HUMAN RIGHTS IN BULGARIA IN 2015

Annual report of the Bulgarian Helsinki Committee

April 2016
The Bulgarian Helsinki Committee is an independent non-governmental organisation for the protection of human rights. It was founded on 14 July 1992.

This report was produced with the support of the Open Society Institute – Budapest and the Oak Foundation.

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Sofia, April 2016

The report can be freely quoted upon acknowledgement of the source.

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Materials provided by the Access to Information Programme and the Rodilnitsa Association were used in drafting the report.

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1. Political developments in Bulgaria in 2015 and cooperation with international and local human rights organisations

Throughout 2015, Bulgaria was governed by the coalition government of the Citizens for European Development of Bulgaria (GERB), the political party which got most of the votes in the October 2014 elections, the Reformist Block (RB), comprised of several small centre-right parties, the Alternative for Bulgarian Renaissance (ABV), a small spin-off of the Bulgarian Socialist Party (BSP), and the Patriotic Front (PF), a coalition of several parties with a more prominent role for two ultranationalist neo-totalitarian entities, the National Front for the Salvation of Bulgaria (NFSB) and the Internal Macedonian Revolutionary Organization – Bulgarian National Movement (VMRO – BND). PF entered the parliament with a manifesto and political rhetoric dominated by racist, xenophobic and Islamophobic messages, which it maintained throughout the year. The Front pressured for the adoption of restrictive legislative and administrative measures in many areas, more specifically the policy on minorities and the migration policy. The presence of a manifestly neo-totalitarian entity in Bulgarian government had a negative effect on the overall human rights situation in 2015. On the other hand, another neo-totalitarian political party, Ataka, remained in opposition but parliamentary represented. In its public events and through its television channel, Alpha, it instigated hatred and discrimination of ethnic and religious minorities, migrants, people of different sexual orientation and neighbouring countries.

Bulgaria’s cooperation with the international human rights organisations, and especially with some Council of Europe’s bodies, posed a serious problem

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in 2015. On 26 March 2015, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) made a public statement in relation to Bulgaria for the first time in the history of the country’s cooperation with this body.\(^2\) This was CPT’s first statement on Bulgaria that explicitly declared the lack of cooperation for the implementation of its recommendations over the past years. By January 2016, the outstanding judgements of the European Court of Human Rights (ECHR) totalled 295. While this marks a reduction over the previous year, it remains amongst the highest per capita among the Council of Europe member states. Some outstanding judgements pending review by the Committee of Ministers of the Council of Europe date as far back as the year 2000.

The UN Human Rights Council held its Universal Periodic Review of Bulgaria on May 7 in Geneva. The member states formulated 182 recommendations in the course of the review. Some of these were trivial but many referred to serious human rights problems in the country, including: initiation of measures to combat discrimination and racial violence against the Roma; initiation of measures to combat racist, xenophobic and homophobic hate speech; improving the counteraction to hate crimes based on race, ethnic origin, religion and sexual orientation; introduction of legislative changes to classify torture as a specific crime; initiation of measures to combat the ill-treatment of detainees by law enforcement officers; improving the conditions in detention facilities; adoption of a special law on gender equality, as well as measures to combat discrimination, human trafficking and domestic violence against women; amending legislation prohibiting minorities to use their mother tongue in exercising their political rights.\(^3\)

In response, the Bulgarian government accepted most of the conclusions and recommendations. However, some of its accompanying notes render this formal acceptance meaningless. For example, the government pointed out that there are no “national minorities” in Bulgaria; that the legislation provides Roma with equal access to education, housing and employment; that “all hate crimes are persecuted by the state with its full capacity”; that the Bulgarian system provides complete protection to hate crime victims; that the Bulgarian state has already initiated adequate policies for further integration of Roma in

\(^2\) For more details, see Right to life, protection against torture, inhuman and degrading treatment.

the areas of healthcare, social care, education, housing and employment. The
government explicitly refused to accept the recommendation of the Republic
of Macedonia to “ensure that no disadvantage shall result for citizens from
the exercise of their right to identify themselves as belonging to any ethnic
minority group”. It also refused to accept, among others, the recommenda-
tion of the Russian Federation to cease to finance political parties preaching
racism; the recommendation of the Republic of Macedonia to ensure that no
impediments are created to the preservation, expression, and development of
the cultural identity by all citizens (implying the Macedonian minority); Tur-
key’s recommendation to change the legislation banning ethnic minorities
from using their mother tongue when exercising their political rights (imply-
ing the Turkish minority).4

The cooperation of the Bulgarian institutions with local human rights or-
ganisations varied. The institution with the best track record in this field
was the Ministry of Justice. It actively involved civil society representatives
in various working groups, subjected its activities to public scrutiny, provided
the information requested and enhanced the monitoring of the detention fa-
cilities under its supervision. There were other institutions, however, which
worsened their cooperation with local human rights organisations, in a dras-
tic and unprecedented manner. The Ministry of Healthcare and the Ministry
of Labour and Social Policy refused to sign agreements with BHC for human
rights monitoring of their closed institutions. The prosecution in turn refused
to provide BHC any information about ongoing investigations, contrary to its
routine practice from the past 25 years.

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Bulgaria-addendum, A/HRC/30/10/Add.1, 2 September 2015.
2. Right to life, protection against torture, inhuman and degrading treatment

On January 27, the European Court of Human Rights delivered a pilot judgment in the case of Neshkov and Others v. Bulgaria. The pilot procedure referred to the living conditions at several Bulgarian prisons. The applicants, five inmates serving their sentences in different prisons, claimed that the combination of overcrowding, bad hygiene and inadequate access to medical care had turned their detention into inhuman and degrading treatment in violation of Article 3 of the European Convention on Human Rights. The Court agreed with them and held that such a violation had indeed taken place in all prisons in which the applicants were serving their sentences. In addition, the Court held that the applicants did not have an effective domestic remedy under Article 13 of the Convention, as the existing mechanism under the Responsibility of the State and the Municipalities for Damages Act allows inmates to only receive compensation for damages but only if they have managed to prove that the actions of the competent authorities were unlawful under national legislation. Therefore, when reviewing the cases, the domestic courts refuse to evaluate the conditions of detention in line with international standards, which prohibit inhuman and degrading treatment. The Court also noted that the Bulgarian legislation lacks an effective prevention mechanism that would allow inmates to request transfer to conditions, which are not inhuman and degrading. Initiating the pilot procedure, ECtHR noted that since 2004 it had found a breach of Article 3 of the Convention on account of poor conditions in detention facilities in 25 cases, and that some 40 complaints against Bulgaria

5 ECtHR, Neshkov and Others v. Bulgaria, Nos. 36925/10, 21487/12, 72893/12, 73196/12, 77718/12 and 9717/13, judgment of 27 January 2015.
with a similar subject were still pending. With regard to the violation of Article 3, the Court abstained from specifying measures and timeframes that Bulgaria should adopt to make the situation at the detention facilities consistent with the Convention’s standards. It declared that this could happen either by an overhaul of the existing prisons or by the construction of new ones. With regard to the violation of Article 13, however, it specified a deadline: 18 months from the entry of the judgement in force, within which Bulgaria should initiate legislative changes to introduce an effective prevention and compensation remedy against inhuman and degrading conditions of detention. BHC took part in the proceedings on this pilot case by submitting a third-party submission and providing legal assistance to one of the applicants.

On 26 March 2015, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT, the Committee) made a public statement concerning Bulgaria. It was the seventh public statement in CPT’s post-1989 history and the first in relation to Bulgaria. The public statement was made as, according to the Committee, the findings and the recommendations in its reports had either been ignored or met with denial, and because “very little progress, if any” had been made in implementing the CPT recommendations in the past years. The public statement focused on two issues: ill-treatment of detainees by police officers and the living conditions in prisons and investigation detention facilities run by the Ministry of Justice.

With regard to the first issue, CPT found that over the past two years the CPT delegations had received a significant number of allegations by inmates of deliberate physical ill-treatment by police officers, including slaps, kicks and truncheon blows. Bulgaria has not implemented the recommendations related to the legal guarantees against ill-treatment, more specifically on access to a lawyer during the first 24 hours of detention, which “remained an exception”. The recording of detainee injuries continued to be ignored and the medical screening prior to the admission to the investigation detention facilities are “extremely precursory” and are performed in the presence of police officers, with detainees usually being handcuffed. CPT once again recommended that “resolute action is required to ensure the practical and meaningful operation of fundamental safeguards against ill-treatment”.

With regard to the second issue, CPT found extremely poor living conditions in the prisons in Varna, Burgas and Sofia, including overcrowding (less than...
2m2 of living space per inmate), dilapidation, poor hygiene, lack of activities and inadequate access to medical care. CPT also found an “alarming situation” with regard to the physical ill-treatment of inmates by prison staff, especially in the prisons of Sofia and Burgas, as well as a serious problem with inter-prisoner violence. The Committee also highlighted the issue of corruption, which it considers “endemic in the Bulgarian prison system”, bringing in its wake “discrimination, insecurity, violence and, ultimately, a loss of respect for authority”.

On 12 November 2015, CPT published another report on Bulgaria following its February 2015 visit (i.e. prior to the public statement). The Committee found an increase in the physical ill-treatment of persons detained by the police at the visited police precincts in Sofia and Burgas. It also found an “ever-worsening” situation with regard to the ill-treatment of detainees by custodial staff at the investigation detention facility in Sofia and at the Sofia Central Prison. At the other prisons visited, in Varna and Burgas, the Committee described many specific cases of violence against inmates by prison staff. Apart from the ill-treatment, CPT also found deplorable material conditions at the prisons in Varna, Burgas and Sofia. As to the access to, and the quality of, healthcare at the three prisons and the Sofia investigation detention facility, the Committee pointed out that they were “ever-worsening”.

The CPT public statement and ECtHR pilot decision prompted the Ministry of Justice to establish a working group to propose amendments to the Execution of Punishments and Detention on Remand Act. The working group elaborated a draft, which however had not been tabled in parliament by year’s end. The ministry also initiated some repairs and construction works at several prisons. The Ministry of Interior, however, had no meaningful reaction to the findings and recommendations addressed to it in the CPT public statement.

In May and June 2015, the BHC carried out a large-scale survey among 1,691 inmates from all Bulgarian prisons whose pre-trial proceedings had been initiated after January 2014. Establishing the scale of the use of physical force by custodial staff against inmates at the time of apprehension and subsequent detention was one of the survey’s main objectives. At the same time, the survey aimed to establish the dependence between the use of force by police

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7 CPT, Report to the Bulgarian Government on the visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 20 February 2015, CPT/Inf (2015) 36, Strasbourg, 12 November 2015.

8 See Conditions in places of detention.
officers and the access to legal protection, ethnic origin, sex, age, the severity of the charges and the place where sentence was being served. Only convicted inmates were interviewed.9

According to the survey findings, 32.8% or one-third of all interviewed inmates who have been arrested declared that force had been used against them either at the time of apprehension or inside the police. Those claiming use of physical force inside the police (21.8% of the detained individuals) are more than the ones declaring use of force at the time of arrest (15.5% of the apprehended persons). The number of inmates claiming use of physical force at investigation detention facilities is significantly lower (4.3% of the detained individuals). Most cases involve use of force against the same person both at the time of arrest and inside the police. Male detainees inform about use of force to a greater extent than female detainees. Juvenile detainees report greater use of force compared to adults. Overall, there is a clear dependency between the use of physical force and the age, with a greater probability for younger detainees being subjected to violence both at the time of arrest and inside the police. The share of Roma who report being victims of physical violence is by some 10% higher than that of the Bulgarians and by some 11% higher than that of the Turks.

The survey established a clear dependence between the access to legal assistance during the pre-trial proceedings and the use of force by police officers. Overall, 34% of the interviewed report that their access to legal assistance had been restricted or completely absent during the pre-trial proceedings. Of these, 6.1% claim that they had not had a lawyer the entire time. Inmates who have had no lawyer and were subjected to physical violence were by 13.3% more than those who were subjected to physical violence but had a lawyer. This indicates that although the access to legal assistance is paramount to the protection against physical violence, it does not per se provide an absolute guarantee against police brutality.

Apart from Neshkov and Others v. Bulgaria, in 2015 ECtHR found violations of Article 2 and Article 3 of the European Convention on Human Rights (ECHR) in a number of other cases. These include Mihaylova and Malinova v. Bulgaria of 24 February 2015 (violation of Article 2 in the case of a Romami man shot dead by police officers); S. Z. v. Bulgaria of 3 March 2015 (violation of Article 3 in

9 For more details on the survey methodology and results, see BHC, Use of Force by Law Enforcement Officers against Detained Persons during Police Apprehension and Pre-Trial Proceedings (in Bulgarian), Sofia, 2015, available at: www.bghelsinki.org.
the case of excessive delays in the investigation of the trafficking of a young woman); **Halil Adem Hasan v. Bulgaria** of 10 March 2015 (violation of Article 13 and Article 13 in conjunction with the “special regime” of an inmate serving a life sentence); **Petkov and Parnarov v. Bulgaria** of 19 May 2015 (violation of Article 3 with regard to the beating of two young men by police officers); **Stoykov v. Bulgaria** of 6 October 2015 (violation of Article 3 on account of the ill-treatment of a detainee by the police); **Simeonovi v. Bulgaria** of 20 October 2015 (violation of Article 3 on account of deplorable material conditions of detention); **Mulini v. Bulgaria** of 20 October 2015 (violation of Article 2 on account of failure to discover the perpetrator of a murder); **Myumyun v. Bulgaria** of 3 November 2015 (violation of Article 3 for the battery of the applicant by police officers); **Slavov and Others v. Bulgaria** of 10 November 2015 (violation of Article 3 on account of excessive isolation and deplorable material conditions of an inmate); **Dimitrov and Ribov v. Bulgaria** of 17 November 2015 (violation of Article 3 on account of excessive isolation and deplorable material conditions of inmates).
In 2015, the government initiated some, albeit half-hearted, measures to solve some of the issues in the field of the right to liberty and security of person, which gave the European Court of Human Rights grounds to issue judgements against Bulgaria in several cases. On the other hand, some retrograde legislative amendments created additional problems. No reform was undertaken with regard to some outstanding issues.

The procedure for placement in social institutions of persons with mental disorders under guardianship was changed in late 2015 – early 2016 with the introduction of amendments to the \textit{Social Assistance Act}. Under the new procedure, upon the submission of a request in writing and of an opinion by the guardian, the Social Assistance Directorate (SAD) may temporarily place the person by an administrative act, until a court ruling is handed down. In other words, judicial review has been introduced, which is a positive development. The judicial placement request must be filed with the district court within one month of the date of the administrative placement by the SAD. However, this deadline is too long to meet the requirement of Article 5(4) of the \textit{Convention} concerning a prompt judicial review of the detention. The introduction of a three-year maximum duration of stay was yet another change. Still, it was rendered meaningless by the possibility for unlimited extension when homecare or resident social services are not an option. Also, the three-year deadline is too long to meet the periodic judicial review requirement of Article 5(4) of the \textit{Convention}. The changes to the placement procedure affect only the persons declared completely incapacitated; individuals placed under partial incapacitation are not mentioned.

3. Right to liberty and security of person
In February 2015, the National Assembly adopted amendments to the *Ministry of Interior Act* (Article 95a), reinstating the powers of the Ministry of Interior (MoI) to detain “vagrants or beggars” for a period of up to 30 days at facilities for temporary placement of adults. The detention is aimed at the subsequent placement of such persons in hospitals and institutions or at having them declared incapacitated. Placement is carried out through an administrative procedure, only with the permission of a prosecutor. The detainees are not allowed to contest the detention in court. Such statutes, rooted in the activity of the militia during the communist regime, create prerequisites for severe violations of Article 5(1) and Article 5(4) of the *Convention*. In December 2015, the Prosecutor General requested the Constitutional Court to declare them contradictory to provisions of the *Convention* and the International Covenant on Civil and Political Rights. The ruling is pending.

In 2015, the institutional placement procedures under the *Juvenile Delinquency Act* posed a serious problem with respect to the right to liberty and security of person. This act allows juveniles to be placed in social and pedagogical boarding schools (SBS) and correctional boarding schools (CBS) on unclear grounds: the commitment of “anti-social acts” which are different from crimes. The meaning of this term is interpreted differently by the courts and the local commissions for combating juvenile delinquency. Most often, such acts include running away from home, truancy, escape from an institution, conflicts with other children, vagrancy. All these acts are not subject to penalty if committed by adults. Juveniles are often placed in institutions due to deplorable living conditions. Some of the juveniles in CBS and SBS are victims of crime. As a rule, the education in these institutions, in which the children are deprived of their liberty, is of very low quality.

In the course of the year, minors and juveniles continued to be placed in institutions for temporary placement of minors and juveniles. According to the Ministry of Interior, a total of 1,031 children were placed in such institutions in 2015. Placement is carried out by a decision of a police administrative body, with the permission of a prosecutor but without a possibility for judicial review. In *A. and Others v. Bulgaria* from November 2011, ECtHR held that this is inconsistent with the requirements of Article 5(4) of the *Convention*. In 2015, however, the placement procedure remained unreformed.

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10 See *Conditions in places of detention*. 

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The institutional placement procedure under the *Child Protection Act* was yet another serious issue. The initial placement in crisis centres for children is carried out as an administrative procedure, with the administrative body being obliged to submit the case for judicial review within six months. The court is not bound by a deadline to decide on such placements, which were ruled to be deprivation of liberty by ECtHR in 2011.  

In some cases, especially in large judicial districts such as Sofia, the court does not decide on the placement during the entire stay of the child at the crisis centre. In reality, in 2015 hundreds of children were placed in such institutions in violation of the necessity and proportionality standards, and the standards of a prompt judicial review.

In 2015, ECtHR held a violation of Article 5 (right to liberty and security of person) and other provisions of the Convention in the case of *Stefan Stankov v. Bulgaria* of 17 March 2015 (application no. 25820/07) concerning the placement in a social care institution of a person with a mental disability.

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2015 saw minimal positive developments in the reform of the Bulgarian judiciary and the resulting independence of the judiciary and fair trial. The year was marked by legislative initiatives and real steps towards comprehensive reform, on the background of unprecedented citizen involvement and activity on behalf of the judges. At the same time, these steps were often sabotaged by representatives of the executive and the legislative powers, the majority in the appointing body of the judiciary, as well as by the management of the prosecution.

Justice and independence of the courts

The leadership of the Ministry of Justice (MoJ) demonstrated in 2015 a will for genuine reform of the judiciary, specifying the necessary steps and elaborating a specific legal framework that would allow this to happen. In summary, this included updating the state reform strategy to incorporate Opinion No. 10 of the Consultative Council of European Judges (CCJE), the adoption of comprehensive draft amendments to the Judiciary Act, accompanied by draft amendments of the Constitution in its part related to the judiciary in order to guarantee the legal stability of the foreseen changes.

