatives of the deceased Angel “Chorata” Dimitrov in connection with his death, which occurred during police detention in a raid carried out by a regional organised crime unit on 10 November 2005. ECtHR held that facts accepted as proven in the case indicate that Mr. Dimitrov was ill-treated by civil servants and ruled a violation of Article 3 of the Convention. ECtHR decided that the case should be reviewed in the light of Article 2 of the Convention, regardless of the fact that the exact cause of Mr. Dimitrov’s death and the existence of a direct causal relation between the force used against him and his death were being contested. The Court also held that the responsibility of the state under Article 2 may be invoked even when the authorities, while conducting a raid, have not taken all possible measures to avoid or limit the
risk of accidental loss of human life. The Court decided that the criminal proceedings did not result in establishing all circumstances related to clarifying the responsibility of the individuals who had caused the victim’s death. It expressed concern with regard to the lack of investigation of the more general picture and with regard to possible attempts on behalf of those involved to cover the incident. The Court recommended a single procedure on the establishment of civil servants’ responsibility in such situations, in order to maintain public trust in justice and refute doubts that the police had wanted the physical elimination of the victim. The Court awarded 50,000 EUR in non-pecuniary damages, a total of EUR 17,000 in respect of the costs and expenses incurred in the domestic proceedings, and EUR 3,681 and BGN 130 in respect of costs and expenses incurred in the ECtHR proceedings.

In the case of Anzhelo Georgiev and Others v. Bulgaria of 30 September 2014 (application no. 51284/09), ECtHR held a violation of the substantive and the procedural aspects of Article 3 of the Convention due to the use of excessive force by police officers during a police raid of an Internet service provider on 18 June 2008. The application was submitted by company employees who claimed that during the raid police officers forced them to lie on the ground and then hit and kicked them and even used electroshock batons against some of them. The Court decided that the preliminary investigation had not established the exact circumstances of the incident, the reasons for the use of force by the officers, the degree and the type of the injuries inflicted on the applicants, and that no convincing arguments had been submitted to justify the force used. The Court awarded each of the three applicants EUR 2,500 in non-pecuniary damages.

In the case of Stoev and Others v. Bulgaria of 11 March 2014 (application no. 41717/09), ECtHR held a procedural violation of Article 3 due to the fact that the Bulgarian authorities had not conducted an effective investigation of a case of battery, threat of murder and robbery of the applicants on 5 December 2000 at an artificial lake at the village of Asparukhovo, near Karnobat. The Court established that the treatment of the applicants was sufficiently severe to fall within the scope of Article 3 of the Convention, and that the authorities had had the obligation to carry out a comprehensive and effective investigation of applicants’ claims. ECtHR held that despite the fact that the Bulgarian authorities had initiated criminal proceedings and had carried out certain investigative actions, the duration of the criminal proceedings – more than ten years – is a cause of concern. The authorities had not demonstrated diligence and had not done anything to identify the persons responsible or to find a missing key witness, despite the applicants’ requests. Although two of the alleged perpetrators had been identified, the investigation was against an unknown person the whole time. This, as well as the fact that the investigation had been suspended on multiple occasions, allowed it to be terminated in 2011 when the statute of limitations expired. The Court awarded a total of EUR 11,000 in non-pecuniary damages and EUR 1,128 in respect of costs and expenses.

In the case of M.G. v. Bulgaria of 25 March 2014 (application no. 59297/12), ECtHR applied Rule 39 of the Court’s rules and imposed initially an interim relief measure to prevent the extradition of the applicant, a Russian national of Chechen origin, to the Russian Federation until the proceedings are completed. At the time of submission of the application, the applicant was being held at the prison in Sofia. He and his family had been awarded refugee status in Poland and Germany. In July 2012, they were stopped at the Bulgarian-Romanian border. The applicant was detained until the completion of the extradition procedure. On 23 August, the Ruse Regional Court refused extradition but the Regional Prosecutor’s Office contested the ruling and the Veliko Tarnovo Court of Appeals allowed the extradition. ECtHR held that the execution of the extradition order would subject the applicant to a serious and proven risk of torture or other
forms of inhuman or degrading treatment in Russia and would constitute a violation of Article 3 of the Convention. The Court noted that the Veliko Tarnovo Court of Appeals had based its decision exclusively on statements of the Chief Prosecutor’s Office of the Russian Federation which, being a signatory to the Convention, had assumed the obligation to respect the fundamental rights enshrined in it. However, referring to international reports, ECtHR decided that under the specific circumstances these statements were not sufficient to eliminate the risk of the applicant’s ill-treatment. The Court held that in this case the authorities had not paid sufficient attention to the risk of ill-treatment of the individual in the country of origin. The Court awarded the applicant EUR 2,377 in respect of costs and expenses.

In Abdu v. Bulgaria of 11 March 2014 (application no. 26827/08), ECtHR held a violation of Article 3 of the Convention in its procedural aspect independently, and of Article 14 (prohibition of discrimination) in conjunction with Article 3, due to the fact that the authorities had not carried out an effective investigation of the possible racist motives in an assault against a Sudanese national residing in Sofia. In May 2003, the applicant and a friend were involved in a brawl with two Bulgarian youngsters who were later described by the police as “skinheads”. It is claimed than one of them pushed the applicant to the ground and kicked him calling him “a dirty nigger”. The other youngster pulled out a knife but the victims managed to escape. The prosecution refused to initiate pre-trial proceedings for a crime under Article 162, para. 2 of the Bulgarian Criminal Code (use of violence against another person due to his/her nationality, race or religion), accepting that no sufficient evidence existed of the racial motivation of the assault, without conducting an investigation in this respect. ECtHR held that the complaints fall into the scope of Article 3, even though the physical injuries of the applicant were not serious, because if they were inflicted on racist grounds this in itself constituted a violation of human dignity. The Court noted that when investigating incidents for which there are doubts that they may be racially motivated, the competent bodies have the additional obligation to take all possible measures to find out whether such motives have played a role in the events. The Court reached the conclusion that the authorities have failed to comply with their obligation to take all possible measures to establish the existence of racist motives for the violence, despite the fact that there were sufficient circumstances indicating violence on racial grounds. The applicant was awarded EUR 4,000 in non-pecuniary damages.

In Radkov and Sabev v. Bulgaria of 27 May 2014 (applications no. 18938/07 and no. 36069/09), ECtHR also held a violation of Article 3 of the Convention. The case is related to the handcuffing of the two inmates during a court session on 26 January 2007 held in prison. Referring to Articles 3 and 13 (right to an effective remedy) of the Convention, the applicants claimed that handcuffing them constituted inhuman and degrading treatment, and that they have had no access to an effective remedy. The Court held that although it could not conclude that the treatment under consideration was aimed at degrading the applicants, it was not convinced that it was justified by the risk of the applicants escaping or using force, and therefore constitutes a violation of Article 3 of the Convention. With regard to Article 13 of the Convention, the Court again held a violation pointing out that the applicants had the opportunity to express their dissatisfaction with being handcuffed during the court session, and they made use of this opportunity. The judge, however, had not ordered the handcuffs to be removed and had not motivated his refusal. Reviewing the possibilities of filing a claim under Article 1 or Article 3 of the Liability of the State and the Municipalities for Damages Act, the Court did not find proof that such a claim would constitute an effective remedy. The Court awarded each applicant EUR 1,000 in non-pecuniary damages. With regard to this case, it should be noted that on an application submitted by one of the same applicants in the case of Sabev v. Bulgaria of 28 May 2013 (application no. 27887/06), ECtHR held
a violation of Article 3 and Article 13 due to inhuman and degrading conditions at the prison in which the applicant is serving a life sentence, and due to lack of an effective remedy.

In the case of *Harakchiev and Tolumov v. Bulgaria* of 8 July 2014 (applications nos. 15018/11 and 61199/12), ECtHR held a violation of Article 3 due to the cumulative effect of the conditions of the detention of the applicants, sentenced to life without parole and life with the possibility of parole, respectively. The Court found that the conditions in which the two were serving their sentences, and namely their complete isolation, the deplorable facilities, the lack of appropriate forms and physical or mental stimulation, and the limited possibilities of spending time in open air, may only be justified by special security considerations, which do not exist in this case. The Court also found that the applicants did not have at their disposal an effective domestic remedy against the physical conditions of detention, and held a violation of Article 13 of the Convention in conjunction with the established violation of Article 3. The Court reminded that the authorities have the obligation to provide every person sentenced to life without parole some kind of hope that he may be released one day. The very purpose of every punishment, including under Article 36 of the Bulgarian *Criminal Code*, is to correct and reform. On the grounds of Article 46 of the Convention, the Court recommended to the authorities general measures that they have to implement in order to execute its decision with regard to the established violations of the Convention, which reveal a systemic problem and could lead to similar new judgements in the future. ECtHR ruled that Bulgaria needs to reform, preferably legislatively, the legal framework regulating the regime of serving life sentences with or without parole, more specifically with regard to the automatic application of the most restrictive regime and the isolation to all persons with such sentences. The Court awarded EUR 4,000 to the first applicant and EUR 3,000 to the second one in non-pecuniary damages, as well as EUR 5,600 in respect of costs and expenses.

In *Manolov v. Bulgaria* of 4 November 2014 (application no. 23810/05), the Court held two violations of Article 3 of the Convention with regard to the complaint of an inmate sentenced to life without parole who is serving his sentence in the prison in Bobov Dol. The first is related to the excessively severe regime of serving his sentence, which is due to the current legislation, constantly locked in his cell. The Court also found that the use of handcuffs every time the applicant was taken out of his cell, without this being justified by security considerations, contradicts Article 3, and referred to its settled case law. The second violation is related to the very nature of the life without parole punishment. The Court referred to its justification in the case of *Harakchiev and Tolumov v. Bulgaria*. The Court awarded EUR 3,000 in non-pecuniary damages, as well as EUR 500 in respect of costs and expenses.

In the case of *Dimcho Dimov v. Bulgaria* of 16 December 2014 (application no. 57123/08), ECtHR held a violation of the substantive and procedural aspects of Article 3 of the Convention on account of handcuffing an inmate in the Varna prison to his bed for 9 days. The handcuffing was initially imposed to prevent the inmate from hurting himself. It was not, however, revoked due to the absence of a management representative during the holidays. ECtHR held that measures to prevent violence in such situations are only applicable within what is strictly necessary to put the situation under control. When an individual is deprived of his liberty, the use of force against him when this is not absolutely necessary constitutes a violation of his human dignity and violates the prohibition of inhuman treatment. The Court also held a violation of Article 8 of the Convention (right to respect for personal and family life) due to the screening of Mr. Dimov’s correspondence by the prison administration. The Court awarded the applicant EUR 12,000 in non-pecuniary damages, as well as EUR 4,000 in respect of costs and expenses.
3. Right to Liberty and Security of Person

Not a single problem relating to the right to liberty and security of person in Bulgaria was solved in 2014. The Roadmap for the Implementation of the State Policy Concept in the Field of Juvenile Justice, adopted in 2013, expired at the end of the year. None of the basic activities foreseen in it were implemented. Respectively, the legislation, some elements of which were deemed contradictory to international law by UN bodies and ECtHR, was not amended.

The Juvenile Delinquency Act, which allows arbitrary placement in CBS and SBS on unclear grounds, remained in effect. By law, the use of the most severe educational measures, namely placement in CBS and SBS, is justified when all other possible measures for influencing juvenile behaviour have been exhausted. However, these other measures are mentioned in the court decisions in only a handful of cases. In some cases, juveniles are placed in CBS without being subjected to other measures prior to placement. Acts that result in placement in CBS and SBS include truancy, running away from home, arrogant behaviour, conflicts with classmates and teachers, vagrancy - in other words, violations that are not punished when committed by adults. The anti-social act which has served as grounds to initiate an educational case is often not specified, thus making it difficult to judge the necessity and the proportionality of the placement as an educational measure. Sometimes there is no anti-social act altogether, and the educational measures are motivated by prevention. The act is substituted by information about the low social status and the substandard living conditions for the children, which proves sufficient for the court to impose the most severe educational measures. The Roma origin of the children is pointed out in a series of court decisions as part of the court’s arguments.

The fact that children, most often girls, who are known to the police as victims of crimes such as trafficking for the purpose of sexual exploitation, prostitution or rape, are placed in boarding schools for correctional and educational purposes is a cause of great concern. Contrary to the standards on the protection of children victims of crimes, the courts keep deeming the victims’ behaviour as incompatible with the requirements of public morale. In reality, this leads to re-victimisation and stigmatization of the children. The placement of girls is often motivated by status offences of moral nature: prostitution, sexual activity, relations and co-habitation with adult men, contacts with convicted felons. The Roma origin of the individuals with whom the underage girls have contacts is also an argument in favour of their placement in CBS.

Children continued to be placed in homes for temporary placement of minors and juveniles by decision of the administrative police body, without the possibility for judicial review. Hundreds of children were thus deprived of their liberty throughout the year, in violation of the requirements of Article 5 of the European Convention on Human Rights, a fact established by ECtHR back in 2011 in A. and Others v. Bulgaria.

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The placements of children in juvenile crisis centres were largely unlawful and arbitrary. BHC monitoring in 2014 found that the crisis centre placement procedure is not always respected and that children may be placed even for the 6-month maximum duration without a court sanction. The children are often unaware of their right to legal assistance and are not heard in court as the requirement of immediate review of the case is not respected. In many cases the children’s stay in the crisis centres ends before the case is reviewed. In almost all cases, this happens before the court decision is announced, which explains why they do not appear in court. Children who have stayed for eight or nine months and who, following unsuccessful reintegration, have been placed in the same crisis centre for the second time or transferred to another one, again for six months, may be found in all crisis centres across the country.

The placement of persons suffering from mental disorders in institutions for adults with mental disorders continued to pose a serious issue during the year. The decision of the ECtHR Grand Chamber in Stanev v. Bulgaria of January 2012 did not result in legislative amendments aimed at introducing judicial review of placement decisions. The legislation on the legal capacity of adults was not amended either.

Throughout 2014, the Ministry of Justice had a working group on amending the legislation in line with Article 12 of the Convention on the Rights of the Persons with Disabilities. By the end of the year, it had not managed to prepare the necessary proposals. BHC monitored systematically the institutions for people with mental disorders in 2014.11

During the year, ECtHR found violations of Article 5 of the Convention (right to liberty and security of the person) in two cases against Bulgaria. In the case of Hadzhiev v. Bulgaria of 3 June 2014 (application no. 44330/07), the Court held a violation of Article 5, para. 1 with regard to the unlawful detention of the applicant during the proceedings on the second application for his extradition to Turkmenistan. The Court accepted that the applicant’s detention cannot be deemed necessary for the purpose of preparing his extradition and was thus unlawful. The applicant was awarded EUR 2,650 in non-pecuniary damages and EUR 1,000 in respect of costs and expenses.

In the case of Petkov and Porfirov v. Bulgaria of 24 June 2014 (applications nos. 50027/08 and 50781/09), ECtHR also held a violation of Article 5, para. 1, Article 5, para. 2 and Article 5, para. 5 of the Convention. ECtHR accepted that the national legislation does not require, and the authorities have failed to prove, that the 24-hour detention of the applicants by the police has occurred in relation to a probable cause of a crime committed by them and in order to ensure that they are brought before “the competent legal authority”. The applicants were deprived of basic procedural guarantees protected under Article 5 of the Convention: they had no information about the grounds for their detention and no access to a lawyer; they had no opportunity to initiate proceedings to obtain immediate release; they could not get a compensation for being deprived of their liberty. The applicants were awarded EUR 1,500 in non-pecuniary damages and a total of EUR 1,232 in respect of costs and expenses.

11 See Rights of people with mental disorders in institutions.
4. INDEPENDENCE OF THE JUDICIARY AND FAIR TRIAL

No significant progress took place with respect to the reform of the judicial system in Bulgaria and respectively in the independence of the judiciary and fair trial in 2014.

Justice and independence of the courts

In 2014, the Supreme Judicial Council (SJC) continued to fail in its task to guarantee the independence of the courts and to improve the system’s effectiveness, and hence public trust. SJC continued to hold tainted, scandalous elections of administrative managers. It continued to refuse to introduce clear and public selection criteria. Its decisions were not motivated clearly and candidates’ qualities were not paramount. People of bad reputation in the profession, often of questionable integrity, were elected. Winning candidates were defined by the majority in SJC in advance, secretly and without a procedure, and the media announced the selection in advance. Honest magistrates were therefore demotivated from running for office. The damages thus inflicted by SJC are long-lasting, as managerial terms of office are long and the controversial chairs replicate their influence by surrounding themselves with their likes. The administrative managers wield significant influence as they define: the random distribution of cases; the equal workload distribution which in turn defines the quality review of the cases within a reasonable time; the secondment which creates dependent judges; the organisation of the work which defines the efficiency; and the image of the court and the possibility to increase citizens’ confidence in it.

The secondment of magistrates remained a controversial practice devoid of clear, predictable criteria and transparent procedure. It remained a tool of maintaining magistrates’ dependence. No institutional efforts were made to overcome the low culture of independence among the judges. On the contrary, with some actions SJC continued to condemn some magistrates expressing independent positions. It continued to apply double disciplinary standards, leaving politically affiliated individuals unpunished while punishing the independent ones for similar offences. The disciplinary proceedings continued to lack clear criteria, consistency, predictability, fairness and transparency.

SJC did nothing to counter corruption practices, ignoring signals of ethics violations by politically affiliated magistrates. As for example, in the case of V. Teneva, a candidate for the post of chief judicial inspector nominated by parliamentary circles, whose property became the subject of alarming media publications. SJC refused to establish and announce the facts, choosing instead to make an unfounded statement that the questions raised pertained “to strictly personal property aspects”. In the case of the chair of the Varna Regional Court, V. Arakelyan, for whom the media published information about a suspicious bank loan, SJC refused to make the facts public, choosing instead to conclude that no offence had been committed as declarations under the Preventing and Determining Conflicts of Interest Act have been submitted.

SJC also failed in the elaboration of standards on magistrate evaluations. Its practice in this respect remained unclear and controversial. SJC continued to de facto refuse to work with the civic sector to reform the system and to make the procedures transparent, despite the European
Commission’s recommendations in this respect. Key organizations left the so-called “civic council” which the SJC was using as a cover and not as a corrective tool.

SJC demonstrated strong negative will for reform by denying that the LawChoice software for the random distribution of the cases is unreliable and compromised, despite the findings of observers and specialists. Instead of respecting the undoubtedly negative results from a series of inspections, SJC continued to defend the system. It was not until the management of the Sofia City Court (SCC) suddenly created a problem with unclear justifications that SJC’s approach inexplicably took a turn. SJC refused to clarify the alarming distribution of the insolvency case of the Corporate Trade Bank to SCC, which created serious doubts of human manipulation.

SJC demonstrated its negative will for reform when it refused to change the rules on the election of chairs of the Supreme Court of Cassation (SCoC), the Supreme Administrative Court (SAC) and the Prosecutor General. SJC proposed measures supported by the “civic council” to legitimise the procedures: to develop a job description; to ensure the participation of the chief justices in the nomination; to allow the participation of prominent public figures as a guarantee; and to adopt an integral ballot. SJC rejected all of them without justification.

SJC took an unclear, ambiguous position with regard to the Ministry of Justice’s (MoJ) Strategy on Continuing the Judicial Reform (the Strategy). On one hand, SJC expressed its approval of the strategy; on the other hand, some of its members, including its chair, expressed publicly their disapproval of the strategy and its main aspects, such as the separation of the SJC into colleges of judges and prosecutors, and the organisation of SJC’s work in sessions. SJC also gave other indications of its indifference to legality. Its inaction allowed that the position of chief judicial inspector be held for more than two years by a person whose term of office had expired, thus contributing to a serious institutional crisis.

The Prosecutor General continued to exert palpable influence on SJC’s decisions on staff matters related to the judges, such as the election of court chairs, judge evaluations and disciplinary cases. The Prosecutor General formed a majority in SJC, which votes along his statements.

The National Assembly performed a continued violation of the Constitution by once again failing in 2014 to elect the chief judicial inspector. Parliament’s reluctance to elect an independent, qualified person was manifested in the rejection of the two nominations submitted by the magistrates, which resulted in delaying the election. This behaviour confirmed the trend for the political parties to give their preference to individuals susceptible to influence instead of to professionals of integrity. Without any justification or grounds, political powers nominated V. Teneva, for whom the media later published alarming information with regard to her property. The then speaker of parliament, Mihail Mikov, publicly announced on several occasions that the chief inspector would be elected on the basis of preliminary consensus between the political powers, i.e. the selection would occur outside the procedure and will not be based on considerations related to the criteria.

**Lack of effective high-level investigations**

The prosecution continued to systematically fail the so-called high profile cases. It obviously tended to investigate individuals who were no more in power or who no longer enjoyed its “benevolence”, as well as to terminate investigations of individuals who are currently in power.
Thus, following GERB’s electoral victory, the prosecution terminated on unknown grounds two investigations involving the former and current prime minister, Boyko Borisov, which were initiated with much ado while he was not in power: on the death of Todor “Chakara” Dimov and of the so-called Misha Birata case. On many occasions, following changes in the political environment, the prosecution gave up its positions in cases reviewed by court. Its actions often created the impression that it was acting on political pressure: in the Corporate Trade Bank case for which the media had published data on which the prosecution had failed to act; the “attempted murder” of Delyan Peevski for which the Prosecutor General admitted that the indictment was a mistake; the position maintained by the prosecution in the Santirov, Tsonev and Kolev case which ended with an acquittal by the SCoC and findings of illegal instigation of bribery by the state. The quality of some investigations was questionable. The prosecution did not provide fit and reliable evidence; often the investigation, without a visible justification, was demonstratively channelled into a given direction, to end in the middle of nowhere. The prosecution’s failures raised questions about the competence of the prosecutors: are they aware of the trails of evidence; are they applying effective evidence collection methods; are they formulating indictments that can stand in court.

The prosecution consistently refused to conduct timely, objective and effective investigations of more serious human rights violations, such as hate crimes. It stubbornly categorised racist motivation as hooliganism with the justification that it was easier to prove, thus denying the real nature of the violence targeted at the minorities. It consistently refused to apply the penal law on the instigation of racial hatred and discrimination, protecting politicians and journalists from criminal persecution, even in cases of blatant racist appeals to sterilise the Roma or to close them in concentration camps where they could serve as a tourist attraction. In cases of criminal hate speech, including instigation of racist and homophobic violence by politicians and other public figures, the prosecution and the court denied the victims access to the proceedings on the grounds of the controversial doctrine that such crimes did not victimise individuals as the law required that they produce a result.

In summary, the state prosecution showed weakness due to lack of will to enforce the law or to political dependence and, in some cases, due to insufficient professional capacity.

Positive developments

The demand for an examination of two cases, Corporate Trade Bank and Belvedere which had become synonyms of corruption, as well as for an examination of how the SCC has been managed and for the resignation of its management, filed by judges who had signed their names, created a positive precedent. This activity of individual magistrates, so untypical of states with established democratic values, was an indication of the intolerance to the degradation of the Bulgarian judiciary and to its institutional impunity.

The adoption of the MoJ Strategy by the Council of Ministers in December was another positive development. The document codifies the systematic observations and the contribution to a meaningful reform provided by independent professional organizations committed to the process for quite a few years. The strategy identifies the measures necessary for meaningful reforms and is extensively argumented by international standards.
The procedure used by the Union of Judges in Bulgaria to nominate magistrate candidates for the position of chief judicial inspector, was also positive. It demonstrated that the professional community has the capacity to create standards. The continuous hearing of the nominees, who were identified through in-depth consultations, made clear to the public their concepts, their responses to all questions and their motivation. The procedure set a precedent for magistrate activity and an example of transparency. The development of a job description for the position of chair of the SCoC by SCoC judges for the purposes of the then upcoming election of court chair was yet another positive precedent.

The pro-active elaboration of magistrate workload norms by SJC was a positive development. Although it did not produce a result during the year, this a step made for the first time ever.

Secondly, albeit remaining intransparent, SJC’s activity became more public.

During the year ECtHR found violations of Article 6 of the Convention (right to a fair trial) in two cases against Bulgaria. In *Duraliyski v. Bulgaria* of 4 March 2014 (application no. 45519/06), ECtHR held a violation of Article 6, para. 1 of the Convention in the context of the civil proceedings related to a payment on the basis of an insurance policy. The applicants claimed that they were not given the opportunity to prove that an insurance contract had been submitted to the court of first instance, as this argument was not mentioned by the appellate court until it had formulated its decision. ECtHR accepted that the failure of the court to submit to adversarial proceedings a decisive question for the outcome of the case and to consider a crucial piece of evidence in its final decision had violated the applicants’ right to a fair trial. The applicants were awarded a total of EUR 2,300 in non-pecuniary damages, as well as EUR 800 in respect of costs and expenses.

In the case of *Stoyanov-Kobuladze v. Bulgaria* of 25 March 2014 (application no. 25714/05), ECtHR held a violation of Article 6, para. 1 of the Convention with regard to the applicant’s complaint that he was sentenced *in absentia* in Bulgaria of fraud, and that upon his return in the country he was detained for the execution of the sentence, without appearing before a court, and that his move to have the criminal proceedings re-opened had been denied. The Court pointed out that despite the fact that the proceedings *in absentia* by themselves are not incompatible with Article 6 of the Convention, depriving the person sentenced *in absentia* of the opportunity to have his case reviewed again constitutes a denial of justice, unless it had been found that the person has given up his right to appear in court and defend himself. The applicant was awarded EUR 5,000 in non-pecuniary damages and EUR 1,000 in respect of costs and expenses.

5. RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE, HOME AND THE CORRESPONDENCE

In 2014, no measures were undertaken toward the implementation of ECtHR judgment in *Yordanova and Others v. Bulgaria* from April 2012, where the Court established a violation of Article 8 of ECHR in connection with the attempt to evict Roma from their homes in Sofia. On the contrary, during the year the practice of involuntary evictions of Roma continued.
Involuntary evictions

On 21 July 2014, the authorities in Stara Zagora began the involuntary demolition of 55 buildings on Vitosha Street in the city’s Lozenets neighbourhood. According to the city mayor, who claimed that the legal procedure for the demolition had been respected, the owners were offered municipal housing and lots for the construction of new residential units. When asked by BHC, the mayor of Stara Zagora responded that illegal construction has occurred in the Borova Gora Park, close to the Ayazmo locality, and not in the Lozenets neighbourhood, and that the construction works had been effected without building permits, on the place of trees which have been cut, in an area which constituted public municipal property. Although the Spatial Planning Act allows that illegal buildings be legalised in certain cases, it does not apply to these buildings as they are in a park. Meetings were therefore held in 2013 with the citizens living in the illegal buildings, at which they were offered right to build on land designated by the municipality and, to poor citizens domiciled in the city, to be accommodated in municipal housing units. By the time the involuntary demolition of the illegal buildings began in July 2014, none of the affected persons had shown any interest in the options offered by the municipality. Despite the possibility to appeal the mayor’s orders for the demolition of 42 illegal buildings, no such appeals were lodged. In March 2014, the mayor issued another 13 demolition orders, which were also not contested. The voluntary demolition deadline expired on 14 July 2014 and the involuntary demolition of the illegal buildings began on 21 July 2014. The affected citizens asked for land where they could move the building materials from the demolished buildings and construct new, legal houses. A lot in the Lozenets neighbourhood categorised as private municipal property was allocated for this purpose.

The Municipal Property Act was amended in November and December 2014, creating more possibilities to notify individuals about actions planned by municipal authorities, to allow those affected to express their opinion and to provide owners with guarantees against arbitrary and uncompensated implementation of municipal measures. Nevertheless, the preliminary implementation of the expropriation act is still possible if the municipality has paid compensation, except when the property is the only residence and the preliminary implementation would inflict the owners “significant or hard to repair damage which cannot be compensated”.