In a positive development, in early 2015 parliament adopted the Updated Strategy for the Continuation of the Judiciary Reform elaborated by the MoJ. The main aspects of the strategy included: procedures for the restructuring of the Supreme Judicial Council (SJC) in a way that would avoid undue influence through and over the SJC; expansion of the possibilities for judicial self-gov-
ernance; effective evaluation of the performance of judges, prosecutors and investigators; introduction of the fair trial principles in disciplinary proceedings against magistrates, including the opportunity for disciplinary measures against the chairs of the Supreme Court of Cassation and the Supreme Administrative Court and the Prosecutor General; measures to effectively manage the judiciary and magistrate workload. One of the strategy’s objectives envisioned guarantees for the rule of law and the protection of human rights, trying to overcome the causes behind the ECtHR convicting judgements and to ensure compliance with international human rights standards. The strategy also incorporated Opinion No. 10 (2007) of the Consultative Council of European Judges. This standard defines the measures that guarantee the independence of the judiciary recommending the de-politisation of the selection of the members of the judiciary council. In January 2015, the strategy was praised in the European Commission’s report on progress in Bulgaria under the Co-operation and Verification Mechanism. According to the Commission, the document was characterised by “an impressive level of precision” and constituted “a solid basis for future actions”.

The detailed draft act amending and supplementing the Judiciary Act presented by the Ministry of Justice at the end of May marked yet another step in the right direction. It provided clear procedures for the implementation of the in-depth reform measures envisioned in the strategy. Some of its key points included: less powers for the prosecution; strong judicial self-governance; new rules on vetting the integrity of magistrates; publicity of decision-making in the Supreme Judicial Council. However, the procedure for the discussion and the adoption of the draft act never started as it was decided to wait for the outcome of the discussions on the amendment of the Constitution. The course towards constitutional amendments was initiated following a series of discussions with the involvement of all parts of government, whose opinions varied from total denial about the necessity of such amendments to appeals to form a Great National Assembly. In the end, it was decided that the constitutional strengthening of the judiciary reform would provide legal stability for the envisioned changes.

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The initial draft act to amend and supplement the Constitution in the part on the judiciary incorporated two major changes. The first one was the division of the Supreme Judicial Council in two colleges: one of the judges and one of the prosecutors and investigators. The second change mandated such constitution and election procedure for the colleges that would guarantee the independence of the judiciary. The draft did not receive sufficient parliamentary support resulting in the so-called “historic compromise”: a draft act that proposed fewer changes. Some ideas were eliminated, such as for example the open vote in appointment decisions made by the Supreme Judicial Council, the reduced mandate of the Council or the widening of the subjects permitted to refer to the Constitutional Court. This draft cast a thick shadow of doubt whether the ruling status quo will allow significant changes and whether the promised real judicial reform would actually occur. Nevertheless, the “historic compromise” preserved an important aspect: the reduction of the influence of the parliamentary quota in the judges’ college and the creation of a mechanism, albeit paltry, to make the prosecution accountable. The text received the support of 180 members of parliament who signed it.

The Venice Commission published its opinion at the end of October, supporting the proposed changes to the Bulgarian Constitution and recommending even more radical measures. The opinion praised the idea for the division of the parliamentary and the professional quotas in the Supreme Judicial Council colleges, recommended that the minister of justice take part in the election of a Prosecutor General and in the appointment of the administrative managers of the prosecution and the investigation.14

The amendments of the Constitution were subjected to a vote on 9 December 2015. Political deals made behind the scenes resulted in the tabling between first and second reading of an amendment, which reversed the logic of the proposed changes, reshaping the Supreme Judicial Council quotas. One member of the parliamentary quota was transferred from the judges’ to the prosecutors’ college. Contrary to the text of the “historic compromise”, changes were adopted that were aimed at increasing the influence of the political quota in the judges’

instead of in the prosecutors’ college. In reality, parliament refused to create an accountability mechanism for the Prosecutor General. As a result, the

minister of justice, who until that moment was the main driving force behind the judicial reform, handed in his resignation.

He motivated his resignation stating that the political commitment in the strategy to ensure the level of court independence recommended in the Venice Commission’s Opinion and in Opinion No. 10 of CCJE has not been accomplished. The minister accused the Prosecutor General of undue influence over the legislative process. “In Bulgaria, it is even more possible to talk about rule of the prosecutor general”, he said. Later, the minister told the media that only things that have been approved by the prosecutor general occur in the judicial reform, and that this was an explicit condition posed by the prime minister.

In a speech on 11 December 2015, the Bulgarian president said that a compromise with judicial independence has been made when the constitutional amendments were voted. On the same date, the chair of the Supreme Court of Cassation criticised the lack of sufficiently radical amendments to the Constitution and the efforts to hinder reform. He said that the manner in which the Supreme Judicial Council and its colleges are elected is of paramount importance.

Despite the political wheeling and dealing, it is worth noting several constitutional amendments that do have the potential to bring positive change. The proposal to divide the Supreme Judicial Council in two colleges, which will enhance the possibility of independent judicial self-governance, was adopted. The secret ballot in the Council, which in the past cast doubts on the legitimacy of the appointment decisions and created prerequisites for the enforcement of backroom decisions, was eliminated. The next step would be the adoption of the amendments to the Judiciary Act that would incorporate the constitutional amendments.

The case of Sofia City Court

Another important process related to judicial independence was unfolding at the same time: the case of the Sofia City Court. In early January, the Supreme Judicial Council held a hearing of a group of judges from the Sofia City Court with regard to the letter they had sent at the end of the previous year. The letter called for the resignation of the city court’s leadership and for an inspection whether it was being managed competently. At the hearing, the magistrates complained of the environment in the court, the uneven workload of
the individual judges, the doubts of irregularities in the distribution of the cases and the lack of communication with the management.

The so-called ‘Worms’ scandal unfolded at the same time. It involved the authorisation of illegal use of special surveillance means in the Ministry of Interior data array. The authorization was granted by the leadership of the Sofia City Court. These events led to the dismissal of the previous court management and to the initiation of disciplinary proceedings against some of its members.

Recordings of conversions between the main figures implicated in the scandal were published by the media in the autumn. The recordings provided new evidence of corruption in the court, influence peddling and influence exercised by the prime minister and the Prosecutor General over the court. The subsequent two inspections by the prosecution and the Supreme Judicial Council were nothing but a travesty. The Prosecutor General initially made it clear that the prosecution will not investigate the doubts of influence peddling but only who had made the recordings. He also refused to withdraw although he was among the key implicated figures. The inspection by the Supreme Judicial Council also began in the midst of doubts about its objectivity, as the Council members mentioned in the conversions did not withdraw.15

The scandal in the Sofia City Court revealed a complex system of dependencies in the judiciary. Corrupt deals that were possible due to the lack of judicial independence in the appointment of court managers by the Supreme Judicial Council, as well as the irregularities in the case distribution system, had rendered the Sofia City Court leadership politically dependent. This in turn transformed into a prerequisite for the latter to feel obliged to grant wiretapping authorisations. However, such authorisations are easily contestable, making the authorising person even more vulnerable to illicit political orders and economic influence. The ensuing investigation by the prosecution was rather aimed at covering the corruption network and identifying scapegoats than at thoroughly investigating the crimes and the objective prerequisites that had made committing them possible.

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15 Upon its completion in early 2016, some Supreme Judicial Council members commented publicly that it had lacked transparency, had been cursory and had been performed with insufficient dedication.
The role of the ‘power players’ in judicial reform

Over the year, the Prosecutor General played a targeted destructive role that hindered the reforms in the Supreme Judicial Council and the prosecution, which envisioned dramatic changes towards decentralisation of the prosecution and diminishing the role of the Prosecutor General in the investigations. The Prosecutor General continued to exercise distinctive influence over Supreme Judicial Council decisions on matters affecting judges, such as the appointment of court chairs, staff assessments and disciplinary cases. He continued to head the majority in the council, which in turn continued to vote in line with his positions. Members who opposed this practice were subjected to systematic humiliation, including in public. For example, at a meeting in May the Prosecutor General raged against a Supreme Judicial Council member during the discussions on the appointment of a chair of the Veliko Tarnovo Appellate Court.

The Prosecutor General permanently established himself in the public field as a player who, although representing the judiciary, interacts with party representatives, publicly entering in a dialogue with them, sometimes threatening them. Over the year, he successfully influenced the legislative process. While in some cases the deals were made behind the scenes, in others his influence was easy to track. For example, the draft constitutional amendments adopted with the so-called “historic compromise” preserved the secret ballot in the Supreme Judicial Council’s appointment decisions.

Surprisingly, at the end of September the Prosecutor General declared his support for the open vote. Some two months later, the Constitution was amended in this sense.

The Prosecutor General also successfully played the role of legislator. This role was made available to him due to his influence on the parliamentary groups in the National Assembly whose members table the texts submitted by him without any criticism. An example of this is the legislative initiative initiated by him in February when he presented the prime minister and the parliamentary groups amendments to the Code of Criminal Proceedings. The amendments were subsequently tabled in parliament by members of different parliamentary groups.

The prime minister tried a double play with regard to the judicial reform. He seemingly supported the minister of justice’s initiative by publicly declaring such will. Later, his actions and inaction indicated that such will has never
existed. When real actions were undertaken in December – parliamentary debates and vote on the constitutional amendments – the prime minister did nothing to support the reformist position and ensure parliamentary support for in-depth constitutional reform. On the contrary, the parliamentary group of the political party headed by him reached agreement with the remaining political powers and derailed the reform.

The prime minister represents the main channel of illegitimate political influence over the judiciary, which became evident from the above-mentioned recordings, which leaked in early autumn. He however consistently refused to comment on this and avoided the topic, even prohibiting at the end of November the media to bring the topic of the judiciary with him.

In 2015, the Supreme Judicial Council continued to fail in its task to ensure the independence of the judiciary, to increase the system’s efficiency and hence public trust in it. Over the year the majority in the SJC was sending clear signals that no changes are needed in the structure and the activity of the appointing body.

With a few notable exceptions, the members of parliament did not demonstrate any independence or individual activity with regard to the constitutional amendments but rather acted under the command of their party headquarters. Their sudden and unmotivated refusal in December to support the draft amendments of the Constitution, the same texts that they had signed just a few months earlier, is an evidence of this.

**Reform of the prosecution**

Reform of the prosecution is closely related to judicial independence. In its current unreformed, totalitarian state the prosecution exercises influence over the court that significantly limits its independence. The year 2015 was retrograde in this respect, with the prosecution continuing to act in an even more centralised manner through the Prosecutor General at the expense of the ordinary prosecutors. This creates the objective impression that everything that occurs in the prosecution happens with the knowledge and consent of the Prosecutor General. The prosecution continued to function without any scrutiny on its budget and appointments. The Supreme Judicial Council simply approved all proposals made by the Prosecutor General, without exception.
The inability of the prosecution to conduct objective and independent investigations of corruption-related crimes became even more obvious in 2015. Investigations were often initiated under public pressure and, due to incompetence or deliberately, were guided into unsuccessful endings. The new practices introduced by the Prosecutor General and aimed at ‘closing’ the prosecution for the public, such as the provision of controlled information only through the press centre and the classification of the names of supervising prosecutors, are also deplorable.

At the beginning of the year, the Bulgarian prosecution was strongly criticised by Amnesty International for its failure to adequately investigate hate crimes.

The prosecution management’s action plan expired in 2015. But the Prosecutor General did not provide the Supreme Judicial Council an analysis of the implementation of the measures in the plan and their impact. Instead, he only submitted a concise formalistic report that was not supported by an analysis.

Positive developments

The agreed division of the Supreme Judicial Council in two colleges was undoubtedly a step in the right direction. It will reduce the influence of external factors on the judiciary. The judges’ reaction to the constitutional amendments adopted in December and the minister of justice’s subsequent resignation created a positive precedent. Scores of judges gathered in front of the Court Hall dressed in togas to talk with citizens on the necessity of judicial reform. They also disseminated an appeal requesting support from peers, professors, students and citizens. Judges from all over the country organised an Open Day at local courts and invited citizens to discuss judicial reform. The fact that the chair of the Supreme Court of Cassation, together with judges from courts of all parts of Bulgaria, demonstrated pro-activeness and called for a real reform is a sign of the evolution of the judges, of the growing inside opposition to the illegitimate influence on the judiciary. Such pro-activeness that is untypical for the judicial community is proof of both the intolerance to the corruption in the Bulgarian judiciary, and to its institutional impunity.

In another positive change, the topic of judicial reform and ensuring the independence of the judiciary made it to media space and ranked top in public discussions permanently attracting public attention. The protests following the failure of the constitutional amendments adopted with the “historic compromise” were unprecedented. Hundreds of citizens went to the streets. They
supported judges’ calls for independence and strongly criticised the Prime Minister and Prosecutor General who were seen as the main culprits in sabotaging judicial reform.

In 2015, ECtHR reviewed several cases of alleged violations of Article 6 of the Convention (right to a fair trial). With regard to the application of a former police officer in the case of Toni Kostadinov v. Bulgaria of 27 January 2015, ECtHR held a violation of the presumption of innocence in relation to a statement of the interior minister on the applicant’s guilt. The Court held that the refusal of the National Expert Medical Commission to comply with the compulsory instructions provided in two court decisions to consider certain medical conditions in defining the applicant's percentage of incapacitation a violation of Article 6(1) of the Convention. In the case of Velcheva v. Bulgaria of 9 June 2015, the Court held a violation of Article 6(1) of the Convention due to failure to comply with a court decision. In the case of Bratanova v. Bulgaria of 9 June 2015, ECtHR found a violation of Article 6 due to the impossibility for the applicant to start restitution proceedings for an inherited property in Bankya. In the case of Tsanova-Gancheva v. Bulgaria of 15 September 2015, the Court did not find a violation of Article 6 in relation to the judicial review of an election procedure for chair of the Sofia City Court.
5. Right to respect for private and family life, home and the correspondence

Special surveillance means

The use of special surveillance means in 2014 and 2015 continued to pose more questions than to provide answers. The main challenges continued to be the ignorance, the disregard and the abuse of law by the competent authorities. The guarantees for the right to private and family life did not improve significantly.

In 2014, the National Bureau for Control on the Special Surveillance Means (the Bureau) already had an office and created a website, publishing the regulation on its activities, the procedural rules on the selection of its members, the budget and the report on its implementation, as well as activity reports. On 29 May 2015, the Bureau published its first annual activity report (for 2014) on the control of special surveillance means to the National Assembly. A six-month report is available for 2015. The 2014 report contains quite a detailed and to a great extent alarming information. The Bureau first created sample registries for the requests, authorisations and refusals of the use of special surveillance means by all competent authorities. It shows a trend towards a reduction of the number of people against whom special surveillance means were requested: 4,202 in 2014, of which 1,824 were requested by the Ministry of Interior, 1,324 by the State Agency for National Security, 1,046 by the prosecution and eight by the Ministry of Defence’s Military Police. In the case of 742 requests, the measure was under Article 17 of the Special Surveillance Means Act (SSMA) – by judicial authorisation in cases of emergency; in 125 cases the measure was under Article 18 of the same act – due to immediate danger of
a serious premeditated crime; in 645 cases the measure was under Article 12(1)(d) of SSMA – to establish the identity of individuals for whom there is information to have been involved in crimes. The number of special surveillance means requests in 2014 totalled 7,604, of which 5,604 initial and 2,000 extensions. In terms of substantive grounds, these were most often: Article 354a of the Criminal Code (drugs distribution) – 1,232; Article 321 (organised crime group) – 880; Article 104 (spying) – 597; Article 234 (crimes involving excise goods) – 583; Article 195 (theft) – 460; Article 253 (money laundering) – 394. The requests for the use of different operational methods in 2014 totalled 19,689; most of these were for surveillance, wire tapping, tracking and insertion. 19,208 were authorised and 11,115 were used.

As a result of over 200 inspections, the National Bureau found 334 violations, of which 150 were identified by judges and resulted in the refusal to authorise the use of special surveillance means. Another 184 violations were identified during the Bureau inspections as contrary to the law but allowed by the courts; 142 of these were due to unspecified crime statutes for which the use of special surveillance means is not envisioned. This is a problem because, on one hand, the failure to specify a crime statute does not provide grounds for the authorisation of the use of special surveillance means as it is not clear whether sufficient data are available to reasonably conclude that a crime has been committed, and because it is not clear which is the competent court that needs to authorise the use of special surveillance means. Most of these requests were filed by the Ministry of Interior, the State Agency for National Security and the prosecution.

The material evidence collected as a result of the use of special surveillance means in 2014 totalled 1,084. The ratio between the number of gathered material evidence and the number of persons with limited rights due to the use of special surveillance means was 24.46%: significantly lower compared to previous years. Of the 1,084 pieces of material evidence, 952 were used in pre-trial proceedings, most of them requested by the prosecution. It was found that material evidence is destroyed in ways not stipulated by law: 258 in 2013 and 113 in 2014. The obligation that the body requesting the special surveillance means notify the authorising judge about the termination of the special surveillance means use is also not implemented.

Cases were found in which the statutory deadline for storing special surveillance means outputs has been exceeded by several months.
In 2014, the National Bureau received 27 citizen complaints with regard to the use of special surveillance means, asking whether their use was lawful. Their use was found to be unlawful in four cases.

The National Bureau concludes that many and various significant violations of the law have occurred in the use of special surveillance means, that the scrutiny of their use is low, biased and ineffective, and that the attitude of court chairs and deputy-chairs is formalistic and void of criticism. The Bureau therefore submitted on 23 March 2015 amendments to the SSMA, which were accepted.

A total of 1,495 less authorisations for the use of special surveillance means were issued in the first six months of 2015 compared to the same period of 2014. The authorisations for the use of special surveillance means under Article 12(1)(4) of SSMA were reduced by 90%; the authorisations under Article 18 of the same act were reduced by 50%; court refusals to grant authorisations increased by 183%; and the scrutiny of the use of special surveillance means by the bodies under Article 15 of SSMA improved.

**Roma housing evictions**

International standards require that in cases when forced evictions of illegal buildings affect the only home of the individual, the authorities are required to consult the affected persons in advance and not allow them to remain homeless both in the short- and long-term. They also prohibit inhuman and degrading treatment, as well as other human rights violations potentially related to forced evictions, such as separation of families and destruction of the property of the affected individuals. Since 2006, three international bodies – the European Court of Human Rights in *Yordanova and Others v. Bulgaria*, the UN Human Rights Committee in *Naidenova et al. v. Bulgaria*, and the European Committee of Social Rights in *European Roma Rights Centre v. Bulgaria* – have ruled against Bulgaria in connection with forced evictions.

In all of the above cases, the respective bodies established inconsistency between the Bulgarian legislation on evictions and different provisions of international human rights law. However, in 2015 the competent Bulgarian authorities made no changes to bring the legislation in compliance with international standards.
The Maksuda case, Varna

On 20 August 2015, the Municipality of Varna, in cooperation with the state authorities, carried out a forced eviction of hundreds of people living in Varna’s Maksuda neighbourhood. The authorities’ inadequate and poorly planned actions resulted in a humanitarian crisis that threatened the health and the life of a large number of people, many of them children. The Bulgarian Helsinki Committee went to the field on the following day and took stock of the situation of the affected persons by interviewing affected individuals, municipal and state officials, NGO representatives, managers and staff of social institutions, as well as witnesses. BHC’s researchers took notice of the documents on the case, which were provided to local and international bodies protecting the rights and the interests of the affected persons.

The raid on August 20 was one of the largest forced evictions carried out by the Bulgarian authorities since the start of the democratic changes in the country. According to official data, 46 of all 58 condemned houses were demolished. The authorities did not provide information on the number of residents in the demolished buildings, many of whom were children. Official data provided at a later stage indicate that a total of 520 individuals, of whom 233 children, were registered as resident at the 58 condemned houses, and 490, of whom 211 children, were registered as domiciled. Assuming that the residents were distributed evenly between all condemned houses, this means that more than 400 persons, of whom more than 150 children, became homeless on August 20. For most families, this was the only home in which they had lived un molested by the authorities for many years, in some cases more than a decade.

Bad weather with low temperatures and rain followed the forced evictions. The affected persons were not provided with adequate information about the exact date and time of the scheduled demolition. This resulted in the destruction of many of the residents’ personal belongings, including clothes, electronics and furniture. Some of the people were not in their homes when the demolition began and were later not allowed by police officers to enter and collect their belongings.

Statements of affected persons and witnesses provided the BHC information about a series of violations on behalf of the police, during and after the forced eviction. A female resident of the Maksuda neighbourhood was taken to the precinct in order to intimidate her to abstain from organising a protest. Pressure was exercised against an NGO staff member who was present at the
place. Women affected by the eviction were pushed, hit with a bat and threatened. Racist insults were made.

Although the attempts of the Municipality of Varna to offer alternative housing to the families, which had lost their homes were a step in the right direction, in fact no real preliminary consultations on the alternatives to the forced eviction were held with the affected persons. No adequate preliminary analysis of the number of persons affected by the eviction was made (children, elderly people, people with disabilities and other vulnerable groups), or of their housing alternatives. This resulted in untimely, chaotic and extremely inadequate actions on behalf of the Municipality of Varna and the social works of the Varna Social Assistance Directorate with regard to the provision of alternative housing to prevent affected persons from becoming homeless. As a result, many children and their parents spent the night of August 20 in the open or under improvised shelters, in continuous rain and cold.

Despite the authorities’ claims that all affected persons had been offered accommodation at social services, BHC received credible information that the offer was not made to everyone, in an understandable language and after a careful discussion of the existing alternatives with every household.

Official information provided in writing by the municipal authorities on the day of the eviction shows that alternative shelter was provided to 48 persons, at the Shelter for Temporary Accommodation of Homeless and Poor Persons located in the building of the Dr Anastasia Zhelyazkova Social Educational and Vocational Centre (the Shelter). The other alternatives announced by the authorities, the Gavrosh Shelter for Homeless Children and the Mother and Baby Unit, were in fact inaccessible due to the placement procedure for these facilities. The alternative accommodation option itself was made impromptu by the municipality on the eve of the evictions, without preparation. Many of the people who could not be accommodated had to spend the night in the open or in improvised shelters. Despite the fact that the accommodation at the Shelter continued over the next several days, it was carried out gradually, with many people having to spend the nights outside, deprived of their homes.

The partial alternative accommodation in a social service was a temporary and insecure measure. The placement was carried out without a placement order, on the basis of an oral agreement with the Shelter’s management. According to the agreement, the placement was for a period of one month. This
basically made the placement in a social service an inadequate alternative to the demolition of the affected persons’ homes.

The initial capacity of the shelter in which some of the newly homeless persons were placed was 50 beds. It was exceeded twice even before the admission of the affected persons from the Maksuda neighbourhood. According to the official information provided by the Municipality of Varna, 20 adults and 28 children had been accommodated there by 21 August 2015, which means that the number of residents exceeded the number of beds almost threefold. The BHC attempt to verify in place the conditions of the accommodation at the social service on 21 August 2015 were met with the refusal of the municipal authorities who explained that access will be provided only on working days and only in the presence of a municipal employee. The Municipality of Varna thus rejected the possibility of independent professional monitoring of the conditions in which the accommodated persons were living.

Despite its severe human rights violations resulting from the forced evictions, the Varna municipal authorities expressed their intention to continue with the demolition of the remaining houses, as well as of at least 150 more houses in the Roma neighbourhood. These actions got the support of the minister of regional development, Lilyana Pavlova. According to media publications in September, more than 80 persons have returned to their native communities or have rented housing after the evictions, while 66 (half of whom children) were accommodated in the Baba Alina resort village in the proximity of Varna until the beginning of the spring, having spent approximately a month at the Social Educational and Vocational Centre building in Varna.

The actions of the municipal authorities in Varna, where illegal construction is not limited to the only homes of the families in the Maksuda neighbourhood, are unjust and discriminatory. They were effected with an immoral electoral objective: to gain political dividends on the basis of anti-Roma prejudice and hatred.

The case of the village of Gurmen

In 2010, the National Building Control Directorate of the Ministry of Regional Development and Public Works established that 134 illegal houses existed in the Kremikovtsi neighbourhood of the village of Marchevo, municipality of Gurmen. The houses were built on municipal arable land, the first of them some 60 to 70 years ago. In 2011, the Directorate issued 134 orders for the
demolition of the illegal buildings. Meanwhile, the former mayor of Gurmen issued 134 tolerance certificates, which made the Roma families think that the demolition orders would not be executed. However, the Directorate found only ten of them legitimate and terminated the execution of the orders for the demolition of these ten houses. The procedure for the remaining 124 went on.

In 2013, the execution of all 124 orders was suspended by a letter of the former minister of investment planning until alternative housing was found.

A conflict arouse on 25 May 2015 between representatives of the Roma and the Bulgarian communities, resulting in a fight in which three persons sustained injuries. Although the reason behind the conflict was not ethnic-based, the first media announcements spoke of a brawl between groups of ethnic Bulgarians and Roma. Several anti-Roma rallies were organised. BHC warned of the risk that this could happen on May 27 in a broadcast on the Bulgaria On Air TV channel.

On 23 June 2015, the Building Control Directorate issued letters for the execution of six orders for involuntary demolition of illegal buildings. Four buildings of Roma families in Gurmen were demolished on 29 June 2015 under public pressure, as a collective punishment for alleged unlawful actions of individual Gurmen residents and without consideration for the specific situation of their residents who were in no way privy to past incidents. This campaign was accompanied by public anti-Roma rhetoric fuelled, among others, by the media and parliamentary represented political parties.

According to data from the Social Assistance Agency, all families had been offered social services, including accommodation of the children in family type facilities, and they had all refused. BHC interviewed the affected persons and they explained that they had refused the services offered because accepting them would have resulted in the separation of their children and placement far away from their domicile, which is the only place where they find support.

At a meeting of the BHC with the mayor of Gurmen on 3 July 2015, the mayor explained that the local authorities did not have the capability to provide alternative accommodation to the affected persons. A proposal was made to accommodate these families in an old school in another village but the local residents opposed. According to the mayor, no funds were available to

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repair the school building. On 10 July 2015, the BHC and the Equal Opportunities Initiative Association sent a letter to the minister of regional development, Lilyana Pavlova, with regard to the demolition of buildings in the village of Marchevo, municipality of Gurmen. The minister was reminded that the demolition of these buildings constitutes a severe violation of the human rights of the affected persons, as it renders them homeless without providing them with a housing alternative. In the case of two orders (issued in 2011) concerning buildings in the village of Marchevo, municipality of Gurmen, the affected persons had taken steps to contest the actions of the administrative body under Article 294 and the subsequent articles of the Code of Administrative Procedure. The buildings were to be demolished on 13 July 2015. Their complaints were registered at the Blagoevgrad National Building Control Regional Directorate and at the Blagoevgrad Administrative Court. The two NGOs insisted that the minister take urgent actions to suspend the execution of the contested orders at least until the ruling of the Blagoevgrad Administrative Court was handed down, as well as to consider the fact that the two families whose houses were to be demolished on 13 July 2015 comprise a total of eight children, including two with severe disabilities and 95% and 100% incapacity, respectively, as well as a pregnant woman. The Gurmen protests were spurred by a domestic incident. Ultranationalist groups, some of which even represented in parliament and part of the governing coalition, openly fuelled the public debate and used the tribute conveniently provided to them by the media to instigate the public. According to minister Pavlova, the responsibility for the provision of alternative accommodation was vested with the mayor; she therefore refused to suspend the evictions.

On 10 July 2015, the Bulgarian government received a letter from the European Court of Human Rights in Strasbourg in which the Court asked two questions: on the measures that were being taken to ensure accommodation and support to the vulnerable persons; and whether these measures provided for separation of the children from their parents. The Court urged the Bulgarian government not to continue with the evictions without a strong commitment to provide housing to the vulnerable applicants before the demolition is carried out. The Court requested a response to the questions by July 13; after that, it was possible that interim measures be applied.

Two more evictions were scheduled to be carried out on July 13. The two families authorised a lawyer who filed complaints against the evictions, including notifying ECtHR.
Interim measures were not granted and the Court asked that the government provide more information. The government explained that the upcoming evictions will not be carried out before an alternative solution is found.

Three international organisations came up with the opinion that the forced evictions need to be terminated until alternative accommodation is offered and ensured to those people who would otherwise become homeless. Although the authorities informed the ECHR about such alternative accommodation measures, they never materialised.

Six houses were demolished on 7 September 2015, leaving 41 persons, including 21 children, homeless. Some houses were demolished by the authorities. For others, the families hired demolition crews because they were told that they would have to pay a large amount for the demolition. A real alternative was not offered, despite claims by the local authorities and the Building Control Directorate that alternative accommodation had been proposed, but the families had refused it. The families explained that the only proposal was for accommodation at the home of an ethnic Bulgarian in a village where the May and June 2015 protests were organised. Ten houses of some 100 residents, most of them children, were demolished since the start of the forced demolitions.

The Orlandovtsi neighbourhood case, Sofia

Several anti-Roma protests were held in Sofia’s Orlandovtsi neighbourhood in 2015. On 13 June 2015, a conflict arose in this neighbourhood between Roma and ethnic Bulgarians when a group of Roma drove around the park playing loud music. The conflict culminated in a mass fight in which six people were injured. A rally took place on June 14 to protest against “Roma crime” that was attended by some 200 people. Protesters, some of them armed with sticks, attempted to enter the Roma neighbourhood shouting “Gypsies into soap!” and “Bulgarian heroes!” They were repelled by the police. Thirty-four people were arrested, only six of whom residents of the neighbourhood; some were football hooligans. A second rally took place on June 15, calling for an end to “abuse from the Roma”. Protesters again attempted to enter the Roma neighbourhood shouting “Janissaries!” and “Bulgarian heroes!” Roma from the neighbourhood said that they had evacuated their children before the rally. Twenty people were arrested. A third protest against the “Roma crime” took place on June 16, with neighbourhood residents explaining that
they have no problems with the local Roma, but with the “sojourners”. On June 17, some 100 persons once again held a rally in Orlandovtsi. There was yet another attempt to enter the Roma neighbourhood, but it was thwarted. Some protesters, headed by an initiative committee, organised a petition in favour of removing Roma from the neighbourhood. They called for checking the domicile of the Roma living in the neighbourhood, eliminating the illegal buildings, creating video surveillance, restoring street lighting and providing police patrols until the situation calms down. Some 600 signatures were collected. The protests went on until June 19.

Answering a question by municipal councillors on the “issues in the Orlandovtsi neighbourhood and the responsibility of the Municipality of Sofia for solving them”, the mayor of Sofia, Yordanka Fandakova, answered that in 2012 the Municipality had removed nine illegal buildings in the Gradinite area. Some were re-built anew in 2013 and were then removed again. Another five illegal buildings were removed in 2014. As to 2015, she indicated that the mayor of the respective municipality had issued “another 14 protocols for the demolition of illegal buildings in the Orlandovtsi neighbourhood”, and that two more illegal buildings for which forced demolition orders had already been issued would be removed by the end of July.

A BHC team conducted monitoring at the Roma neighbourhood on 3 July 2015, more specifically at 3 Gradinite Street and 45 Odesa Street, where some 300 persons living in 16 houses have a registered address. The interviewees said that third and fourth generation residents were living there. According to the official information provided by Municipality of Sofia’s Serdica ward to the BHC under the Access to Public Information Act, six acts of findings have been issued for a total of 26 buildings in the Orlandovtsi neighbourhood constituting “one-storey buildings built on plots” located on Gradinite Street. The acts of findings were sent by a letter of 7 August 2015 to the director of Municipal Building Control who was to issue forced demolition orders under Article 225a, in conjunction with Article 225(2)(2) of the Spatial Planning Act. The identity of the people who had built the illegal structures could not be established. Property owners declared that the construction of all buildings had taken place in 2014. The buildings had electricity but no water and sewer connections and no sanitary facilities. Residents interviewed by BHC claim that no documents whatsoever had been given to them, and that no municipal employees have come to inspect the buildings on the date stated in the acts (27 July 2015), neither before, not after that.
Despite the fact that no houses had been demolished by 31 December 2015, BHC has not been informed of a termination of the procedure with regard to the demolition orders issued.

**The city of Peshtera case**

In September 2015, the National Building Control Area Directorate Southern Central Area issued authorisation letters for the forced execution of orders issued in 2012 for the demolition of four houses in the Roma neighbourhood in the Orsehaka area, near Peshtera. According to information in the media, the houses were home to 36 people, some of them residing there for over 20 years. The individuals threatened by eviction contested the authorisation letters before the Pazardzhik Administrative Court, which suspended their execution on September 15. In all three cases, the Pazardzhik Administrative Court held that the National Building Control Area Directorate Southern Central Area is not the statutory body that can authorise forced execution of the orders and declared its actions void.

In 2015, ECtHR handed down one decision under Article 8 of the *Convention* (right to respect for private and family life). In the case of *Penchevi v. Bulgaria* of 10 February 2015, the Court found a violation with regard to the right to contact with a parent after divorce.
6. Freedom of conscience and religion

The same as in 2014, no progress was achieved with regard to the situation of religious freedoms in Bulgaria. A series of violations against religious denomination representatives occurred and were largely not penalised by the authorities. The established violations included: vandalism of temples and attacks of religious followers; discriminatory media representation of rituals and confessional identity; refusal of the prosecution to persecute public instigation of religious hatred, discrimination and violence; restrictions on the religious activities of certain minority religious communities imposed by municipal council regulations; cases of persecution of Muslim religious representatives due to their religious beliefs.

Actions of the prosecution in relation to crimes against religions denominations

Statistical information provided by the Prosecutor’s Office of the Republic of Bulgaria indicates that the special statutes in the Criminal Code, which include hate crimes, including on religious grounds, and crimes against the religious denominations, are sparsely used. In 2012–2015, a total of 41 pre-trial proceedings concerning crimes against denominations were initiated. At the

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17 Criminal Code (1968), Article 164 (1) (amend. SG No. 103 of 2004, in force since 1.1.2005, amend. SG No. 27 of 2009) (1) (suppl. SG No. 74 of 2015) Whoever preaches or instigates discrimination, violence or hatred on religious grounds through speech, press or other mass media, through electronic information systems or in any other way, shall be punished by deprivation of liberty of up to four years or by probation, as well as by a fine from five thousand to ten thousand leva. (2) Whoever desecrates, destroys or damages a religious temple, shrine or adjacent building, their symbols or burial stones, shall be punished by deprivation of liberty of up to three years or by probation, as well as by a fine from three thousand to ten thousand leva. Art. 165. (1) Whoever by force or intimidation prevents the citizens to freely confess their religion or perform their religious rituals and services which do not breach the laws of the country, public order and good
same time, only two of these cases, or less than 5%, have ended with an indictment. Table 1 presents detailed information about the development of the pre-trial proceedings in the past three years.\textsuperscript{18}

Table 1: Information on initiated and submitted to court pre-trial proceedings concerning crimes against the religious denominations (Article 164, paras. 1 and 2 and Article 165, paras. 1 and 2 of the \textit{Criminal Code}) in 2013-2015

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<tr>
<th></th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>Total</th>
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<td>1</td>
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<td><strong>Art. 165(1)</strong></td>
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18 Prosecutor’s Office of the Republic of Bulgaria (2016), information provided to BHC under the Access to Public Information Act on request No. 201/18 January 2016.

\(\text{Rights},\) they shall be punished by deprivation of liberty of up to one year.

(2) The same punishment shall be imposed on whoever in the same way forces someone else to take part in religious rituals and services.

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Activities of the Council of Ministers’ Religions Directorate

Despite the request for public information on the activities of the Council of Ministers' Religions Directorate for 2015, sent by the BHC in early January, and the many phone calls to attempt to receive such information, it was not available at the time this report was published. The Religions Directorate does not have a public website and does not publish public data about its activities.

Muslim religion

Following the ruling on 19 March 2014 of the Pazardzhik Regional Court on the controversial case of the 13 imams that began in 2011, the case was reviewed by the Plovdiv Appellate Court. All 13 defendants were found guilty at the first instance, despite the lack of any appeals to violence or to undermine the state in the indictment. On 1 July 2015, the Plovdiv Appellate Court increased the penalty imposed on Ahmed Musa, a Pazardzhik imam and the only one sentenced to effective imprisonment, to two years of imprisonment. Two other defendants who were handed down suspended sentences at the first instance, were acquitted by the Appellate Court of the charges of preaching antidemocratic ideology; however, the fines imposed on them under the second charge, management and membership in an organisation created with the purpose of preaching antidemocratic ideology, were raised to BGN 3,000 (EUR 1,500) and BGN 4,000 (EUR 2,000), respectively. The Regional Court’s verdict concerning the remaining defendants was sustained by the court of second instance. In September 2015, according to media reports, the website

| Art. 165(2) | Newly initiated/converted/re-initiated pre-trial proceedings | 1 | 0 | 0 | 1 |
| Terminated pre-trial proceedings | 0 | 1 | 0 | 1 |
| Suspended pre-trial proceedings | 0 | 0 | 0 | 0 |
| Indictments presented to court | 0 | 0 | 0 | 0 |

19 Bulgarian Helsinki Committee (2016), request for access to public information ref. No. 001/04 January 2016 to the Council of Ministers' Religions Directorate.
20 Pazardzhik Regional Court, decision no. 15 of 19 March 2014 on criminal case 330/2012.
21 Plovdiv Appellate Court (2015), verdict No. 9 of 1 July 2015 on criminal case 294/2014.
of a municipal kindergarten frequented mainly by Muslim children included a Muslim slogan stating: “Good education is the best gift a parent can give to his child! Fear Allah and be fair to your children!” Following a media scandal marked by open anti-Muslim rhetoric, the State Agency for Child Protection and the State Agency for National Security conducted an inspection in the kindergarten. According to information provided by the Chief Mufti’s office, after the inspection the kindergarten started serving pork meat to the children three times a week, despite the large number of children to Muslim parents.