Special surveillance means

Despite the positive changes made in 2013, the legislation regulating the secret phone tapping and surveillance of citizens retained its serious deficiencies in 2014. The authorities demonstrated a negative attitude towards the public discussion and criticism of unlawful phone tappings. On 2 February, Deputy Prime Minister and Minister of Defence Tsvetlin Yovchev said in an interview on Bulgarian National Radio that sending information to Brussels about abuse of phone tapping

16 Municipal Property Act, Art. 25, para. 4. (4) (New - SG, No. 54 of 2008, amend. - SG, No. 109 of 2013, amend. - SG, No. 105 of 2014). When the address of an affected person is unknown or he cannot be found at his domicile and residence, the order under para. 2 shall be notified to him by the mayor of the municipality under the procedure stipulated in Art. 61, para. 3 of the Administrative Proceedings Code and by a publication in the State Gazette.
17 Municipal Property Act, Art. 30. (Rep. – SG, No. 101 of 2004, new - SG, No. 15 of 2011, deemed unconstitutional by Constitutional Court Decision No. 6 of 2013 - SG, No. 65 of 2013, amend. - SG, No. 105 of 2014 (3) In case the expropriation is not carried out or is repealed, the Municipality shall also pay the property owners under para. 1 compensation for the damages on the property or for its restoration to its condition at the time of its expropriation.
was “dishonest”: “These attempts to create a scandal and to have that scandal exported to Europe are quite dishonest, as what they will result in ... they will harm Bulgaria, they will harm society”.

In January 2014, on the basis of the Access to Public Information Act, BHC requested the State Agency for National Security (SANS) to provide statistical information on the use of special surveillance means (SSM) in 2013. The Agency’s refusal to provide the information was appealed and the Sofia Administrative Court upheld the refusal with the argument that the information requested was classified and that its provision is subject to a special procedure under the Special Surveillance Means Act, namely by the publication of reports by regional and appellate court chairs and by the National Bureau for Control on Special Surveillance Means.\(^\text{18}\)

2013 amendments to the Special Surveillance Means Act reinstated the National Bureau for Control on Special Surveillance Means.\(^\text{19}\) It has extensive powers over all requests, the collection, storage, analysis and destruction of special surveillance means. Its members are elected by the National Assembly. Firstly, it has the right to request access to any information or documentation pertaining to the requests for the use of SSM.\(^\text{20}\) The law, however, does not provide its members access to the physical carriers of the requested information, in order to exercise control over their destruction. This is within the competence of a committee whose members are selected by state institutions using SSM: the State Agency for Technical Operations and the specialised directorate for technical operations at SANS.\(^\text{21}\) Secondly, the law contains provisions which allow people who have been subject to unlawful use of SSM to be automatically informed about this.\(^\text{22}\) However, the exceptions are so extensively regulated that this possibility is rendered practically inapplicable.\(^\text{23}\) Furthermore, the current legislation allows that only people who have been subject to unlawful use of SSM are informed about this, but not people who have been subject to lawful but unnecessary or disproportional surveillance by SSM. Existing remedies are only applicable to cases of unlawful surveillance, and not for unfounded, unnecessary or disproportional, regardless of the fact that it constitutes a violation of privacy. Still, the judicial review foreseen in Article 15 of the Special Surveillance Means Act remains the main guarantee that human rights are respected when SSM are used. All requests for the use of SSM must be approved by the chair of the respective regional court. Since August 2013, a new provision in Article 15, para. 2, allows the judge to require the provision of any information with regard to the request. The law requires that all court decisions be justified.\(^\text{24}\)

The members of the National Bureau for Control on Special Surveillance Means were appointed by parliament on 28 November 2013.\(^\text{25}\) On 31 January 2014, the Bureau adopted its Rules of Procedure which entered into force on 14 February 2014.\(^\text{26}\) The Bureau does not have a website and had not published a report by January 2015. It operates in several rooms in parliament. In

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\(^{18}\) Decision 5007, 18 July 2014, Sofia City Administrative Court.
\(^{19}\) Special Surveillance Means Act (21 October 1997), Art. 34(b), http://lex.bg/bg/laws/ldoc/2134163459.
\(^{20}\) Special Surveillance Means Act (21 October 1997), Art. 34(f), para. 4.
\(^{21}\) Special Surveillance Means Act (21 October 1997), Art. 31, para. 3.
\(^{22}\) Special Surveillance Means Act (21 October 1997), Art. 34(j).
\(^{24}\) Special Surveillance Means Act (21 October 1997), Art. 15, para. 1.
\(^{25}\) Report of the Committee on Oversight of the Security Services, the Use and the Application of Special Surveillance Means and the Access to Data under the Electronic Communications Act on the results of the hearing the candidates for members of the National Bureau for Control on Special Surveillance Means (as per art. 34(d), para. 5 of the SRM Act), http://parliament.bg/bg/nbkrs_reports/ID/2 (accessed 9 April 2015).
July 2014, its chair presented an activity report for the first six months of existence, according to which the Bureau had checked 15 signals for allegedly unlawful use of SSM and has not confirmed any of them.27 It is expected that by 31 May every year the Bureau will submit to parliament activity reports for the previous year which will contain summary data on the permitted, applied and used special surveillance means, the storage and the destruction of the information collected through them, as well as the protection of citizens’ rights and freedoms against unlawful use of special surveillance means.28

By January 2015, the activities of the services with regard to the use of SSM in 2014 were still not summarised in a report. According to an annual report of the prosecution for 2013, the investigating bodies of the State Agency for National Security had become operational quite late, given the necessity to structure the individual units and clarify the scope of their competence. Thus, the actual pre-trial proceedings initiated and the investigations carried out are in fact reported for the last quarter of 2013: a total of 93. The average workload of an investigating agent at the headquarters was 1.56 cases, while that of the investigating agents in the country was 0.98 cases.29 In comparison to 2012 and 2011, the overall trend was towards lower use of SSM.

The number of monitored cases in 2013 in which SSR were used in the pre-trial proceedings on request by a supervising prosecutor was 1,018.30 Their share in the monitored high crime cases (15,872) was 6.4%. In 2013, prosecutors had prepared a total of 1,840 (2,596 in 2012, 2,936 in 2011) requests to courts to allow use of SSM in initiated/started pre-trial proceedings. Of these, 1,413 were initial (1,919 in 2012), while 427 were additional requests to extend the duration of the application (677 in 2012). The courts approved 1,793 requests (2,574 in 2012, 2,892 in 2011), of which 1,373 initial and 420 extensions. The total number of requests denied (initial and extended) was 48 or 2.6% of all submitted requests. In comparison to the preceding 2012, the submitted requests have dropped by 29.1% which in turn has led to a 30.3% reduction of the number of requests approved by the courts. In 2013, SSM were approved with regard to 1,435 individuals (1,609 in 2012). This number includes also the individuals with regard to whom the use of SSM was approved in 2012, but an additional extension request was submitted in 2013 and was approved. The data refer to the real number of people with regard to whom SSM were authorised during the year, excluding the overlapping in several cases and several approved requests for one and the same person.

The number of individuals for whom SSM were authorised in 2013 exceeds significantly the number of cases to which SSM were attached, but is lower than the number of operative methods authorised and attached, as often there is more than one accused per case and several operative methods are used against one and the same person. In 2013, prosecutors in pre-trial proceedings submitted requests for the application of 4,676 (6,815 in 2012, 6,055 in 2011) operative methods, of which the courts authorised 4,541, or 97.1% (6,741, or 98.9% in 2012; 5,955, or 98.3% in 2011). The requests for the use of SSM submitted by the prosecutors in pre-trial proceedings in 2013

28 Special Surveillance Means Act, Art. 34(b), para. 1, item 7.
show a 31.4% reduction over 2012. The most often used operative methods include: phone tapping – 1,602, or 35.3% (2,588 and 3,207 in 2012 and 2011, respectively); surveillance – 1,267, or 27.1% (1,970 and 1,289 in 2012 and 2011, respectively); tracking – 1,258, or 27.7% (1,957 and 1,316 in 2012 and 2011, respectively). “Undercover purchase” was used in 15 cases (19 and 21 in 2012 and 2011, respectively); “controlled delivery” – in 35 (11 and 13 in 2012 and 2011, respectively); and “undercover officer” – in 15 cases (18 and 25 in 2012 and 2011, respectively). The number of these methods has dropped in comparison to 2012 and 2011.\(^{31}\)

Given the competence and the volume of work on high crime cases, the largest number of requests was submitted by the Specialised Prosecution Office, the Sofia City Prosecutor’s Office and the regional prosecution offices in Pleven, Plovdiv, Stara Zagora, Varna, Yamvol and Sliven. SSM were used against 472 persons (440 in 2012 and 473 in 2011) for whom the prosecution had submitted prosecution acts in court. The share of the 231 convicted individuals against whom SSM were used out of those brought to court with court-authorised use of SSM was 48.9% (239, or 54.3% and 271, or 57.3% in 2012 and 2011, respectively).\(^{32}\)

The **Electronic Communications Act** provides even weaker protection than the **Special Surveillance Means Act**. It stipulates that the approval of a judge is a necessary prerequisite for providing access to traffic data,\(^{33}\) but the provision of Article 250c, para. 4 seems to provide an opportunity for the security services and the prosecution to request traffic data without the court’s consent. There is no supervising body which would notify the individuals whose traffic data have been unlawfully requested by the security services. Furthermore, there are very few cases in which this would be unlawful.

In 2013, prosecutors drew up 879 access to data requests (626 and 1,286 in 2012 and 2011, respectively) under Article 159, para. 1 of the **Criminal Proceedings Code** in conjunction with Article 250c, para. 4 in conjunction with Article 250a, para. 1 of the **Electronic Communications Act**.\(^{34}\) A total of 822 data references were provided, or 93.5% of the requests made during the year (614 or 98.1% and 1 270, or 98.8% in 2012 and 2011, respectively). Witness protection was provided in 79 cases (85 and 91 in 2012 and 2011, respectively). Physical protection was provided in 4 cases (3 and 6 in 2012 and 2011, respectively) and in 118 cases (139 and 146 in 2012 and 2011, respectively) the identity of a witness was kept secret.\(^{35}\)

A compensation claim under Article 2, para. 1(7) of the **Liability of the State and the Municipalities for Damages Act**\(^{36}\) was the only remedy available to a person against whom SSM are used. The person may be notified by the National Bureau that SSM have been unlawfully used against him, with the Bureau being obliged to notify that person. The information collected through the use of SSM is considered classified and cannot be accessed under the **Access to Public Information Act**.\(^{37}\)

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31 Report on the implementation of the law and the activities of the prosecution and of the investigative bodies in 2013, p. 6.
32 Report on the implementation of the law and the activities of the prosecution and of the investigative bodies in 2013, p. 6.
In 2014, ECtHR held violations of Article 8 of the Convention (right to respect for private and family life) in two cases against Bulgaria. In *Prezhdarovi v. Bulgaria* of 30 September 2014 (application no. 8429/05), the Court held a violation of Article 8, para. 2 of the Convention on account of the inspection at the applicants’ computer club and seizure of five computers. The inspection was ordered by the prosecution on suspicion that unlicensed games were installed on the computers (a crime under Article 172a of the *Criminal Code*). The Court decided that, given the manner in which the search and the seizure were carried out, the applicants had not been provided with the necessary guarantees protecting their right to respect for private life. The applicants were awarded EUR 3,000 in non-pecuniary damages and EUR 175 in respect of costs and expenses.

In *Tsvetelin Petkov v. Bulgaria* of 15 July 2014 (application no. 2641/06), the Court held a violation of Article 8 of the Convention. The applicant was unable to personally take part in proceedings to establish paternity and was therefore assigned a court-appointed lawyer. The applicant learned that he was judged to be the biological father of the child two years after the court had made its decision. In consistency with its settled case law, the Court accepted that the right to personal life includes also the right to establish relations with other human beings, as well as the decision to become a father or not. The Court also pointed out that the state has not only negative obligations but positive ones as well under Article 8 and that it must ensure a balance between the interests and the rights of all parties. The Court held that in the case of the applicant no fair balance had been reached between his right to personal life, the right of the child to have a father established, and of the mother to have child support awarded. The applicant was awarded EUR 4,500 in non-pecuniary damages.

**6. FREEDOM OF CONSCIENCE AND RELIGION**

As in 2013, no progress was achieved with regard to the situation of religious freedoms in Bulgaria during the year. Violations committed against representatives of religious denominations were largely left unpunished by the authorities. The violations include: vandalisation of temples and assaults on religious followers; discriminatory presentation in the media of rituals and confessional identity; refusal of the prosecution to persecute public instigation of religious hatred, discrimination and violence; municipal council practices that restrict the local religious activities of certain minority religious communities; cases of persecution of Muslim representatives due to their religious convictions.

**The Muslim religion**

In 2014, the Muslim religion was subjected to many and various forms of religious freedom violations. On 19 March 2014, the Pazardzhik Regional Court handed down its sentence in the very controversial case against the 13 imams that began in 2011. All 13 accused were found guilty, despite the fact that no appeals to violence and to breaching state order were established during the proceedings. Ten of the accused were found guilty of being members of an organization
preaching anti-democratic ideology, namely “the ideology of Islam’s Salafist movement which is manifested in opposing the principles of democracy, division of powers, liberalism, statehood and rule of law, basic human rights such as the equality of men and women and religious freedom. They were acquitted of penal liability and were administratively fined with EUR 1,000.\textsuperscript{38} Two of the accused were found guilty of preaching anti-democratic ideology and managing an organization in which they were also members whose purpose was to preach such an ideology. They were sentenced to pay a fine of EUR 1,500 each and to one year and ten months, respectively, of suspended imprisonment. The only accused who was sentenced to effective imprisonment was Ahmed Musa, a Pazardzhik imam who was sentenced to one year in prison and to pay a fine of EUR 2,500 for preaching anti-democratic ideology, membership in an organization whose purpose was to preach such an ideology, and preaching religious hatred through speech. The sentence was appealed in the Plovdiv Appellate Court whose decision is still pending.

Twenty-four persons were detained on 25 November 2014, in a new raid of the Ministry of Interior and the prosecution in four cities. They were charged with providing illegal training in Islam and preaching anti-democratic ideology, as well as with war propaganda through the use of Islamic State symbols and speech.

A woman was charged for translating a religious book. By 12 February 2015, seven of those arrested, were still detained. The Plovdiv Appellate Court confirmed the detention on remand for six of them. On 15 August 2014, a Muslim believer from the Filipovtsi neighbourhood in Sofia was taken to the 9\textsuperscript{th} police precinct in Sofia where, according to the Chief Mufti’s Office, he was interrogated about his religious convictions and actions, including his participation in iftar charity dinners, his enrolment in Quran study courses abroad and in serving Friday prayer. According to the mufti’s office, the interrogation ended with the police officer saying that the next meeting might be held outside the precinct. A complaint was filed with the prosecutor’s office.

The systematic vandalism against Muslim prayer homes all over the country continued during the year. In most cases, the police and the prosecution did not show sufficient interest and did not work actively to identify and punish the perpetrators. The authorities also continued to refuse to categorise the different desecrations of prayer homes and other buildings owned by religions as crimes against the religion and hate crimes.

On 13 January 2014, the downtown mosque in Pazardzhik woke up painted to multiple swastikas and anti-Muslim phrases, including the word “swine” sprayed in black. According to media reports, the police were informed about the incident.

On 14 February 2014, over 1,000 people protested in Plovdiv against a case reviewed by the Plovdiv Appellate Court as a court of second instance, involving the restitution of the Kurshum Mosque in Karlovo to the Chief Mufti’s Office. Passing by the historic Dzhumaya Mosque on 14 February, the protesters threw cobblestones, stones, cracker, smoke bombs and a burning torch. The mosque’s door was broken alongside many windows. Anti-Muslim appeals and appeals to violence were posted, including: “Gypsies into soap, Turks – under the knife”.\textsuperscript{39} The protest was organised by Elena Vatashka, chair of the Association of Soccer Fans in Bulgaria, and was supported by the mayor of Karlovo, Emil Kabaivanov, as well as by many football fans. The

\textsuperscript{38} Pazardzhik Regional Court, sentence No. 15 of 19 March 2014 on penal case 330/2012.

\textsuperscript{39} See after 03:00 min video “Protest Kurshum Djamiya”, 14 February 2014, PlovdivNews, accessible online at: https://www.youtube.com/watch?v=NlOwSO9KoBM (accessed on 21 April 2015).
Municipality of Karlovo posted on its website an official press release to thank everyone who took part in the protests in Plovdiv.\textsuperscript{40} With regard to the charges for the broken windows, the Plovdiv City Court sentenced one person to 14 months of probation on charges under Article 164, para. 2 and Article 325, para. 1.\textsuperscript{41} Two other persons were handed down suspended 6-month sentences on charges under Article 325, para. 2 of the \textit{Criminal Code}.\textsuperscript{42} No criminal charges were pressed against protest organisers and those who screamed anti-Muslim slogans.

On 15 February 2014, the building of the Higher Islamic Institute in Sofia was attacked once again. It was sprayed painted with anti-Muslim slogans such as “Turks out!”, “Nazi Boys” and others. The security cameras recorded two perpetrators. They were masked and could not be identified by the police.

On 16 March 2014, the Killak Mosque in Shumen woke up to “Death to you” inscriptions. The police was notified, but the perpetrators were not identified.

On 15 May 2014, the old mosque in Asenovgrad was desecrated with offensive and anti-Muslim inscriptions such as “pikes” and “katwa”, and with swastikas.

The Karadzha Pashi Mosque in Gotse Delchev was again vandalized in 2014 on several occasions. On 19 June 2014, a cross had been placed on the mosque’s minaret; several days later it had been topped with the national flag accompanied by an inscription “Don’t do Erdogan a favour” and a swastika. The district mufti’s office notified the prosecution in both cases and the person who had posted the flag was identified. Nevertheless, the Gotse Delchev District Prosecutor’s Office refused to initiate pre-trial proceedings with the argument that the mosque was not in operation and was thus a cultural monument; therefore, these acts did not constitute a crime under Article 164, para. 4 of the Criminal Code.\textsuperscript{43} As to the flag, the District Prosecutor’s Office agreed with the perpetrator’s statement that his act had “patriotic motivation”. The refusal was confirmed by the Blagoevgrad Regional Prosecutor’s Office.\textsuperscript{44} The district mufti’s office appealed the decision before the Sofia Appellate Prosecutor’s Office.

In another case, on 10 and 11 August 2014 the walls of the Karadzha Mosque were sprayed in black with the words “Amen”, “Christ has risen”, “1488”,\textsuperscript{45} a cross and a swastika. The Gotse Delchev District Prosecutor’s Office refused again to initiate pre-trial proceedings with the argument that the mosque is not a working temple but a cultural monument.\textsuperscript{46} The refusal was appealed before the Blagoevgrad Regional Prosecutor’s Office.

Around 20 June 2014, the mosque in the village of Popovo, Targovishte region, was also desecrated by inscriptions “Death to the Turks and the Gypsies”, “Gypsies into soap, Turks under the knife” and swastikas. No complaint was filed.

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\textsuperscript{40} Municipality of Karlovo (2014), “Thank you, Bulgarians!”, press release, 14 February 2014, available at: http://www.karlovo.bg/%D0%BD%D0%BE%D0%B2%D0%B8%D0%BD%D0%B8%D0%B1%D0%BB%D0%B0%D0%B3%D0%BE%0D%B4%0D%B0%1%0D%80%0D%8E%0D%81%0D%8A%0D%80%0D%8B%0D%8C-%0D%82%0D%88-%0D%81%0D%83%0D%8B%0D%81%0D%80%0D%88 (accessed on 9 April 2015).
\textsuperscript{41} Plovdiv District Court, minutes of 16 February 2014 on criminal case No. 856/2014.
\textsuperscript{42} Plovdiv District Court, minutes No. 95 of 16 February 2014 on criminal case No. 855/2014 r. and Plovdiv District Court, minutes No. 97 of 16 February 2014 on criminal case No. 854/2014.
\textsuperscript{43} Gotse Delchev District Prosecutor’s Office, order of 10 October 2014 on file No. 1343/2014.
\textsuperscript{44} Blagoevgrad Regional Prosecutor’s Office, order of 3 November 2014 on file No. 2895/2014.
\textsuperscript{45} 1488 or 14/88 refers to The Fourteen Words – a White nationalist phrase.
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On 16 September 2014, the mosque in Blagoevgrad was desecrated once again with the inscriptions “Death” and “We won’t forget Bunovo”. Complaints were filed with the prosecution and the police.

Extreme Islamophobic rhetoric was also used in the electoral campaign for the parliamentary elections on 5 October 2014. Two extreme right nationalist parties, the National Front for the Salvation of Bulgaria and VMRO, consolidated in the Patriotic Front coalition, integrated in their political agenda appeals to severe restrictions of Muslim’s religious freedoms, including “the state should respect the rights of citizens to oppose fiercely the construction of mosques and minarets”, “immediate prohibition of the daily calls from the minarets”, as well as an obligation for all religions to hold their services in Bulgarian.

**Jehovah’s Witnesses**

The Jehovah’s Witnesses denomination and its followers were also subject to a number of violations and assaults during the year. The trend for municipal authorities to adopt provisions hindering the performance of religious activities by the Jehovah’s Witnesses’ also continued. On 6 February 2014, the Kyustendil Municipal Council amended the Ordinance on the Activity of the Religious Communities in the Municipality by including a provision prohibiting religious promotion in the streets by means of free printed materials, as well as the “religious propaganda at citizens’ homes without their prior explicit consent.”

According to information provided by the denomination, a provision aimed at restricting the Jehovah’s Witnesses’ activities was also adopted by the Municipality of Karlovo, where the municipal authorities even organised the collection of signatures in support of the ‘Termination of Jehovah’s Witnesses’ activity in the Municipality of Karlovo and the Municipality of Sopot and submission of a request to the Council of Ministers’ Religions Directorate to propose the withdrawal of Jehovah’s Witnesses’ registration’. Such actions, as well as the restrictions adopted, are clearly inconsistent with the *Denominations Act* but, as was the case in Kyustendil, are still being adopted by consensus by the municipal authorities.

Followers of Jehovah’s Witnesses were victims of a number of attacks, including assault, during the year. In 2014, the media continued to provide a platform for hate speech against this denomination and its followers.

On 14 April 2014, in Berkovitsa a group of Jehovah’s Witnesses followers were attacked by a person backed by another 20 or 30 individuals who insulted the Jehovah’s Witnesses and pushed them aggressively. The police reacted immediately.

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47 This is a reference to the Bunovo train station bombing carried out on 9 March 1985.


50 Municipality of Karlovo (2014), news from 17 October 2014, available at: [http://www.karlovo.bg/%D0%BD%D0%BE%D0%B2%D0%B8%D0%BD%D0%B8/%D0%BF%D0%BE%D0%B4%D0%BF%D0%B8%D1%81%D0%BA%D0%B0](http://www.karlovo.bg/%D0%BD%D0%BE%D0%B2%D0%B8%D0%BD%D0%B8/%D0%BF%D0%BE%D0%B4%D0%BF%D0%B8%D1%81%D0%BA%D0%B0). See also Karlovo.tv (2014), *Interview with Dr Emil Kabaivanov, mayor of Karlovo*, “The signatures against Jehovah’s Witnesses sent to the Religions Directorate”, 24 October 2014, available at: [http://www.karlovo.tv/vsichki-statii/kabaivanov-podpiskata-sreshtu-svidetelite-na-jehova-otiva-v-direktziyata-po-veroizpovedaniyata](http://www.karlovo.tv/vsichki-statii/kabaivanov-podpiskata-sreshtu-svidetelite-na-jehova-otiva-v-direktziyata-po-veroizpovedaniyata) (accessed on 9 April 2015).
On 6 August 2014 in Stara Zagora two Jehovah’s Witnesses were attacked by one individual while disseminating bibles; one of the women was hit with a folder in the face. Despite the fact that the injured woman filed a complaint with the prosecution claiming that the incident was a hate crime, the authorities only issued a warning to the aggressor.

On 9 August 2014, in the village of Zhilentsi, near Kyustendil, a group of Jehovah’s Witnesses were threatened with death by an armed man who also insulted them because of their religious affiliation. On 3 October 2014, the victims filed a joint complaint with the prosecutor’s office.

On 27 August 2014 and on 3 September 2014, the presenter of SKAT TV’s Parallax show and member of the 43rd National Assembly from the Patriotic Front, Valentin Kasabov, hosted a broadcast entitled “Satanists Jehovists taking over Bulgaria” and “A Satanist cult takes over Karlovo with mayor’s blessing”. Two Patriotic Front members of parliament were invited as guests in the show. Mr. Kasabov resorted to insults in his shows and demonstrates a discriminatory attitude towards Jehovah’s Witnesses, calling them “an extremely dangerous cult”, “monsters” and comparing the admission of believers in town with “allowing a paedophile to enter a nursery”. Over the year, there were also other cases of hate speech against Jehovah’s Witnesses in the country.

**Other violations**

The central synagogue in Sofia was also vandalised and subjected to anti-Semitic acts in 2014. On 4 June 2014, the Jewish holiday of Shavuot, a swastika and an inscription “Death, Jews!” were painted on its notice board. The police detained four persons. However, Jewish community representatives inform that the Sofia District Prosecutor’s Office has refused to initiate pre-trial proceedings with the argument that the inscriptions constitute expression of personal opinion. The refusal was confirmed by the Sofia City Prosecutor’s Office.

Two cases of conflict between children’s right to attend school and their religious conviction, as well as those of their parents, occurred during the year. In the first case, a girl affiliated with the Seventh-day Adventist Church in Sliven was not allowed to be absent from the last classes on Friday afternoon, a period that the Adventists consider a holiday such as Saturday. Following an opinion of the Ministry of Education, the girl’s request was rejected by school management which resulted in the accumulation of unexcused absences and the eventual punishment of the student. In the second case, a Muslim girl from Haskovo was not allowed to wear a headscarf in school, thus forcing her to move to individual education.

These incidents occur on the background of the flawed decision of the Sofia City Administrative Court (SCAC) which confirmed on 21 August 2014 a decision of the Commission for Protection against Discrimination that the suspension of an 8-grade female student from school for a period of eight days because she started attending class wearing a headscarf did not constitute discrimination and abuse. The decision for her suspension was based on a provision in the school’s internal rules stipulating that “students may not use their dress to express ethnic affiliation, faith or religious affiliation”. The judge accepted that school authorities’ actions do not constitute discrimination but a “way of putting an end of the privileged position on the basis of

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51 SCAC, Decision no. 5531 of 21 August 2014 on case No. 6671/2013.
religion and of the unequal status of all students, which would render the internal rules and order meaningless”.

7. FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION

The undermining of freedom of expression in Bulgaria continued in 2014. Censorship and various forms of pressure on media and journalists, severe self-censorship, strong economic and political dependencies of the media, transparent ownership and financing, media concentration, lack of respect for basic journalistic ethics rules and the inefficient media self-regulation remained the main problems in this field. Hate speech towards ethnic, religious and sexual minorities was strongly manifested in certain media. The distinction between editorial and paid content, including election promotion, continued to be often unclear, especially in the printed media. The changing political situation once again resulted in sharp turns in the “heading” of some media.

Bulgaria fell down six places in the latest Reporters without Borders World Press Freedom Index, taking the 106th place (its worst ranking ever), continuing to be the country with the least free media in the EU. In comparison, in 2006 Bulgaria ranked 35th. The reasons behind this ranking include the actions of the Financial Supervision Commission (FSC) and the pressure to disclose secret sources.