As in 2014, the systematic vandalism against Muslim prayer homes throughout the country continued. In most cases, the police and the prosecution did not show sufficient interest and proactiveness in identifying and punishing the perpetrators. The authorities also continued to refuse to classify as crimes against the religion and as hate crimes the different acts of desecration of prayer homes and other buildings.

• An attempted arson attack at the Dzhumaya Mosque in downtown Plovdiv took place around 10 p.m. on 5 January 2015. The perpetrator poured incendiary liquid on the building window frames and set them afire. The perpetrator of this anti-Muslim act was arrested and sentenced to three years imprisonment.

• The Hadzhi Osman mosque in downtown Dobrich was desecrated on 12 January 2015. A huge white cross was painted on its external wall.

• On 22 February 2015, the Blagoevgrad Area Mufti’s Office administrative building woke up to swastikas and insults, including “Death to the Turks”. The Area Mufti’s Office filed a complaint with the police. On this occasion, and on the occasion of previous anti-Muslim acts in the area, the Area Mufti’s Office organised on February 28 a peaceful protest under the motto “Together against Islamophobia, xenophobia and hatred”.

• Despite the protests, just a few days later, on 3 March 2015, the mosque in Blagoevgrad was painted with many insults, swastikas, 14/88, “death to Dogan” and peppered with pork legs and intestines.


24 1488 or 14/88 denotes “the fourteen words”, a phrase used mainly by the so-called white nation.
• In another incident on 19 June 2015, the first day of the Ramazan Bayram Muslim holiday, a hog’s head was hung from the minaret of the mosque in Gotse Delchev.\(^{25}\)

• Strong insults were written on the wall of the mosque in Gorna Oryahovitsa on 13 July 2015: “Allah is a pig”, a swastika and 1488. The police arrested the perpetrator.\(^{26}\)

• The mosque in Yambol was desecrated on an unknown date, again by painting vulgar words and swastikas on its walls.

**Jehovah’s Witnesses**

The Jehovah’s Witnesses and its followers were also subjected to a series of violations and attacks during the year. Municipal authorities’ practice of imposing fines for religious activities performed in public, as done by Jehovah’s Witnesses, was especially alarming. Thus, six Jehovah’s Witnesses were punished by the municipality of Kyustendil for handing out religious leaflets by a fine of BGN 800 (EUR 400) each. The *Ordinance on the activities of the religious communities in the municipality of Kyustendil* quoted by the municipal authorities bans the performance of religious promotion, which is defined as “targeted influence on society through speech, written or oral, through sound, image or in another way, in order to create religious beliefs and recruit new followers to a religion”.\(^{27}\) When the followers contested their fines in court, different panels of the Kyustendil District Court amended or repealed the fines. In two decisions, the Kyustendil District Court repealed the municipal acts as unlawful, motivating itself with human rights norms and national and international standards that guarantee the right to freedom of religion.\(^{28}\) At the same time, another panel of the Kyustendil District Court repealed two other penalties on


\(^{27}\) Kyustendil District Court (2015), decision No. (not indicated) of 13 November 2015 on administrative case No. 806/ 2015.

\(^{28}\) Kyustendil District Court (2015), decision No. (not indicated) of 3 November 2015 on administrative case No. 805/ 2015; Kyustendil District Court (2015), decision No. (not indicated) of 23 November 2015 on administrative case No. 789/ 2015; Kyustendil District Court (2015), decision No. (not indicated) of 25 November 2015 on administrative case No. 921/ 2015.
the grounds of procedural violations. A third panel, however, held that the penalty was lawful and only reduced the fine from BGN 800 (EUR 400) to BGN 200 (EUR 100).

On 12 April 2015, employees of the municipality of Burgas imposed BGN 50 fines on two Jehovah’s Witnesses; on 8 July they fined by BGN 20 another follower of the denomination for “publicly expressing religious beliefs in the open, without complying with the requirements and the procedures established in the Gatherings, Rallies and Manifestations Act”. All three penalties were repealed by the Burgas Regional Court due to procedural violations.

Followers of the Jehovah’s Witnesses were subjected to various attacks during the year, including physical violence. Their prayer homes were vandalised. In 2015, the media continued to provide a platform for hate speech targeted at the denomination and its followers.

On 20 February 2015, two Jehovah’s Witnesses followers handing out religious materials in the street were assaulted by a man who overturned the table they were using and kicked one of them. The denomination informed that a complaint was filed with the police but no action was taken against the attacker.

On 4 April 2015, a Jehovah’s Witnesses follower was stopped by an activist of the National Front for the Salvation of Bulgaria political party who together with a television crew started asking him provocative questions. When the follower tried to leave, the assailant twisted his hand and punched him in the temple. The victim filed a complaint with the police and the perpetrator was initially charged with petty hooliganism. According to the denomination, the Blagoevgrad District Court returned the case to the prosecution with the instruction that the act is investigated as a hate crime.

On 8 July 2015, in Burgas three Jehovah’s Witnesses were preaching in the street when they were approached by a crew of the SKAT television who began provoking the three followers and punched them. Despite the provocation and

29 Kyustendil District Court (2015), decision No. (not indicated) of 13 November 2015 on administrative case No. 867/2015.
30 Kyustendil District Court (2015), decision No. (not indicated) of 2 November 2015 on administrative case No. 788/2015.
the assault, the police officers who came to the scene issued citations to the followers for holding an illegal religious meeting and did nothing against the attackers. The denomination informed that a similar incident occurred also on 22 August 2015, again in Burgas.

Other incidents documented by the denomination include: slashed tyres of cars owned by Jehovah’s Witnesses followers; eggs thrown at prayer homes; windows broken and stones thrown at temples; a female follower hit with a stick, etc.

During the year, ECtHR held violations of Article 9 of the Convention (freedom of conscience and religion) in two cases concerning members of minority religious communities in Bulgaria. In the case of Dimitrova v. Bulgaria of 10 February 2015, the Court found such a violation in relation to the search of the applicant’s home, a member of a small religious community. In the case of Karaahmed v. Bulgaria of 24 February 2015, the Court held a violation of Article 9 with regard to a 2011 assault on the Sofia mosque by political party sympathisers.
7. Freedom of expression and access to information

The downturn in freedom of expression in Bulgaria continued in 2015. The media are increasingly used as bats against the opponents of the powers and guardians of its comfort. The huge pressure on media and journalists exercised via different means, the severe censorship and self-censorship, the extreme economic and political dependencies of the media, the opaque ownership and financing of the media, the media concentration, the breaching of the basic ethical principles of journalism and the ineffective media self-regulation continue to be the key problems in this field. Hate speech towards different minorities continued to be widely manifested in some media. Making a distinction between editorial and sponsored content, including electoral promotion, is often impossible.

Bulgaria dropped six places in the Reporters without Borders freedom of expression index” since the beginning of 2015, ranking 106th (its worst ranking ever for yet another consecutive year), and continues to be the country with the least free media in the EU. In comparison, in 2006 the country ranked 35th. The reasons include the actions of the Financial Supervision Commission (FSC) and the pressure to reveal secret sources (see below).

Bulgaria scored a one-point improvement in the new Freedom House report over the previous year (due to the reduced number of assaults on journalists), ranking 75th. The report’s authors commented that “media concentration remains problematic”, especially in the hands of New Bulgarian Media Group,

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given the fact that it is owned by a member of parliament (Delyan Peevski) who “has a history of strongly supporting whichever parties are in power”.

According to a study of the Association of European Journalists – Bulgaria (AEJ – Bulgaria) of freedom of speech in 2015 conducted online among 143 journalists at national level, the opaque ownership (65.7%), the monopolisation of the media environment (82.5%) and the mix of political and economic interests in media management (83.9%) are the top three problems of the Bulgarian media that journalists mention most often. Other serious deficiencies include the low educational level and practical skills of the journalists (62.9%). Every second interviewee points out the ineffective self-regulation of the sector as a problem. The most often quoted measures for the improvement of the media environment include: adoption of practices against ownership and dissemination concentration (76.9%); making the ownership transparent (65.7%); providing additional training to journalists (60.8%); creation of new forms of independent media (60.1%).

**Pressure, censorship**

According to the above AEJ study, the “pressure culture” in the Bulgarian media “is becoming widespread, with sustainable trends towards control and restriction of pluralism”. The majority of the 143 interviewed journalists stated that they had personally been impeded to freely exercise their profession (53.8%), while 72% reported that they had witnessed how their colleagues were subjected to undue pressure. The authors of the study noted the emergence during the year of a new method of pressure: the spread of slander about journalists, reported by 40.6% of the survey participants. The pressure on behalf of politicians and media owners is displaced by economic pressure on editorial content: the economic agents (69.2%) and the advertisers (60.8%) are the new media content masters. The serious influence of political agents (67%) continues, together with that of state and municipal institutions (42.7%). As to self-censorship, only 9% of the interviewees reported that they cancel their own publications/reportages on a regular basis or avoid


37 Ibid.
topics of importance to society. 46% reported that this happened to them only rarely, while the remaining 45% claimed that they did not censor themselves. More than half of the regional journalists who took part in the AEJ – Bulgaria study had personally been threatened in connection with their work.\(^3\)

Threats of lawsuits are most frequent, followed by those of dismissal, physical violence and threats to journalists’ families. Threat sources are headed by political agents (26%), local business people (23%) and municipal authorities and criminal organisations (17% of the responses for each of them). Seven journalists in Kazanlak testified that they had been summoned to the police to sign a police warning that they would not provide negative coverage of the mayor and the municipal government.

At the beginning of the year, the Financial Supervision Commission (FSC) imposed on Economedia, the company publishing the Capital, the Capital daily and the Dnevnik daily, a record fine of BGN 150,000 (EUR 75,000). FSC imposed a separate fine of BGN 10,000 (EUR 5,000) because the journalists refused to reveal their sources. According to the publisher, the unprecedented amount of the fine had the purpose of hurting the company financially and resulting in self-censorship in articles on the financial system.\(^3\) The citations issued by FSC were for market manipulations, which, according to the regulator, were committed by Capital through its publications. The record fine of BGN 100,000 (EUR 50,000) was imposed for an article entitled “Panic is greater than the problem” written during the bank crisis in the summer of 2015. FSC also fined the Vratsa-based publisher Alpico with BGN 100,000 for an article in the Zov News newspaper, which covers the delicate situation in the banking sector.\(^4\)

The representative of the Organization for Security and Cooperation in Europe (OSCE) 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.\(^4\) “Reporters without Borders condemns this political attempt to silence media organisations”, wrote the

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\(^3\) Ibid.

\(^4\) See “Vratsa’s Zov News also fined by FSC with BGN 100,000”, 15 January 2015, Capital, available at: [http://www.capital.bg/politika_i_ikonomika/bulgaria/2015/01/15/2454612_kfn_globi_sus_100_hil_lv_i_vrachanskila_zov_njuz/](http://www.capital.bg/politika_i_ikonomika/bulgaria/2015/01/15/2454612_kfn_globi_sus_100_hil_lv_i_vrachanskila_zov_njuz/).

international organisation in a statement.42 “The Commission is clearly trying to silence these newspapers which, for several years, have been disclosing serious irregularities in the financial sector”, says 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.43

In December, the deputy chair of the National Assembly, Dimitar Glavchev, appealed that media be inspected as to how they have obtained information. In a broadcast of the Channel 3 television Glavchev addressed the special services, pointing out more specifically the State Agency for National Security, asking them to check the Mediapool website for alleged “undermining of institutions”. AEJ – Bulgaria commented44 that such an appeal on behalf of a body of authority addressed to a special service with counterintelligence functions and aimed at a publication “is inadmissible in a democratic society in which media freedom is a value recognised by the authorities”. The organisation also noted that this could create an environment of intimidation and provoke self-censorship. The Journalistic Ethics Committee adopted in 2015 an opinion on the protection of information sources,45 in which it states that “the journalists have not only the right but also the obligation to protect their sources when these are confidential”, as well as that “the right to protect the sources may be subject to restriction when the conditions of lawfulness, proportionality and necessity in a democratic society have been met, upon the judgment of an independent and impartial court”. Currently, the Bulgarian legislation does not guarantee sufficient protection of information sources. The Council of Europe recommends that penalties for refusal to reveal sources are imposed only by judicial authorities.46

This year we saw a series of threats and attacks against journalists, more so around the local elections. In October, the head of the supreme meshere (the Roma popular court also known as Kris–Romani), Hristo Mladenov, issued a series of threats against Nova Television’s journalist Veronika Dimitrova with regard to an investigation incriminating politicians in relations with organised crime.\(^{47}\) Another Nova Television crew was assaulted earlier the same month by Samokov municipal councillor candidate Traicho ‘Pizhe’ Vasiliev from the Movement for Rights and Freedoms (MRF) and several other individuals.\(^{48}\) Another television team was attacked on the same day in Yambol.\(^{49}\) In May, bTV reporter Dimitar Tasev was subjected to undue insults by entrepreneur and football boss Kiril Domuschiev.\(^{50}\)

In 2015, we witnessed the strong and alarming trend of using slander complaints by those in power as a form of intimidating and pressuring journalists. The mayor of Blagoevgrad, Atanas Kambitov, filed a slander lawsuit against the owner of the www.blagoevgrad-news.com information website, Marieta Dimitrova, claiming BGN 100,000 (EUR 75,000) in non-pecuniary damages.\(^{51}\) The chair of the Financial Supervision Commission, Stoyan Mavrodiev, sued Rosen Bosev, a journalist at the Capital, for slander. Mavrodiev filed a non-pecuniary damages claim with the Sofia City Court alleging that he was feeling “tense, anxious” due to Bosev’s articles in the Capital and his interviews in other media.\(^{52}\) He sought compensation in the amount of BGN 20,000 (EUR 10,000).

In September, the Sofia City Prosecutor’s Office terminated the pre-trial proceedings against Atanas Chobanov, editor-in-chief of the investigative journalism site Bivol. The proceedings were started by the Sofia District Prosecu-
tor’s Office in connection with the undue accusation of the former minister of the Oresharski government Ivan Danov. The district prosecutor’s order was terminated by the higher-ranking prosecutor with the motive that there are no grounds for undertaking criminal action against the journalist. The pressure against Bivol started in late 2014 after publications in which the media requested that the Bulgarian National Bank carry out an inspection to see if the First Investment Bank is being looted similar to the Corporate Commercial Bank. FSC then obliged Bivol to reveal its sources and – according to Bivol director Assen Yordanov – “to provide personal data, including the addresses of the editors who worked on this information, the personal data of the administrators who published it, the exact time it was published, the exact people who uploaded it, their addresses and personal data, and the personal data of the person who approved publishing of the information on the internet.”

**Opaque media ownership**

Some changes in media ownership occurred during the year. In August, *The Presa* newspaper and *The Tema* magazine were shut down, only two weeks after their former owner, United Free Media, had transferred them to Integrated Road Systems AD, a company which similarly to the media group owned large amounts to the failed Corporate Commercial Bank (CCB). In November, the CCB receivers announced the sale of the equipment of TV7 and News7. Almost two years after he announced his purchase of *The Trud*, in December 2015 Petyo Blaskov found financing and finalised the deal.

For another consecutive year, the issue of the clarification of ownership remained unsolved for many media. The mediamarket.bg.info platform, an AEJ – Bulgaria project with analyst Nikoleta Daskalova, was launched at the end of the year with the purpose of clearly showing who owns what and how much of the Bulgarian media market. The platform provides a visual presen-

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tation of Bulgarian media shares in different sectors, their advertising revenues and audience. The infographics also provide information on what media are owned by the various media groups, as well as on their owners' membership in associations. The platform clearly outlined the main problems of the Bulgarian media market: lack of transparency and ownership concentration. According to the data, offshore heavens, most often Cyprus, are used by leading media groups. According to Nikoleta Daskalova, the observations reveals “a summary outline of the media environment: unevenly developed market, practically dominated by a limited circle of agents, with a concentration of a single content type, inefficient functioning and insufficient transparency. In the end, these characteristics narrow the boundaries of pluralism and invest the environment with risks”.58

With regard to the online media, the analysis of the Bulgarian media environment indicates that they are losing their independence and are becoming less of an alternative to the traditional media: the online environment reflects the powerful presence of large television and publishing companies on the internet59. Furthermore, scores of anonymous online media are more widely present in the environment. They are very prolific in publishing news, lack original content and breach the most basic rules of journalism. As stated in an investigation of the topic by The Capital,60 media such as dunavmost.bg, petel.bg, sekirabg.com, bradva.bg quote each other, “very often do not have a clear owner or publisher, and even if backed by some company, papers show that it usually is a one–man show (if it has any employees at all); they often mix fake news with shocking titles from the daily news flow, like the Blitz and Pik websites. The investigation notes that the mock-up websites often quote media related to MRF member of parliament Delyan Peevski and copy their content, sometimes literally. The influence of the pseudomedia is not to be underestimated: the largest ten websites lacking clear ownership have generated a total of more than 5.5 million clicks in October 2015 alone.61

59 Ibid.
61 Ibid.
Media bats

The use of media for political purposes and retribution is escalating. Many media in Bulgaria massively publish slander, lies and manipulations with frequency that in some cases borders on abuse, against certain people who are often uncomfortable to those in power. The Pik and Blitz tabloid websites, which regularly and severely violate media standards, are leading the efforts of defeating status quo critics. Pik demonstrated its excellent contacts with the powers that be at the end of 2014 when the agency’s birthday party was attended by members of parliament and representatives of political party elites, while Prosecutor General Sotir Tsatsarov even underlined its “professionalism” in his address.62

Capital noted in an investigation that “for months publishers have been saying off the record that on the market the two websites – pik.bg and blitz.bg – are Peevski’s main “dirty work” weapon, meaning that the compromise battles against his political and economic opponents pass mainly through them. They explain that Delyan Peevski’s interest in the two websites is protected by the editorial team headed by Slavka Bozukova (editor-in-chief of The Standard) who is also a member of the Bulgarian Media Union created by the MP. A month ago, Blitz journalists stated that Bozukova visits them once a week to personally check on their work and give them instructions. During the rest of the time, they are under the control of Pik owner Nedyalko Nedyalkov. His job is to have the two media websites ensure media comfort to the government and protect Delyan Peevski’s interests”.63

The state supports websites like Pik and Blitz also by providing them exclusive information, thus giving them an advantage in comparison to other media.64 The media that are close to Peevski were expectedly preferred for contracts for paid political advertising.65

Information from the Sofia District Court and Sofia City Court, where the lawsuits against national media are heard, shows that in the past five years the tabloid media – the Blitz, Pik and Vseki den websites, as well as Weekend,

64 Ibid.
The Telegraph, The Monitor and The Galeria newspapers – are most frequent defendants in such cases.⁶⁶

**Relations with those in power**

The distribution of funds from the government to the benefit of media with a positive attitude through advertising and media coverage contracts continued throughout the year. According to the AEJ – Bulgaria freedom of speech survey for 2015, municipal level three or five-year information services contracts, some of which include a requirement “to preserve the good image” of the administrative authorities, are a widely used method of influencing the media content of regional media.⁶⁷

At the end of 2016, when the amendments to the Public Procurement Act were put to vote, the members of parliament left a text, which allows the institutions to directly place “orders for the purchase of programming time or ensure broadcasts that are assigned to media service providers”.⁶⁸ The lack of clarity and transparency as to why a certain institution has chosen to buy programming time from a certain media creates a possibility for the media comfort of the powers that be to be financed by the taxpayers.