According to the Freedom in the World 2014 report of US-based non-governmental organization Freedom House, Bulgaria ranks 78th in the world by media freedom (77th in 2013) and remains among the countries with “partially free” media. In addition, the organisation’s report on the state of democracy in the Eastern European countries in transition once again shows unsatisfactory results with regard to the Bulgarian media environment (a score of 4.00 where 1 is best and 7 is worst, the lowest since 2005). According to Freedom House, editors and journalists often routinely shape their reporting to suit the political and economic interests of owners or major advertisers; a large portion of the paid content is not labelled as such; concentration remains problematic because ownership transparency rules are weak and poorly enforced; the shrinking private advertising market has increased the importance of state advertising; decreasing salaries and job insecurity remain problematic for individual reporters, who are often subject to editorial pressure. The report also notes that some television stations or

hosts are explicitly associated with political parties, and those linked to right-wing nationalist factions often carry hate speech aimed at minorities and refugees.

The US State Department’s annual Human Rights Report noted continuing worsening of the media environment and growing media self-censorship due to corporate and political pressure as main problems in Bulgaria.\textsuperscript{57} In its first EU Anti-Corruption Report\textsuperscript{58} the European Commission pointed out that media ownership in Bulgaria is ever more concentrated in the hands of the same persons, compromising editorial independence.

According to the Balkan Media Barometer, a study carried out by the Friedrich Ebert Foundation in partnership with the Media Democracy Foundation, the main problems faced by the Bulgarian media include frequent self-censorship, economic dependencies and corporate interests provoking pressure on journalists, as well as the insufficiently transparent ownership.\textsuperscript{59}

**Pressure, censorship**

According to a survey of the Konrad Adenauer Foundation in 2014, almost a quarter of the journalists claimed the publication of their materials has been stopped, while 36% state that there are things they cannot announce to their audience. Sixteen percent admit that they are not convinced in everything they write or say. According to more than 30%, their media is susceptible to external influences and does not always stick to the facts.\textsuperscript{60}

In the last working days of 2014 and the first one of 2015, the Financial Supervision Commission (FSC) issued a number of citations imposing on Economedia, the company publishing \textit{Capital}, \textit{Capital Daily} and \textit{Dnevnik}, a record fine of EUR 75,000. FSC imposed a separate EUR 5,000 fine because the journalists refused to reveal their sources. According to the publisher, the unprecedented amount aims to hurt it financially and to lead to self-censorship on articles pertaining to the financial system.\textsuperscript{61} The citations issued by FSC are related to market manipulations which, according to the regulator, were committed by \textit{Capital} through its publications. A record fine of EUR 50,000 was imposed for an article entitled “Panic is greater than the problem” written during the bank crisis last summer. FSC’s actions against \textit{Capital} and Economedia began in the summer of 2014, when the editorial office was bombarded with letters containing accusations of violations and demands that information sources be disclosed. At the end of 2014 FSC addressed similar threats to two other media, Mediapool and Bivol.


FSC also fined the Vratsa-based publisher Alpico with EUR 50,000 for an article in the Zov News newspaper which covers the delicate situation in the banking sector. The fine is the maximum possible permitted by law and is imposed for an article entitled “First Investment Bank on the brink of bankruptcy?”. The article stayed on the http://zovnews.com website for about two hours on 27 June 2014, when queues were forming in front the bank’s offices in Vratsa. The article, comprised of only nine sentences, was visited 800 times which means that it had reached at most the same number of readers. According to FSC, the violation was severe. The publisher commented that the fine might result in the closure of the media.

OSCE representative Dunya Miyatovich expressed concern with regard to the FSC fines. “Imposing large fines on media can only lead to censorship in the coverage of issues of public interest”, said Miyatovich.

“Reporters without Borders condemns this political attempt to silence media organisations”, wrote the international organisation in a statement. “The Commission is clearly trying to silence these newspapers which, for several years, have been disclosing serious irregularities in the financial sector”, said the organisation’s programme director, Lucie Morillon. “The FSC has no legal ground to demand media to disclose their sources in the banking sector [...] What the Commission has done, was to instil fear among journalists and media owners, thus institutionalising some form of censorship”, agrees Antoine Héry, head of the organisation’s European Union and Balkans desk.

In August, Capital managing editor Aleksey Lazarov and editor Nikolay Stoyanov were summoned to the Sofia Directorate of the Interior for interrogation. The reason for the interrogation was a request by Momchil Borisov, CEO of Vodstroy 98 Ltd., a company associated with Delyan Peevski, who wanted to check whether crimes against the republic and the public order and the peace of the citizens had been committed. Borisov stated in his request that the article published by Capital, “Panic is greater than the problem”, creates panic.

In July, the parliamentary legal committee adopted at first hearing, with the votes of GERB and MRF members, amendments to the Criminal Code introducing severe punishments for discrediting the banking system. They provide 2 to 5 years of imprisonment for the dissemination of “misleading or untrue information or other data about a bank or a financial institution which

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68 Idem.
may lead to sowing confusion and fear in the population”. The proposals were tabled by a MRF member of parliament, Yordan Tsonev, and repeated literally texts proposed by the Bulgarian National Bank. The Association of European Journalists – Bulgaria stood firmly against the adoption of this text. “Motivated by the idea to better protect the banking system, this proposal is scandalous and constitutes imposing complete censorship on all information pertaining to the banking system. Together with the misleading information, which is persecuted by law even now, the proposal introduces the phrase “other data” which has a very broad meaning. In reality, this means that for the banks you write good or nothing. The journalists are being deprived of their basic function, to reveal and disclose the irregularities in this area of public life”, said AEJ – Bulgaria in a statement. GERB leader Boyko Borisov withdrew his support and said that his members of parliament have adopted amendments which constitute censorship on talking about the banks. The unclear phrases “other data” and “sowing confusion and fear in the population” were dropped at second hearing. The new text preserved the 2 to 5 years imprisonment but only for those who disseminate untrue information about the financial condition of a bank or a financial institution, have the purpose to gain material benefit and their actions may bring significant harmful consequences.

**Intransparent media ownership**

The problem with the unclear ownership of many media remained unresolved. In the spring of 2014 the New Bulgarian Media Group Holding sold its shares in the newspapers *Telegraph, Monitor, Politics Today, Meridian Match* and *Borba* to an Irish company, Media Maker Limited. A number of journalistic materials called the sale non-transparent and dubious. In July, Delyan Peevski said in an interview that the media are still owned by his family. By the end of the year, no ownership changes had been marked on the website of the New Bulgarian Media Group Holding and in the Ministry of Culture’s (MoC) printed publications ownership data registry. Again in the spring, Petyo Blaskov announced his purchase from Venelina Gocheva of daily *Trud* and weekly *Zhult Trud*. Blaskov became *Trud* editor-in-chief in July. By the end of the year, however, the change of ownership had not been marked in the MoC’s registry.

**Attacks against journalists**

In 2014, we kept seeing attempts at intimidation and attacks on journalists. For another consecutive year there was no progress on the cases of attacks from this and previous years. In January, Ataka MPs barged into the Nova Television headquarters and tried to bully guests of the...
Milen Tsvetkov’s Hour show. Sports journalist and deputy editor-in-chief of 7 Days Sport, Vladimir Zarkov, was attacked in March. The attacker was waiting for Zarkov to exit the newspaper’s editorial office and ran away afterwards. The newspaper’s editor-in-chief Yuli Moskov suggested that the crime was due to pressure by two soccer clubs which insisted that Zarkov is fired. The car of bTV journalist Genka Shikerova was set on fire in April. This was the second such case. Shikerova’s personal car was set on fire in September 2013 and the prosecution terminated the investigation for lack of evidence. bTV journalist Rosen Tsvetkov and cameraman Lyuben Katsarov were assaulted in September while working on a material about phone scams in the village of Vetovo. Also in September, there was an attack against a TV7 team investigating drug crime in Pernik.

Blocked self-regulation

The lack of effective self-regulation is one of the reasons for the worsening of the media environment in Bulgaria. Instead of reforming and upgrading the existing model, it was dubbed and to some extent replaced. The Bulgarian Media Union (BMU) disseminated in January the Bulgarian Media Code of Professional Ethics, adopted in mid-December. BMU members refused to join the Bulgarian Media Code of Ethics which dates back to 2004, choosing instead to write a new one. At the same time, the materials of many of those who had signed the new code continued to be flawed by serious ethics issues. AEJ – Bulgaria called the code “an attempt to privatise media self-regulation in Bulgaria” and “self-regulation in private benefit”.

In a positive development, the members of the journalistic ethics committee were selected and its activity re-started. Commission members were selected at the end of the year by the Founders’ Board of the National Journalistic Ethics Council Foundation. The commission will be reviewing signals for all media, regardless of which organization they are members and whether they have signed the code of ethics. In early 2015, the head of the Access to Information Programme, attorney Aleksandar Kashumov, was unanimously elected chair of the commission.

Relations with government

Over the past year, the channelling of funds by the government towards government-friendly media continued (through advertising and media coverage contracts). In November, a group of

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NGOs, journalists and university professors demanded in a declaration a clear and uncompromising state policy “to distance itself from practices of encouraging and supporting media which blatantly breach ethical standards, national laws and European and national values”.82 Those who had signed the declaration called for the introduction of a mandatory requirement that only media which have signed the 2004 Bulgarian Media Code of Ethics could be eligible for public procurement, as well as for a ban on the direct or indirect provision of public funds to media which have not met all statutory requirements on ownership transparency under the Compulsory Deposition of Printed and Other Works Act.

Several weeks prior to the publication of the above declaration, the second anniversary of tabloid website PIK, which regularly and blatantly breaches the standards of the Media Ethics Code, was honoured by MPs and representatives of the political elites. The support to the PIK agency announced by National Assembly speaker Tsetska Tsacheva, Prosecutor General Sotir Tatsarov, SAC chair Georgi Kolev and other representatives of state institutions and political parties spurred the indignation of journalists and media organizations.83

Access to information

In 2014, legal advice from the team of the Access to Information Programme (AIP),84 a non-governmental organisation, was sought mostly by citizens (214), followed by journalists (77) and NGOs (56). The team was contacted for advice by administration staff on 28 occasions and by business representatives on 13. In most cases, information seekers addressed the central bodies of the executive (132) and the local government institutions (109).

The number of silent refusals remained large in 2014. Affected third persons interests and personal data dominate the substantiated refusals. In some cases, when refusing to provide information, the administration referred to Article 13, para. 2 of the Access to Public Information Act (APIA); there are referrals to trade secrets as well.

AIP reports that in 2014 information was most frequently sought in the areas of:

- banking activities;
- public spending;
- activities of the judiciary;
- environment;
- social assistance;
- state and municipal property management;
- urban environment/urban planning.

AIP’s legal team continued to provide assistance to citizens, NGOs and journalists, supporting court appeals in case of refused access to information. In 2014, the AIP legal team drew up 47 complaints: 38 at first instance (Supreme Administrative Court – 4, Sofia City Administrative Court

84 All AIP annual reports are available at: http://www.aip-bg.org/publications/Годишни_доклади_за_състоянието_на_достъпа/206338/ (accessed on 9 April 2015).
In 2014, AIP provided procedural representation in 68 lawsuits against refusals to provide information. During the period, AIP’s legal team developed 24 written defences for lawsuits supported by the organization.

79 court decisions and verdicts were handed down on AIP-supported lawsuits during the period Supreme Administrative Court – 38, Sofia City Administrative Court – 28, Sofia Region Administrative Court – 1, administrative courts in the country – 12. The courts ruled in favour of information seekers in 69 cases and in favour of the administration in 10.

In early 2014, the Ministry of Justice submitted to the Council of Ministers the draft of a new Criminal Code. It contained a number of proposals for penal statutes whose wording contradicted international standards on seeking, receiving and disseminating information and on freedom of expression. The bill was not passed by the National Assembly due to public criticism.

In May 2014, the National Assembly adopted the Interior Ministry Act as tabled, without integrating the opinions expressed in the preceding public debate and the criticism with regard to the wording of the restrictions on the access to public information and personal data. AIP addressed a substantiated opinion to the President with regard to the unlawfulness of Article 28 of the Act. The arguments of the opinion were taken into consideration in the President’s June 2014 veto on some provisions of the act, including Article 28.

In April 2014, AIP developed and presented an annual report with recommendations, some of which refer to changing the legislative environment. It recommended the improvement of the provisions on the active publication of information, the submission of electronic requests, the restrictions, sanctions and supervision on the implementation of the APIA. The ratification of the Convention on Access to Official Documents was brought up once again.85

In October, the Ministry of Transport, Information Technology and Communications provided for public discussion a Bill Amending and Supplementing the Access to Public Information Act. The bill included revamped provisions on the re-use of information by the public sector (Chapter Four of the APIA) and proposed improvements in the regime of access to public information. Changes were foreseen with regard to the submission of electronic requests (without the requirement for an electronic signature), the access to information form (including in electronic format), the active publication of information for which an extension of the scope was envisioned. An obligation was created to create a portal for the publication of documents in open format.

85 AIP (2014) Advocacy for better law-making and law enforcement in the field of access to information, available online at: http://www.aip-bg.org/publications/%D0%91%D1%8E%D0%BB%D0%B5%D1%82%D0%B8%D0%BD/%D0%97%D0%B0%D1%81%D1%82%D1%8A%D0%BF%D0%BD%D0%B8%D1%87%D0%B5%D1%81%D1%82%D0%BE_%D0%B7%D0%BD%D0%BE%D0%BE%D0%BD%D1%82%D0%B5%D0%B8%D1%81%D1%82%D0%BE_%D0%B8_%D0%BE%D0%BF%D1%80%D0%B0%D0%B2%D0%BE%D0%B1%80%D0%B8%D0%BD%D0%B3%D0%B0%D0%BD%D0%B5_/101218/1000935415/ (accessed on 9 April 2015).
In November 2014, the AIP developed and published a concept on amending the APIA. Issues of amending and supplementing the APIA were identified in the fields of active publication, submission of electronic requests and responses to them, restrictions, sanctions and supervision.

8. FREEDOM OF ASSOCIATION

Unpopular groups in Bulgarian society were subjected to serious violations of their right to freedom of association in 2014. Most of these violations were committed against the Macedonians in Bulgaria, whose identity is still officially denied. On 20 June, the Blagoevgrad Regional Court once again refused to register UMO Ilinden. The court held that the activity of the association was directed against “the national unity” because its by-laws identified objectives related to opposing the official propaganda against the Macedonian language and culture, as well as against the policy of “assimilation, discrimination and xenophobia against the Macedonians in Bulgaria”. The decision was appealed before the Sofia Appellate Court whose ruling was still pending by the end of the year.

On 26 September, the Blagoevgrad Regional Court refused to register the Association of the Repressed Macedonians Victims of Communist Terror in Bulgaria. According to the court, the association opposed the unity of the Bulgarian nation and its goals were directed at inciting national and ethnic animosity through the objectives stated in the by-laws that include preservation and promotion of the Macedonian cultural and historic heritage through lectures, discussions and reports, rallies, commemorations of historic dates and events, collection and publication of memoirs and archive materials related to the history of the Macedonians, recording, storing and promoting the Macedonian folklore heritage.

On 22 October, the Blagoevgrad Regional Court refused to register the Tolerance Human Rights Committee, an association for the protection of the rights of the Macedonians in Bulgaria. The association’s by-laws were almost a literal copy of the by-laws of the Bulgarian Helsinki Committee, which has been registered in Bulgaria for over two decades. Nonetheless, the Blagoevgrad Regional Court held that the by-laws of the Tolerance Human Rights Committee do not contain all the circumstances necessary for registration and were inconsistent in some points with imperative legal provisions.

The real reason behind the refusal of the registrations in all three cases was the Macedonian ethnic origin declared by the association members and their goals: protection of the rights and the interests of the Macedonians. Currently, there is not a single registered association of Macedonians in Bulgaria. High-ranking public figures, including three of the four presidents of the country so far, have systematically denied the Macedonian identity not only in Bulgaria but also in the Republic of Macedonia.

In 2014, the commercial division of the Sofia City Court refused to register a new foundation that planned to carry out activities in the field of LGBT equality. When the founders of the Gays and Lesbians Accepted in Society Foundation (GLAS) submitted their registration documents in court, the court panel sent a letter with a list of additional questions, including “Where does the foundation see discrimination against the LGBT people in Bulgaria” and “Why do the founders believe that these communities should be regarded as “communities with automatically violated civil rights””. Despite the foundation’s detailed response, in April 2014 Sofia City Court refused to register the legal entity. This decision was upheld by the Sofia Appellate Court and the Supreme Cassation Court. The foundation subsequently filed new documents and was registered.

9. CONDITIONS IN PLACES OF DETENTION

Data provided by the Ministry of Justice reveals that, contrary to official statements by the authorities, the number of inmates in prisons is on the rise. The executive’s neglect of the problems within the prisons and the underfinancing of the system are the main problems facing the penitentiary system in Bulgaria. Overcrowding, bad material conditions, an archaic penal policy, the lack of any resocialisation policy whatsoever and the extremely high levels of corruption permeating the administration in most of the country’s prisons continue to be the main problems plaguing the system.

Prisons and prison dormitories

According to information provided by the Central Penitentiary Administration, the average number of inmates in Bulgarian prisons in 2014 was 9,715. Figure 1 below shows the number of inmates in prisons and prison dormitories for the past six years.

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88 SCC Decision of 25 April 2014, 6th commercial division, 3rd panel, on commercial case No. 114/2014.
90 Supreme Court of Cassation, Ruling No. 385/13.11.2014 on commercial case No. 3112/2014.
The number is significantly higher than the one provided by the government in December 2014 in response to the report of the European Committee for the Prevention of Torture following its visit to the Republic of Bulgaria. According to the government report, the number of inmates in prison in 2013 was 8,282, i.e. 1,000 less than the number for the same year provided by the Central Penitentiary Administration to BHC. Such a large discrepancy makes the claim in the government report that there is a trend towards a reduction of prison population since 2005, when probation measures were introduced, hard to explain. If the number of inmates has marked a significant reduction in 2013 over 2012, the 2014 increase over 2013 is by 368 inmates, which refutes the claim that there is a trend towards reduction. In reality, as illustrated by the figures above, the Bulgarian prison population has remained sustainably high over the past six years, without any significant fluctuations, except in 2012, during GERB first term in office, which made combating crime a national priority and whose policy entailed the enforcement of more severe penal sanctions. Given the overall decrease of Bulgaria’s population, especially in the 20-40 age group due to low birth rates and migration to other countries, the trend indicates a constant and significant increase in the share of inmates in the population in this age group.

By 31 December 2014, the number of the defendants in prison had dropped from 273 to 190, while the number of accused has not changed significantly over the previous year, 479. The same holds true for the number of inmates placed in open and closed dormitories. In 2014, the average number of inmates in open dormitories was 1,395, while those in closed dormitories were 1,136.

Apart from the large number of inmates, as in previous years, the overpopulation, the obsolete and outdated facilities, the obsolete penal policy, the lack of any re-socialisation policy, the strongly restricted and in many aspects incompatible with international standards legal framework for the protection of inmate rights and freedoms and, last but not least, the extremely high corruption among the administration in most prisons, and especially in the largest one, Sofia Central Prison, continued to be the main characteristics of the Bulgarian prison system. In May 2014, the newly appointed Director-General of the Central Penitentiary Administration presented a strategic management concept which identifies overpopulation, low employment rates, serious deficiencies in the field of healthcare services, illiteracy and the low educational levels of the inmates, as well as the lack of prison staff, as the main problems faced by the system.
The neglect of prisons by the executive power and the insufficient funding are permanent problems in the Bulgarian penitentiary system. For example, during a visit to the Lovech prison in August 2014, the minister of justice Hristo Ivanov said that the funds for the maintenance of the prisons are short by EUR 6.5 million. Unlike most previous governments, which having come to power declared that they will announce public procurement for new prison design and construction, the new government was sparse of promises. The funds under external projects also turned out to be insufficient. The implementation of the Improvement of Prison and Detention Centre Standards by Infrastructure Repairs in Order to Ensure Respect for Human Rights Project, financed by the Norwegian Financial Mechanism, continued during the year. With a total value of EUR 5,620,780, the project was aimed at improving the conditions in detention places by reducing the overpopulation and respecting the needs of vulnerable inmate groups. The project allocated funds to repair the specialised hospital for inmates in Lovech, for the Central Penitentiary Administration training centre in Pleven, as well as for a nursery and medical centre at the women’s prison in Sliven, which were officially opened in March 2014 by the then deputy minister of justice. The largest share of the funds from the Norwegian Financial Mechanism was allocated for the renovation and completion of two closed prison dormitories in Varna and Burgas. The procedure for the selection of contractors was underway by early 2015, and the dormitories are to be completed by the end of 2015. The purpose is to overcome the insufficiency of closed dormitories and to reduce the overpopulation at the two prisons. These investments, however, will not solve the common problem with the conditions in the facilities.

When two inmates escaped from the Sofia Central Prison on 30 April 2014, the news was much commented in the media, stressing that this could not have happened without help from prison guards. The Ministry of Justice even threatened to take severe action should the involvement of prison staff be proven. As this did not occur by the end of the year, the case was forgotten.

When in 1998 capital punishment was replaced by a new punishment, life without parole, currently there are more than 60 inmates serving such sentences. This punishment has been subject to criticism on many occasions, including by BHC and CPT. After the last CPT visit to Bulgaria in 2014, the Committee concluded that nothing had been done to improve the conditions for inmates serving life sentences in the light of the Committee’s long-term recommendations. In this respect, it pointed out the necessity to develop the regime of inmates sentenced to life, mostly by means of providing more general activities (including access to employment and education). No progress was achieved also on the elimination from the Criminal Code of “life without parole”, a punishment which exceeds the admissible limit of suffering and humiliation and deprives the convict of any hope of free life.

A significant portion of prison inmates are multiple offenders, most often serving short sentences. This is an indication of a deficit in the correctional and reformatory function of prison. The lack of meaningful activities and skills or training programmes also contributes to this. According to data provided by the Central Penitentiary Administration, the share of employed inmates over the last years has been around 18% of all inmates and is extremely insufficient. In this respect, CPT recommended that measures be taken to expand the activities offered outside the cells (including employment, education and vocational training) in all prisons. At the expense of the low share of employed inmates, the prison system has shown an increase of inmates involved in educational activities, including through the creation of external school classes in some prisons. Still, the activities on social support and re-integration of inmates whose release is pending should be strengthened.
The quality and the volume of medical services and the insufficient staff of the medical facilities are persistent problems of the Bulgarian penitentiary system. In most prisons, the positions of higher medical personnel remain unoccupied for years. Healthcare services to inmates continue to be isolated from the national healthcare system. Prison medical units cannot meet the requirements of the Medical Facilities Act and the supervision of their activities, as well as of the sanitary and hygienic conditions related directly to inmates’ health status, is not independent of the prison system. In the report on its 2014 visit, CPT expressed serious concern with regard to prison medical care due to the extreme insufficiency of staff and resources, and the obvious lack of attention to many recommendations that CPT has been making in this field for years. The comprehensive analysis of prison medical services is a result of the fact that the delegation was overwhelmed by complaints from inmates in all visited prisons about difficulties and delays in the access to medical services and the inadequacy of such services (including dental care). In this respect, CPT repeats its long-term recommendation to the Bulgarian authorities to ensure a more active involvement of the Ministry of Health in the supervision of prison care standards (including with regard to the hiring of medical personnel, its on-the-job training, the evaluation of clinical practices, the certification and the inspection). The overall goal should be to provide care equivalent to that in the community.

Investigation detention centres

A total of 42 investigation detention centres operated in the country in 2014, of which eight were closed during the year. The BHC visited ten of them, namely the investigation detention centres in the cities of Burgas, Varna, Vidin, Pazardzhik, Pleven, Plovdiv, Ruse, Sliven, Slivnitsa and the investigation detention centre at 42 G. M. Dimitrov Boulevard in Sofia. A total of 16,362 individuals, including 975 women, have gone through the investigation detention centres. The number of foreign nationals who have gone through the country’s investigation detention centres was 2,405. By 31 December 2014, the total number of people detained under the Criminal Proceedings Code in investigation detention centres was 764 (Figure 2).

FIGURE 2: Number of accused in investigation detention centres by 31 December, 2004-2014

The total capacity of the currently operational 34 investigation detention centres is 1,757. The largest facilities are located in Sofia (42 G. M. Dimitrov, capacity: 415; Vekilski, capacity: 119),

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91 Ministry of Justice, Central Penitentiary Administration, information provided to BHC under the Access to Public Information Act, ref. no. L-707/27.01.2015.
92 The investigation detention centres in Samokov, Svishtov, Balchik, Popovo, Lom, Oryahovo, Slivnitsa and Petrach were closed down.
93 Ministry of Justice, Central Penitentiary Administration, information provided to BHC under the Access to Public Information Act, ref. no. 370/14.01.2015.
Plovdiv (180) and Varna (86). The smallest are the ones in Razlog (10), Sandanski (13), Kazanlak (14) and Dupnitsa (16). In 2014, overpopulation was registered at the investigation detention centres in Dupnitsa, Dobrich, Svilengrad, Vidin and Ruse. The analysis of the collected data shows that overpopulation was highest in Vidin, with 15 persons above capacity, and in Ruse, where at one point it reached as much as 42 persons above capacity.

The reconstruction of one investigation detention centre, in Shumen, started in 2014 and only one major repair was carried out in the investigation detention centre in Sofia. Only 12 investigation detention centres were renovated or repaired to improve detainees' living conditions and stay in 2014. Repairs are partial and differ from one investigation detention centre to another and in some cases do not include the premises in which detainees are accommodated. During its visits, BHC found that the conditions in the cells are completely unacceptable: rusty iron beds; extremely worn bed linen; iron and/or plastic furniture, often broken and insufficient. The investigation detention centre in Plovdiv is the only one where the conditions are visibly better. The hygiene in the cells is very low. While it is the responsibly of the detainees, they are not provided with sufficient materials to maintain it. Floorings are old and worn. Cell walls are very dirty, saturated with moisture and mould. The windows are also dirty, further hindering sunlight access to the cells. There is no effective ventilation and cooling. The air is stale. The detainees in all investigation detention centres smoke in their cells and the lack of ventilation makes matters even worse; the walls are darkened by the smoke. Winter heating is ineffective.

Out of 550 investigation detention cells, only 277 have in-cell sanitary facilities. Eleven investigation detention centres have in-cell sanitary facilities; in seven investigation detention centres they are in all cells, in the remaining four in some cells only. In the other investigation detention centres, the sanitary facilities are common for all detainees. Nevertheless, only two renovations were carried out in 2014 of the sanitary facilities in the investigation detention centres in Yambol and Razgrad. As witnessed by BHC, the sanitary facilities in the investigation detention centres are in deplorable condition and detainees' access to them is restricted. The bathrooms are common for every floor, insufficient for the large number of detainees, and in bad condition in some investigation detention centres.

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94 In 2014, overpopulation was registered at the following investigation detention centres: Dupnitsa for one month (April); Dobrich for two months (November and December); Svilengrad for two months (October and November); Vidin for eight months (January, February, April, June, July, August, September and October); Ruse for nine months (January, February, March, May, July, October, November and December).
95 The contractor for the reconstruction of a former Ministry of Defence property into an investigation detention centre which will house the Shumen Regional Office of Enforcement of Sentences was selected in early 2014. Funding is provided under a predefined project 1 under the Norwegian Financial Mechanism. Construction began on 20 April 2014. By contract, the works must be completed by 20 April 2015.
96 An overhaul and replacement of the whole water and sewer system was carried out at the investigation detention centre at 42 G. M. Dimitrov Blvd. in Sofia.
97 In the towns of Veliko Tarnovo, Targovishte, Pleven, Svilengrad, Gabrovo, Elhovo, Lovech, Ruse, Yambol, Vidin, Razgrad and Pernik.
98 The repairs include: painting of common areas and cells; replacement of lockers, mattresses and pillows; replacement of cell window mechanisms; installation of strengthened bars in the cells; floor replacement in the common areas; façade facing; file repository renovation; cell surveillance improvements, etc.
99 In the towns of Targovishte, Svilengrad, Gabrovo and Yambol.
100 In the towns of Burgas, Varna, Montana, Plovdiv, Smolyan, Targovishte and Sofia (42 G. M. Dimitrov).
101 In the towns of Razgrad (14 sanitary facilities for 15 cells), Elhovo (13 sanitary facilities for 14 cells), 2 Vekiaksi, Sofia (25 sanitary facilities for 30 cells) and Stara Zagora (1 sanitary facility for 16 cells).
102 For example, in the investigation detention centres in Slivnitsa, Pazardzhik, Pleven, Burgas and Vidin.
The cells in 11 of the 34 functional investigation detention centres do not provide access to natural light and are lighted through the hallways. In the investigation detention centre in Dupnitsa, the cells have absolutely no access to natural light, which is available only in some cells in the investigation detention centres in Pazardzhik and Shumen. The remaining cells are totally devoid of natural light.

The fact that nine investigation detention centres lack open air exercise facilities, while in another eleven these facilities are indoor, is a cause of concern. As observed by BHC, some exercise premises are not sufficiently large to provide for effective exercise. The exercise premises in the remaining fourteen investigation detention centres are open-air (spaces around the building or uncovered areas inside the building). Some buildings have more than one such area. According to information provided by the Central Penitentiary Administration, all investigation detention centres operating in 2014 have telephones that may be used by the detainees. As BHC saw, the areas in which the telephones are installed do not guarantee the confidentiality of the calls: in a walking area, in a hallway, where every passer-by can hear the conversation. The possibilities to make phone calls differ by investigation detention centre. The number of phone numbers with which communication is allowed also varies by investigation detention centre, but does not exceed ten.

Also according to information provided by the Central Penitentiary Administration, all investigation detention centres operating in 2014 have areas for visits and meetings with lawyers, with the sole exception of the investigation detention centre in Svilengrad. During its visits, BHC found that the areas for visits in a number of investigation detention centres are inadequate. Detainees have no privacy when meeting their relatives or lawyers. Some investigation detention centres literally lack such. As seen by the BHC, the visitation areas often violate the rights of the detainees. The confidentiality of the conversations with lawyers is not guaranteed due to the inadequacy of the premises.

Full-time medical personnel were hired for the Central Penitentiary Administration territorial units in 2014, as follows: one paramedic at the investigation detention centre in Ruse and one paramedic at the investigation detention centre in Yambol. Four doctors and 24 paramedics were employed full-time at the 27 regional offices of Central Penitentiary Administration in 2014, with the investigation detention centre in Plovdiv being the only one which had both a doctor and a paramedic. According to information provided by the directorate, the investigation detention centres in Razlog, Sandanski, Dupnitsa, Kazanlak, Svilengrad and Elhovo have no such specialists.

103 The indoor walking area at the Slivnitsa investigation detention centre measures barely 1.5 by 2.5 metres, only sufficient for the detainees to stand. The Vidin Regional Health Inspectorate concludes that the area of 23 m² at the Vidin investigation detention centre is sufficient for an indoor walking area and that the three windows with a total area of 4.5 m² provide enough light. A maximum of five detainees are allowed to exercise at the same time in this investigation detention centre.

104 In the investigation detention centres in Sofia (42 G. M. Dimitrov – 7 exercise areas; 2 Vekilski – 2 exercise areas, Plovdiv (3 exercise areas) and Pernik (2 exercise areas).

105 For example, under the internal rules of the investigation detention centre in Burgas, a document provided to BHC during its visit on 21 May 2014, the detainees are only allowed two phone calls per week.

106 For example, 10 in the investigation detention centre in Plovdiv, but only 5 in the investigation detention centre in Pazardzhik.

107 The visitation area at the Slivnitsa investigation detention centre consists of a small booth in which the detainee has room enough for only one chair, while the visitor is standing in front of the booth, not in a separate premise but in the detention centre's foyer. There is absolutely no privacy and conversations can be overheard. The visitation area at the investigation centre in Pleven consists of a cage in which the detainee is standing; the visitor is in front of the cage, in the detention centre's foyer, without any privacy.

108 The visitation areas at the detention centres in Slivnitsa and Pleven are such examples. See above.
The lack of psychological care for detainees is a major problem at the investigation detention centres, as the Central Penitentiary Administration also admits. In 2014, there were 13 suicide attempts in investigation detention centres but there was not a single case of death during the year.

In 2014, BHC monitoring of the investigation detention centres in the country focused on juveniles detained in pre-trial criminal proceedings. In recent years, there has been a trend towards an increase in the total number of juveniles passing through investigation detention centres (Figure 3). A total of 500 juveniles passed through investigation detention centres in 2014. At the same time, the prosecution reports a decrease in the number of “detention on remand” measures imposed on juveniles. With some insignificant exceptions, the statutory provisions on the placement and the conditions of the stay of juveniles in investigation detention centres are identical to those referring to adults. The law does not foresee a differentiated approach which takes into consideration the differences in age and maturity, in juveniles' emotional and educational needs as opposed to those of adults. This inevitably results in neglecting the specific rights and interests of the more vulnerable group.

**FIGURE 3. Total number of juveniles detained at investigation detention centres by 31 December, 2011-2014**

<table>
<thead>
<tr>
<th>Year</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011</td>
<td>426</td>
</tr>
<tr>
<td>2012</td>
<td>438</td>
</tr>
<tr>
<td>2013</td>
<td>444</td>
</tr>
<tr>
<td>2014</td>
<td>500</td>
</tr>
</tbody>
</table>

Source: Central Penitentiary Administration

According to information provided by the Central Penitentiary Administration, detained minors and juveniles are placed in single cells, separated from the other detainees, but the cells are not specifically designed for accommodation of juveniles. During its monitoring in 2014, BHC observed that both adults and juveniles are detained in the investigation detention centres, and that the principle of separate accommodation is often not respected. The cells are extremely small and unfit for children; they often do not provide enough light; the access to sanitary facilities is very restricted and buckets and bottles have to be used for physiological needs. Most investigation detention centres lack open-air walking areas, others have no indoor exercise premises. Thus, a juvenile might be forced to spend months living alone, sitting or lying down, which could have a detrimental effect on their health.

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109 Central Penitentiary Administration, Activity Report of the Investigation Detention Centre Guard and Security Section, provided to BHC under the Access to Information Act, on BHC request no. 12990 of 31 July 2014.
110 Supreme Cassation Prosecutor’s Office (2014), information provided to BHC under the Access to Information Act by decision no. 7367/2014.
During the period of detention, the children have no access to education or to any other meaningful activities. Relatives are only allowed to visit twice a month and in most places there is no opportunity for physical contact between the child and the relatives.

Violence against children in detention centres is a serious problem. During its visits to different detention facilities in 2014, BHC received many complaints of physical abuse by guards.111

**Correctional boarding schools and social educational boarding schools**

Four correctional boarding schools (CBS)112 and three social-pedagogical boarding schools (SBS)113 operated in Bulgaria in 2014. Of these, BHC visited CBS in Zavet and Rakitovo and SBS in Varnentsi and Dragodanovo. Despite the fact that Bulgaria has declared its intent to completely reform juvenile justice (2013-2014),114 including to close down the SBS and reform the CBS, children from vulnerable groups are still being placed in correctional boarding schools on unclear criteria on the basis of controversial court decisions, for long periods and in violation of their fundamental rights (right to information, right to defence, right to appeal). A total of 63 children were placed in CBS in 2014, of whom 14 girls; SBS were home to 38 children, of whom four girls.115 The largest number of placements occurred in CBS in Rakitovo and SBS in Varnentsi, 21 boys at each location.116 Most of the children placed during the year were underage juveniles, 80% in CBS and 70% in SBS, but there were cases when children who had barely turned 11 were placed in CBS, and even of 10-year-olds at SBS. The overrepresentation of the Roma children in CBS, approximately 80%,117 should also be noted.

Many of the children placed in boarding schools in 2014 came from other types of community-based services. This is the situation with 21 children aged 12 to 15 and placed in CBS. Of them, nine were girls all of whom had already been accommodated in a different institution or community-based service before being placed in a correctional boarding school. Most come from homes for children deprived of parental care (HCDPC) and family-type centres. Children from SBS and from a crisis centre were also placed in CBS. A total of nine children aged 14 to 16, among them three girls, who had already been at another type of community-based service (SBS, HCDPC, family-type centre or crisis centre), were placed in SBS in the past year. For many children coming from institutions or community-based services, the placement in CBS and SBS is a punishment for their inability to adapt to the institutional order.

The fact that there is no significant reduction in the number of children in CBS and SBS in 2012-2014 is a cause of concern, especially considering the trend towards a general reduction in the number of minors and juveniles in Bulgaria as a result of the demographic crisis. It is a firm

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111 See Right to life, protection against torture, inhuman and degrading treatment.
112 CBS Angel Uzunov, village of Rakitovo; CBS Hristo Botev, town of Podem; CBS St. St. Cyril and Methodius, village of Kereka; CBS Nikola Vaptsarov, town of Zavet.
113 SBS Hristo Botev, village of Varnentsi; SBS Straldzha; SBS Hristo Botev, village of Dragodanovo. The SBS in Straldzha was closed and the children were transferred to the SBS in Varnentsi and Dragodanovo.
115 Statistical data for 2014 was provided by the Ministry of Education (MoE) (2015), information provided to BHC under the Access to Public Information Act by Decision no. 1104-2/30 January 2015.
116 Followed by the SBS in Dragodanovo with 17 children, of whom four girls; the CBS in Kereka with 15 boys; the CBS in Podem with 14 girls; and the CBS in Zavet with 13 boys.
117 Data based on management and staff assessments during the visits to: SBS in Dragodanovo on 30 January 2014; SBS in Varnentsi on 12 February 2014; CBS in Zavet on 13 February 2014; and CBS in Rakitovo on 23 May 2014.
manifestation of the unwillingness of the local commissions for combating juvenile delinquency to harmonise their activities with the government’s commitment to close SBS down by the end of 2014. In 2014, the children in SBS were aged 10 to 18 and 80% of them were juvenile. A total of 43 students reside at the SBS in Varnentsi, followed by 30 at the SBS in Dragodanovo. During the same year, the children in CBS were aged 11 to 18 and approximately 90% of them were juvenile. The largest number of children resided at the CBS in Rakitovo, a total of 60, with the lowest number at the CBS in Zavet, 23 students.\(^{118}\)

Despite the fact that the division of the children between the CBS and the SBS is carried out by the Ministry of Education (MoE), there is no leading criterion for this. There are also no criteria on the division of the children with regard to the proximity of the institution to their usual place of residence. The number of children actually living in the institutions is lower than the officially announced, which is due to the fact that budget support is allocated depending on the number of children or, sometimes, due to slow judicial proceedings.

**TABLE 2. Number of children in CBS and SBS, 2012–2014**\(^{119}\)

<table>
<thead>
<tr>
<th>Institution</th>
<th>Number of children in 2012</th>
<th>Number of children in 2013</th>
<th>Number of children in 2014</th>
<th>Number of girls in 2012</th>
<th>Number of girls in 2013</th>
<th>Number of girls in 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>CBS</td>
<td>168</td>
<td>168</td>
<td>144</td>
<td>31</td>
<td>43</td>
<td>34</td>
</tr>
<tr>
<td>SBS</td>
<td>107</td>
<td>105</td>
<td>73</td>
<td>21</td>
<td>22</td>
<td>12</td>
</tr>
</tbody>
</table>

The legislation and the case law do not define clearly the maximum age for placement and detention of children in CBS and SBS. The duration of the stay is rarely defined in the placement decision and most children are placed for the 3-year statutory maximum period. In some cases, the duration noted is incompatible with law. Once the placement in CBS or SBS is imposed, it leads to lasting institutionalisation. The residents may decide to extend their stay after its duration has expired in order to continue their education and without the explicit consent of a parent or guardian. The staff encourage the children to stay because this brings financial benefits to the school. The mechanism under which placement is terminated upon a review of the educational measure by the educational board, which is supposed to occur at the end of every academic year, is not working. In most cases, the placement is terminated when the child comes of age or due to the expiration of the maximum duration of the stay.

At the boarding schools the children live in inhuman conditions. They do not have the opportunity to maintain good hygiene and are deprived of quality food, personal items and clothes. Attempted suicide and self-injuries occur every year as an expression of the inadequate psychological and medical care. The overall environment in CBS and SBS, marked by sexual violence between the children and high levels of physical and verbal aggression, is yet another manifestation of the lack of quality psychological support for them in these two types of facilities. CBS and SBS are also used to accommodate children in need of daily specialised medical care. In most cases, they do not receive it because the access to specialists is all but impossible, thus putting their life at risk. The educational process is of very low quality and in reality vocational training is not provided due

\(^{118}\) 34 girls reside at the CBS in Podem, 27 boys at the CBS in Kereka.

to the inadequate facilities, the insufficiently motivated teachers and the mixing of students of different ages and levels of development. Children with development problems also do not get quality education. The extracurricular activities are not interesting to the children and television and internet are not easily accessible. Visits and conversations with relatives are left at the discretion of the staff and are rather restricted and uncontrolled. The children work illegally outside the boarding schools to raise funds. They are often punished with forced labour (an illegal measure) at the boarding schools, with separate degrading and dehumanising punishment being imposed on them. The staff are insufficient in number and deficient of qualifications. Their inactions lead to violence between the children. The inspections of the boarding schools do not lead to greater respect for the rights of the children in them.

The information about mass physical and mental violence and cases of sexual abuse collected during the BHC visits in 2013 was confirmed during the visits conducted in 2014.\textsuperscript{120}

**Homes for temporary placement of minors and adolescents**

The placement of children in homes for temporary placement of minors and adolescents is a form of deprivation of liberty regulated by the *Juvenile Delinquency Act*. In 2014, BHC visited the five homes for temporary placement of minors and adolescents (HTPMA) in the country.\textsuperscript{121} A total of 1,132 children, of whom 360 girls, have passed through them during the year.\textsuperscript{122} The institution in Sofia ranks first with 331 children, followed by the institutions in Plovdiv and Veliko Tarnovo, with 228 and 226 children, respectively. It should be noted that a significant number of children - 189, were placed for the second or consecutive time. This phenomenon is most clearly manifested at the institution in Veliko Tarnovo. The measure is disproportionate, no less restrictive measures are applied and there is no judicial review of the detention. The largest share of children are aged between 14 and 18 (928), significantly more than those aged 6 to 14 (see Table 3).

**TABLE 3. Children passing through HTPMA, 2012 - 2014\textsuperscript{123}**

<table>
<thead>
<tr>
<th>Year</th>
<th>Total number</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>1,211</td>
<td>1,190</td>
<td>1,132</td>
</tr>
<tr>
<td>Age</td>
<td></td>
<td>6 to 14</td>
<td>14 to 18</td>
<td>6 to 14</td>
</tr>
<tr>
<td>Girls</td>
<td></td>
<td>89</td>
<td>440</td>
<td>76</td>
</tr>
<tr>
<td>Boys</td>
<td></td>
<td>135</td>
<td>547</td>
<td>131</td>
</tr>
</tbody>
</table>

Escape from a state institution is the main reason behind the placement of a child in an HTPMA. This was true for over half of the children placed in 2014 (555 cases). The largest number (320 children) were placed in homes for temporary placement because they had escaped from social-

\textsuperscript{120} See *Right to life, protection against torture, inhuman and degrading treatment*.
\textsuperscript{121} Five homes for temporary placement of minors and adolescents exist in the country, in the cities of Burgas, Varna, Veliko Tarnovo, Plovdiv and Sofia.
\textsuperscript{123} Statistical data for the period 2012-2013. Ministry of Interior (MoI) (2014). Information provided to BHC under the Access to Public Information Act by decision No. 812104/ 26 August 2014.
pedagogical boarding schools and homes for children deprived of parental care (HCDPC). For this reason, the greatest number of children are placed in the institution in Sofia. With 235 cases, mostly in the institution in Veliko Tarnovo, escape from a correctional boarding school ranks second. Other reasons for the placement of a significant number of children in such institutions include anti-social acts and neglect (307 cases in 2014, with the most children placed for such reasons in Sofia HTPMA. A total of 185 have passed through HTPMA because they have run away from home, with most such cases registered at the Varna HTPMA. Out of the 68 children countrywide placed for vagrancy and begging, most were placed in the Sofia HTPMA. Seventeen children were placed for unknown identity and residence, mostly in the Plovdiv HTPMA.

The minors and juveniles residing in HTPMA are most often placed by an inspector from the Child Pedagogical Unit (474 cases). In a total of 311 cases nationwide police bodies have also placed children in these kinds of institutions. Children have resided in HTPMA for transfer purposes in 237 cases in 2014. There are several cases of children who were identified and placed by HTPMA staff (seven), by a social worker (two) and by the local commission for combating juvenile delinquency (one).

In 2014, most of the children placed in HTPMA (808) stayed there for up to 24 hours. The children placed for up to 15 days were 201. 25 children, of whom 11 in the HTPMA in Varna, stayed for more than 15 days.

Children of Roma origin are overrepresented in HTPMA. Most of them (616) identify themselves as Roma, followed by Bulgarians (251) and ethnic Turks (85). The remaining 180 children are of other nationality or ethnic origin. In comparison to previous years, the number of children of other ethnic origin placed in HTPMA has increased (Table 3).

<table>
<thead>
<tr>
<th>Period</th>
<th>Total</th>
<th>Roma</th>
<th>Bulgarians</th>
<th>Turks</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012</td>
<td>1,211</td>
<td>767</td>
<td>332</td>
<td>96</td>
<td>16</td>
</tr>
<tr>
<td>2013</td>
<td>1,190</td>
<td>734</td>
<td>329</td>
<td>86</td>
<td>41</td>
</tr>
<tr>
<td>2014</td>
<td>1,132</td>
<td>616</td>
<td>251</td>
<td>85</td>
<td>180</td>
</tr>
</tbody>
</table>

The fact that most of the children (867) were placed in an HTPMA located in a town different than the one they live in is a cause of concern. In 2014, 440 children were given to their parents after their stay in the institutions. Other children were sent to institutions for children deprived of parental care and SBS (418), CBS (266) or transferred to investigation or prosecution authorities (eight).

A significant number of the children placed in HTPMA in 2014 have one deceased parent (243) or both parents are deceased (33), divorced parents (300) or came from families in conflict (261). A total of 392 children have in their families members who have committed crimes, have served prison sentences or have alcohol or drug dependencies.

The quality of care in HTPMA is extremely low. There is no effective separation by age, the children cannot maintain personal hygiene, their access to the sanitary facilities is restricted and the provided food is of low quality. They are deprived of the right to wear their own clothes during the stay in the institution. Their right to personal life and privacy is violated. The detained children
are under constant video surveillance, even in the dormitories. During detention, the children have no right to education. There are no targeted organised recreational activities for the residents at the HTPMA. The minors and juveniles spend their time locked in a room. The open-air stay and the contacts with the outside world are extremely limited.

Children with serious health problems are placed in these institutions. They are not provided with adequate and constant medical care. The minors and juveniles have no access to independent external services provided by specialists. Health prevention programmes do not exist. Disciplinary punishments such as “isolation in a single room” are imposed in the homes for temporary placement. There are cases of use of physical force against children. The staff are not qualified to work with minors and juveniles and staff turnover is high. The results and the findings from the inspections performed by the bodies of the MoI are not transparent.

State institutions do not regard the children placed in HTPMA as vulnerable. The State Agency for Child Protection does not exercise any institutional supervision on the operations of these institutions, the conditions in them and the treatment of minors and juveniles. Thus, there are no inspecting or controlling bodies, which would exercise constant and timely supervision on the respect for the rights of the children in HTPMA, which is a prerequisite for violations and arbitrariness.

Crisis centres for children

Given the dynamic nature of the social service “placement in a crisis centre”, as well as the stay of a child for a specific duration ranging between 3 and 6 months, at the end of the year such centres were accommodating 106 children, of whom 84 girls. Most of the residents in crisis centres by December 2014 (72%) were children aged up to 15. A total of 226 children were placed in such services during the year.

According to the Social Assistance Agency (SAA), 15 crisis centres for children with a total capacity of 155 places were operating in Bulgaria at the end of 2014. The Ordinance on the Implementation of the Social Assistance Act defines the crisis centres as a community-based social service. The users are individuals victims of violence, trafficking or another form of exploitation, and are placed for a period of up to six months. The regulation of all types of community-based social services is general, that is, apart from the legal definition of “crisis centre”, there is no specific legislative regulation on them.

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124 The minister of interior is not specifically tasked with ensuring the respect for the rights of the child. Under the Child Protection Act, the minister of interior’s responsibilities in his capacity of protection body include only “a) to provide police protection to a child through the specialized bodies of the Ministry of Interior; b) to take part in providing and monitoring specialised protection of children in public places; c) to supervise the crossing of the Bulgarian state borders by children”. Child Protection Act (2000), Art. 6a, para. 4, item 2.


127 Social Assistance Agency (SAA), List of Bulgarian crisis centres for children victims of violence or trafficking, 30 September 2014, available at: http://www.asp.government.bg/ASP_Files///ASP_Files/KC%20za%20deca.xls. There is a discrepancy in the number of CC indicated by SAA and that indicated by SCPA (accessed on 19 April 2015).

The Ordinance on the Implementation of the Social Assistance Act also presents the crisis centres as a form of social service meeting “the everyday needs”,\textsuperscript{129} which completely changes its meaning as a place for crisis intervention. In reality the placement in a crisis centre may have no relation to a crisis situation or to the existence of a significant risk of such a situation for the child and can be done for purely social reasons. The type of service is disregarded and children are placed in crisis centres only because there is nowhere else to accommodate them. This leads to ineffective separation of the children victims of violence from the children in conflict with the law. Despite the 2012 attempt of SCPA and SAA to regulate the establishment and the functioning of the crisis centres and their profiles,\textsuperscript{130} judges and area courts do not have the obligation to respect the profiles. Consequently, children of different profiles were still being placed together in 2014, which results in ineffective care and problems during their stay.

The long stay, the conditions or the lack of such, often pose an additional risk to crisis centre residents. Most crisis centres do not have medical staff regardless of the fact that the children they accommodate need not only psychological and social care to deal with crises and overcome problems, but also real medical care because they often have serious health problems. Some crisis centres suffer from systematic lack of information on newly arriving children from the Social Assistance Directorate (SAD) to the crisis centre staff. The working specialists are thus unaware of the psychological, social and legal status of the crisis centres, do not have their social reports, do not know the duration of their stay and whether the SAD has submitted a request to court. Access to this information would allow them to adequately plan and carry out effective actions on individual basis.

Many children placed in crisis centres have never attended school or, if they have, the educational level completed does not correspond to their actual knowledge. Most children in these facilities are enrolled in kindergarten or school, but many of them do not attend classes regularly.

The crisis centres are closed institutions. The contacts with the outside world are limited, which is the reason for the frequent escapes. The children are not allowed to go out unaccompanied, to have contacts with parents or relatives without the judgment and the presence of a crisis centre member of staff. Due to the uneven distribution of the crisis centres in the country, the child protection bodies place children in locations different than that of their habitual residence, thus hindering contacts with their families.

10. PROTECTION FROM DISCRIMINATION

2014 put the protection of minority groups from racially motivated violence and discrimination to serious test. No progress was made with respect to protecting the right to equality of other vulnerable groups such as women, children and LGBT people.

\textsuperscript{129} Regulation on the implementation of the Social Assistance Act (1998), Additional Provisions, Art. 25.

\textsuperscript{130} For children victims of domestic violence; children victims of human trafficking; children with deviant behaviour and children in conflict with the law.
Hate speech

In February the BHC referred to the prosecutor’s office an article by TV presenter Albena Vuleva that called for involuntary sterilization to curb Roma birth rates because “we are controlling and restricting the population of dogs, wild animals, even plant species [...] and on the background of this care the Gypsies are left to literally take over the central parts of important Bulgarian cities, by means of behaviour, cultural and lifestyle peculiarities which contradict the evolutionary level achieved by the rest of the residents”. The author deems this legitimate because “we cannot regard as equal the Gypsy and the representative of another, more civilized ethnic group, in the very least due to the different stage of civilization development of their societies”.131 In October, the Sofia District Prosecutor’s Office refused to initiate pre-trial proceedings. The prosecution stated in its decision that the act is inconsistent with Article 162 of the Criminal Code because Vuleva had also named other social groups different than the Roma. It also failed to find preaching or instigation, as Vuleva had offered that the sterilization be regulated by a statutory ban.132

A letter sent in December by the then chair of the Chamber of Investigators in Bulgaria, Plamen Stoilov, was made public in March. The letter contains his refusal to attend a work meeting at the National Institute of Justice because the meeting was to be attended by a representative of the Kingdom of the Netherlands as a country that had successfully implemented a magistrate and judiciary workload calculation model. Stoilov justified his refusal by stating that the Netherlands “is a country in which the homosexuals have established domination in society, drug addiction is almost completely legalized and the paedophiles have an official party which is aspiring to parliamentary representation”. He continued: “I believe that representatives of such a country cannot be our mentors with regard to the problems of the judiciary. Our Slavic people does not deserve such a fate”.133 The Supreme Judicial Council (SJC)134 and the Chamber of Investigators denounced the letter,135 while the spokesperson of the Sofia District Prosecutor’s Office (SDPO), Petar Belchev, told the media that the prosecution will not act “due to not being aware”.136

In June, BHC filed a complaint with the prosecution with regard to Facebook appeals and threats with violence against the annual LGBTI equality parade, the Sofia Pride. Among these were: “Let us all gather and together oppose and nip in the bud this fagot contagion”, “Asphalt out of you, fagots”, “Cyclone B is against fleas and lice... Kalashnikovs and shovel handles are needed...”, etc. In December, however, SAPO refused to initiate pre-trial proceedings due to insufficient data that a crime had been committed. According to the decree, the lack of data was due to the fact that the Facebook event page entitled “Anti-Gay Parade”, where almost all statements quoted in the complaint were posted, had been deleted and the comments “could not be restored”. Although the investigators did not collect evidence on time, the profiles indicated in the complaint allowed

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133 See “Ex SJC member and head of the Chamber of Investigators Plamen Stoilov: The Dutch are not good for mentors, they are dominated by homosexuals, pedophiles and drug addicts”, 31 March 2014, Praven Svyat, available at: http://www.legalworld.bg/35284.html (accessed on 19 April 2015).

BULGARIAN HELSINKI COMMITTEE HUMAN RIGHTS IN BULGARIA IN 2014
them to identify some of the individuals and have them interrogated. SDPO accepted their explanations at face value. Referring to “all materials in the file”, namely the explanations of the suspects, the prosecutor pointed out that “the purpose of all participants in the “anti-gay parade” and of the Facebook posts was not to openly instigate crime, but to prove that [...] this behaviour and the sexual orientation of these people [...] should not be demonstrated”.  