Influence peddling is not restricted only to advertising contracts and media coverage. A scandal burst in April with regard to opaque disbursement of public funds to the media when the Ministry of Culture financed Bulgarian journalists’ trips to the opening of a Bulgarian exhibition at the Louvre. The minister of culture, Vezhdi Rashidov, said on that occasion in an interview for Pik: “Everything is provided for my friend colleagues” and “I haven’t called [the journalists] to create scandals for me”.⁶⁹

**Regulation and self-regulation**

The lack of effective self-regulation is one of the reasons behind the poor media environment in Bulgaria. There are two media unions in the country,

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as well as two media codes of ethics. At the same time, the serious ethical issues with the publications of members of the Bulgarian Media Union continue. The appointment of the members of journalistic ethics committee and the relaunching of its activities may be noted as positive developments. The committee reviews signals for all the media, regardless of the organization they are member of. In early 2015, the lawyer Aleksandar Kashumov, head of the Access to Information Programme’s legal team, was unanimously elected chair of the committee; he was re-elected in February 2016.

In 2015, the National Council of Journalistic Ethics Foundation’s secretariat received 79 complaints and signals. Complaints regarded as “unfounded” with regard to violating Bulgarian media’s code of ethics have the largest share of all decisions: 32. 21 complaints were regarded as “founded”. A significant number of complaints (19) have not been reviewed or proceedings have not been initiated due to failure to respect complaint review rules (complaints about publications or broadcasts which have occurred more than two months before the date the complaint was filed are not reviewed). The majority of the complaints involve printed media and online news services (electronic newspaper editions, magazines, information agencies and other electronic publications): 54. 24 complaints have been filed against traditional media, almost exclusively related to television broadcasters.

The trend towards prevalence of the complaints for which the commission has not held a violation of ethical rules is valid more specifically for the most frequent categories by the type of alleged violation: “Preciseness of the information provided” and “Discrimination”. With regard to complaints concerning the provision of true and verified information, only two complaints were deemed admissible. The “inadmissible” complaints (25) prevail with regard to “discrimination”.

The long-time chair of the Electronic Media Council (EMC), Georgi Lozanov, resigned in February 2016. In his official statement he explained that the reason behind his resignation was the registration of the Pik television and his disagreement with the hate speech imposed by the website with the same name. “I wouldn’t like either with my vote as EMC member or with my signature as EMC chair to legalise in the electronic media the aggressive rhetoric

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of the online media of the same name which easily crosses the boundaries of hate speech, albeit not necessarily on the basis of race, ethnic origin or religion”, he said.\(^{72}\)

**Hate speech**

Hate speech against ethnic, religious and sexual minorities continued to be strongly present in many media, and the attitude to marginalised groups was generally stereotypical and negative. Many media continued to cover without any criticism the positions of neo-Nazi organisations.\(^{73}\) We saw materials instigating and appealing to violence and lynching of people affiliated – or suspected of being affiliated – with the LGBT community (Martin Karbovski, Adrian Asenov).\(^{74}\) The television channel of the Ataka party, Alpha TV, continued to systematically instigate hate and intolerance on racist and Islamophobic grounds. Although such acts should be penalised both under the media legislation and under the *Penal Code*, no such penalties were ever imposed.\(^{75}\) In September, all parliamentary represented parties except Ataka signed an Agreement between the Political Parties and the Media on Not Using Hostile and Discriminatory Speech in the Official Campaign for the 2015 Local Elections. Importantly, representatives of the Bulgarian Media Union did not attend.\(^{76}\)

**Access to information**

After a year and a half of work and public discussions, parliament adopted on 26 November 2015 the Bill Amending and Supplemeting the *Access to Public Information Act* (APIA).\(^{77}\) Most texts entered in force on 12 January 2016, some that related to the proactive publication of information by institutions – three

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\(^{77}\) For the full text of the *Access to Public Information Act*, see [http://www.aip-bg.org/legislation/](http://www.aip-bg.org/legislation/).
months later, while for others there are different deadlines, the last of them expiring in 2017. The amendments improve both the regime for provision of public information and the procedures for the so-called re-use of information from the public sector. The texts were elaborated with the participation of Access to Information Programme.

The changes expand the possibilities for electronic access. The number of the categories of information the institutions are required to publish on the internet is increased. A new requirement is introduced to publish online the information provided on initiative of the bodies of power. Administrative managers are obligated to adopt lists of additional categories of information subject to publication online. Publication deadlines and penalties for failure to comply with the obligation are introduced. The administration is prohibited from requiring electronic signatures on requests sent by email. An explicit obligation is introduced for staff to respond to requests by providing documents also in electronic format or by referring to a website where they are located. In such cases, there is no obligation to sign a protocol for the delivery of the information and access is free of charge. Individuals will be able to file requests via a special platform which will also be used to publish the decisions on the requests and the information provided. The silence of a third party will not be interpreted as refusal to provide information, as it was so far, but as consent.

The main purpose of the amendments was to improve the reuse of information from the public sector in line with Directive 2013/37/EU. In this respect, the currently obligated subjects (state bodies and organisations of public law) are expanded to include libraries, museums and archives. The institutions and the organisations need to aspire to provide opportunities to use and publish information in machine-readable format. The standard rules on the reuse of information from the public sector and on its publication in an open format will be defined in an ordinance of the Council of Ministers. The institutions and the organisations will publish information in open machine-readable format on the Open Data governmental portal. This format allows the easy processing of the information for commercial and non-commercial purposes.

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78 The portal is available at https://opendata.government.bg/.
8. Freedom of association

The freedom of association of the Macedonians in Bulgaria continued to be violated in 2015, despite the many past judgements of the European Court of Human Rights, which have established violations of Article 11 of the Convention in similar cases. During the year, Sofia Appellate Court panels handed down decisions in three cases confirming the lower court’s refusal to register associations of Macedonians in Bulgaria. In all three cases, the decisions were openly arbitrary and discriminatory.

On February 2, the Sofia Appellate Court rejected the complaint of the Association of the Repressed Macedonians in Bulgaria Victims of Communist Terror against the refusal of the Blagoevgrad Regional Court to register the association. In the court’s opinion, the by-laws of the association “imply the existence of a minority Macedonian ethnus deprived of rights”. This, together with the appeals to stand behind a “Macedonian cause” was “targeted against the unity of the Bulgarian people and the territorial integrity of the country”. In the court's opinion, such objectives were intrinsic only to political parties and could not be adopted by a civil association. These grounds for refusal have already been reviewed by the ECtHR in similar cases and were rejected as inconsistent with article 11 of the Convention.

On November 8, the Sofia Appellate Court handed down a final refusal of registration to the Tolerance Association for the Protection of the Rights of Macedonians in Bulgaria. The goals in the association's by-laws almost literally repeat those in the by-laws of the Bulgarian Helsinki Committee, which has had a registration in Bulgaria for more than two decades. The Blagoevgrad District Court instructed the applicants to supplement this part of the by-laws; they did and submitted to the court supplements reviewed and approved by all founders. Nevertheless, in October 2014 the Blagoevgrad District Court
decided that not all circumstances subject to registration have been disclosed in full.79 In its decision, the Sofia Appellate Court held that “it should consider the facts and circumstances that have occurred by the date the registration application was submitted” but not after that date. Such an approach contradicts the law, which does not include provisions on security proceedings with regard to the registration of non-profit associations. It implies that the Blagoevgrad District Court’s instruction was also unlawful. The court also motivated its refusal by stating that three of the founders have not submitted their personal identification numbers, a fact neglected by the Blagoevgrad court and therefore left without instructions. As in all similar cases pertaining to the registration of Macedonian associations, such mock-up grounds are nothing but a cover for the true discriminatory objectives: the refusal of the judiciary bodies to recognise an association of Macedonians.

On November 18, the Sofia Appellate Court once again confirmed the refusal of the Blagoevgrad District Court to register the OMO Ilinden association. The court held that the goals of the association and the means to their achievement are peaceful and do not include violence. But it referred to the past activities of the association’s members which it were “public” and include “periodically challenging both the opponents of applicants’ political positions and the Bulgarian state bodies, which in the end resulted in a series of objectivised violations of public order which were covered by the media”. Secondly, the court held that although the association had declared that it’s open to members from all ethnic groups in Bulgaria, it is in fact Macedonian. And thirdly, the court decided that the international situation in Europe and in the Balkans is complex and requires “comprehensive and complete mobilisation and commitment of all existing state and social resources to meet the above-mentioned challenges”. Due to the peculiarities of the international situation and the association’s potential to generate violations of public order, it should be denied registration. In the court’s opinion, those who do not share the association’s values as declared in its by-laws would feel that their rights and interests of citizens of a civilised European country which has not had any serious human rights violations have been hurt. This decision of the Sofia Appellate Court ranks among the most arbitrary ones ever handed down by a Bulgarian judicial body in a case involving the registration of a Macedonian organisation.

In 2015, the degrading and inhuman conditions at the Bulgarian prisons became the occasion for two unprecedentedly critical acts of Council of Europe bodies against Bulgaria: ECtHR’s pilot judgement in January 2015 in the case of *Neshkov and Others v. Bulgaria*, and the public statement of the Committee against Torture of March 2015.\(^8\)

**Prisons and prison dormitories**

According to information provided by the Central Penitentiary Administration (CPA), the average number of the inmates in prisons and prison dormitories in 2015 was 7,640, or a fifth less compared to 2014. (See Figure 1 below).\(^8\) This is a dramatic reduction of the absolute number of inmates in penitentiary institutions, which has not been seen in the past six years.\(^8\)

A look at the changes in the number of inmates serving their sentences at prisons and prison dormitories by December 31/January 1 over the past ten years also indicates a constant trend towards a reduction of the prison population. By 1 January 2016, the number of inmates was 7,408 or 462 less than on 31 December 2014.\(^8\)

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\(^8\) See *Right to life, protection against torture, inhuman and degrading treatment.*  
\(^8\) Ministry of Justice, Central Penitentiary Administration (2015). Information provided to BHC under the *Access to Public Information Act* by Decision No. 1-190/2 of 22 January 2016.  
\(^8\) In 2015 BHC was surprised to find that according to the methodology used by CPA the “average number” indicator reflects the sum of the number of inmates at prisons and prison dormitories on the first day of each month of the year, divided by the number of months. This calculation method is inconsistent with the approach in statistics, where the average number is calculated as the mean arithmetic of the number of inmates for each calendar day of the respective period. The approach used by CPA is too limited and may result in biased representation of the real situation with regard to prison population.  
\(^8\) Ministry of Justice, Central Penitentiary Administration (2015). Information provided to BHC under *Access to Public Information Act* by Decision No. 1-190/2 of 22 January 2016.
In comparison to 2014, the number of defendants and accused in prison remains almost unchanged; in the longer term, the trend towards the reduction of their number is preserved. By 1 January 2016, 161 were serving life sentences, 57 of them without parole.84

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<tbody>
<tr>
<td>Accused</td>
<td>348</td>
<td>352</td>
<td>380</td>
<td>364</td>
<td>273</td>
<td>190</td>
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<tr>
<td>Defendants</td>
<td>542</td>
<td>707</td>
<td>719</td>
<td>563</td>
<td>501</td>
<td>479</td>
</tr>
</tbody>
</table>

The reduction of the absolute number of inmates in prison in 2015 is a fact, but it is not a result of a targeted state policy as such a policy has not been implemented. On the contrary, the entrance of the penitentiary system remains wide open to newly entering offenders. The National Statistical Institute’s (NSI) analysis of imposed punishments clearly indicates a constant increase of the share of persons sentenced to deprivation of liberty at the expense of the diminishing share of those sentenced to probation (See Figure 2 below).86

85 2015 data by 1 January 2016.
At the same time, no wider implementation of early release measures, such as parole and pardon, is reported in 2015, nor has an amnesty law been adopted. In fact, the changing demographics in Bulgaria and the general decrease of population as a result of the low birth rate and the migration to other countries, especially in the 20-40 age group whose members are statistically most likely to enter prison, remain the main reason behind the reduced number of inmates.

Regardless of the lower number of inmates, overcrowding continues to be a serious and unsurmountable problem in some prisons and prison dormitories. Based on official data, eight penitentiary facilities were overcrowded by July 2015. Among these were the prison in Burgas, at 230% of capacity, and the prison in Varna, at 155% of capacity.

The escalation of international criticism of prison conditions in Bulgaria since the beginning of 2015 led to the urgent inclusion of the penitentiary reform on the government’s agenda. The cabinet of justice minister Hristo Ivanov, whose term began in 2014, openly admitted the existence of structural problems in the penitentiary system and declared its commitment to overcoming them.\(^7\)

ures. One of these was to change the management of the prison system. A new acting director general of the CPA was appointed in 2015, the wardens of the three prisons which were most criticised by the CPT – in Burgas, Sofia and Boichinovtsi – were fired. Nevertheless, there is no information that any of those fired has been held disciplinary responsible for the violations identified at the institution he was managing. Furthermore, two of the fired wardens remained in the system, reappointed to other management positions.

In response to the recommendations made by the CPT for many years to establish guarantees against physical abuse in detention facilities and prisons, the Ministry of Justice introduced in October 2015 the creation of trauma registers at detention facilities and special rules on improving oversight in case of incidents involving the use of physical force.\textsuperscript{88} Progress was reported also with regard to 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. Repairs of various auxiliary facilities at the Lovech prison, its hospital and its Atlant dormitory were completed in 2015 under the project; the overall reconstruction of the Stara Zagora prison began, including the installation of sanitary facilities in the dorms. The construction of a new prison dormitory at the prison in Burgas and the repair and expansion of a dormitory at the prison in Varna continued under the project in 2015.

In 2015, the Ministry of Justice created two working groups for the purpose of elaborating legislative measures on the implementation of the pilot and other ECtHR judgements against Bulgaria and CPT recommendations. They formulated proposals to amend some legislative texts, including such concerning the initial distribution and the transfer of inmates, the change of the regime of serving the sentence, the parole, the regime for the inmates serving life sentences, the judicial review of some acts of the prison administration, the legislative definition of degrading and inhuman treatment, the use of force and restraint. Another important part of the proposals concerned the introduction of an obligation to guarantee a minimum living space of 4 m\textsuperscript{2} per inmate, a new preventive means of protection against violations of the prohibition of torture, inhuman and degrading treatment, and a new means of monetary compensation for violations of this prohibition. However, the final draft act presented for public discussion by the Ministry of Jus-

\textsuperscript{88} Ministry of Justice (2015), Order No. 10-04-1416 of 13 October 2015 by deputy-minister Andrei Yankulov provided to the BHC under APIA by Decision No. №1-190/2 of 22 January 2016.
tice lacked some important proposals of the working group, for example the free access of human rights organisations to the accused and the defendants, as well as the introduction of visits without a barrier between inmates and their relatives. The reduction of the disproportionally heavy punishment for “theft” stipulated by the Criminal Code\textsuperscript{89} was yet another significant measure aimed at combatting overcrowding that was left out of the package of legislative proposals.

In another draft act, the Ministry of Justice proposed the introduction of electronic monitoring of individuals placed under house arrest and under probation, as well as a change in the status of the correctional institutions from independent facilities within the CPA to prison divisions. Regardless of the efforts of the Ministry of Justice, many problems concerning places of detention remained unsolved in 2015 while others became more acute. According to the ministry, to meet the minimum international standards on inmate treatment, the state had to invest some BGN 13,030,000 (EUR 6,660,000) in improving the dilapidated buildings and the poor material conditions in the prisons. However, the actual amount allocated for capital outlays in the penitentiary system’s budget is far less and has remained unchanged in the period 2011–2015: BGN 1,298,400 (EUR 664,000) annually. In fact, the state still denies the legitimacy of allocating own funds for penitentiary system investments, relying completely on external donor funding, mostly from the Norwegian Financial Mechanism.

BHC observations indicate that the level of inter-prisoner violence in some prisons, such as those in Varna and Burgas, remains alarmingly high, resulting from overcrowding, insufficient staff and lack of effective prevention measures. Healthcare quality is also very low. Based on the current legislation, people with psychiatric conditions continued to be segregated in special wards, usually inside or immediately adjacent to high security areas hosting inmates serving life sentences and/or the disciplinary punishment of “isolation” (Burgas, Sliven). The disciplinary practice in the prisons, which is implemented with unclear criteria on imposing the punishments, lack of access to legal assistance in the administrative proceedings and lack of judicial review, except for isolation-related punishments, is yet another issue, which has not been addressed by the reforms. At the prison in Burgas, BHC established that inmates are punished for self-injuries, a completely unacceptable

\textsuperscript{89} According to information on the composition of inmates by type of punishment, by 1 May 2015 37\% of inmates were serving convictions for theft.
practice. Inmates complain in numbers of the procedures on filing complaints with external organisations due to the lack of anonymity guarantees and the possibility of tracing the complaints filed, as well as of a high risk of revenge in case of complaints against prison staff (Varna, Burgas, and Lovech).