Two prosecution instances, the Sofia City Prosecutor’s Office (SCPO) and the Sofia Appellate Prosecutor’s Office (SAP), ruled in 2014 on the complaint of a Roma activist regarding the election programmes of the ultranationalist VMRO-BND and NFSB parties presented during the 2013 elections. Both programmes contained measures discriminating the Roma. VMRO-BND envisions compulsory labour for Roma and the formation of “militias for the protection of the Bulgarian population” against the Roma, undoubtedly unlawful organizations which oppose ethnic groups in society. NFSB proposes in its programme the demolition of the illegal dwellings in ghettos of predominantly Roma inhabitants, the removal of the Roma to closed camps where they could serve as a “tourist attraction”, and the restriction of their birth rate. According to the prosecution, these elements of the election programmes “do not lead to the conclusion of preaching or instigating discrimination, violence or hatred towards the Roma population, but rather call for integration and respect for law”. The settlement of Roma in isolated areas is “for individuals who do not wish and make no effort to integrate”, writes SAP further in its decree. Another major argument in favour of the prosecution’s refusal to criminally persecute these writings is that they were formulated and adopted by collective management bodies of political parties, while under Bulgarian law criminal liability may only be personal. The prosecution does not discuss the possibility of identifying the individuals serving on party boards. The SAP decree was appealed to the higher prosecutor’s office, but the Supreme Cassation Prosecutor’s Office did not announce its decision during the reporting period.

The cases of public and widespread hate speech by football fans at football games continued. A prominent example in 2014 was the game between Levski and CSKA on October 25 when Levski fans pulled out a large banner stating “Bulgaria will be free when we kill you! Meat-loaves, Turkish sons ... janissaries and gays”. Even though that various penalties were imposed for a series of violations during this game, the Bulgarian Football Union turned a blind eye to this manifestation of hate speech.

Based on a self-referral by a member, the Commission for Protection against Discrimination (CPD) started in November a file with regard to two articles about criminal acts published in the Ataka newspaper owned by the ultranationalist Ataka party. The titles use derogatory words to indicate perpetrators’ Roma origin without this being relevant to the essence of the information.

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140 See “Levski punished by one game without spectators, will pay EUR 12,000 fine”, 30 October 2014, Dnevnik.bg, available at: http://www.dnevnik.bg/sport/2014/10/30/2409678_/ (accessed on 19 April 2015).
Health minister Petar Moskov’s statements made on 7 December 2014 with regard to attacks against medical emergency teams were widely publicised. The minister announced in Facebook his intention to have the medical emergency teams stop responding to emergency calls from Roma neighbourhoods: “If someone has chosen to live and act like an animal, he also gets the right to be treated as such. In fact, even the wild animals understand when you are trying to help them and wouldn’t attack you ... As of tomorrow, [medical emergency] teams will enter locations where such incidents have occurred only if an agreement is reached with the local community’s “opinion leaders” to personalise the responsibility of the said population, or accompanied by police teams. When possible and as possible. I will issue a special order relieving the regional centres and the teams of the responsibility for these decisions”. On this occasion the BHC published a position statement reminding that criminal liability in Bulgaria is personal and not collective, and that it may only be established by the Bulgarian court which is the sole body competent to impose statutory punishments. The position paper underlines that the refusal of access to public healthcare is life-threatening. In a declaration read in plenary, the Reformist Block – whose cabinet member the minister is – asked “why are we hating the people who take care of our health and why are we respecting the illiterate more”, given that “the doctors have always been a part of any society’s elite”. Minister Moskov’s racist threat spurred a storm of indignation among the Roma community and rights activists. Several organisations and individuals addressed the prosecution insisting that it hold the minister responsible for instigating racial hatred and discrimination. At the end of February 2015, the Sofia City Prosecutor’s Office refused to initiate criminal proceedings, accepting that Moskov’s actions did not constitute targeted and deliberate instigation of racial discrimination, violence or hatred based on race, nationality or ethnic origin.

In another case of instigation of racism, on 17 December the leader of the ultranationalist National Front for the Salvation of Bulgaria (NFSB), Valeri Simeonov, a coalition partner in the Patriotic Front, stated in parliament’s plenary that the Roma have turned into “ferocious apes demanding right to salary without labour, sick assistance without being sick, child assistance for children playing with pigs in the streets, and maternal assistance for women with the instincts of street bitches”. This statement also spurred a storm of protests among the Roma community. Several Roma organisations and individual Roma activists addressed the prosecution, asking that it hold him criminally responsible for instigation of racial hatred and discrimination. The prosecution did not announce its decision by the end of the year.

Rights activists defending marginalised group rights also became victims of hate speech in 2014. Such speech was especially widespread in social networks and comments on news and publicist websites. The main themes articulated by such speech are that the non-governmental organisations are working against the interests of Bulgaria (being labelled “anti-Bulgarians”); that they are “financed from abroad” and are therefore “foreign agents”; conspiracy theories revolving around George Soros (whose name was used to concoct the epithet “sorosoids”); direct accusations that rights activists only care about marginalised communities, thus discriminating Bulgarians who also suffer from different social injustices; or that they encourage the rights of the minority, thus infringing the rights of the majority.

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On 12 September 2014, as part of its election campaign, the Bulgarian National Union – New Democracy (BNS-ND) political party and the Movement for the Protection of the Fatherland, a Facebook group, organised a protest rally under the motto “Let’s ban the BHC”. The rally, attended by some 50 individuals, including Boyan Stankov – Rasate, Elena Vatashka, Miroslav Borisov Paskalev – Zoret and Radenko Grigorov from the Association of Bulgarian Football Fans, finished their rally in front of BHC headquarters. The participants wanted a ban on the BHC, called the neighbours in the residential building, which houses the BHC offices, to banish its staff from the offices and raised and disseminated posters with such calls. Threats and insults against the organisation and individual employees who were in the offices at that time were made during the rally. The prosecution was informed about the threats heard during the rally but has not announced its decision during the reporting period.

Case law on the Protection against Discrimination Act

Negative trends appeared in 2014 in the Supreme Administrative Court (SAC) case law on the Protection against Discrimination Act (PADA). SAC reviewed complaints against decisions of the Sofia City Administrative Court (SCAC) in its capacity of court of second instance on cases heard by the Commission for Protection against Discrimination (CPD). Some SAC decisions contradict PADA and seriously hinder its intent to effectively regulate protection against discrimination. These decisions also contradict SAC case law of previous years, as well as decisions of the court from the same year.

In several decisions, SAC held that “a statutory provision which has not been ruled anti-constitutional by the Constitutional Court cannot be discriminatory. This is so because the Constitutional Court alone may judge whether the respective acts contradict Article 6, para. 2 of the Constitution of the Republic of Bulgaria, which prohibits unequal treatment. The implementation of a statutory provision which has not been ruled discriminatory by the Constitutional Court cannot be regarded as discrimination”.

SAC thus denies the applicability of PADA as law per se when other laws contradict it. In reality, however, in case of contradicting laws the court has the obligation to implement either one without waiting to have the other one ruled unconstitutional by the Constitutional Court. PADA is a special act and as such has precedence over contradicting discriminatory provisions. Furthermore, PADA incorporates EU provisions, which have precedence over contradicting national provisions. The case law of the Court of Justice of the European Union is consistent: national judges must apply the EU norms, leaving contradicting national provisions without implementation. In the same flawed decision, SAC goes even further in denying the independent meaning of PADA by holding: “This is why the adoption of a law or a regulation legal

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146 Decision No. 5645 of 25 April 2014 on administrative case No. 15991/2013, 7th division, p. 2.

147 See the doctrine of the direct effect: when the EU legislation is directly applicable, the domestic courts must disregard the contradicting domestic law. See also the doctrine of the indirect effect: when the EU legislation is not directly applicable, the domestic courts must do their best to interpret and apply the domestic law in consistency with that legislation. These statutes are derived from the doctrine of the primacy of EU legislation over national law. For more details, see: http://eubg.eu/upload/files/764775081_Zapiski%20po%20Pravo%20na%20ES%20-%20tom%20i.pdf, pp. 130 - 134.
or the implementation of such provisions, insofar as they are not duly ruled unconstitutional or unlawful (by the Constitutional Court in the first case or by the SAC in the second case), cannot be regarded as a violation of PADA*. These arguments also contradict the Statutory Instruments Act and the Administrative Proceedings Code (APC) because they deny the basic principle of the hierarchy of statutory instruments, which stipulates that a regulation that contradicts a law shall be disregarded and the court shall apply the law instead. In fact, by this decision SAC wrongly excludes from PADA's scope the protection of the people against discrimination by the administration enshrined in regulations adopted by it. Thus, any minister can regulate discriminating practices in his acts, in contradiction to PADA, and the individuals would not be able to protect themselves unless they file two lawsuits: one with SAC to repeal the controversial regulation, and another one with CPD to establish that the repealed regulation constitutes discrimination. This contradicts the clear provision in PADA that the prohibition of discrimination is applicable to everyone, including all state bodies, including the ones that adopt regulations.148 Also, not only the Constitutional Court but any court has the power to find in a case that a certain law is inconsistent with the Constitution or with binding international contracts to which Bulgaria is signatory, and to apply the latter instead. This is the meaning of their direct applicability, which is based on the Constitution. Such is the meaning of the constitutional provisions of Article 5, paras. 1, 2 and 4.

Further in the same decision, SAC holds that “not every violation of PADA and the other laws regulating equal treatment constitutes a violation [that may be established by the CPD], but only the specific act (factual action or inaction), which meets the administrative violation criteria under Article 6 of the Administrative Violations and Punishments Act (AVPA)”.149 With these arguments SAC illegally limits the powers of CPD to establish every violation of PADA, as stipulated by PADA itself. In essence, SAC is saying that not every violation of PADA is a violation of PADA, thus illegally stripping the law of some of its power. This creates a problem also from the point of view of the legal definitions of direct and indirect discrimination, which do not require that the act be premeditated and prohibit discrimination as an objective act, regardless of its subjective aspect, because many manifestations of discrimination are an unconscious expression of internal stereotypes, while the definition of violation under AVPA requires guilt. SAC continues to introduce with this decision more illegal restrictions to the application of PADA for the protection of individuals: “In order for the Commission to establish that a violation has been committed and to impose [a coercive administrative measure (CAM)] under Article 76 of the Act, it must have found that a specific administrative violation constituting discrimination had been committed (from objective and subjective point of view), the perpetrator of the violation, as well as the specific affected person. The failure to identify the specific action or inaction by which the discriminating act was performed, the subject of the violation (the perpetrator) or the specific affected person means that there has been no violation of the legislation on discrimination under Article 47, para. 1 PADA”.150 SAC thus puts a barrier to the protection of whole communities, for example when the proceedings have been initiated by a third, unaffected person, a possibility provided explicitly by PADA with regard to media hate speech against ethnic, religious, sexual or gender groups. The identification of the specific affected individuals in such cases is impossible as their number is huge, unlimited. SAC continues to further main PADA: "Only a natural person can be the subject of an administrative violation and, in cases explicitly stipulated by law, a legal entity. Administrative bodies, both individual and collective, cannot be the subject of a violation under Article 47, para. 1 PADA; perpetrators of violations can be the specific natural persons

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148 Art. 6, para. 1 PADA.
149 Idem, p. 3.
150 Idem, p. 4.
exercising the powers of the respective bodies”. SAC thus illegally denies PADA’s prohibition of discrimination *erga omnes*: according to the explicit provision of Article 6, para. 2, an obliged entity is everyone, which means all persons, including the legal entities and the bodies. In the decade since PADA entered into force SAC has handed down scores of decisions on cases in which defendants were both legal entities and state bodies, including cases involving discriminatory regulations. This decision of SAC contradicts both the law and the case law. It also contradicts a decision of the same court from the same year.

Further in this unlawful decision, SAC held: “The legal norms constitute abstract behaviour rules, not specific actions or inactions by which a specific act of discrimination could be carried out. They only create a possibility to discriminate specific individuals at a specific time. The adoption of the provision quoted above also couldn’t meet the statute of violation of the anti-discrimination legislation under art. 47, para. 1 of the Act”.

The SAC made a similar decision in another case during the year: “The power of CPD power to establish a violation of the PADA refers to establishing a specific factual situation of unequal treatment by protected class, and not of a hypothetical, eventual, potential possibility for unfavourable treatment in the future as a consequence of a provision in a regulation. [...] It is not sufficient to have a discriminatory provision adopted, but to have a specific discriminatory manifestation against the applicant as a result of its implementation [...].” According to this decision, should the CPD find that a norm is discriminatory, it could only appeal the relevant act or to recommend the issuing body to repeal it. Decision No. 5645 quoted above sustains this: “The Commission undoubtedly has powers to judge to what extent the acts, including the laws, do not violate the prohibition of discrimination. But when it finds an act inconsistent with the anti-discrimination provisions, it should not establish a violation under Art. 47, para. 1 by a decision under Art. 65, para. 1 (because such a violation does not exist), should not obligate the body to terminate the violation, nor should impose a CAM by issuing compulsory instructions. It may only exercise some of its remaining powers described in Art. 47, para. 5, 6 or 8 of the Act. The Commission may appeal before SAC the respective provisions which it deems inconsistent with the PADA or to propose or recommend to the respective body to adopt, repeal, amend and supplement acts”.

However, the powers of CPD are not regulated by PADA in this manner. The Commission is statutorily authorised to establish any discriminatory violation, regardless of its form and subject, and to impose in all cases administrative penalties and CAMs on the individuals responsible. In contradiction with the PADA, these SAC decisions hold that the CPD does not have powers to instruct the bodies to repeal their discriminatory regulations, but can only issue recommendations to this effect. SAC thus hinders CPD from performing its duties under the PADA by effectively establishing the discriminatory nature of acts, including regulations.

The above two decisions contradict not only the court’s case law of previous years but also one of its decisions during the same year, in which it lawfully rules: “Behaviour based on, and implementing, a discriminatory norm of domestic objective law or a discriminatory general administrative act shall also be categorised as discriminatory as the violation of the principle of equal treatment on the basis of protected class [...] is an objective fact. [...] The Protection against Discrimination Act prohibits all forms of discrimination: § 1, para. 7 in conjunction with Art. 4, para. 2 and para. 1 of PADA. The prohibition in Art. 4 of PADA is valid for all legal entities in the

151 Idem.
152 Supreme Administrative Court, Decision No. 15637 of 19 December 2014 on administrative case No. 1925/2014.
performance of their activities, due to which the academic autonomy conferred on the higher educational institution under the [Higher Education Act] does not derogate in any way the university’s obligation to behave in line with the principle of non-discrimination. The established inconsistency between the formal age criteria for student boarding-house accommodation introduced by Art. 3 (repealed) of the Regulation and the imperative provision of Art. 4 of PADA leads to the conclusion that the implementation of the age requirement under Art. 3 (repealed) of the Regulation with regard to the [plaintiff] violates a norm of higher order. Refusing the plaintiff accommodation at a student boarding-house on the basis of not meeting a formal maximum age condition introduced [in the Regulation] constituted unfavourable treatment of the plaintiff under Art. 4, para. 2 in conjunction with § 1, item 7 of PADA on the basis of statutorily protected class. The statute of direct discrimination has been met. It does not require discrimination intent and the lack of such is therefore irrelevant in establishing that the treatment was discriminatory, including if it was due to the belief that it was lawful under the then effective Art. 3 [of the Regulation].153

SAC makes another positive, lawful ruling in yet another decision, namely that the operative independence of the bodies does not revoke their obligation to not treat individuals less favourably with regard to protected classes in making their judgments.154

In another decision, SAC incorrectly applies the “comparator test” in a case of direct discrimination. The plaintiff was not allowed to take part in a competition for a state post due to his age: under the rules, the maximum age was 40. SAC held that he had not been treated less favourably because the condition was valid for all candidates. In reality, however, the candidate was treated less favourably than those who, unlike him, were allowed to participate, due to the age differences between them, which is a clear case of direct discrimination.155 SAC further held that the 40 years limit was justified, given that the maximum age for the post was 60 years. In fact, the new recruits can learn in much less than 20 years everything necessary for the performance of their duties, before their retirement, so the restriction seems excessive.

In one case SAC held that following a CPD decision establishing discrimination arising from an individual administrative act, the victim cannot seek pecuniary compensation insofar as the respective administrative act is not repealed; he can only seek compensation for non-pecuniary damages. This decision contradicts Article 74 of the PADA, which stipulates that in every case of discrimination established by CPD, the person who has suffered damages as a result – damages in general and not only non-pecuniary – may file a compensation claim against the individuals who have inflicted these damages. On the other hand, it is positive that in this decision the court acknowledges that discrimination implicitly causes non-pecuniary damages.156

In a decision pertaining to unequal remuneration on the basis of gender, SAC held no discrimination, despite the larger remuneration of the man with whom the female victim compared herself, because another male was paid the same as her.157 In fact, for gender discrimination to exist it is only necessary that the female victim be treated less favourably than one specific male in a situation comparable to hers; it is not necessary that she be treated less

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153 Supreme Administrative Court, Decision No. 1048 of 27 January 2014 on administrative case No. 8033/2013, VII division.
154 Supreme Administrative Court, Decision No. 8388 of 19 June 2014 on administrative case No. 600/2014, VII division.
155 Supreme Administrative Court, Decision No. 10734 of 1 September 2014 on administrative case No. 1463/2014, VII division.
156 Supreme Administrative Court, Decision No. 13320 of 6 November 2014 on administrative case No. 3036/2014, VII division.
157 Supreme Administrative Court, Decision No. 315 of 10 January 2014 on administrative case No. 9463/2013, VII division.
favourably than all men in such a situation. Apart from the protected classes, there are other factors that determine treatment and discrimination is not always manifested in the same manner.

In one case SAC provided protection against sexual harassment at the workplace.\(^{158}\) The court correctly ruled that it did not matter that the abuser was not a direct superior of the victim because it had been proven that her refusal to accept his behaviour could nevertheless influence decisions which affected her as this person controlled work aspects such as the work schedule, the leaves, etc. The court held that the employer had not taken measure to terminate the abuse but had decided to wait for the court’s decision, proposing that the victim change her workplace instead of punishing the perpetrator. The court condemned this, as well as the lack of staff training on the prevention of discrimination.

In another case the court provided a Roma woman protection against racist abuse: anti-Roma insults and threats to have her fired.\(^{159}\)

SAC also solved a case of a Muslim inmate who was not being given food consistent with his religion (without pork products) by overruling the objections that the *Enforcement of Punishments Act* did not include the obligation to provide different food depending on religion.\(^{160}\) The court held that this obligation arises from the PADA and found discrimination, only not in comparison with the Christians in the same prison who were getting food corresponding to their religion but in comparison with the Muslims in the Sofia prison where pork meat was being substituted by another. Avoiding a ruling on the alleged discrimination on the basis of religion is unjustified. It is also incorrect to categorise the disputed unequal treatment as indirect discrimination. In fact, it is direct insofar as there is a different treatment. In indirect discrimination, the treatment is the same but has a different effect on the different groups: worse on some than on others. What is positive, however, is that the court held that the religion class should not be proven and that the self-determination of the individual is sufficient.

As to the sexual orientation class, SAC ruled unfavourably in a case under the *Asylum and Refugees Act* by holding that the asylum seeker had voluntarily chosen to associate himself with the persecuted group of the homosexuals in Cameroon, choosing at the age of 35 a sexual orientation that he “wasn’t born with”.\(^{161}\) There was no “plausible explanation” of this “conscious choice”. In reality, the decision denies the right to protection against homophobic persecution of individuals who have revealed their homosexuality at a later stage of life. This contradicts the due effectiveness of the protection and in essence vests into homophobia victims responsibility for the violence they have suffered.

In one decision SAC stated twice that it was necessary that the unequal treatment be conducted “consciously”.\(^{162}\) In reality, the law does not require the presence of intent; worse treatment by protected class is sufficient, and the causal relation between the treatment and the class may not be recognised by the perpetrator as he may be acting under the influence of deeply rooted stereotypes of which he may not be aware at the time of act or at all.

\(^{158}\) Supreme Administrative Court, Decision No. 10402 of 24 July 2014 on administrative case No. 2534/2014, VII division.

\(^{159}\) Supreme Administrative Court, Decision No. 1667 of 6 February 2014 on administrative case No. 10013/2013, VII division.

\(^{160}\) Supreme Administrative Court, Decision No. 2514 of 21 February 2014 on administrative case No. 10989/2013, VII division.

\(^{161}\) Supreme Administrative Court, Decision No. 3467 of 7 July 2014 on administrative case No. 1381/2014, III division.

\(^{162}\) Supreme Administrative Court, Decision No. 3645 of 14 March 2014 on administrative case No. 12679/2013, VII division.
In conclusion, SAC’s case law with regard to the PADA, although marked by positive developments, may be criticised due to some contradictions and especially due to some negative, alarming trends towards limiting the scope of the law.
11. RIGHT TO ASYLUM

In 2014, Bulgaria improved significantly the national asylum system enshrined in Article 27 paras. 2 and 3 of the Constitution. In the first half of 2014, the State Agency for Refugees (SAR) spent most of its time dealing with the consequences of the institutional collapse of the national refugee system following the events in the fall of 2013 and the first more significant influx of refugees to the country.

With the help of the urgent measures and resources provided by the United Nations High Commissioner for Refugees (UNHCR), the assistance of some foreign governments, non-governmental organisations and the Bulgarian public, and with the logistics support for training of the European Asylum Support Office (EASO), SAR managed in a relatively short time to significantly improve the conditions at its registration and admission and accommodation centres. Additional staff were hired to increase SAR's administrative capacity to officially register asylum seekers, provide them with temporary papers, conduct the evaluation of their applications and make the decisions to grant or refuse status. Large-scale construction, repair and equipment activities were initiated in SAR's transit (TC), registration and admission (RAC) and accommodation centres (AC). The accommodation capacity at the refugee centres was increased to a total of 6,000: 300 at the TC in Pastrogor (municipality of Svilengrad), 3,340 at the RAC in Harmanli, 860 at the RAC in Sofia, 150 at the RAC in Banya (municipality of Nova Zagora), 300 at the AC in Vrazhdebna (Sofia), 700 at the AC in Voenna Rampa (Sofia) and, until its closure, 350 at the AC in Kovachevtsi (municipality of Pernik). Since February 2014, SAR also took responsibility for the feeding of the asylum seekers placed in the admission centres and initiated measures to provide medical care to them. As a result of the improved conditions and the renewed issuance of temporary papers, the regime at the RAC in Harmanli was changed from closed to open in mid-March 2014. By early June, all SAR admission centres met the minimum requirements on receiving and accommodating asylum seekers.

A national coordinating mechanism was established within SAR: regular coordination meetings of specialised sub-committees in the different fields of protection in Bulgaria. Throughout 2014, governmental, non-governmental and international organisations, including UNHCR, used this interdepartmental platform to discuss and initiate specific actions to solve existing legislative, institutional and practical problems in the field of the admission, the proceedings and the initial integration of the refugees in Bulgaria.

As a result of the achieved improvement of admission and accommodation conditions, the UNHCR withdrew in April its recommendations to suspend the Dublin transfers to Bulgaria except for the vulnerable categories for which it recommended case-by-case when making return transfer decisions.

163 160 of whom 50 full-time and 110 temporary staff.
164 The accommodation centre in Kovachevtsi (capacity: 350) was closed by decision of the SAR chair on 1 November 2014 with the sole argument that the winter heating costs were too high.
At the same time, the trend towards the gradual but steady increase in the number of persons seeking international protection continued in 2014, especially after the first half of the year, when there was a sharp increase in comparison to the preceding six months. While 7,144 persons filed protection applications in 2013, in 2014 they were 11,081 - a 35% increase. It should be noted, however, that a large number of people who have sought protection at the end of 2013 were not officially registered by SAR until the first months of 2015. Syria remained the number one country of origin (6,524 protection applications), followed by Afghanistan (2,968 applications), Iraq (608 applications), stateless persons (286 applications) and Pakistan (183 applications).

During the period following the crisis situation at the end of 2013, on the background of the growing number of refugees and asylum seekers in Bulgaria, both the government and the specialised administrative body in the field of international protection, the Council of Ministers’ State Agency for Refugees, gradually adopted the view that last autumn’s events are not an isolated or one-off phenomenon. This understanding came in existence due to the conflicts in close proximity to the country, both the continuing civil war in Syria and the emerging conflicts in Iraq and other countries in the Middle East and Sub-Saharan Africa. The significant number of refugees from Syria in neighbouring Republic of Turkey, which exceeded 1.6 million in 2014, is an objective factor defining the constant increase of protection seekers in Bulgaria. Nevertheless, by the end of 2014 Bulgaria had not elaborated short and long-term measures in case of eventual new significant increase in the number of protection seekers in the country by the creation of reserve reception capacity and lasting efficiency and speed of protection application evaluation procedures. The lack of such measures also presupposes lack of committed additional national and community funds from the available European resources in this field. At the expense of the long-term measures, the state gave preference to the revival of old institutional practices, or the introduction of new ones, which hinder the access to protection proceedings and to some rights during the procedure. The main purpose of these restrictive policies was to discourage the persons seeking protection in Bulgaria from staying in the country, and to seek asylum and lasting solution elsewhere instead.

In the same context, there was a total lack of integration programmes and of initial integration measures throughout 2014, which is considered as a “zero integration year”. Such a situation was allowed for the first time after the adoption in 2005 of the first ever Bulgarian annual national programme for the integration of persons who have been awarded status and protection. The responsibility for the adoption and the implementation of the integration programme was transferred from SAR to the Ministry of Labour and Social Policy; the Ministry postponed its adoption with the argument that an integration strategy needs to be adopted first. The 2014-2020 National Strategy on Integration was not adopted until the middle of the year. Nevertheless, the local integration of the refugees with awarded status in Bulgaria remained inaccessible, insofar as the strategy is a programme document without any specific integration measures or possibility of financing the implementation of such measures. Together with other factors, the lack of access to measures in support of the integration motivated many refugees with awarded status and protection to seek integration and long-term settlement alternatives.

166 Number of applications in 2014, by month: January – 822; February – 776; March – 433; April – 320; May – 545; June – 645; July – 911; August – 1 104; September – 1 220; October – 1 429; November – 1 378; December – 1 498. Source: State Agency for Refugees.

167 Source: State Agency for Refugees.


outside Bulgaria. Despite the lack of official statistics on the number of refugees who have left Bulgaria, it can be judged by the 7,851 information requests sent in 2014 to Bulgaria under the Dublin Regulation.\textsuperscript{170} It should be noted, however, that these requests are not related only to possible return transfers of asylum seekers, but also to confirmations of the legal status of persons who have been granted status and protection.

The following specific problems were noted in the field of asylum and international protection in 2014:

**The access to territory** for asylum seekers was hindered beyond the limits of the admissible barriers associated with border controls and the prevention of illegal immigration. 1,250 border police officers, backed up by additional 1,350 seconded police officers, patrolled the South-Eastern border with the Republic of Turkey in 2014. As in 2013, FRONTEX organised and coordinated in Bulgaria joint operations and pilot projects along the Bulgarian-Turkish border. Personnel and equipment from the Poseidon joint operation were re-deployed for this purpose. A total of 144 experts, 21 patrol vehicles, 9 dogs and 6 mobile thermal vision systems were deployed in the area of responsibility of the Elhovo Regional Directorate of Border Police as part of the Poseidon Land 2013 extension and Poseidon Land 2014. The Directorate-General of Border Police (DGBP) reported that 589 specialised police operations were carried out, as well as joint border patrols with neighbouring exit countries (96 joint border patrols with Serbia and 60 mixed patrols with Macedonia).

In this respect, the problem with the factual non-admission of foreigners who attempt to enter Bulgaria irregularly becomes even more acute. The MoI reported\textsuperscript{171} that 6,400 third country nationals have not been allowed entry and have been returned with an official refusal to enter the country in 2014. Most of them were foreigners coming from the Republic of Turkey.\textsuperscript{172}

**FIGURE 4.**

<table>
<thead>
<tr>
<th>Immigrant countries of origin, established at the border in 2014</th>
<th>Countries of origin of protection applicants in 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Syria</td>
<td>35</td>
</tr>
<tr>
<td>Afghanistan</td>
<td>27</td>
</tr>
<tr>
<td>Iraq</td>
<td>60</td>
</tr>
<tr>
<td>Iran</td>
<td>412</td>
</tr>
<tr>
<td>Other</td>
<td>1171</td>
</tr>
</tbody>
</table>

\textsuperscript{170} Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast).

\textsuperscript{171} As of 15 January 2015.

\textsuperscript{172} 6,000 non-admitted foreigners coming from the Republic of Turkey and 400 non-admitted foreigners coming from the Republic of Greece.
In addition, another 28,000 persons were reported to have been noticed on Turkish territory close to the Bulgarian border but have not attempted to cross the border and enter Bulgarian territory. The MoI reported that the 6,400 persons who were refused entry originated from Syria, Iraq and Afghanistan. The comparative analysis of the main countries of origin of the persons seeking asylum and protection\(^{173}\) in Bulgaria in 2014 (Syria, Afghanistan and Iraq) indicates that there is no significant difference between the profile of the foreign nationals attempting to enter the country and that of the foreigners seeking international protection. Thus, the foreigners entering or attempting to enter Bulgaria are mainly individuals running away from conflict zones, insecurity or massive human rights violations. Therefore, the border control and prevention of the access to the territory of the Republic of Bulgaria in 2014 reflected mainly on forced migration flows and not on voluntary economic migration flows.

Should the non-admission be applied to persons running away from a country of origin, which is a source of forced migration, it constitutes refoulement or push-back in violation of the principles of the Geneva Convention Relating to the Status of Refugees and the minimum legal standards of the European Union. The above-mentioned statement of the MoI confirms indirectly the suggestions that push-back and refoulement of protection seekers are widely used along the national borders by MoI units. Such assumptions were so far based on both individual statements of protection seekers who were pushed back from the Bulgarian border on one or more occasions, and on different reports of international organisations and observers.\(^{174}\) Following MoI’s statements in this respect, and based on the profile of established migrants provided by the same ministry, it may be reasonably concluded that push-back along the national land borders is a widely spread practice, as the number of the foreigners who were not admitted in mid-2014 exceeds by a factor of two the number of foreigners from identical countries of origin registered as protection seekers in Bulgaria over the same period.\(^{175}\)

As a result of the measures which in reality closed the Bulgarian-Turkish land border and MoI’s non-admission practices, first attempts by protections seekers to enter Bulgaria via the Black Sea border were registered in 2014. Typical of this new phenomenon is the fact that currently the final destination of sea entry is not Bulgaria but Romania, in whose territorial waters the so-called “boat people” are apprehended most often. The need to also cross the Bulgarian-Romanian border is thus circumvented, a fact which underlines the transit nature of the mixed migratory flows in the region. By the end of June 2014,\(^{176}\) the Turkish and the Romanian border services had apprehended a total of 151 migrants in their territorial waters. The first large group of 24 Afghans was detained in Bulgarian territorial waters, approximately two miles away from the town of Shabla, in October 2014.\(^{177}\) This indicates an attempt to shorten the sea migration routes in the light of the coming winter. It also means that the attempts to enter Bulgaria by sea will increase

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173 Source: State Agency for Refugees.  
175 10,800 foreigners not admitted, 5,556 protection seekers, source: Mol, SAR.  
177 Idem.
due to the shorter distances from the Turkish coast and especially in the wake of the tragic incident on 3 November 2014\(^{178}\) when a boat with 40 people on the way to the Romanian city of Konstanta sank in Turkish territorial waters near Istanbul. The passengers died or disappeared. Many of them were minors and juveniles.

As a whole, the **principle of non-penalisation** under Article 31 of the Convention Relating to the Status of Refugees was respected. In 2013, the prosecution and the courts in Southeastern Bulgaria generally found the protection seekers guilty\(^{179}\) of illegal entry, in violation of international and domestic law. In 2014, however, this practice was eliminated, and only 12 protection seekers were convicted of illegal entry in the country during the whole year. But in the end of the year the practice was revived, albeit in a different region, Southwestern Bulgaria, mostly in the territory of the Petrich Area Prosecutor’s Office. Such revival, apart from being a direct violation of the respective non-penalisation provisions of criminal law\(^{180}\), constitutes an evident attempt to artificially improve the statistics of convictions at the expense of law and morality.

**The access to procedure** went through several dynamic developments and turns in 2014. At first, the administrative procedures for the evaluation of the protection applications filed with SAR were almost paralysed between December 2013 and the end of February 2014. The lack of any registration and temporary papers for protection seekers was an especially serious problem. Instead of issuing the due registration cards to protection seekers, SAR widely handed out notices of the date on which the protection seeker had to present himself for registration (the so-called “notes”). The usual period of the registration notices varied between 3 and 6 months. As a result, the procedures of the respective protection seekers were delayed for an unlimited time, and their access to the statutory rights during the procedure was completely blocked.

The lack of registration affected the worst those protection seekers who had filed declarations refusing accommodation and social assistance (the so-called “people at an external address”). Most of them were protection seekers who due to the lack of SAR accommodation capacity were transferred directly from the border or the border areas into one of MoI’s two special homes for temporary placement of foreigners (SHTPF) in Busmantsi or Lyubimets. Due to the lack of SAR accommodation capacity and the blocked initial registration, these protection seekers, most of whom women and children, were detained and deprived of their liberty for significant periods of time - 45 days on the average\(^{181}\) - at the end of 2013 and the beginning of 2014. In this situation most of them decided to submit declarations that they had sufficient funds and to provide an external address, in order to be released from the SHTPF and to have a registration date notice issued. In almost 100% of the cases, the declared addresses did not meet the statutory requirements but still SAR approved the release while the MoI bodies did nothing to counteract the widespread fraudulent practices at SHTPF. As part of the latter, Bulgarian citizens were providing the same address to many foreigners against the payment of exorbitant amounts, a blatant and evident violation of the law. SAR provided in early January 2014 information that 4,694 persons had been accommodated in the admission centres, while 4,421 protection seekers were living at external addresses. Having no documents due the declarations filed and having no right to accommodation, social or medical assistance, most foreigners seeking protection at


\[^{179}\] See Bulgarian Helsinki Committee, Human Rights in Bulgaria in 2013.

\[^{180}\] Art. 279, para. 5 of the Criminal Code and Art. 31 of the UN Geneva Refugee Convention of 1951.

\[^{181}\] By 31 December 2013, source: DGBP, MoI MD, BHC.
external addresses left the country. Thus, in the beginning of 2015 SAR reported only 430 protection seekers at external addresses.

The so-called Distribution Centre (DC) administratively subordinated to MoI’s Migration Directorate (as of 1 July 2014, Migration Department of MoI’s DGBP) and with the capacity to accommodate 300 people, was created in Elhovo on 25 September 2013 by order of the interior minister. Throughout 2014 and at present, the coercive placement (detention) of foreigners in the DC in Elhovo is carried out in violation of the law, insofar as the DC is a facility for administrative detention of foreigners but its existence is not based on an explicit text in a legislative act as required by national law. At the same time, the detention of asylum seekers in the DC in Elhovo and the restriction of their freedom is also carried out in violation of the adopted regulations. Regardless of the short stay of the protection seekers and their relatively quick transfer and accommodation in SAR centres, the detention of protection seekers in the DC in Elhovo under the above conditions constitutes a deprivation of liberty and a direct violation of Article 5 of the European Convention on Human Rights (ECHR). Finally, this detention also violates the current legislation in the field of asylum and international protection, which stipulates that the detention of persons seeking protection is not allowed or admissible under any circumstances.

As a consequence, in 2014 SAR continued to act on the initial registration of the protection seekers held at the Distribution Centre in Elhovo in violation of the law. Since back in 2012 SAR opened the Transit Centre in the village of Pastrogor (municipality of Svilengrad) in the form of a SAR unit, from that point on the law does not allow that any procedure or separate procedural actions be carried out by SAR staff in places different than its territorial units. The transfer of asylum seekers from the DGBP bodies to SAR staff at the DC in Elhovo instead of at the TC in Pastrogor for the purpose of the initial registration of their protection applications in 2014 constituted an unlawful practice violating the above-mentioned legislative provisions.

The development in 2014 with regard to the average duration of the detention of persons who had submitted protection applications at the special homes for temporary placement of foreigners of MoI’s Migration Directorate was positive. Last year, the average duration of the detention at the DC in Elhovo remained unchanged at 6 days, but the average duration of the detention at SHTPF dropped sharply to 11 days (in comparison to 45 days in 2013). The total average duration of the detention of international protection candidates in 2014 was thus 9 days, the shortest average detention since the establishment of MoI’s Migration Directorate in 2005. Nevertheless, this duration continues to violate the established European legal standard on registration of a maximum of 6 working days from the date of submission of the protection

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182 Ministry of Interior Act, SG, no. 53 of 27 June 2014.
184 For example, similar to Art. 44, para. 7 of the Foreigners in the Republic of Bulgaria Act on the creation of the special homes for temporary placement of foreigners (SHTPF).
185 Art. 1a of the Statutory Instruments Act.
188 § 5 of the Provisional and Concluding Provisions of the Asylum and Refugees Act.
189 Transit or registration and admission centres, Art. 47, para. 2 of the Asylum and Refugees Act.
190 Since 1 July 2014, subordinated to MoI’s Directorate-General of Border Police.
191 Art. 6, para. 1 of Directive 2013/32/EU.
application when filed with other bodies which may receive such applications but are not competent to carry out the registration under national law.

However, the average duration of the detention of some asylum seekers from countries of origin in Northern Africa (Algiers, Tunisia, Morocco) and Sub-Saharan Africa (Mali, Côte d'Ivoire, Ghana) exceeded 6 months which led the respective foreigners seeking protection to the conclusion that they are being discriminated on the basis of their nationality. Given the fact that by law the asylum seekers cannot be coercively removed from the country until the asylum determination procedure has been completed with an effective decision, the detention in SHTPF is completely unlawful, insofar as its sole purpose is to secure such coercive removal. The accepted European standards explicitly prohibit the detention of a person solely because that person has applied for international protection. Detention during the asylum determination procedure is only allowed in restrictively listed cases for the duration of one-off procedures or with regard to persons posing a threat to national security or public order, under the condition that the same cases are explicitly introduced in national legislation. Furthermore, SAR practices escalated into handing down the decisions on these procedures to the protection seekers at the SHTPF without releasing them and placing them at SAR accommodation centres. At the same time, the performance of procedural actions in detention results in objective impossibility for the protection seekers to exercise their guaranteed rights during the procedure. Fundamental human rights, such as the right to liberty and free movement and the right to a fair trial are violated. In violation of the law, asylum seekers are restricted in exercising their right to shelter and food, social assistance, health insurance, affordable medical care and free medical services and psychological assistance. Labour market access rights are also affected under certain conditions during the refugee procedure. The legal possibility for protection applications with funds to meet their basic needs to ask in the course of the general proceedings and to be granted permission to settle at their own expense at an address of their choosing is also hindered. In 2014, 30 asylum seekers were subject to refugee procedures while in detention, in violation of their statutorily recognised rights during administrative and judicial procedures.

With regard to the access to procedure in 2014, there were practices constituting retreat from the administrative procedure standards already established and confirmed in SAR’s practice. In September 2014, there were cases in which SAR staff refused to accept and register protection applications if evidence of a rental contract for an “external address” or a valid national identity document was not provided. Also, the practice of refusing asylum applications and accommodating asylum seekers after 5 p.m. and on non-working days continued in 2014, leading in some cases to candidates for protection and their families having to sleep in the open in front of SAR centres. Finally, the access to procedure was in reality refused in September 2014 to protection seekers appearing directly at SAR’s territorial units. As a result of this unlawful practice, 65 asylum seekers (38 men, 8 women and 19 children, including babies aged 0 to 12 months) who had presented themselves at SAR’s territorial units and had submitted international protection

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192 Art. 67, para. 1 of the Asylum and Refugees Act.
194 Art. 8, para. 1 of Directive 2013/32/EU.
195 Art. 8, para. 3, items a), b), c) and f) of Directive 2013/33/EU.
196 Art. 8, para. 3, item d) of Directive 2013/33/EU.
197 Art. 5 and art. 6 of the European Convention on Human Rights.
198 Art. 29, para. 1 of the Asylum and Refugees Act.
199 Art. 29, para. 3 of the Asylum and Refugees Act.
applications were detained and transferred to SHTPF in violation of the law\textsuperscript{200} and the European minimum standards.\textsuperscript{201}

Despite the explicit legal prohibition introduced in March 2013,\textsuperscript{202} the practice of coercive placement (detention) of unaccompanied foreign children in SHTPF continued in 2014. The reason for this, however, was mainly due to the lack of a really working system of national bodies in the field of child protection\textsuperscript{203} competent to place unaccompanied minors in specialised institutions, mobilise community-based social services and provide accommodation in the community or in a foster family.

As a whole, the quality of the status determination procedures in 2014 was satisfactory. Since the majority of the protection seekers in the country in 2014 were Syrian nationals,\textsuperscript{204} SAR adopted a prima facie approach to the evaluation of their protection applications as “evidently substantiated”. SAR thus shortened significantly the duration of the status proceedings to an average of 6 months. In 2014, this also contributed to achieving the highest award rating and the lowest refusal rating for the past 20 years since the asylum and protection system in Bulgaria was established in 1993. The award rating reached 55% and the refusal rating 6% (a total of 12,787 decisions handed down in 2014 by the deciding body, SAR, of which 40% or 5,162 refugee statuses, 15% or 1,838 humanitarian statuses, 6% or 738 refusals to award status, 17% or 2,196 suspended and 22% or 2,853 terminated procedures).

The violations of procedural standards in 2014 concerned only a few, albeit significant, exceptions. The main issue during the year was the use of recording equipment during the protection application evaluation interviews as the best guarantee for the complete, objective and fair recording of candidates’ statements, the correct judgment whether to award protection in line with the actually declared facts and circumstances, and as a guarantee against corruption. The interviews were recorded with technical equipment in only 0.5% of the procedures monitored in 2014. All SAR employees who have the obligation to conduct interviews have audio recording equipment, but in 100% of the monitored cases the interviewed individuals were asked to sign a declaration prepared in advance that they agree not to have a recording, without being explained the benefits from its use. This is why the majority of the interviews (99%) are recorded by the interviewing SAR employees on a computer and, in some cases, on paper. In the latter cases, the minutes of the interview are developed at a time different than that of the interview, often days later, which creates reasonable doubts about their preciseness and correctness. The monitoring of SAR decisions showed similar contradictions, even with regard to insignificant circumstances in refugee history, being used as grounds to refuse protection because the refugee history or parts of it do not check out. In 2014, it was established that SAR has abstained from using the so-called “social interview” which serves to identify the pressing needs and the specific problems of asylum seekers by law.\textsuperscript{205}

The 2014 monitoring of the quality of the procedure showed that the legal assistance provided during the monitored interviews is formalistic as a whole. The legal representatives providing legal

\begin{itemize}
\item \textsuperscript{200} Art. 67, para. 1 of the Asylum and Refugees Act.
\item \textsuperscript{201} Art. 7 and art. 8, para. 1 of Directive 2013/33/EU.
\item \textsuperscript{202} Foreigners in the Republic of Bulgaria Act, Art. 44, para. 9.
\item \textsuperscript{203} Under Art. 6 of the Child Protection Act, the child protection bodies include the State Child Protection Agency and the respective child protection departments at the Social Assistance Regional Directorates of the Social Assistance Agency of the Ministry of Labour and Social Policy.
\item \textsuperscript{204} 6,524 protection seekers form Syria out of a total of 11,081 asylum seekers who have filed applications in 2014.
\item \textsuperscript{205} Art. 29, para. 4 of the Asylum and Refugees Act.
\end{itemize}
assistance during the proceedings do not demonstrate proactive participation or tabling of evidence in support of the statements made by the protection seeker. In 100% of the monitored interviews, the attending legal representatives did not ask additional or clarifying questions despite the evident discrepancies or contradictions in the statements of the interviewed candidates.

In some cases, albeit isolated, incorrect or untrue information was provided both about procedural deadlines and about candidates’ rights and obligations in the course of the procedures or after SAR’s positive or negative decision had been handed down. In none of the monitored cases were the protection refusal decisions given in the presence of a lawyer as a guarantee that protection seekers’ rights will be respected. The monitored decisions show that the burden of proof is not used correctly in refugee procedures under the Asylum and Refugees Act.\(^\text{206}\) Fifty-seven percent of SAR decisions were based on up-to-date information about the country of origin of asylum seekers and had the sources of its collection identified. In the large majority of cases, however, the quoted information about the country of origin does not support or correspond to the legal conclusions on the lack of necessity of protection arguing the SAR refusal.

The situation of unaccompanied refugee children continued to be especially alarming. For the 20\(^{\text{th}}\) consecutive year since the establishment of the refugee institution, their procedures continued to be held without the appointment of guardians or trustees. The presence during the refugee procedures of social workers appointed under the Child Protection Act\(^\text{207}\) was completely formalistic and did not ensure the necessary assistance and protection of the legal interests of unaccompanied children in the refugee procedures, in contradiction with the statutory obligation to protect the child’s best interests.

12. RIGHTS OF PEOPLE WITH MENTAL DISABILITIES IN INSTITUTIONS

The process of deinstitutionalisation continued with slow progress. The capacity of residential institutions for adults marked a decrease while new sheltered houses and family-type small group homes were opened up. The general picture reveals that the only aspect where there is a significant improvement during the last years is in the material conditions. Persons with chronic mental disorders continue to be placed in residential social care institutions in an arbitrary way and without any judicial control.

The transition from the traditional for Bulgaria institutional care for adults with mental disabilities to community and home-based services is one of the major priorities of the National Strategy on Long-Term Care,\(^\text{208}\) adopted by Council of Ministers Decision No. 2 of 7 January 2014. It foresees

\(^{206}\) Art. 75, para. 2 of the Asylum and Refugees Act.

\(^{207}\) Art. 15, para. 7 of the Child Protection Act.

that “access to community-based social services, home-based services and health services will be improved in the next 20 years by expanding the network of such services in the country, their diversity, volume and scope, the improvement of their quality, as well as the encouragement of synergies between them”, which would lead to the closure of “all functionally obsolete and inconsistent with the target groups’ current needs specialised institutions for adults and people with disabilities”.

The deinstitutionalisation of adults with mental disabilities in Bulgaria began some ten years ago with the creation of the first community-based social services, sheltered housing (SH) and family accommodation centres (FAC), as an alternative to institutional care, being made possible by the amendments to the Regulation on the Implementation of the Social Assistance Act of 2003. Since then, the annual reports of the Social Assistance Agency reveal that the number of new services is growing, while the capacity of the institutions is being reduced and some of them are being closed.

For example, the 2013 report states that the institution for adults with mental disorders (IAMD) in the village of Pastra, municipality of Rila, with a capacity of 33 residents, was closed, while the capacity of the institution for adults with developmental disabilities (IADD) in the village of Kudelin, near Bregovo, has been reduced (from 200 to 173 places); the institution for adults with mental disabilities in the village of Samuil underwent a great reduction in the capacity (from 101 to six places); and the institution for adults with developmental disabilities in the village of Rovino, near Smolyan, also reduced its capacity (from 100 to 87 places). Added up, the numbers indicate that in 2013 the overall capacity of the institutions for adults with mental disorders was reduced with 46 places and that of the institutions for adults with developmental disabilities - by 72 places, or a total of 118 for both types of institutions.

**FIGURE 5. Capacity of social care institutions by 31 December, 2009-2014**

<table>
<thead>
<tr>
<th>Institutions for adults with developmental disabilities</th>
<th>Institutions for adults with mental disorders</th>
<th>Institutions for adults with dementia</th>
</tr>
</thead>
<tbody>
<tr>
<td>2379 2349 2277 2210 2137 2136</td>
<td>1249 1202 1169 1082 1036 1036</td>
<td>843 843 836 836 825 825</td>
</tr>
</tbody>
</table>

Source: Social Assistance Agency

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Figure 5 was developed on the basis of data from SAA reports and the individual capacity of the institutions by 31 December 2014 as published on the SAR website.\(^{211}\) It shows the actual reduction of the capacity of the institutions between 2009 and 2014. 2014 marks the first stagnation for the period because the total capacity is reduced by only one place (the capacity of the institution for adults with developmental disabilities in the village of Malenovo, near Straldzha has been reduced by one place).

Such lack of change in 2014 is quite logical given the lack of vacancies at the new services and the long waiting lists. For example, by the end of April there were 84 candidates on the waiting list for the institution for adults with developmental disabilities in Banya (capacity: 120 places). By December 2014, there were 398 people on the waiting list for admission in the institution for adults with mental disorders in the village of Lyaskovo, near Stara Zagora (capacity: 60 places), according to the institution’s director. It should be noted that the problem with the scarcity of places has existed for many years and is not a result of the reduction of the capacity or the closure of separate institutions in previous years. It is a fact that the rate of closure is not consistent with the demand for the service and is not secured with the provision of a sufficient number of places in community-based alternatives or with adequate assistance for the families of people with mental disorders, so as to allow them to take care of their loved ones in a home environment.

The table below shows the ratio between the total capacity of the separate types of institutions to the number of people on the respective waiting lists.\(^{212}\) It should be noted that all institutions are operating at full capacity. When a vacancy occurs, it is filled within days.

**FIGURE 6. Ratio between capacity and the number of people on the waiting list by 31 December 2014, by type of institution**

<table>
<thead>
<tr>
<th>Institution Type</th>
<th>Capacity</th>
<th>People on Waiting List</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adults with Developmental Disabilities</td>
<td>2136</td>
<td>406</td>
</tr>
<tr>
<td>Adults with Mental Disorders</td>
<td>1036</td>
<td>1198</td>
</tr>
<tr>
<td>Adults with Dementia</td>
<td>825</td>
<td>538</td>
</tr>
</tbody>
</table>

The greatest scarcity is observed with regard to the places for adults with mental disabilities where the number of the people on the waiting lists exceeds the capacity of the institutions. In reality, however, the scarcity is even greater as in all state psychiatric hospitals there are scores


\(^{212}\) Social Assistance Agency, information provided to BHC under the Access to Public Information Act, ref. No. RD-04-10 of 22 January 2015.
of patients who are neither undergoing active treatment, not are released because there is nowhere to place them, so they actually live in the hospitals. The hospitals are thus forced toassume the role of institutions for people with mental disorders. There is no doubt that the institutions are obsolete and have to be closed, but they are still the only possibility for many people in need to get care.

What was the quality of that care in 2014? Despite the trend towards closure, the municipalities providing the service invested significant financial resources in repairs in many residential institutions. For example, a new residential building was constructed at the institution for adults with developmental disabilities in the Chuchurkata area, near Lom. All bedrooms and sanitary facilities at the institution for adults with developmental disabilities in the village of Samuil, municipality of Samuil were overhauled. The roof of the institution for adults in the village of Cherni Vrah, near Smyadovo, was replaced and a modern but common bathroom with a shower stall was built in one of the buildings.

During the year, BHC researchers visited also institutions in need of urgent renovation. For example, the residents at the institution for adults with mental disorders in the village of Govezhda, municipality of Georgi Damyanovo live in single family houses, but their condition is deplorable. One of buildings, which housed the washing room and the games room, was destroyed in a fire in March 2014. The building of the institution for adults with mental disabilities in the village of Lyaskovo, near Stara Zagora is also in need of overhaul and renovation.

Every institution has its own specific characteristics but the overall picture shows that the living conditions are the only field in which there has been a significant overall improvement in the last years. However, this only element of care and its improved condition does not change the fact that the conditions in which most residents live can be defined as inhuman. The reasons for this vary from the typical for the system depersonalisation of the people due to their institutionalization to severe human rights violations.

The attitude that staff responsibilities are limited to the physical care for the users because they are “unable to do anything” is still very much alive in the social care institutions. The fact that in many institutions the staff refers to residents as “children” shows the lack of any practical implementation of the definition of “social services” under the Social Assistance Act, according to which activities should be in place that “support and expand the opportunities for individuals to lead independent lives”. Filling in colour books and story-reading by the staff remain the main activities in the institutions. Some institutions utilize other practices. For example, even the most disabled clients at the institution for adults with developmental disabilities in the town of Batak attend a community day care centre that works to improve their skills.

Physical activities are not encouraged which leads to lethargy and apathy even in younger clients. Nonetheless, some exceptions in this general atmosphere do exist. For example, the institution for adults with developmental disabilities in the village of Rusokastro, near Burgas, has a bicycle obstacle course and provides courses in folk dances. The institution in the town of Tvarditsa has a successful folk ensemble; and the institution for adults with developmental disabilities in the village of Oborishte, near Vulchi Dol organises various skills tournaments.

Most institutions are isolated geographically, located away from large communities, in areas which are being further depopulated in the last years. Nevertheless, the clients are still being kept behind constantly locked fences, “for their own safety”. The lack of freedom is rarely discussed by residents with developmental disabilities because for most of them this is the typical environment in which they have grown up. Many of them have come to these institutions straight from childcare institutions. The lack of freedom is painful for the people with mental disorders, who as a rule develop their disease and move to the institutions when they are adults. The distance from their families and the lack of contact with “civilisation” are depressing. The single gender division between the institutions prevails (16 out of 29 institutions for adults with developmental disabilities and 12 out of 12 institutions for adults with mental disorders) and the lack of opportunities for complete satisfaction of sexual needs is a problem which has always been underestimated but continues to be serious for men and women with preserved libido. Few institution directors will discuss this problem. Those acknowledging its existence say that they are powerless. Others state openly that homosexual relations are not tolerated. At the institution in the village of Govezhda, for example, consensual sexual contacts are regarded as improper by the management and a bad example to others. Which is why anyone “caught” is sent to a psychiatric hospital for ten days. The clients at the same institution say that despite the punishments oral sex between residents is traded for 10 cigarettes.

In April 2014, the Sliven District Prosecutor’s Office began an investigation of sexual violence by a staff member against a resident at the institution for adults with developmental disabilities in Tvarditsa. A month earlier, the same prosecutor’s office was informed that physical and psychological violence is being exercised against residents of the same institution. The Burgas Appellate Prosecutor’s Office repealed the refusals of the Sliven District Prosecutor’s Office and the Sliven Regional Prosecutor’s Office to initiate pre-trial proceedings.

Nobody denies the existence of violence in the social care institutions due to the exacerbated condition of some clients. Such violence on behalf of the staff, however, is unacceptable. But in some institutions this attitude is an everyday practice. The inspection conducted jointly by the Ministry of Labour and Social Policy and the Municipality of Sliven resulted in the replacement of the management of the largest IADD in the country, the one in the Kachulka settlement, village of Byala, municipality of Sliven. The inspection was on the occasion of two identical cases within a month in which two women had jumped from the third floor. The new director revealed publicly (to a national television channel and printed editions) that the clients were kept without therapy and locked in their rooms because previous management teams believed that otherwise they will run away. “Some staff members have resorted to hitting them, with a fist on the back, on the waist, kicking them in the legs”. None of the regular staff were fired as according to the new director there was no way to attract new people to work in this place, so the same staff members who had resorted to violence had to be taught to treat the users like humans. The pre-trial proceedings initiated for financial abuse and for the death cases in the institution in Kachulka were terminated.

According to information provided by the Social Assistance Agency, 214 persons were transferred from specialised institutions and placed in residential community-based social services in 2014. Eight sheltered homes for people with developmental disabilities, two sheltered homes for people with mental disorders, nine family accommodation centres for adults with

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214 Social Assistance Agency, information provided to BHC under the Access to Public Information Act, ref. No. RD-04-10 of 22 January 2015.
developmental disabilities and four family accommodation centres for adults with mental disorders were opened during the year.