The number of staff in the penitentiary system, and most of all of social workers, psychologists and prison guards, remains inadequately low to effectively work with offenders and ensure inmate protection and safety. In a special inspection of the prisons in 2015, the prosecution found “insufficient physical security, with its ratio to inmates not sufficient in any of the locations inspected".90 Also in 2015, the government implemented administration optimisation measures that led to a 10% cut of posts at the Central Penitentiary Administration. The organisation of the work of prison guards is yet another problem that has existed for many years. When 24-hour shifts were prohibited in 2014 on recommendation of the CPT as incompatible with the requirements of prison guard service and posing risks to inmate safety, in 2015 the prohibition was repealed under pressure from staff.

Important reforms were implemented in 2015 also with regard to the correctional facility for boys at Boichinovtsi. These were effected following the information about multiple violations at the correctional facility published in BHC91 and CPT92 reports. The most important finding of the two organisations was the existence of data about widespread use of physical violence by the guards against the juveniles deprived of their liberty. Apart from violence, the CPT report published in January 2015 included many critical remarks about the correctional facility, most of all about its poor material conditions, its geographical remoteness, the wide use of disciplinary isolation and the insufficient activities. Besides the CPT, in 2015 the correctional facility was also visited for the first time by the State Child Protection Agency acting on referral from BHC.93

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90 See “The prosecution: prison guards are working well but are overloaded”, Dnevnik.bg, available at: http://www.dnevnik.bg/bulgaria/2015/08/17/2592309_prokuraturata_nadziratelit_e_v_zatvortite_rabotiat_dobre/.
Over the past year the institutions addressed many of the issues outlined by CPT. In January, deputy minister of justice Andrei Yankulov personally committed to the problems at the correctional facility. He personally informed the prosecutor's office\(^94\) about the violence there but the pre-trial proceedings were terminated later in the year due to lack of data that a crime had been committed. Secondly, the head of the correctional facility under whose management the use of violence against juveniles deprived of their liberty had become an institutional policy was replaced. The new head demonstrated significantly greater sensitivity to the problems faced by juvenile delinquents. For example, he put a stop to the practice of imposing “isolation in a penal cell” as a punishment.

The correctional facility was partially repaired in 2015, as a result of which all juveniles were placed within a single hallway. Although the new division saves heating and security costs, it also increases the risk of violence and abuse between inmates, about the existence of which the BHC was informed.\(^95\) Unlike in the preceding year, a positive trend was observed in 2015 towards the use of different possibilities to make the serving of the punishment easier for juveniles: home leave and release on parole. The existence of only one correctional facility for boys for the whole country remains the most serious issue. In 2015, the Ministry of Justice considered moving the correctional facility to the Vratsa prison as a more accessible location, but this would not solve the problems arising from the fact that there is no other such facility.

In 2015, the BHC also conducted monitoring at the women’s prison in Sliven.\(^96\) It revealed that for many women the deprivation of liberty is a disproportionately severe punishment given the nature of their crimes (mainly crimes against property), the risk they pose to society, their family and health status. As with the juveniles, the existence of only one women’s prison in Bulgaria is a major drawback of the penitentiary system that creates a series of other unsolvable problems, such as the impossibility of placing inmates close to their usual place of residence and severed contacts with the external world. The cells in the Sliven prison have no sanitary facilities and the women use buckets for their physiological needs during the night. This, combined with


\(^95\) Information collected in interviews with juveniles during a BHC visit to the Boichinovtsi correctional facility, January 2016.

the limited access to hot water and bath, is a form of degrading and inhuman treatment. The widespread practice of performing strip searches is also degrading and unjustified by prison security needs. The prison has a modern nursery where women who have given birth while serving their sentences may stay together with their children for up to one year. Nevertheless, the nursery’s location in the main prison building, the lack of professional support in raising the children, as well as the complete exclusion of the mothers from the activities organised in the prison compromise the idea of having a prison nursery. The monitoring also showed widespread use of disciplinary punishments against the women and lowest levels of implementation of the release on parole statutes in the whole penitentiary system.

Investigation detention facilities

Thirty-four investigation detention facilities (IDF) with a capacity of 1,733 detainees and a total of 524 cells operated in Bulgaria in 2015. Of all places of detention, the material conditions are the worst at the investigation detention facilities. According to data provided by the Central Penitentiary Administration, based on 4 m² of living space per person the number of places (beds) in the investigation detention facilities should be 1,432. In 2015, they were by 301 more. The total number of cells in the investigation detention facilities has been reduced by 31 compared to the preceding year: with 16 at the IDF in Pleven, with six cells at the IDF in Vratsa and with two cells at the IDF in Burgas. According to the CPA, in 2015 overcrowding was reported in only two IDFs: those in Ruse and Svilengrad. Compared to the previous year, the overall overcrowding has diminished. BHC visited in early 2016 the two investigation detention facilities in Sofia, at G. M. Dimitrov Boulevard and at Major Vekilski Street. The cell area measurements at the IDF on G. M. Dimitrov showed that the area of the cells is 14.88 m², while the number of detainees in a cell may be up to five, or a little over 3 m² per detainee. The cells are equipped with two double and one single beds, with a bed available to every detainee.

In 2015, the total number of detainees was 15,606 of whom 388 women. The number of women in investigation detention facilities was significantly lower in 2015 compared to 2014, when a total of 975 had passed through the country’s IDFs. The foreign citizens detained in IDFs in 2015 totalled 1,452, almost

97 2015 statistical data provided by the Ministry of Justice, Central Penitentiary Administration (2015), information provided to BHC under the Access to Information Act by Decision No. 1-164/2 of 19 January 2016.
by 1,000 less than in the preceding year. This is due to the prosecution being less active in persecuting migrants illegally crossing the border. The reduction in the number of detained juveniles compared to previous years is also noteworthy. According to information provided by the CPA, by December 1 they totalled 310 for the whole year, compared to 500 in the previous year. According to the CPA, all investigation detention facilities in the country have separate cells for juveniles. The total number of number of detainees in investigation detention facilities by 31 December 2015 was 739 (Table 3).

Table 3: Number of detainees in investigation detention facilities by December 31, by year (2004–2015). Source: Central Penitentiary Administration

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<tbody>
<tr>
<td>Number of detainees</td>
<td>858</td>
<td>862</td>
<td>786</td>
<td>760</td>
<td>723</td>
<td>1087</td>
<td>1283</td>
<td>1025</td>
<td>1024</td>
<td>746</td>
<td>764</td>
<td>739</td>
</tr>
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In 2015, the IDFs in Burgas and Pleven were moved to the prison buildings in Burgas and Pleven, respectively. The IDF in Shumen was moved to a new building. Partial building repairs were effected in six IDFs. Despite the fact that the material conditions in most investigation detention facilities are very poor, less repairs were made in 2015 than in 2014. Regardless of previous and ongoing repairs, the monitoring in early 2016 showed that the division between smokers and non-smokers was insufficiently effective, due to the lack of a ventilation system at the IDF on G. M. Dimitrov Boulevard and an ineffective such system at the IDF on Major Vekilski Street. In both IDFs, detainees are divided in cells based on whether they smoke or not. This does not alleviate the situation, especially at the IDF on Major Vekilski St. where the windows do not open and the air in the cells is palpably stale. The situation observed at both IDFs is deemed to pose a health risk to both the detainees and the staff working directly with them. Despite the fact that both IDFs have central heating which is not subject to a special regime, it was found that the cells on Major Vekilski St. which are comprised of two premises with two beds each combined into a single space, were cold. The presence of insects and rodents in the buildings requires the visited IDFs to be sanitised. Interviewed staff’s statements, confirmed by the medical personnel at the IDFs, show that vermin extermination is carried out on a schedule by a specialised company, every one to three months, as well as on when needed basis. Sanitary and hygienic oversight at the IDFs is carried out by their medical staff who may
issue compulsory instructions to IDF management. The visits revealed the extremely poor condition of the mattresses and the bed linen in both IDFs. These were exceptionally worn out and unhygienic. Cell furniture – beds, tables and chairs – is also very old and worn out. The walls are darkened by cigarette smoke. Outside the cells, cleaning services are provided by the detainees on a schedule or by IDF staff. In both areas, the open-air exercise areas are not cleaned.

The fact that the access to direct sunlight continues to be limited at eight investigation detention facilities\(^98\) is alarming. According to information provided by the CPA, the cells in only 15 of all 34 investigation detention facilities are equipped with sanitary facilities,\(^99\) due to which the access to toilets is restricted and there are prerequisites for conflicts and violations of detainees’ rights. There are seven IDFs still in operation which have no exercise premises whatsoever.\(^100\) 17 IDFs have open-air exercise areas, while in 10 others the exercise areas are located indoors.\(^101\)

According to the CPA, only four out of the 34 investigation detention facilities in Bulgaria have qualified doctors on full-time contracts. These are the IDFs in Pleven, Plovdiv and Sofia (both IDFs in Sofia have a medical centre staffed by two doctors, a nurse, a paramedic and a dentist who has at his disposal an equipped dental office at the IDF on G. M. Dimitrov Boulevard). 16 IDFs have a post for a paramedic;\(^102\) the post is vacant at the IDFs in Blagoevgrad and Vratsa, and is completely missing at the remaining 8 IDFs. According to information provided by the CPA, a total of 16 IDFs have completely lacked medical services in 2015. Only the IDFs in Plovdiv and in Sofia had occupied posts for doctors and paramedics.

The conditions needed for effective healthcare in prisons are of administrative and financial nature. According to the government, the healthcare available in places of detention is the same as the one available to all Bulgarian citizens, namely, the one provided by the para-state health insurance in

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\(^98\) The IDFs in Veliko Tarnovo, Dobrich, Kardzhali, Dupnitsa, Lovech, Silistra, Sliven and Svilengrad.

\(^99\) The following IDFs have sanitary facilities in the cells: Burgas, Varna, Montana, Pleven, Pernik, Plovdiv, Razgrad, Ruse, Smolyan, Stara Zagora, Targovishte, Shumen, Elhovo, 42 G. M. Dimitrov Blvd. (Sofia) and 2 Major Vekilski Street (Sofia).

\(^100\) The IDFs in Dobrich, Kazanlak, Lovech, Razgrad, Svilengrad, Sliven and Yambol.

\(^101\) The IDFs in Blagoevgrad, Varna, Veliko Tarnovo, Vidin, Kardzhali, Pazardzhik, Ruse, Stara Zagora, Targovishte and Haskovo.

\(^102\) In 2015, qualified paramedics were working at the IDFs in Veliko Tarnovo, Vidin, Gabrovo, Dobrich, Kardzhali, Kyustendil, Montana, Pazardzhik, Pernik, Plovdiv, Razgrad, Ruse, Silistra, Sliven, Sofia, Shumen and Yambol.
stitute – the Bulgarian National Health Insurance Fund. The 2015 National Framework Contract does indeed introduce medical specialists in the system and mandates them to use the financial mechanisms for reimbursing drugs and medical services (Article 45(1), National Framework Contract 2015). This regulation however covers only doctors and not paramedics; according to European healthcare standards, the latter have a very low competency and mandate status. In the investigation detention facilities, the mechanism of a temporary choice of general practitioner applies. This possibility is applied in different ways and insufficiently in investigation detention facilities without an appointed doctor. In cases of detention for periods over one month, a GP is appointed by the administration; the detainee is not entitled to take part in this process. This provision in its current wording imperatively repeals the existing opportunities for choice of GP; it can thus be considered as restricting freedom of choice.

In spite of the generally positive nature of the possibility to choose a GP of one’s choice, one has to bear in mind the lack of and necessity for a special regulation for GPs working in the detention facilities for independent establishment, verification and reporting of cases of abuse. The existing general provision is obviously insufficient for this specific case. The functions of the operative medical specialists in this respect are definitely not independent and unbiased. The imputed functions of the staff medical specialists in the prison system that involve implementing functions of the regional healthcare inspections with respect to sanitary and epidemiological control and functions of the Bulgarian Food Safety Agency with respect to food are essentially formal and non-functional on account of the clear dependence of the object and the subject of control. Hospital healthcare with the prisons is entirely financed by the Ministry of Justice. It lags behind considerably from the national standards and functions in the context of lack of control and failure to implement the legal and professional requirements for hospital services on issues such as, staffing, staff qualification and equipment. The requirements for informed consent and evidence thereof are not duly respected. The principles and requirements for confidentiality of medical information are to a large extent violated. These problems are visible in the predominant contents of prisoner complaints.

According to information provided by the CPA, no staff received disciplinary punishments in 2015 in relation to incidents with detainees, and not a single case of violence between detainees and staff has been established. The CPA
claims that only one case of inter-detainee violence has been registered during the year at the investigation detention facilities. During the visits in the beginning of 2016, a review of the inmate trauma registry which is kept since 15 October 2015, revealed three records for the IDF on G. M. Dimitrov Boulevard: a fight between cellmates; a detainee who had fallen in the bathroom; and a prevented attempt at suicide by a female foreign citizen who tried to hang herself in her cell. According to the staff, she had attempted the suicide because interpretation had not been provided on time and she was under great stress as she did not understand what was happening to her.

Compared to previous years, the cases of death in investigation detention facilities have increased. Four deaths and three suicide attempts were established. In 2013, there were two deaths; in 2014, there were none, but 13 suicide attempts were registered. Despite the growing number of deaths and suicide attempts, there is a lack of psychologists in the IDF system. According to information provided by the CPA, in 2015 there was only one full-time psychologist, at the Sofia Regional Penitentiary Administration.

The BHC revealed in a 2015 thematic report data from a large-scale survey that show that 11.3% of the interviewees had witnessed physical abuse of other detainees in an investigation detention facility. Most of the witnesses report that they had heard violence – sounds of hitting and shouts – in other IDF premises, outside their own cell. Many state that violence took place in front of them, in their own cell. Yet others had been instigated to abuse other detainees. Most witnesses of violence in IDFs say that physical force is most frequently used against Roma and foreigners, including women. 34 inmates, or 2.8% of all interviewed who had spent time at an IDF, were both witnesses and victims of physical violence. Five women (7.5%) had witnessed violence during their stay, while two (3%) of them were both victims and witnesses. During its visit to Bulgaria from 13 to 20 February 2015, the European Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) also found a series of cases involving physical violence (slapping, hitting and kicking) against detainees in IDFs, more specifically at the IDF on G. M. Dimitrov Boulevard in Sofia. There were also cases of violence against juveniles, which in the opinion of CPT have increased significantly over the previous year when the Committee visited the same facil-

ity. Physical violence by staff is provoked by disobedience of detainees or by their generally challenging behaviour (problems with cellmates, noise, multiple demands to staff). A specific example of 2015 concerns a 17-year-old boy who was hit and kicked by a guard because he had been talking to detained women. In another example from the same facility, a detainee complained of being physically assaulted by three guards who hit and kicked him while he was lying helpless on the floor. CPT received complaints of physical abuse from several other detainees at the same detention facility. The individuals subjected to physical abuse at the IDF on G. M. Dimitrov Boulevard reported that they were not checked by medical staff after the abuse, and that the abuse had not been registered or investigated.\textsuperscript{104}

Human rights bodies, including CPT, have been pointing out for years the problems in the IDF system in Bulgaria: poor material conditions, physical abuse by staff, inaccessible and low quality medical services and other issues. As the Bulgarian authorities have failed to demonstrate sufficient progress, in its 2014 report CPT recommended the closure of all investigation detention centres in the country.

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

A total of six boarding schools operated in Bulgaria in 2015: four correctional boarding schools (CBS)\textsuperscript{105} and two social educational boarding schools (SBS).\textsuperscript{106} In comparison to the previous year, the share of children in CBS and SBS in 2015 remains relatively constant given the closure of the SBS in Straldzha at the beginning of the 2014/2015 school year, as well as the lower number of children as a result of the demographic crisis in the country (Table 4). At the beginning of the 2014/2015 school year, the CBS and SBS accommodated a total of 204 students, 46 of whom were girls.\textsuperscript{107}

\textsuperscript{104} For more information see CPT (2015), *Report to the Bulgarian Government on the visit to Bulgaria, conducted from 24 March to 3 April 2014*; CPT (2015), *Report to the Bulgarian Government on the visit to Bulgaria, conducted from 13 to 20 February 2015*.

\textsuperscript{105} CBS Angel Uzunov, town of Rakitovo, Pazardzhik Region; CBS Hristo Botev, town of Podem, Pleven Region; CBS St. St. Cyril and Methodius, village of Kereka, Gabrovo Region; CBS H. Y. Vaptzarov, town of Zavet, Razgrad Region.

\textsuperscript{106} SBS Hristo Botev, town of Varnentsi, Silistra Region; SBS Hristo Botev, village of Dragodanovo, Sliven Region.

\textsuperscript{107} 2012–2013 statistical data provided by the State Agency for Child Protection (SACP) (2013), information provided to BHC under an *Access to Public Information Act* on request ref. no. 05–00–9/18 December 2013; and by the State Agency for Child Protection (2014), information provided to BHC under *Access to Public Information Act* on request ref. no. 14–0037/31 March 2014; 2014 statistical data provided by the Ministry of Education (MoE) (2015), information provided to BHC under by
Table 4: Number of children residing in CBS and SBS in 2012-2015

<table>
<thead>
<tr>
<th>Boarding school type</th>
<th>Number of children</th>
<th>Number of girls</th>
</tr>
</thead>
<tbody>
<tr>
<td>CBS</td>
<td>168</td>
<td>168</td>
</tr>
<tr>
<td>SBS</td>
<td>107</td>
<td>105</td>
</tr>
<tr>
<td>Total</td>
<td>275</td>
<td>273</td>
</tr>
</tbody>
</table>

According to the Ministry of Education (MoE), theft is the main reason for the placement of a child in a specialised boarding school. More than half, or 61%, of the children in CBS and SBS were placed there for this reason. Aggressive behaviour ranks second. Almost 11% of the children were placed in CBS and SBS for hooliganism and aggression. Then follow running away from home or from a specialised institution – 8%; prostitution and begging – 3% each; vagrancy and damage to property – 2% each. Only two students in the boarding schools were placed there for racketeering.

The analysis of the information provided by the MoE once again confirms that many of the children in boarding schools were deprived of their liberty for begging, vagrancy, truancy, running away from home, breaching order at home, running away from an institution, indecent behaviour, aggressive behaviour, prostitution and other acts or combinations of acts, and are treated as offenders instead of being protected and housed in an appropriate and supportive environment.

Children aged barely 11 or 12 continued to be placed in boarding schools in 2015. The minors aged 11 to 13 who were living in boarding schools in 2015 totalled 25. The juveniles are the largest group in CBS and SBS, with 88% of all residents. The 16-year-olds have the largest share of this group. There are also young people who have come out of age, which indicates the trend towards a lasting institutionalisation of the children in the boarding schools.