According to information about the functioning community-based services and their capacity published on the Social Assistance Agency website, by 31 December 2014 there were 18 FTAC for people with developmental disabilities with a total capacity of 219 places and 17 such centres for people with mental disorders and a total capacity of 225 places. The sheltered homes for people with developmental disabilities were 80 with a total capacity of 678 places, while those for adults with mental disorders were 29, with a capacity of 286 places. There were five transient homes (TH) at the institutions for adults with developmental disabilities, with a total capacity of 59 places, and only two transient homes at the institutions for adults with mental disorders, with a total capacity of nine places. Figure 7 shows the ratio of the persons in various institutions to those in alternative services by 31 December 2014.

**FIGURE 7. Residents by 31 December 2014, by type of service**

<table>
<thead>
<tr>
<th></th>
<th>Institutions</th>
<th>Family-type centres</th>
<th>Sheltered houses</th>
<th>Transient houses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adults with disabilities</td>
<td>2136</td>
<td>219</td>
<td>678</td>
<td>59</td>
</tr>
<tr>
<td>Adults with mental disorders</td>
<td>1036</td>
<td>225</td>
<td>286</td>
<td>9</td>
</tr>
</tbody>
</table>

Is the so-called deinstitutionalisation process successful, in other words, are the residents that are transferred from institutions genuinely deinstitutionalised? In assessing the success of the deinstitutionalisation process it is key to answer the question whether the clients of the new services continue to receive the type of “care” that is typical for institutions or if it has been replaced with mental and social rehabilitation encouraging the transition of the institutionalised individual from passive to active behaviour and to empower that person to make independent decisions.

According to BHC research in 2014 the main change for most of those transferred to new services is improvement in the living conditions and life in a smaller group. This is the only difference between their new life and that in the bigger institution. The clients remain persistently dependent, which is inconsistent with the declared goal of the deinstitutionalisation, namely “social inclusion”. The location of some of the new services in the courtyards of the old institutions (for example, an institution for adults with developmental disabilities that had its capacity reduced in 2013 at the expense of newly opened services in the villages of Kudelin and Batoshevo), is an objective obstacle to achieving social inclusion.

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The same holds true for sheltered homes for adults with mental disorders located in the yards of psychiatric hospitals. Of the newly opened community-based services in 2014, three are located in specialised institutions; a family accommodation centre for adults with developmental disabilities and another one for adults with mental disorders were located in the building of the closed down home for children with developmental disabilities in the village of Iskra, near the town of Karnobat.216

Some good practices were established as well. For example, many of the clients of the sheltered housing in Stara Zagora are working in offices or companies, travelling on their own to their workplaces by public transport. In most community-based services, users are successfully involved in the preparation of food, as well as in the maintenance of the yards. Some manage to provide paid assistance to local residents.

The successful transition from institutional care to decent and independent life and social inclusion of clients of social services requires adequate legislative changes. According to the Action Plan Containing Measures on Bringing Republic of Bulgaria’s Legislation and Policies in the Field of People with Disabilities in Line with the Provisions of the Convention on the Rights of Persons with Disabilities (2013-2014),217 adopted by Council of Ministers Decision No. 868 of 19 October 2014, drafts on changes in the fields of interdiction, guardianship and trusteeship, as well as on the introduction of measures guaranteeing the people with disabilities access to justice, had to be elaborated by the end of 2014. The deadline was not met. The Ministry of Justice’s working group on elaborating proposals for legislative changes consistent with the standards of Article 12 of the UN Convention on the People with Disabilities could not agree on important issues and continued its work in 2015.

The issues established by ECtHR in Stanev v. Bulgaria of January 2012 thus remained as pressing as in previous years. Persons with chronic mental disorders continued to be placed in institutions on arbitrary grounds and without judicial review. No actions were initiated to reform the care for these people, in order to make them less dependent and to guarantee their fundamental rights, which are still being violated.

13. WOMEN’S RIGHTS

In 2014, there was stagnation in the efforts to guarantee respect for women’s rights in Bulgaria. The lack of any legislative changes to improve the situation of women is proof of this. Instead, the authorities continued demonstrating tolerance to discriminating and sexist provisions, practices and attitudes affirming and replicating gender inequality.

216 Social Assistance Agency, information provided to BHC under the Access to Public Information Act, ref. no. RD-04-10 of 22 January 2015.
Protection against domestic violence and other forms of violence against women

The Council of Europe Convention on preventing and combating violence against women and domestic violence\(^{218}\) entered into force on 1 August 2014, but Bulgaria has still not signed and ratified it. The review of the Bulgarian legislation for compliance with the Convention has been postponed for 2015.\(^{219}\) In this context, it is unlikely that the country will deliver on its commitment to join the Convention within the deadline set in the Plan on the Implementation of the recommendations of the United Nations Committee on the Elimination of Discrimination against Women (the UN Committee), July 2015.

A Norwegian Financial Mechanism programme administered by the Ministry of Interior supported activities aimed at combating domestic violence and gender-based violence. In 2014, the programme announced calls for the financing of activities totalling two million euro. At the same time, there was total stagnation in the development of policies and legislation, activities which do not require much financing. A number of measures from the 2014 National Programme for the Prevention and Protection against Domestic Violence were thus left on paper only, including those for the creation of a coordination mechanism for assistance and support to victims of domestic violence, the creation of a national council for the coordination of domestic violence prevention policies, as well as the elaboration of a strategy on reducing domestic violence.\(^{220}\)

The fact that the recommendations of the United Nations Committee on the Elimination of Discrimination against Women with regard to amending the Criminal Code have not been implemented is a cause of serious alarm. The provision stipulating that crimes involving assault, battery and some cases of aggravated assault committed by “ascendant, descendant, husband, brother or sister” are only persecuted privately on complaint by the victim is still in force. Other recommendations which have not been implemented include the criminalisation of domestic violence and marital rape and the elimination of Article 158 of the Criminal Code which allows the termination of the criminal persecution of the perpetrator if he marries the victim.

The official Bulgarian statistics do not contain data on the cases of domestic violence and other forms of violence against women. The murders of women, being the worst form of crime against the person, are also not documented and analysed in the light of gender-based specifics. Provoked by the lack of such information, BHC initiated a study covering the sentences handed down in 2012 - 2014 for premeditated murder and attempted murder of women. The preliminary review of the case law of ten regional courts in such cases provided information which, although


expected, is alarming. Ninety-one percent of the murders of women are committed by men, 7% in complicity between men and women, and 2% by women.

**In 35% of the cases, the homicide or the attempted homicide was committed by a current or former intimate partner of the victim, in 25% - by a brother, son, grandson or another close relative, in 31% - by another male acquaintance, and in only 9% - by a stranger. Nineteen percent of the sentences explicitly state that the victim had been subjected to systematic physical domestic abuse by the perpetrator, while 21% indicate that the victim was an elderly citizen or was suffering from a severe physical or mental disease. In two thirds of the cases, the homicide was committed at the victim’s home.**

In the summer of 2014 public attention was focused on an incident with 21-year-old Nona Slavova from the city of Plovdiv. On 24 July, Slavova’s ex-boyfriend, Peter Bakalski, decided to publicly humiliate and punish his former partner for alleged unfaithfulness. At a meeting between him and Nona Slavova, Bakalski and two of his friends who turned up at the meeting in a planned act of revenge poured several litres of acrylic paint over the young woman face and body. They filmed the assault with a mobile phone and uploaded the video on Facebook. As a result, Slavova suffered damage to her eyesight and was prohibited from exposure to direct sunlight. BHC issued a position on the incident saying that the attack was an arrogant and brutal act of violence against women and in effect a lynching and gender-based bias crime.

A positive development in 2014 was that the Council of Ministers approved the payment of compensations for rights violations with regard to complaints upheld by the United Nations treaty bodies under the universal international instruments in the field of human rights. Three of the four compensations were granted for rights violations under the United Nations Convention on the Elimination of Violence against Women, namely: in *Pelova v. Bulgaria* (Communication no. 31/11) – EUR 5,000; in *Jallow v. Bulgaria* (Communication no. 32/11) – EUR 3,500; in *Komova v. Bulgaria* (Communication no. 20/08) – EUR 2,500.

**Participation of women in government**

The 2014 parliamentary elections resulted in a drop of female representation in the Bulgarian legislature. Barely 20% (48 out of 240) of the new members of parliament are women, the worst result in the country since 2008. Three women are of Turkish origin, none are of Roma origin. Of the 18 political parties, which took part in the elections, only three are chaired by women.

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221 The statistical data quoted are based on the sentences handed down in 2012-2014 for homicide and attempted homicide of women under Articles 115, 116, 117 and 118 of the *Criminal Code* by the Regional Courts in the following cities: Sofia, Plovdiv, Shumen, Varna, Burgas, Stara Zagora, Sliven, Pazardzhik, Blagoevgrad.


224 Council of Ministers, Decision No. 766/ 13 November 2014.

The men preserve their dominance in the executive power. Only five out of 21 portfolios in the new Council of Ministers were given to women. In terms of the local representation of the central government, the women also form a negligible minority. By the end of 2014, women were heading barely six of the 28 regional governments. With regard to the low representation of the women in the new parliament, the Organization for Security and Cooperation in Europe formulated in October 2014 a priority recommendation to Bulgaria to consider “introducing temporary special legislative measures to promote women candidates, including gender quotas and placing women in winnable positions” and the political parties to “consider nominating a minimum number of candidates of each gender”.\(^{227}\) The recommendations of the United Nations Committee on the Elimination of Discrimination against Women of 2012 are much the same.\(^{228}\)

Despite the fact that the elaboration and adoption of a new *Electoral Code* in March 2014 provided an excellent opportunity to implement these recommendations, the issue of women’s representation in government was never raised during the law-making debates and the problems remained unsolved. If this situation is preserved, it would be very likely that the women will again be only marginally represented in the country’s government after the 2015 local elections.

### Gender equality

In 2014, Bulgaria once again failed to deliver on its commitment to develop and adopt a law on gender equality. The adoption of such a law was planned as a measure in the 2014 National Plan on Encouraging Gender Equality\(^{229}\) and the Plan on the Implementation of the United Nations Committee’s Final Conclusions.\(^{230}\)

The primary role of the woman in raising and educating the children continues to be among the most persistent stereotypes with regard to the division of the responsibilities between the two genders. At the same time, the legislation in the field of labour and social affairs does not foresee


real measures to encourage the shared and balanced raising of children by both parents, despite the fact that the achievement of this goal is set in the 2009-2015 National Strategy on Encouraging Gender Equality.\textsuperscript{231}

Even at the level of legal terminology, such as “pregnancy and birth leave” or “General Illness and Maternity Fund”, the legislation suggests that raising a child is a function which is biologically and completely predestined to the woman. In this respect, it is inexplicable why the measures defined – but never implemented – in the 2013 National Plan with regard to the replacement of these discriminatory terms with others that encourage balanced parenthood, such as “parental leave”, “maternity/paternity”, were not included in the 2014 plan.\textsuperscript{232}

Under Article 168, para. 8 of the \textit{Labour Code}, the right to 410 days of pregnancy and birth leave, as well as the right to compensation for this period under Article 50, para. 7 of the \textit{Social Insurance Code}, are given to the woman who is insured for this purpose. With her consent and not before the child has reached the age of 6 months, the insured father can use the leave instead of the mother. Thus, it is not surprising that according to statistics for the first nine months of 2014, \textit{96.2\% of all pregnancy and birth compensations were paid to women}.\textsuperscript{233} The leave for raising a child through the age of 2 years is also formulated as a right of the mother employee; with her consent, it may be transferred to the father or to one of their parents. The statistics is once again indicative of the division of roles with regard to childcare: \textit{in 98.6\% of the cases the compensations for raising a child through the age of 2 years for the period January – September 2014 were paid to women.}\textsuperscript{234} Since January 2014, the amount of the compensation was increased from EUR 125 to EUR 170. During the whole political and media debate, it was incorrectly suggested that this is all about increasing the “maternity” compensation.\textsuperscript{235}

In 2014, the Commission for Protection against Discrimination (the equality body, the Commission) announced a decision in which it paradoxically divulged its own dependence on patriarchal and sexist stereotypes.\textsuperscript{236} The decision was handed down with regard to the complaints of two fathers against Decree No. 1 of the Supreme Court Plenum on 12 November 1974 (the Decree), which they considered discriminatory on the basis of gender. The Decree includes the following compulsory instructions to the courts with regard to awarding child custody: “The mother is better fit than the father to raise and educate female children. […]. Infants, unhealthy children, etc. need immediate maternal care. In such cases, the mother is more suited than the father to raise and educate the child”.  

The equality body rejected the complaints by holding that while the Decree does introduce “a certain form of unequal treatment on the basis of gender”, it has a legitimate objective related to the protection of children’s best interests. Furthermore, in the Commission’s opinion the need of such unequal treatment is “scientifically and practically justified” by the “strictly specific functions and biological characteristics typical of each of the two sexes”. Referring to a 1960 scientific paper, the Commission’s second specialised panel justified the mother’s greater “suitability” to raise infants with the indispensable role of “the specific motherly care” during the first years of a child’s life. With regard to the care for girls in puberty, the Commission paradoxically concluded that “the father cannot be as useful to the girl as the mother, because he does not have the necessary life experience in this respect”.

The approach adopted in this decision must be rejected firmly as it preserves the status quo of gender inequality and seeks to subjugate the woman to childcare. The Commission argumented its position on the basis of biological determinism, a theory which is rejected as wrong, obsolete and discriminatory against women.

Also in 2014, the Commission handed down the first decision on sexist hate speech in Bulgaria.237 The decision was delivered on the occasion of part of an article by journalist Martin Bogdanov – Karbovski in which he states that “[a]fter 4 September 2013, politics found out that it had become a harlot with a permanent period. That is, it’ll stink but it won’t work”. The Commission accepted that “the paragraph, when expressed verbally, is humiliating and insulting, suggesting a degrading image of women. [...] The comparison used by Bogdanov, in which women are identified with a stinking object which doesn’t work, undoubtedly creates an insulting, humiliating and degrading environment with regard to every woman”. The author and the owners of the two websites that ran the article were each fined by the Commission with EUR 300.

The provision which stipulates that the child’s surname is formed only from the father’s surname/paternal name, without the possibility to have it formed from the mother’s names and regardless of whether the father has been identified or not, remained in the Civil Registration Act. This practice has been recognised as discriminatory by the European Court of Human Rights.

**Rights of childbearing women**

For yet another consecutive year the rights of childbearing women remained unrecognized. Bulgarian legislation limits these rights to rights of patients and regulates them under the Healthcare Act and other by-laws. This legislative regulation is based in the understanding that pregnancy and birth are a pathology, hence women giving birth are viewed and treated as patients who are in need of hospital treatment and medical interventions. On the one hand, NGOs alarm that there is a trend for excessive and routine medicalisation of the birth process in Bulgarian hospitals that hinder its natural course. The excessively high share of caesarean births in Bulgaria, which according to unofficial statistics are estimated at 40% of all births – is proof of this. NGOs also point out that it is widespread practice in Bulgaria to not follow a medical model of care for pregnant women and women giving birth that is based on scientifically-proven sound medical practice. Thus, for example, a series of practices that the World Health Organisation (WHO) has labelled as ineffective and harmful238 are routine practices in Bulgaria (e.g. enema, }
shaving of the pubic hair, intravenous infusion during delivery, back-lying position, instructed pushing during the second phase of delivery). Practices that according to WHO are effective and should be promoted domestically are not widely available (following a birth plan prepared by the woman, taking into account her wishes to take in fluids, to choose a place for delivery, to be accompanied by a person of her choice, to have early mother-and-child body contact, and support for initiation of nursing within an hour after delivery).

On the other hand, hospitals and doctors exercise a monopoly over the childbearing process in Bulgaria since under law deliveries are conducted in hospitals and in the compulsory presence of a doctor. An obstetrician is therefore not allowed to follow a pregnancy and conduct a delivery irrespective of having practiced as an OB/GYN. Home births can only be carried out if the woman giving birth takes the risk to have an unassisted delivery, since obstetricians bear administrative and criminal responsibility for assisting births outside hospitals in case of non-emergency. Owing to all these factors, the right of the pregnant woman to exercise her free choice in choosing the circumstances of the birth of her child is restricted.

In addition, reports about abuse of medical personnel against women during delivery are a cause of concern. In an open letter from December 2014 to the minister of healthcare, the Rodilnitsa Association pointed out that after a social media campaign organized by them in November 2013, the association received 60 personal stories about physical and mental abuse committed by medical staff against women during delivery, in additional to scores of additional reports about similar experiences. At present, the Ministry of Healthcare had not responded to the letter and has not undertaken any measures to remedy the situation, including by conducting monitoring of the WHO criteria.

14. RIGHTS OF THE CHILD

Since the start of the deinstitutionalisation of Bulgaria’s childcare institutions the number of institutions is decreasing. Some 60% of the children and adolescents with disabilities and children over 3 years of age from institutions for medical and social care for children are being transferred to family-type environments. Nevertheless, the number of death cases remains excessively high – 111 in the period 2010-2014. The number of institutionalised children coming from the bottom of society has been on the increase during the last two years. Not one of the eight pilot institutions scheduled for closure were officially closed down during the year.

Postponed deinstitutionalisation

Since the beginning of the deinstitutionalisation of the childcare institutions in Bulgaria both the number of institutions and that of children in them have been decreasing. The closure of 137 institutions housing 5,695 children (the deinstitutionalization process) is a political project

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planned to end in 2025 with the closure of all childcare institutions across the country and their replacement with alternative services.

The process began with the *Childhood for All* project in mid-2010 with the ambition to first transfer the most vulnerable group of 1,797 children with disabilities from the institutions for children with developmental disabilities (ICDD) and children over three years of age from the institutions for medical and social care for children (IMSCC). Gradually, five projects were initiated by 2012 as part of the implementation of the Vision on the Deinstitutionalisation of the Children in the Republic of Bulgaria National Strategy. In 2010, it was planned that the children from ICDD and IMSCC would be transferred to 149 family-type (residential) accommodation centres (FTAC), 36 sheltered houses, one day care centre for children with disabilities and eight social rehabilitation and integration centres. All these facilities were to be built under the Childhood for All project in 81 municipalities nationwide with a total capacity of 2,076 places. The initial plan was to have all children transferred by the end of October 2014. The map of community-based services was updated in 2014: the construction of 160 FTAC, including 37 for healthy children, was planned.

At the start of the reform in 2010, the childcare institutions (IMSCC, ICDD and the third type of residential childcare institution – institutions for children deprived of parental care, ICDPC) were 137, with a total of 5,965 children living in them. By 31 December 2014, the total number of children and adolescents living in institutional care across 95 childcare institutions was 2,218.  
- **925 children** in 29 institutions for medical and social care for children (IMSCC);  
- **1,235 children and young people** in 47 institutions for children deprived of parental care (ICDPC). Nine of them house 196 children aged 3 to 7 years and 38 of these institutions house 1,039 children aged 7 to 18 years and 78 young people over 18;  
- **508 children and young people** in 19 institutions for children with disabilities (ICDD), of whom 181 children and 327 young people over 18.

**The difficult “return” of the most vulnerable**

For one-third of the children and young people from the target group of the Childhood for All project (children and young people with disabilities in ICDD and the only institution for children with physical disabilities (ICPD) and children aged over 3 years in IMSCC) who have “left” the institutions, the reform is actually a dead end. According to official statistics, between the start of the project on 1 June 2010 and 31 January 2015, the number of children and young people with disabilities placed in ICDD/ICPD and that of the children above 3 years in IMSCC has been reduced by 668.

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240 Information provided by SAPC to BHC on 27 January 2015 under a request for access to public information, ref. No. 14-00-1/12.01.2015; information provided to BHC by SAA, ref. No. 05-14 of 29.01.2015; information provided by the Ministry of Health on 5 February 2015 on request by BHC; database of the Childhood for All project.
241 1,130 children in 29 IMSCC at the end of 2013. Data provided to BHC by the Ministry of Health on 5 February 2014: “Number of children by 31 December 2014: ~ 925 in residential care, 50 prematurely born infants in special wards and 716 children from families using the services of the day care centres daily, hourly and weekly. No IMSCC were closed in 2014”.
242 1,492 in 51 ICDPC at the end of 2013. The following ICDPC were closed down in 2014: ICDPC in Popovo, ICDPC St. Ivan Rilski in Sofia and ICDPC Rada Kirkovich in Plovdiv. The ICDPC in Borovan was closed on 1 January 2015.
243 1,144 children and young people in 23 ICDD and 1 ICPD at the end of 2013. The quoted information is provided by SAPC on 27 January 2015 on BHC request for access to public information No. 14-00-1/12.01.2015. Two ICDD and one ICPD were closed in 2014: ICDD in Targovishte, the ICD in Kermen and the ICPD in Lukovit.
244 Source: SAPC, database of the Childhood for All project.
**Where did these children go?**

- **In a family environment:** 390 (almost 60%). Of them: adopted – 272 children; reintegrated into their biological families – 61 children (incl. 2 unsuccessful reintegrations where the children has to be returned to the institution); in foster care – 55 children; left because of coming of age – 2;
- **Transfer to another institution:** 88 (13.1%). Of these: to a social educational professional centre - 6 young people; to ICDPC - 38 children; to institutions for adults with developmental disabilities - 44 young people;
- **To residential community-based services:** 79. Of these: to other FTAC - 51 children; to sheltered houses - 22 young people; to transient homes - 6 children;
- **Death cases:** 111 (16.6%).

The analysis of these figures reveals that for 199 of the 668 children and young people that “left” the institutions, deinstitutionalisation did, in fact, not take place. According to the “black statistics” of deinstitutionalisation, for 1 out of 3 children (29.7%) the “exit” from the institution was either death or transfer to another institution. In four years of reforms, only 469 of the initial target group of 1,797 (26%, 1 out of 4) children in ICDD/ICPD and in IMSCC who had to leave the institutions as part of the Childhood for All project have really left them. By 5 February 2015, the number of children and young people of the initial target group who were planned to be placed in the new residential community-based services, but who are still living in the institutions was 602 (439 in 19 ICDD and 163 in 25 IMSCC).\(^{245}\)

**The “entrance” to the institutions remains open**

Despite the declining total number of children in institutions, the admission of new children did not stop in 2014,\(^{246}\) especially of newborn babies, some of whom with disabilities, and of children from families from the poorest strata of society, whose abandonment escalated in 2013 - 2014.

- **The share of the children with disabilities placed in IMSCC is growing:** according to the Ministry of Health, almost every second child who went through IMSCC in 2014 had a disability (the percentage of children with disabilities going through these institutions increased from 39.74% in 2013 to 45.18% in 2014).\(^{247}\)
- National Statistical Institute data show a 20% increase in 2013 of the new placements of children aged up to 1 year, including direct admissions from maternity wards.\(^{248}\) The share of babies admitted from maternity wards in 2014 was 37% (208 out of 561 new placements).\(^{249}\)
- **The escalation of placement of children from families from the poorest strata of society** is another alarming trend in the deinstitutionalisation process in 2014.

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\(^{245}\) Information provided to BHC by SACP on 27 January 2015 on access to information request No. 14-00-1/12.01.2015.  
\(^{246}\) 758 children have left the IMSCC (the starting point for the transfer from institution to institution, together with the maternity wards) in 2014 by new 561 were admitted. The information was provided to BHC on 5 February 2015 by the Ministry of Healthcare.  
\(^{247}\) Information provided to BHC on 5 February 2015 by the Ministry of Healthcare. According to the ministry, of the 925 children placed in 29 IMSCC, 604 or 65.2% were children with disabilities.  
\(^{248}\) According to the National Statistical Institute, 62.8% of the newly admitted children in IMSCC in 2012 were aged up to 1 year; in 2013, their share grew to 82.6%.  
\(^{249}\) Of the 925 children placed in IMSCC, 681 or 73.6% are aged up to 3 years.
If there has been any progress in the closure of the “entrance” and the opening of the “exit” of the IMSCC, it was achieved in the eight pilot institutions among all the 29 institutions for children aged 0 to 3 years: in Gabrovo, Montana, Pernik, Pazardzhik, Plovdiv, Targovishte, Ruse and St. Paraskeva in Sofia, which are being restructured within the Direction: Family project. At the start of the project in early 2012, there were 342 children in the pilot institutions. At the end of 2014, there were 66 children with disabilities and serious medical problems (36 aged over 3 years) who should be placed in specialised community-based centres built under the project. Out of 504 transferred children, 440 are being raised in a family environment. But despite the fact that the number of institutionalised children has dropped fivefold, due to administrative disputes between the Ministry of Healthcare and the Ministry of Labour and Social Policy, the transfer of all children from the pilot IMSCC and their transfer to a family or similar environment (foster care and family-type accommodation centres) is still pending. None of the eight pilot institutions has been closed officially. None of the new services, such as the family advisory centre, the foster care and adoption centre, replacing services of the family type for children with disabilities, has become operational. The lack of early intervention and prevention of abandonment remains the largest blank spot of deinstitutionalisation. There is no network of alternatives for adequate support to the parents of the most vulnerable groups of children: the babies with disabilities in the maternity wards.

To summarise, the number of children from the target group of the Childhood for All project who still remain in the institutions is still larger than the number of those who have actually left (602 vs. 469). Furthermore, today the children and the young people with disabilities in institutions (ICDD and IMSCC) are still almost 2.4 times more than those who were really transferred into new alternative services under the Childhood for All project (469 vs. 1,112 – 508 in ICDD and 604 in IMSCC).

**Children in shocking condition**

The problem is not only in the “postponed deinstitutionalization”, but also in the “postponed humanisation” of the environment in the institutions. In 2014, BHC also established deficiencies in the quality of care in some IMSCC. BHC researchers found children in shocking condition: no respiratory rehabilitation is carried out for bedridden children despite the fact that this is a proven prevention tool for hypostatic pneumonia, the number one cause of death among children in the institutions. The children with the most severe disabilities have significant psychomotor retardation, delayed growth in height and weight, adinamia, forced lying position accompanied by pressure injuries, deformations of the musculoskeletal system, joint contractures and muscle hypertrophy.

The existence of a clearly voiced agreement with a specific timeline for the closure of all institutions for medical and social care for children in line with the National Strategy and the National Plan is paramount. Currently, the reform of the IMSCC is delayed in comparison with the other components of the system. All institutions for children with disabilities are planned to be

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250 Based on data provided by SACP and Ministry of Healthcare, there were 508 children and young people with disabilities in ICDD (by 14 January 2015) and 604 in IMSCC (by 31 December 2014).

251 Several cases of medium and severe malnutrition were established, as well as injuries resulting from incidents (Kyustendil), uninvestigated death (Pleven), feeding from beer bottles, severe pressure injuries on head and body (Kardzhali), stereotypical movements (Buzovgrad). Staff show no understanding of children with stereotypical movements. Many children with disabilities (cerebral palsy, Down syndrome) who remain at the IMSCC after the age of 3 suffer from significant lags in their development ranging from 3 to 6 months due to bad rehabilitation carried out by unqualified staff.
closed under the Childhood for All project and if the entrance to the institutions via IMSCC is not closed, this would pose serious risks for the future of the deinstitutionalisation.