The Juvenile Delinquency Act (JDA) does not include a requirement to define the duration of the stay in CBS and SBS. According to Article 30(2) of this act, the maximum stay in CBS and SBS cannot exceed three years; however, in many cases this does not happen in practice and the children remain in boarding...

schools for a long time. The analysis of the duration of stay shows that the total average duration of stay per child in such an institution during the (ongoing) 2015/2016 school year is around 17 months, while in the preceding 2014/2015 school year it was around 21 months.

In 2015, the stay was the longest for the students at the CBS in Rakitovo. During this school year the number of students over the previous year has been reduced by only four. The average stay of a child in the boarding school is around 19 months, while the longest stay is that of a 12th grader who has spent 62 months (five years and two months) at the boarding school. The longest average stay is that of the students in the 11th grade at the CBS in Rakitovo: approximately 26 months. Three children who have already spent more than three years at the boarding school have submitted stay extension applications. No child’s stay has been terminated during this school year; during the previous, a boy was the only one released. For 2015/2016, 54 students were placed for an indefinite period of time, while only two boys have a definite 12-month stay for theft.

At the SBS in Dragodanovo the total average stay of the girls and boys is around 18 months, while the longest stay of a child there in 2015 was 34 months. The boarding school in Dragodanovo is home to students from third to eighth grade. The ones in fifth grade stay the longest: about 25 months. A total of 28 children are placed in this boarding school, two less than in the previous year. The stay of only one child was terminated in 2015. 15 children who were placed there without a specific duration of their stay were released in 2015. All children residing at the boarding school in 2015 were placed for an indefinite period.

Thirty-four female students from fifth to twelfth grade are placed at the CBS in Podem. For the 2015/2016 school year, the total average stay of the children in this boarding school was around 17 months. The longest stay is that of a girl in the twelfth grade: 36 months. The total average duration of stay is the

108 Under Article 30, paras. 3 and 4 of the JDA, the residents in these schools remain there for upbringing and education, including for vocational training, until they reach the age of 16 and, if they express such a wish in writing, until they reach the age of 18. Upon a request in writing by the juvenile, the teaching board, with the participation of a prosecutor and a representative of the local commission, which has proposed the correctional measure, may extend the stay at CBS or SBS after the juvenile had reached the age of 18, until the completion of the respective educational degree or vocational training.

109 The significant differences between the two years under comparison are due to the fact the 2014/2015 school year has ended while 2015/2016 is still ongoing.
longest for the students in the tenth grade: around 21 months. Only five of the girls have a defined duration of stay: 3 years for theft, 2 years for running away, 1 year for running away, 1 year for running away and 6 months for theft. The last child has already spent a year at the boarding school, her stay exceeding by at least four months the period defined at the time of placement. Only two girls had their stay terminated in the 2015/2016 school year. Prior to 15 September 2015, a total of 11 girls were released from the institution; 10 of them were placed for prostitution, one for begging. The number of students at the boarding schools has increased in 2015/2016 compared to the previous school year.

Twenty-two male students from fifth to eight grade are placed in the SBS in Kereka. The total average stay in the institution is about 16 months. The students in the eighth grade stay the longest: about 22 months. Nineteen children were placed for an indefinite period, three for one year each for theft. This is the only institution where the total average stay of the children has increased in comparison to the previous school year. This institution has not released a single child in two consecutive years.

According to information provided by the Ministry of Education (MoE), the total average stay of the children at the SBS in Varnentsi in the 2015/2016 school year was around 14 months. It is noteworthy that this is the boarding school for which the statistical information provided by the MoE does not indicate the duration of stay. Six children whose period of stay is not specified have submitted extension applications. In such cases, it is considered that these children, with the exception of one whose stay is fixed at less than three years, have spent more than three years in the institution and must express in writing their wish to stay, as provided by law. The situation with regard to the unspecified stays is identical in the 2014/2015 school year. This is a clear sign that children have been held at the SBS in Dragodanovo for more than the allowed three years, and that the real duration of these children's stay is not indicated on purpose. The longest stay of a child in this year exceeded 36 months. The longest total average stay is that of the students in the eighth grade: around 20 months. They also account for most of the children from second to eight grade (there is no third grade): 14 children in total. The duration of stay is not indicated for 32 out of 35 children; the stay of the other 3 is as follows: 2 years for theft which have expired but an extension application was submitted; 3 years for vagrancy and begging; and 3 years for theft. Not a single boy has been released from the institution in two consecutive years.
The total average stay of the children at the SBS in Zavet is around 13 months. The longest stay is that of a child who has been there for 32 months. The longest total average stay is that of the eighth grade students: 27 months. There are 26 children of whom 24 without a specified duration of stay and 2 placed for one year each for theft. The children are from the second to the eighth grade, with no fourth grade class. No child has been released from this boarding school in the past two years. The number of students at the SBS in Zavet has increased in the 2015/2016 school year compared to the previous year.

According to the MoE, the capacity of the boarding schools in Bulgaria totals 530. No CBS or SBS runs above capacity. With 130 places, the SBS in Varnentsi has the greatest capacity, followed by the CBS in Rakitovo and the CBS in Zavet with 120 places each, the CBS in Podem and the SBS in Dragodanovo with 60 places each. The largest number of students in 2015 have been accommodated at the CBS in Rakitovo. The CBS in Kereka has the fewest students placed and the lowest capacity, 40 places.

In the 2015/2016 school year, 21 of the 141 children in CBS, or around 15%, have been placed before that in another service of family type. It is worth noting the large number of girls coming from other types of state services to the SBS in Podem: 11 children aged 15 to 17. Before their admission to the boarding school, the girls have resided in family-type centres (FTC) and homes for children deprived of parental care (HCDPC). Three boys aged 15 to 17 at the CBS in Kereka have come from other types of services, such as HCDPC and a homeless children’s shelter. Two students at the CBS in Zavet aged 16 and 17 came from an HCDPC and transitional housing. The number of the children who had been placed in other types of services prior to being sent to CBS has remained unchanged in comparison to the 2014/2015 school year. The number of girls coming from another family-type service has increased in 2015 compared to 2014. 9 out of the 63 students in CBS in 2015/2016 were raised before that in another family-type service; three of them are girls. These children grew in number by one in comparison to the 2014/2015 school year. Four children aged 12 to 16 came to the SBS in Varnentsi from HCDPC and FTC. Four children aged 13 to 15, including two girls, have lived in HCDPC, FTC and a homeless children’s shelter before being placed in the SBS in Dragodanovo. In 2014, six boys from the closed SBS in Straldzha were transferred to the SBS in Varnentsi. In the same year, a boy from the SBS in Dragodanovo was transferred to the CBS in Zavet, and a girl from the same boarding school
was moved to the CBS in Podem. Until now, no transfers of children between boarding schools have been observed in the 2015/2016 school year.

At the end of his visit to Bulgaria in February 2015, Council of Europe’s Commissioner for Human Rights Nils Muižnieks made a statement in which he explicitly stressed that the country must stop placing children in institutions such as CBS and SBS. He believes that there is a need of reform that would replace outdated repressive legislation with new one, completely protecting the rights of the children and allowing children at risk and children in conflict with law to be fully reintegrated in society. Referring to reports of violence in several types of children’s institutions, the commissioner urged the Bulgarian authorities to investigate such claims and to ensure the protection of the children against additional victimisation. At the presentation of the National Preventive Mechanism’s (NPM) report of the inspections and the evaluation of the conditions at SBS and CBS (November – December 2015), national Ombudsman Maya Manolova said that the specialised boarding schools must be closed urgently and that the reform of juvenile justice must be carried out immediately. The issues outlined in the NPM’s report coincide to a great extent with those in the BHC’s 2014 thematic report on the children deprived of liberty in Bulgaria.

Some of the proceedings related to cases of psychological and physical violence and sexual abuse found during BHC visits in 2013, 2014, the end of 2015 and the beginning of 2016 ended with two termination orders. The first one was related to physical abuse of children by boarding school staff, the second one concerned sexual abuse of minors by adolescents at the boarding school in which all of them were residing at the time when the acts occurred. This particular boarding school was closed but the children who were among victims and/or the perpetrators were transferred to the other two boarding schools, which are still operational. None of the affected children, the children at the boarding schools and the children who have left them, was provided adequate medical care and psychological support. These examples of abuse at the specialised boarding schools in Bulgaria are not isolated cases; the children placed in CBS and SBS continue to live in inhuman conditions and are subjected to psychological abuse and violence.

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Homes for temporary placement of minors and adolescents (HTPMA)

In 2015, the minors and adolescents in HTPMA\textsuperscript{112} totalled 1,031, or 101 less than the previous year.\textsuperscript{113} Again the number of placements was the greatest in Sofia – 237 children, followed by Veli\textsuperscript{k}o Tarnovo with 230, Varna with 205 and Plovdiv with 203. With 156 children, Burgas had the smallest number of placements. As established by ECtHR as far back as 2011 in the case of \textit{A. and Others v. Bulgaria}, the legal framework for the placement in such institutions is incompatible with Article 5(4) of the \textit{Convention} as it does not allow any judicial review.

The large number of children placed for the second or subsequent time – 187, is alarming. Again, their number is the highest in Veli\textsuperscript{k}o Tarnovo – 78, followed by the HTPMA in Varna – 60. In 2015, the minors placed for the second or subsequent time totalled 30, of whom 21 boys and 9 girls. The number of all minors placed was 157, of whom 117 boys and 40 girls. The trend from previous years for children aged 14 to 18 to account for the majority (839) of those placed in such homes compared to the minors (192) remains valid. The number of boys placed in HTPMA is significantly greater than that of girls.

The fact that the reason for the placement in HTPMA of almost half the children (around 48\% or 490 children) is their running away from a state form of extra-family care is alarming. Escapes from SBS and CBS are frequent: a total of 310 children, mostly adolescents (267), ran away. Escapes of adolescent boys placed in HTPMA prevail: 225 in total. The girls who have run away from such institutions and were placed in HTPMA are more than the boys. There are a total of 88 cases of escape of children from a specialised institution placed in HTPMA; most often (in 62 cases), they involve children aged 14 to 18. Most of the children from specialised institutions who were placed in HTPMA and escaped are boys. These number are a clear indication of the sustained low quality and effectiveness of state child care over the years.

Anti-social acts and homelessness are another reasons for the placement of children in HTPMA. In 2015, there were 239 such cases, with the home in Burgas accommodating the largest number of such children: 71. The children placed in HTPMA for anti-social acts and homelessness are most often boys,

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{112} Five homes for temporary placement of minors and adolescents exist in in the country in the cities of Burgas, Varna, Veli\textsuperscript{k}o Tarnovo, Plovdiv and Sofia.
\item \textsuperscript{113} Statistical data for January – December 2015 provided by the Ministry of Interior, Directorate General of National Police (2015), information provided to BHC under and access to public information request by Decision No. 812100–1831, copy No. 2 of 25 January 2016.
\end{itemize}
\end{footnotesize}
a total of 185. In general, the adolescents placed in HTPMA for these reasons (193) are more than the minors. Running away from home is yet another reason behind placements: 158 children, most of them in the HTPMA in Varna (43), followed by Plovdiv (38). Again, most of the children who had run away from a foster family and were placed in HTPMA are adolescents: 136. Girls from all age groups running away are prevalent: 110.

Police protection is another reason for placements in HTPMA in 2015. It concerns 76 children, most of them at the HTPMA in Sofia: 43. Most of the children are adolescents: 52. In 2015, more girls than boys were placed in HTPMA for police protection. A total of 44 children were placed for vagrancy, of whom 27 at the HTPMA in Sofia. Most of the children (37) are adolescents. Begging and unknown identity are other reasons for placement but involve a smaller number of children.

67% of the children in HTPMA in 2015 have stayed up to 24 hours; 16% have stayed up to 15 days – 48 at the HTPMA in Veliko Tarnovo and 46 at the HTPMA in Sofia; 15% have stayed up to 48 hours. A total of 29 children have stayed at the HTPMA more than 15 days, 15 of them at the HTPMA in Veliko Tarnovo. Those who have stayed more than 15 days are mostly boys aged 14 to 18.

Roma children were overrepresented among those placed in HTPMA in 2015 for another consecutive year. 588 children have identified themselves as Roma, 266 as Bulgarians, 130 as Turks and 47 as members of another ethnic group. It is worth noting the larger number of children of Turkish origin placed in HTPMA in 2015 compared to previous years, as well as the lower number of children of other ethnic origin in comparison to 2014.

Only 276 of all 1,031 who went through HTPMA were placed in a home within the city or close to the community in which they were living. The sustained trend of placing children far away from their habitual residence is alarming. In 2015, 123 minors were placed in a HTPMA that was far away from their home.
10. Protection against discrimination

No significant progress was achieved in 2015 with regard to the protection of minority groups against racial or ethnic violence and discrimination, nor with regard to the protection of the equality of other vulnerable groups, such as the women, the children and the LGBTI people.

Hate speech

Hate speech against Roma escalated significantly with regard to evictions of Roma houses.114

In January, the Supreme Cassation Prosecutor’s Office (SCPO)115 issued a final confirmation of the 2013 Sofia District Prosecutor’s Office (SDPO) refusal to initiate pre-trial proceedings related to the election manifestos of ultra-nationalist political parties VMRO-BND and NFSB (currently represented in parliament and part of the governing coalition) as announced in their election campaigns in 2013.116 The two manifestos contain measures that discriminate against the Roma. In their manifesto VMRO-BND plans forced labour for Roma and the creation of “voluntary units for the protection of the Bulgarian population” against the Roma. These are undoubtedly illegal entities that op-

114 See Right to respect for private and family life, home and correspondence.
pose ethnic groups in society. NFSB proposes in its manifesto the demolition of the illegal houses in ghettoes populated mostly by Roma, removal of the Roma in “isolated communities” outside of the big cities with “24-hour police presence” to serve as a “tourist attraction”, limiting their birth rate. With regard to the complaint of an individual of Roma origin against the refusal of the lower prosecutor’s office to initiate pre-trial proceedings, the SCPO held that “[t]he case involves the expression of disagreement with certain texts included in the parties’ political manifestos [...] which are interpreted by the applicant as preaching for and inciting to violence, animosity and hatred against the Roma population”. In the prosecutor’s office’s opinion, there are no data that a crime has been committed, as the manifestos “presents ideas and views, expresses opinions on specific pressing issues and outlines possible solutions”. According to the prosecutor’s office, such agitation falls within the boundaries of the freedom of speech and does not constitute preaching and incitement since its purpose is to attract voters, while the provision of Article 162 (1) of the *Criminal Code* foresees punishment for a premeditated act and the agitation is not seeking such a criminal result. The SCPO thus admitted, on one hand, that the materials were for agitation and propaganda purposes, that the foreseen “ideas and views” and “possible solutions” to specific “pressing issues” constitute a promise to the voters and seek their support (empowerment) to achieve these goals but, on the other hand, stated that their purpose was not to preach and incite.

In 2015, the Prosecutor’s Office confirmed at three instances the SDPO’s refusal to initiate pre-trial proceedings with regard to multiple threats and calls to violence and death against the participants in the 2014 Sofia Pride which were made through Facebook. The instances where the Sofia City Prosecutor’s Office, the Sofia Appellate Prosecutor’s Office and the Supreme Cassation Prosecutor’s Office. None of the three higher prosecutor’s offices discussed the deficiencies in the investigating bodies’ actions pointed out by BHC.

121 For more details, see LGBTI rights.
In September, a five-member panel of the Commission for Protection against Discrimination (CPAD) decided on a complaint by a Roma and a Bulgarian with regard to an image published on a comic page in Facebook. The image is a collage of photos showing soap engraved with Roma names. It makes an allusion to the claims for production of soap from the bodies of victims in Nazi concentration camps, turning it into a caricature and diminishing its significance, even presenting it as something positive and desirable. Since the image was published anonymously, the CPAD asked the Ministry of Interior to identify the person who had posted it. In response to the Commission's instructions, the Ministry sent a letter notifying the Commission that Facebook is an US company, which does not have an office in Bulgaria, and that it provides information only through the International Department of the Supreme Cassation Prosecutor's Office when pre-trial proceedings have been initiated in relation to a crime. Based on this information, and without holding it has found data that a crime had been committed under the provision of Article 59 (4) of the Protection against Discrimination Act, CPAD did not review the complaint and sent it to the Prosecutor's Office. This decision was appealed and the case is currently pending in the Sofia City Administrative Court. It raises questions about CPAD's due diligence in cases when information related to the identification of an offender under foreign jurisdiction is needed. In this case, the CPAD did nothing to gather such information.

In October, CPAD delivered decision on a case against TV presenter Albena Vuleva and the Evrokom TV channel. The case was opened on referral by BHC on the occasion of Vuleva's statements aired as a recording by Evrokom in two issues of the presenter's own show. In these issues of her show, Vuleva covers the topic of the growing refugee flows to Bulgaria by filming different individuals of Middle Eastern or African origin in the area of the Banya Bashı mosque in Sofia, commenting behind the scenes their presence in Bulgaria in extremely degrading and insulting way. She calls them “jutting-ass infidels” (referring to the Muslim praying position), “invaders”, “alcohol-loving aliens”, “raging black infidels”, “pushy, arrogant, demanding and obnoxious”, “Muslims creeping in our country”, “Islamists”, “illiterate, black, ingrate mass of organisms”, etc. In the same broadcasts, she defines the Roma as “aboriginal bloodsuckers”, “pest” and “organisms living parasitically on Bulgarian society”. In Vuleva's opinion, Bulgaria is a “white European and Chris-

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122 CPD (2015a), Decision no. 370 of 25 September 2015 on file no. 213/2015 of extended five-member panel.
tian state”, “not a negro state”, “the white race has the right to protection”, “it would be a shame if negroes and Muslims are the prevailing population in Bulgaria”. She says that Muslim religious rituals are “historically insulting to the Bulgarian”, that “a new slavery is coming” (referring to the Ottoman rule of Bulgaria), etc. She consistently portrays all foreigners of African or Arab origin, Roma, as well as Muslims, as culturally incompatible with Bulgarians, and their presence in Bulgaria as “abnormal”. The Commission held that Albena Vuleva’s statements constitute “harassment” under the law and that Evrokom, the TV channel which had aired the recorded broadcasts, is also liable for this discrimination. The Commission underlined that the Radio and Television Act obliges all media service providers to not allow the creation or the provision for distribution purposes of broadcasts instilling national, political, ethnic, religious or racial intolerance. CPAD fined the presenter by BGN 500 (EUR 250) and Evrokom by BGN 1,000 (EUR 500).