**Risk of reinstitutionalisation**

According to data provided by SACP, the transfer to institutions for adults is being reversed: only three young people from ICDD were transferred to a residential institution for adults with developmental disabilities in 2014. But a new form of replication of the institutionalization appeared in 2013 and 2014 - the return to the former institutions. According to data provided by the Social Assistance Agency, 22 children and young people who were transferred to alternatives (family-type accommodation centres and sheltered houses) in 2014 were returned to the institutions. The number of those returning increases if the unsuccessful examples of reintegration “at any cost” are added. BHC monitoring of 20 IMSCC in 2013 and 2014 showed that in the last four years children the bottom of society have returned up to three times to the children’s institutions due to reintegration “at any cost”. These are children suffering from serious illnesses who go back to their parents who have no funds and support from the state.

**Land of family-type accommodation centres**

Less than half of the planned FTACs were functioning at the end of 2014. The network of accompanying community-based services, day centres and social integration and rehabilitation centres, is not in place yet. In fact, in 2010, during the initial phase of the Childhood for All project, the Bulgarian government developed, together with the National Map of Community-Based Services, a map of accompanying services. In 2013, the latter was locked in a drawer and the hasty construction of FTACs began. The children transferred to the new FTACs, each with a capacity of 12 + 2 children, sometimes turn into “hollow” services that replicate the institutional model of care. Since 2010, the BHC is observing an alarming practice of having new community-based services established in buildings and courtyards of children’s institutions, mostly in smaller communities. Such practices are an travesty of deinstitutionalisation and provision of quality care.

In 2014, the placements in the new family-type accommodation centres and sheltered housings were aimed at filling their capacity to the maximum, without taking into account individual specifics of the children. The model and approach applied currently are wrong and contradict the rights and needs of the children and young people. For the deinstitutionalised children, the change sometimes ends at the entrance of the new institutions. The state does not track whether and how children’s quality of life has changed after the transfer into the new institutions. The

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252 At the beginning of 2015, there were 65 FTACs and 11 sheltered housings for children with disabilities out of the 123 FTACs planned in the National Map of Community-Based Social Services, as updated in 2014. Eighteen of the 37 planned FTAs for children and young people without disabilities were also functional. According to information provided by SACP, the construction of the new services should be completed by October 2015. See SACP announcement available at: [http://sacp.government.bg/proekti/proekta-podkrepa/novini/robotna-grupa-predlaga-profile-za-centrovete-za-nastanyavane/?preview](http://sacp.government.bg/proekti/proekta-podkrepa/novini/robotna-grupa-predlaga-profile-za-centrovete-za-nastanyavane/?preview) (accessed on 21 April 2015).

253 A hollow service is a formalistic service which does not guarantee social inclusion but rather extends the institutional stereotype of exclusion and provides care inconsistent with the deinstitutionalisation philosophy.

254 Examples of this are the two sheltered housings opened in the institution’s courtyard in the ICDD in the village of Gomotartsi, Vidin. Their clients do not leave the boundaries of the institution and in reality get the same institutional care. This is demonstrated by the clients’ stereotypical movements, the fact that they spend the day on benches in the institution courtyard, normally without being involved in any socialisation activities.
well-thought technology and methodology of children’s relocation is thus rendered meaningless. The approach used is not child-centred and contains alarming dehumanising elements. What is even more alarming is that this approach is justified with alleged requirements of the European Commission to accommodate according to capacity, which is simply not true.

**Nobody’s children**

Another risk to successful deinstitutionalisation was identified in 2014: refusal of placement. The severest cases involve children who need a change most urgently but may not get it and remain in the institutions in the long-term. According to the director of the IMSCC in Buzovgrad, Dr. Ivelina Panova, one child from the IMSCC in Buzovgrad was transferred to a FTAC in Plovdiv. The child stayed in the new service for only a few hours and was returned to the institution with the argument that: “the child has multiple disabilities and is not fit for us”. According to the director of the ICDD in Vidrare, Evgeni Dimitrov, the FTAC in Montana refused to accommodate a child with disabilities from the Vidrare institution, basing its decision on the child’s diagnosis and lack of staff capacity. According to an NGO monitoring the ICDD in Krushari, the mayor of Balchik, a resort on Bulgaria’s Black Sea coast, had reportedly said that “he didn’t want disabled children in his municipality as this would make the resort look less attractive”. “A thick file of letters from mayors who do not want children with disabilities in their municipalities was created” in 2014.255

**Deinstitutionalisation as an administrative revenge**

Despite the difficult return in the community of children with disabilities, instead of taking measures to optimise the process, the state decided to expand the initial target group that was supposed to be removed from the childcare institutions first - the children from institutions for children with disabilities and children over 3 years from the IMSCC - with healthy children from ISDPC. On 19 February 2014, by order of the executive director of MLSP Social Assistance Agency, the placement of children in five ICDPC256 was stopped. This marks the actual start of the expansion of the target group of children and young people with disabilities under the Childhood for All project with healthy children from ICDPC. By 31 May 2014, the head of the Support Project, Mihaïlina Dimitrova, announced that additional medical evaluations of some 200 boys and girls had been conducted and they were to be transferred from the social institutions.257 The closure of the first ICDPC since the start of the target group’s expansion, ICDPC in Borovan, took place on 1 January 2015. At this stage, the deinstitutionalisation began to resemble an act of administrative revenge whose final goal was the easier filling of new buildings.258

The decision to expand the target group by adding children and young people without disabilities (coming from ICDPC) contradicts the initial idea and purpose. Apart from occurring in an intransparent and unargumented manner, this approach poses a great risk that the children with

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255 Information provided to BHC by SACP experts.

256 See SAA executive director order, ref. No. 9103-17 of 19 February 2014.


severe disabilities will not be provided with quality care and will remain in their old institutions longer still. A balanced approach to the relocation of the children with disabilities should be sought, so as to meet the needs of all children. The European Commission’s understanding of the use of the new, smaller homes (FTACs and sheltered housing) is that if there are vacancies in the alternative services housing children from the institutions, the new buildings may be used for other purposes serving the social care system, such as day care centres or social rehabilitation centres, as long as social policy priorities are being achieved.\textsuperscript{259}

Some attempts in 2014 to replace the institutional model of care for the children in ICDCP were bogged down by inter-departmental wars accompanied by formalistic evaluations of the children to be transferred from the institutions and administrative chaos. According to directors of ICDCP and ICDD, FTAC managers and mayors are extremely active in bidding and hastily filling the new alternatives with healthy children coming from ICDPC. There are also other even more inadmissible practices, which make the administrative chaos and the lack of adequate decisions look like child’s play.

**The risk to those reaching the age of 17**

The half-baked expansion of the target group of the Childhood for All project poses a risk of long-term institutionalization of young people aged over 18 years in ICDD. In seven out of 24 ICDD in the country,\textsuperscript{260} the share of individuals over 18 years increased in 2013 to more than 70% of all residents, reaching its peak in the ICDD in the village of Gomotartsi, near the town of Vidin, where 84% of all residents are aged over 18 years. In this institution BHC established an alarmingly low level of care on multiple occasions. A mere “change of the label” from an institution for children with disabilities to one for adults was the model of “closure” of the ICDD in the villages of Dzhurkovo and Tri Kladentsi, for example. Concerns have been voiced that the institutions with the greatest concentration of young people aged over 17 years will also be re-labelled into residential institutions for adults.

**Foster care and adoption in Bulgaria: not for children with severe disabilities and children aged 7 to 18 years**

The number of foster families has increased fivefold compared to 2011 when there were 391. By 30 June 2014, the number of foster families has reached 2,160 with 2,178 children placed in them.\textsuperscript{261} The introduction of the professional foster care model and SAA \textit{I Have a Family Too} project\textsuperscript{262} were decisive for the progress. On a positive note, the focus in some regions is being

\textsuperscript{259} Recommendations of Coalition 2025 on the irreversibility of the deinstitutionalisation process presented to the minister of labour and social policy, 2014.

\textsuperscript{260} The following institutions for children with developmental disabilities in: village of Petrovo, near Sandanski; village of Ilakov Rut, near Veliko Tarnovo; village of Gomotartsi, near Vidin; village of Kula, near Vidin; town of Berkovitsa, near Montana; village of Medven, near Sliven.

\textsuperscript{261} Development of foster care in 2014, SAA website, \url{http://www.asp.government.bg/} (accessed on 21 April 2015).

\textsuperscript{262} Between the start of the \textit{I Have a Family Too} project in May 2012 and the end of November 2014, the foster care commissions had approved 1,158 foster families in 83 partner municipalities and 1,718 children had used the service. Of these, 883 children from the community were placed in foster families. Other 631 were transferred from specialised institutions, 204 from community-based services. See SAA announcement available at: \url{http://www.asp.government.bg/ASP_Cli}ent/Cli\textbackslash ntServlet?cmd=add_content&lng=1&sectid=8&s1=27&s2=1741&solid=1741 (accessed on 21 April 2015).
shifted towards placement in foster families of babies from directly maternity wards and of children with disabilities. But foster care turns to be a successful type of temporary care mostly for smaller children. Children aged 7 to 18 years, as well as those with severe disabilities, are not preferred by foster families. They have better chances to find an adoptive family abroad.

Despite the fact that the number of the adopted (mostly abroad) children with special needs has been growing since 2010, this exit is also difficult for children with severe disabilities, even in infant and early age. BHC visits in IMSCC in 2014 did not reveal a single case of adoption in Bulgaria of a child suffering from Down syndrome, severe cerebral palsy or facial malformations. According to information provided by the Ministry of Healthcare, a little over 80% of the children adopted in Bulgaria are healthy and aged under 3. The trend in foreign adoptions after 2010 is the opposite: almost 80% of all internationally adopted children are over 3 and almost all have a special need. The legislative changes were decisive for the increase in “little emigrants”. The Family Code was amended in 2009 by explicitly stating that if within 6 months the parents, without a valid reason, fail to ask that the placement be terminated and the child be returned to the family, the child may be given for adoption without their consent. The provision in Article 21 of Ordinance No. 13 of 30 September 2009 gave the start to the application of a special procedure on international adoptions, including keeping separate statistics on the adoption procedures of children with special needs. The largest group of children adopted under the special protection measures went to the United States. The peak was reached in 2013, when 76% of all international adoption procedures for the United States were under the special protection measures.

Serious illnesses are not the only barrier to the adoption of children from the institutions, however. There are also subjective reasons, such as delayed listing and procedural delays.

In the adoption lists ... at 16

By 29 August 2014, the Ministry of Justice’s official registry of special adoption measures for children with health problems, special needs or aged over 7 years included the profiles of 1,165 children. Many of them did not make it to the registry before reaching the age of 12 or 13 years, in some cases after turn 16 or even months away from turning 18, when they stand no chance to find a family. For example, out of 47 children’s profiles published on the Ministry of Justice’s website, 18 (40%) are of children aged above 12 years, three of them being over 15 years (two girls, one aged 17 years and 4 months, the other one 16 years and 9 months, and one by aged 15 years and 3 months).

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263 This practice is encouraged mainly by the NGO sector: Sauchastie Association, Varna; Public Support Centre of the Zhaneta Association, Razgrad.
264 There are isolated cases of children with severe cerebral palsy being raised by foster families. The Association of the Parents of Children Suffering from Down syndrome reported only one known case of a foster mother from a town in southern Bulgaria raising a child with Down syndrome.
265 Based on Ministry of Health data for 2013. 544 children from IMSCC were adopted in 2013. Of these, 395 were adopted in Bulgaria, of whom 325 (82%) were healthy children under 3 years. Of the 149 adopted children, 113 (76%) were aged over 3 years and almost all (109 children) had a recognised illness. More than 60% of the international adoptions in the past seven years have occurred in the period 2011-2013. Italy, USA and France are the three countries in which over 70% of all internationally adopted Bulgarian children find a family.
266 Nevertheless, the children with specific health needs and those of greater age adopted abroad were by 18 less that in in 2013. A decrease by 139 was also observed with regard to the domestic adoptions in 2013.
267 See https://mjs.bg/83/, updated on 29 August 2014, accessed on 4 September 2014.
In some cases, the listing in the adoption registries has been delayed greatly. BHC established several specific cases in which the inscription in the adoption registry of two boys with severe health problems was delayed by eight years by the Regional Social Assistance Directorate in Stara Zagora. At the time of the monitoring, the children were 12 years old. A case in which the listing of a 6-year-old orphaned boy with severe special needs was delayed by two years was established in the Regional Social Assistance Directorate in Sofia. Much more investments are needed in abandonment prevention services and foster care which are key to the provision of adequate support to the children and families at risk and to close the “entrance” to the system.

15. RIGHTS OF LGBTI PEOPLE

The lesbian, gay, bisexual, transgender and intersex people (LGBTI) in Bulgaria face social and legal challenges and discrimination, not experienced by the heterosexual and cisgender residents.

Equality and non-discrimination

In 2014, LGBTI people continued to be treated less favourably in legislative terms in comparison with the people not belonging to these groups, as well as with other minority communities.

In October, the European Union Agency for Fundamental Rights (FRA) presented an analytical version of the results from a large-scale study of the situation of LGBTI people in the European Union. A detailed analysis of the data concerning specifically the transgender people in the EU member states was presented in December.

Sexual orientation, gender identity and gender expression are still not included in Article 6 of the Constitution of the Republic of Bulgaria, which proclaims equality before the law on the basis of race, nationality, ethnic origin, gender, origin, religion, education, convictions, political affiliation, personal and social status and wealth.

Consensual same-sex acts, when not performed in public, are decriminalized by the adoption of the current Criminal Code in 1968. However, the law still contains aggravated circumstances which divide the criminal sexual acts into regular (undefined) and performed “with a person of the same sex” (Article 155, para. 4; Article 157, paras. 1, 3 and 4). The statutes in Article 149 and Article 150, referring to sexual molestation in its two forms, with a person under the age of 14

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269 Cissexual or cisgender: a term denoting all people who are not transgender or transsexual. For example, it may refer to someone who was born with female sexual attributes, feels like a woman and self-identifies as a woman.


and with a person over the age of 14, are an example of non-discriminating attitude. Here, the gender of the perpetrator and the victim of the crime are not important: it can be the same or different. In 2002, the age of statutory consent to sexual acts was made the same for both heterosexual and homosexual acts.

In January 2014, the Ministry of Justice tabled in parliament a new draft Criminal Code. Articles 165 through 168 of the draft reproduced the vicious and discriminating separation of criminal sexual abuse of a person “of the same sex”, with the names of the criminal statues even containing the definition “homosexual” (act). The “homosexual act”, however, lacks the aggravated circumstances of the rape under Article 163, para. 2, 3 and 4, the latter presumably existing only with regard to heterosexual acts. Thus, in the case of a group “homosexual act” involving violence inflicted by two or more persons, the maximum sentence under Article 166 is eight years of imprisonment, while in the case of a “regular” (heterosexual) rape the maximum sentence is fifteen years. The draft’s Article 157, entitled “Sexual molestation”, does not correct this inequality as it foresees up to ten years imprisonment. The difference is even greater with regard to rape that has caused great bodily harm. The draft reproduces the vicious doctrine, according to which rape is understood only as involuntary penal-vaginal penetration, which is treated differently than other types of sexual coerce. Thus, the punishment for raping an underage person of the same sex is significantly lower than the corresponding act of raping a person of the opposite sex. Such an approach does not recognise the possibility of using the rape as a specific form of violence victimising the group to which the victim belongs and the victim per se, and not due to aspiration to sexual satisfaction. Such are the cases when one is being raped on the basis of protected characteristic, for example, a man or woman being raped because of their sexual orientation, gender identity or gender expression, or because of their religion, etc.

Sexual orientation is a protected characteristic under the Protection against Discrimination Act (PADA, Article 4, para. 1). Gender identity and gender expression, however, are not included among the characteristics under Article 4 of PADA. In December 2014, in relation to the transposition in national law of Directive 2006/54/EC of the European Parliament and the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), a bill amending and supplementing PADA was tabled in parliament for the second time. It had not been reviewed by the previous 42nd National Assembly. The draft foresees in §1 of its Additional provisions the creation of a new item 7: “With regard to Article 4, para. 1 the characteristic of sex shall also include the cases of sex change”. However, the bill does not provide a definition of sex change, leaving room for interpretation that this provision only protects post-operative transsexual people. Thus, both pre-operative transsexual people and persons not feeling that they belong to any specific gender (genderqueer) may be deprived of protection. The draft was not reviewed by parliament in the scope of the monitored period.

Private and family life

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273 See Decision No. 77 of 18 February 1981 on criminal case No. 26/81, I penal division of the Supreme Court.
275 The statute of the crime under Art. 163, para. 1, entitled “Rape”, begins with the following phrase: “Whoever has an intercourse with a female person...”. 
Bulgarian legislation still does not recognise any form of same-sex family. Both the *Constitution* (Article 46, para. 1) and the *Family Code of the Republic of Bulgaria* (Article 5) define marriage as a voluntary union between a man and woman. The political parties have no position on this issue and an active public debate does not exist.

There are no legal provisions on cohabitation. There are more than 50 legal provisions regulating different rights, obligations, responsibilities or restrictions for married couples, of which same-sex cohabiting couples are *de facto* deprived. Unlike the non-marital heterosexual couples, same-sex couples do not have the opportunity to enter into any legally recognised union, which puts them in an unequal position.

Same-sex marriages concluded under the law of a foreign country should be recognised by the Republic of Bulgaria (Articles 75, 76 and 77 of the *Private International Law Code*).

No form of adoption by a second person of a sex identical to that of the parent of the child has been legalised.

The artificial insemination (in vitro) procedure is available to single mothers.

There is no legal obstacle to the marriages of post-operative transsexual people with persons of the opposite sex.

**Hate crime and hate speech**

The current *Criminal Code* does not contain penal measures for hate crime or hate speech based on sexual orientation, gender identity or gender expression. These characteristics are not considered aggravating circumstances in the penal process. Hate speech based on sexual orientation may be punished under the administrative or the civil law proceedings of the PADA.

**Legal recognition of gender**

Transsexual and intersex people need a statutory procedure on changing legal gender (i.e., the gender indicated in official documents).

Bulgarian legislation recognises the right of a person to change their legal gender (Article 9, para. 1 of the *Bulgarian Identity Documents Act*). However, there is no statutory procedure for such a change, nor medical standards or protocols on sex reassignment. The change may occur if the person submits an application to the district court, with the court panel adopting an *ad hoc* procedure. The documents required by the court, as well as the scope of the decision if the latter is in favour of the person asking to change their legal gender, are evaluated by every panel separately. The case law is controversial and penalises citizens. For the same reason there is

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also controversial case law on the obligation to have surgical intervention before changing legal gender.\textsuperscript{278}

There are no legislative provisions on intersex people. No medical standards or protocols on the intersex people were found during the study for the purposes of this report, including such guaranteeing that genital cosmetic surgery would not be carried out at an early stage.

**Freedom of association and freedom of expression**

The LGBTI community in Bulgaria generally enjoys broad freedom of association and freedom of expression. In 2014, there were at least five non-governmental organisations focused on the LGBTI community whose activities were publicly visible: Bilitis Resource Centre Foundation, GLAS Foundation, Crocus Foundation, Deystvie Youth Association and LGBT Plovdiv Association.\textsuperscript{279}

On 17 May, the International Day against Homophobia and Transphobia (IDAHO), Bilitis Resource Centre Foundation and BHC organised a discussion on the issues of LGBTI voters. Seven of the parties registered for the European parliament elections were invited to take part in the event. On this occasion the ultranationalist Ataka party informed the Central Electoral Committee (CEC) that illegal campaigning is being carried out on the day of the elections. CEC dismissed the complaint.\textsuperscript{280}

The LGBTI community organised a number of cultural initiatives during the year, including the second edition of the Sofia Queer Forum (29 May – 5 July in Sofia)\textsuperscript{281} and the tenth LGBT Art Fest (1 – 5 December in Sofia).\textsuperscript{282}

The seventh consecutive Sofia Pride was held in 2014. The date announced initially by the organisers was 21 June. In connection with the rally, the Municipality of Sofia sent the organisers an approved route different than the one requested initially, much shorter and restricted. An exhibition planned for a downtown pedestrian street was also moved by another coordination letter: instead of having it for seven days on a central boulevard, the instruction was to hold it within three hours in the enclosed space of the pride’s starting point. The organisers appealed the two coordination letters before the Sofia City Administrative Court (SCAC), but the court rejected the complaints because under the Meetings, Rallies and Manifestations Act the organiser of an event may only contest the prohibition but not the change of venue and the duration.\textsuperscript{283}

Despite these circumstances, the organisers of the Sofia Pride postponed the rally because of the

\textsuperscript{278} Compare, for example, Decision No. 1835 of 11 June 2007 on civil case No. 1953/2007 of the Varna Area Court and Decision No. 1126 of 6 April 2010 on civil case No. 10044/2009 of the same court.

\textsuperscript{279} Based on information from the electronic version of the central registry of non-profit entities in public benefit (accessed on 27 January 2015).


\textsuperscript{281} See the event website: http://www.xaspel.net/queer/bg/ (accessed on 21 April 2015).

\textsuperscript{282} See the agenda of the 10\textsuperscript{th} LGBTI Art Fest at: http://www.bilitis.org/news/1/145/ (accessed on 21 April 2015).

\textsuperscript{283} See ruling No. 3148/2014 on administrative case No. 5913/2014 of SCAC and ruling No. 3149/2014 on administrative case No. 5918/2014 of SCAC.
tragedy in Varna and the region caused by heavy rain and windstorm.\textsuperscript{284} The Sofia Pride was successfully held on 5 July.\textsuperscript{285}

Despite the change of date, the already announced anti-pride rally took place on 21 June under the motto “Ah, Europe! Whore of Babylon, slut of Sodom!” and was attended by representatives of Ataka and VMRO-BND ultranationalist parties and the Bulgarian branch of the informal neo-Nazi organization “Blood and Honour”.\textsuperscript{286}

On the day of the pride supporters of the Ataka nationalist populist party gathered around the monument of the national hero Vasil Levski in Sofia to “protect” it, in their own words, from being “desecrated” by the Sofia Pride march. Ataka followers shouted “Ubi, ubi, ubi peder!”; a homophobic slogan calling for physical elimination of gay people, used by Serbian football hooligans.\textsuperscript{287}

2014 was not devoid of legislative challenges to the exercise of the freedom of free peaceful assembly and association of the LGBTI people. In January, parliament rejected at first plenary reading the Bill Amending and Supplementing the Criminal Code tabled by the Ataka party. The bill envisioned one to five years imprisonment and a fine from EUR 2,500 to EUR 5,000 for “[w]hoever manifests publicly their or others’ homosexual orientation or affiliation, by organising or taking part in rallies, processions and parades or through the mass media and internet.”\textsuperscript{288} In February, Ataka tabled in parliament a bill amending and supplementing the Meetings, Rallies and Manifestations Act, which contained a similar prohibition.\textsuperscript{289} The bill was not reviewed by the 42\textsuperscript{nd} National Assembly until the end of its term. Nevertheless, Ataka re-tabled its proposal on amending and supplementing the Criminal Code on the first working day of the 43\textsuperscript{rd} National Assembly.\textsuperscript{290} The bill had not been reviewed during the reporting period.

In October, seven municipal councillors from Burgas, all of them affiliated with the ultranationalist National Front for the Salvation of Bulgaria (NFSB) political party, tabled a memo (draft bill) in the Burgas Municipal Council proposing an addendum to the Ordinance on the Preservation of Public Order in the Municipality of Burgas. According to it, Article 3, para. 6, which stipulated: “Actions which violate the moral norms of behaviour in public places shall be prohibited”, was proposed

\begin{itemize}
\item \textsuperscript{287} For the position of the 2014 Sofia Pride organising committee, see: \url{http://sofiapride.org/?p=1875} (accessed on 21 April 2015); the article “Ataka sympathisers and members have blocked the Vasil Levski monument in downtown Sofia to prevent its desecration by the participants in the gay parade”, Ataka daily, 5 July 2014, available at: \url{http://www.vestnikatoka.bg/?p=58966} (accessed on 21 April 2015); see also “Ataka followers protect the Apostle’s monument from the sodomist rally”, 5 July 2014, available at: \url{http://www.atakatv.com/video/atakiisti-zashtitha-pametnika-na-apostola-ot-sodomistskoto-eshhtvstie-r-c5962.html} (accessed on 21 April 2015).
\item \textsuperscript{289} Bill No. 454-01-12/05.02.2014, available at: \url{http://www.parliament.bg/bg/bills/ID/14768/} (accessed on 21 April 2015).
\end{itemize}
to be supplemented by the following text: “including public manifestations, showing and demonstration in any way (billboa
erds, posters, parades, etc.) of sexual orientation different than the heterosexual.” The proposal was rejected by the Municipal Council later during the month.  

Access to justice

In 2014, LGBT activist Radoslav Stoyanov filed a lawsuit against Bulgaria with ECtHR for violations of Article 3, Article 8 and Article 4 in conjunction with Articles 3, 8 and 13 of the European Convention on Human Rights. The application was filed with regard to the refusal of the Bulgarian prosecution to provide the applicant access to the proceedings against father Evgeni Yanakiev from the St. Dimitar Church in Sliven, which were finally terminated in 2013. In the summer of 2012, the priest publicly called “everyone who feels a Christian and a Bulgarian to oppose in every way to the pending gay parade”, saying that to throw stones at the participants in the march would be “a viable option”, and that the state bodies responsible for allowing the march should “be dressed in concrete pants and thrown in the deepest place in the sea”. The initiated pre-trial proceedings were subsequently terminated. The applicant was refused a copy of the decree as he was not recognised as a victim under Article 74 of the Criminal Proceedings Code. The practice of not recognising the victims of “formal” crimes affects disproportionately the people from the minorities because they are the victims of criminal hate speech.

The trial for the murder of Mihail Stoyanov continued during the year. The proceedings were not completed by year’s end. During the trial it became clear that an eyewitness of the murder who was part of the gang which had attacked Stoyanov had not been interrogated during the pre-trial proceedings and is currently in the United States, and therefore needs to be interrogated by delegation.

In December, the Sofia District Prosecutor’s Office refused to initiate criminal proceedings on a complaint against the website of the “Anti-gay parade” rally in Facebook. Many calls for violence and threats against the 2014 Sofia Pride and its participants were published on this Facebook event. A prosecutor form the SDPO pointed out that the comments were deleted in the period between the submission of the complaint and law enforcement bodies’ attempt to get acquainted with them.

295 Ruling No. 3708 of 2013 on private criminal case No. 5247/2013 of the Sofia City Court.
298 Decree of 23 December 2014 refusing to initiate criminal proceedings on file No. 28988/14 of SDPO.
Institutions, organisations and human rights activists

The interaction between the institutions and the LGBT community and its non-governmental organisations and advocates remained weak and formalistic in 2014. Although the Sofia Pride organisers had invited all political parties and relevant institutions, including the mayor of Sofia, to attend or support the event through an official position, no official representative of a parliamentary represented political party or of an institution supported openly and publicly the Sofia Pride or attended the march or the accompanying events. The event was officially supported by 11 embassies, the political parties of the Greens and the Bulgarian Left, which are not represented in parliament, the Dutch Workers’ Party, the Association of Families of Lesbians and Gay Men from Catalonia (FLG), as well as US actor and singer Jared Leto.

Media visibility

The media visibility of the LGBTI community continued to be low and mostly negative or stereotypical. This year the media once again did not communicate clearly the objectives of the Sofia Pride and the event organisers did not receive a wide media platform to express their positions. Many media still placed LGBTI activists in debates in which their opponents were representatives of ultranationalist or extreme right formal and informal groups.

WOULD YOU LIKE TO HELP?

NGOs frequently work on restricted budgets. This is why we need your support to help us continue our work with the most marginalized groups in Bulgarian society. This support will help us build a better world.

WHAT CAN YOU DO?

Activists from around the world have demonstrated that resistance against those that undermine human rights is possible. Be a part of that movement. Help us fight the acts that breed fear and hatred. You can do this by becoming a

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