Local elections were held in Bulgaria in 2015. Sociologist Mihail Mirchev was the candidate of the Bulgarian Socialist Party for mayor of Sofia. At the announcement of his nomination, Mirchev told journalists that he will fight the “[a]rmy of pro-Western, pro-American and pro-Sorosoid foundations”. During his campaign and immediately after its end Mirchev made on several occasions sexist and anti-minority statements. In an interview in October, he said that he was consciously trying to recruit nationalist votes and that he is “a carrier of Orban-style ideas, of the policy to protect our state from the pest of the invaders”, alluding to the refugee crisis stemming from the military conflict in Syria. He then added: “They are invaders, and primitive ones at that, because from civilisation point of view they belong to the 7th century; we are after all living in 21st century Europe. The two civilisations are completely incompatible. […] All these definitions are unpleasant, go against the ideology of European tolerance, but are completely realistic from factual point of view”. In his opinion, “the modern left is patriotic and nationalist”. Having achieved prominence in his campaign by his political aspirations, Mirchev published in the social media his own metered speech describing the Roma

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123 Named after American billionaire philanthropist George Soros, known for funding human rights defenders in Bulgaria.
and the refugees as a threat. In a chart posted on his Facebook profile in September, Mirchev questioned the capacity of his opponent and incumbent mayor Yordanka Fandakova to deal with the problems of the capital city because she's a woman.

**Case law of the Supreme Administrative Court on to the Protection against Discrimination Act**

The Supreme Administrative Court’s (SAC) work with regard to the implementation of the Protection against Discrimination Act (PADA) showed some negative trends in 2015. SAC has cassation powers on the decisions of the administrative courts ruling on complaints against decisions of the Commission for Protection against Discrimination (CPD).

SAC continued in 2015 the vicious practice of refusing to acknowledge discrimination objectified in provisions of secondary legislation. It upheld the decision of the Sofia City Administrative Court (SCAC) repealing a decision of the equality body finding certain provisions in an ordinance issued by the minister of agriculture and foodstuffs to be discriminatory and instructing him to amend it. SAC held that the CPAD could not establish discrimination in a legal norm as this would be only a hypothetical possibility of discrimination; it can only establish a specific violation committed against a specific subject. This decision contradicts Article 1 of the PADA, which stipulates that the act is applicable to all forms of discrimination, as well as Article 6 of the PADA, according to which the prohibition of discrimination is applicable to everyone. SAC unduly narrows PADA’s substantive and personal scope, thus denying the right to protection against discrimination to individuals affected by discriminating regulations. This decision of the court also contradicts logic, as there is no doubt that the adoption of a discriminatory provision constitutes a specific violation against specific persons: the individuals targeted by the provision, including the applicants. It also contradicts SAC’s case-law from previous years when it has established discrimination objectified in implementing regulations.

SAC ruled similarly in another case. The court upheld the decision of SCAC which in turn is upholding a decision of the equality body in which it had held that the provisions of the Passenger Transport Tariff which make discounts available only to students enrolled in Bulgarian universities but not to foreign students constitutes direct discrimination. The CPAD applicant was refused a discounted ticket because she was studying at a foreign university. In this decision, SAC again incorrectly required that a certain person be discriminated by the implementation of a discriminatory provision and implicitly denied the possibility to establish that the provision is discriminatory per se.

In another decision, SAC incorrectly accepted that a provision in a Council of Ministers regulation stipulating that scholarships for excellence shall be provided only to full-time students but not to part-time students did not constitute discrimination on the ground of education. The applicant, a part-time student, was denied a scholarship due to this provision. SAC held that “the form of education in a tertiary education institution is not covered by the protected ground of “education” and is not itself a protected ground under the PADA”. In this case, the court also incorrectly used the direct discrimination comparator test, accepting that the applicant’s major was only available as a part-time course and therefore could not be compared to full-time students in the same major. SAC did not accept the motivation of both SCAC and the equality body that the comparison should be made with the full-time students, regardless of their major.

In a positive decision, SAC found harassment on the ground of disability against persons with oncological diseases whose communities lack modern treatment equipment but only appliances dating back to the 1960s, which are less effective and have more severe side effects. The minister of health was found infringing the ban of harassment. In this case, SAC repealed the decision of SCAC, which had repealed the equality body’s decision establishing the abuse and its order to the minister to cease his infringement of the law.

In another case, however, SAC wrongly applied the PADA harassment provision. Contrary to the law, SAC accepted that “different treatment must be established” for the existence of harassment, which has to be performed “intentionally”, and that “less favourable treatment of the applicant in com-

parison to other persons in the same or similar circumstances” must also be established. Unlike the provisions for direct and indirect discrimination under Article 4, the regulation of harassment does not require comparison and different treatment of the discriminated person as opposed to another person. No comparator test in the same or comparable situation is envisioned for this violation. PADA does not require that the harassment be intentional; the objective presence of the statutory result is sufficient.

SAC incorrectly confirmed a decision of SCAC upholding a decision of the equality body in which CPAD refused to recognise discrimination against a Roma under the “ethnic origin” and “personal status” protected grounds. The applicant approached CPAD claiming that he had been discriminated against by a newspaper’s editor-in-chief and owner. The newspaper published an article entitled “Suspended sentence for the Gypsy who robbed Dr. Valev”, in which the applicant was the main protagonist. The applicant pointed out that he had been discriminated by the use of the phrases “Gypsy” and “a multiple offender with a long rap sheet for robbery”. SAC accepted that the proceedings at SCAC and the equality body had established beyond any doubt that “the manner of expression used in the article […] does not indicate and does not amount to incitement of discrimination under the protected ground of “ethnic origin”. In terms of the discrimination on the basis of “personal status”, there was no evidence that applicant’s personal dignity had been violated, insofar as the article reflected correctly the information about the case provided by the Ministry of Interior. In its decision, SAC also points out that the phrases “Gypsy” and “Roma origin” were used in their proper meaning and not figuratively, and therefore did not constitute discrimination on the ground of ethnic origin. In this decision, SAC indicated, contrary to the law, that Article 9 of PADA explicitly places the burden of proof on the person claiming discrimination. SAC misinterpreted the special rule on proof established with Article 9 of PADA, according to which once the applicant proves facts from which a conclusion for discrimination can be made the burden of proof is shifted to the defendant, who has to prove that his/her behaviour is not motivated by a protected ground.

The court unjustly accepted that the indication of the applicant’s ethnic origin does not constitute discrimination. It did not consider the fact that in similar cases, when the perpetrator is a Bulgarian, his ethnic origin is not indicated.

Indicating the ethnic origin of the perpetrator of a crime, when it is unrelated to the crime, constitutes discrimination per se. By stating that the use of the word “Gypsy” in its literal meaning does not constitute discrimination, and that the latter is present only when the word is used figuratively, the court itself is being discriminatory. In essence, the court accepts that the figurative meaning of the word “Gypsy” has a negative, derisive connotation, thus endorsing an illegitimate connection between the ethnic origin of the Roma and the racist stereotypes about them.

In yet another case, SAC wrongly held that the applicants have not been discriminated against, both personally and as representatives of three different religious denominations. The applicants claimed that the Municipality of Burgas had disseminated among the local schools a letter describing these denominations’ theological practices in a negative and untrue manner, thus harassing them. SAC wrongly held that there was no discrimination against the applicants as individuals because they were not specifically named in the letter. PADA, however, does not require that the victim of discrimination be named specifically; being a part of a group of affected persons is sufficient. In this decision, the court once again wrongly accepted that there is no discrimination, including harassment, as no “intentional” different treatment had been performed. As already mentioned, no different treatment is required for the presence of abuse. With the exception of the incitement to discrimination, the law does not require that behaviour be “intentional” with regard to any form of discrimination.

In a positive ruling, SAC sent a request for a preliminary ruling to the Court of the European Union (CEU) with regard to a case of discrimination on the ground of disability. The court asked whether it was admissible that the national legislation provides protection against dismissal only to people in an employment relationship but not to civil servants.

In another case, SAC found discrimination against a student with a disability and special educational needs. It confirmed a decision of SCAC finding the principal of a secondary school guilty of direct discrimination on the ground of disability because he had not created an environment for integrated

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schooling of students with special educational needs, thus forcing the child to leave the school.

SAC continued to award the legal advisers’ and lawyers’ fees to the losing party in PADA lawsuits, despite the explicit provision in the law that the expenses related to such lawsuits are covered by the court’s budget.\textsuperscript{138}

In 2015, SAC handed down three rulings that the respective administrative courts in the country, and not the SCAC as it was so far, had geographic competence with regard to complaints against CPD decisions, when the CPD has regional representatives in the community of which the applicant is resident.\textsuperscript{139} According to the 2014 amendment of Article 133 (1) of the Administrative Proceedings Code, cases contesting individual administrative acts will be reviewed by the administrative court located in the community, which hosts the territorial structure of the administration of the body issuing the contested act, on whose territory the applicants is domiciled or resident. A territorial structure of the administration is a territorial organisational unit of the administration created by a regulation, regardless of whether it is a legal person or not, which supports the administrative body in exercising its powers. SAC accepted that CPD’s regional representatives are such regional structures.

SAC’s practice of having the administrative courts review claims under Article 71 of the PADA filed against administrative bodies with regard to their administrative activities is incorrect.\textsuperscript{140} The provision under Article 71 of the PADA indicates clearly that the district courts have competence with regard to such claims, regardless of who is the defendant.

In 2015, the General Assembly of the judges from the Civil College of the Supreme Cassation Court and from the First and the Second College of the Su-

\textsuperscript{138} Inter alia: Decision No. 5537 of 15 May 2015 on administrative case No. 11588/2014, V division; Decision No. 5609 of 18 May 2015 on administrative case No. 11614/2014, V division; Decision No. 7359 of 18 June 2015 on administrative case No. 12066/2014, V division; Decision No. 7461 of 22 June 2015 on administrative case No. 11810/2014, V division; Decision No. 7868 of 29 June 2015 on administrative case No. 404/2015, SAC 5-member panel.

\textsuperscript{139} Ruling No. 12227 of 17 November 2015 on administrative case No. 11788/2015, V division; Ruling No. 13282 of 8 December 2015 on administrative case No. 13441/2015, V division; Ruling No. 13935 of 18 December 2015 on administrative case No. 12364/2015, V division.

\textsuperscript{140} Ruling No. 9799 of 24 September 2015 on administrative case No. 10225/2015, V division; Ruling No. 9927 of 29 September 2015 on administrative case No. 9914/2015, IV division; Ruling No. 9989 of 29 September 2015 on administrative case No. 10277/2015, V division; Ruling No. 10070 of 30 September 2015 on administrative case No. 10204/2015, V division; Ruling No. 10507 of 12 October 2015 on administrative case No. 10236/2015, V division; Ruling No. 12998 of 2 December 2015 on administrative case No. 13196/2015, V division; Ruling No. 14120 of 22 December 2015 on administrative case No. 13966/2015, I division.
preme Administrative Court published an Interpretive Decree of 19 May 2014 on interpretive case No. 2/2014. According to this, cases involving damage claims related to violations of civil rights concerning the equal treatment and stemming from illegal acts, actions or inactions of state bodies and officials, fall into the jurisdiction of the administrative courts even when there have been no proceedings under Section I of the PADA. This interpretive case began after several years of controversy over the jurisdiction between the civil and the administrative courts. The interpretive decree contradicts the PADA which stipulates in its Article 71(1) that the civil courts have the competence to rule on claims of discrimination and compensation of damages in all cases, regardless of whether the defendant is a state body or official or not. The law also stipulates (article 74(2)) that the administrative courts have jurisdiction over claims for damage compensations only when and if the plaintiff has chosen to ask the CPD to establish the discrimination, has been handed down a favourable decision and the defendant is a state body or official. In such a case, the compensation for damages claim is filed under the State and the Municipalities Responsibility for Damages Act (SMRDA). This interpretive decree creates the possibility that the administrative courts would not apply the special rule on the distribution of the burden of proof under Article 9 of PADA in cases involving compensation for damages brought against state bodies or officials, replacing it with SMRDA's provisions. The same holds true for the exemption from fees and expenses under PADA.

In summary, despite some positive developments, SAC’s case law was also faulty in many respects, mostly due to the narrowing the scope of the law, the incorrect implementation of some discrimination statutes and the identification of wrong jurisdiction with regard to some lawsuits under the PADA.
In 2015, the national asylum and international protection system was once again subjected to significant changes over a relatively short period of time. As in previous years, this turbulence was a reflection of the dynamic processes on the continent resulting from the record-breaking number of refugees and migrants entering Europe, and more specifically the EU countries. According to the UN High Commissioner for Refugees, their number exceeded one million. Most were refugees from conflict areas in the immediate vicinity where, parallel to the massive violations of many fundamental human rights, there was a serious threat and unacceptably high risk to the right to life and the protection against torture, inhuman or degrading treatment or punishment as a result of internal or external armed conflicts. The main flow of refugees to both Europe and Bulgaria was mostly from Syria (50%), Iraq (20%) and Afghanistan (7%). For the first two groups, the exodus was a direct consequence of the war raging in Syria for five years, as well as of the conquest of a large part of its territory and of that of neighbouring Iraq by the Daesh fundamentalist group (the so-called Islamic State of Iraq and the Levant or ISIL) and the terror over the population of these territories.

As in preceding years, the refugees continued to move and enter the European countries and Bulgaria as part of the mixed migrant flows, together with economic migrants from countries of origin in which poverty, corruption, rudimentary state structures and lack of basic legal guarantees for the individual safety are the reason behind the large-scale emigration of the local population. The illegal entry in the European countries of both refugees and economic migrants was due mostly to the lack of generally accepted ways of legal entry and residence in Europe and the European Union that would be available to refugees and would ease the legal crossing of the border. Such legal ways might include, for example, the use of the currently existing legal
opportunity to issue entry visas on humanitarian grounds\textsuperscript{141} to \textit{prima facie}\textsuperscript{142} refugees from countries which are widely known to be involved in internal or international armed conflict, such as Syria and certain areas in Northern Iraq. This would prevent refugees from joining the mixed migration flows, the illegal crossing of the borders and the nurturing of the related criminal networks and human trafficking channels. Nevertheless, both Bulgaria and the EU countries failed to take any measures in 2015 to apply in practice the existing possibilities provided for by the European legislation. Nor did they discuss and adopt other alternatives that would avoid the risks to the life and the security of people running away from war, torture and widespread human rights violations. In Bulgaria in particular, the government stated on several occasions in 2015 that the construction of a fence along the Bulgarian–Turkish border is aimed at curbing the illegal access of the refugees and at redirecting them to the official entry points, thus encouraging their legal entry in the country. At the same time, however, the regular monitoring of the border over the year found and registered many cases when refugees holding regular national identity documents, presenting themselves at official border crossing points and applying for asylum and protection, were denied access to territory and protection in Bulgaria by the border police under various excuses, including lack of entry visa or means of sustenance during their stay or residence.

The access to territory for the refugees seeking protection in Bulgaria thus remained significantly impeded in 2015. By the end of the year, the Ministry of Interior reported\textsuperscript{143} that 34,056 illegal immigrants have been detained; of them, 10,709 were detained at entry and 11,710 at exit points, while another 11,637 were detained inside the country. These statistics show that the significantly increased number of foreigners detained inside the country and at exit points – 68% compared to 32% detained at entry points – categorically refutes the government’s position\textsuperscript{144} that the fence along the Bulgarian–Turkish border has contributed to the drastic reduction of the number of persons entering from Turkey. Furthermore, 26,939 of the detained 34,056 foreigners have submitted a protection application to the border police or the im-

\textsuperscript{141} Article 25(1a) of the \textit{Visa Code} – a visa with limited territorial validity, which under Art. 35(5) of the \textit{Code} may be issued on humanitarian grounds in exceptional cases, including at an EU external border.

\textsuperscript{142} Latin for “at first sight” – obvious, visible, without need of other arguments or evidence; in refugee law, obviously justified.

\textsuperscript{143} MoI, available at https://www.mvr.bg/Planirane_otchetnost/Migracionna_statistika/default.htm.

\textsuperscript{144} Ref. No. 812100–27496 of 23 December 2014 of the MoI to the Council of Ministers’ Security Board on the necessity of constructing an engineering deterring facility along the Bulgarian-Turkish border, http://bit.ly/1jMopHw.
migration police. This means that almost 79% of the foreigners entering the country illegally are in fact protection seekers. The illegal entry via the land border led to several incidents that resulted in worsened or critical health condition of protection seekers, mostly women, due to the great physical effort and the harsh terrain on the Turkish–Bulgarian border. In one case, this ended with the death of a 40-year-old Iraqi woman.

The practice of pushing back individuals who could be considered *prima facie* refugees used by the authorities generated most concern with regards to the hindered access to territory in 2015. Different groups of protection seekers reported over the year that they were forced to return (pushed back) in Turkey by the Bulgarian border patrol and mixed border security groups, not only from the actual border but also from border areas inside the country. The push back method most often used by the Bulgarian police was reported to involve stopping at the border, or transfer from the interior of the country to the border, and mobilising Turkish border patrol to take groups or individuals out of the country and into Turkish territory. There were also many reports that at the time of detention the Bulgarian police have confiscated and taken without documentation or procedure money, telephones or valuables. In isolated cases, protection seekers reported abuse in the form of being pushed to the ground, kicked or verbally offended, as well as in the form of public searches of women and children, albeit by female police officers. In October 2015, a 19-year-old Afghani citizen was shot dead by a border policeman in the outskirts of the village of Dyulevo at the Bulgarian–Turkish border when the border patrol intercepted the group with which the foreigner had entered the country illegally. The investigation carried out as part of the BHC’s regular monitoring of the border found circumstances which deviated significantly from the Ministry of Interior’s initial version. The official version, published just a few hours after the incident, completely justified the death as result from a ricochet from a warning shot in the air. The shot was justified initially with shots fired from the group, and subsequently with resistance and aggression on behalf of the group of foreigners. BHC made two statements on the case – one related to the applicable standard for the use of firearms and one

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147 http://m.novini.bg/news.php?id=311020; http://viaranews.com/2015/10/16/%D0%B3%D1%80%D0%BD%D0%B8%D1%87%D0%B5%D0%BD-%D0%BE%D0%BF%D0%BB%D0%B8%D1%86%D0%BD%D0%B9-%D0%B7%D0%BD%D1%82%D1%80%D0%B5%D0%B4%D1%8F-%D0%BD%
148 See the BHC statement: “BHC: Prosecutor General is responsible for the fairness of
related to the contradictions in the official MoI version. By the end of 2015, the prosecution had not published the results from the official investigation, including the findings of the autopsy and the ballistics, and the criminal proceedings are carried out still against an unknown perpetrator.

As an external border of the EU and the first country along the South–Eastern Mediterranean route of the mixed migration flows, Bulgaria continued to experience a growing number of people applying for international protection. The number of protection applications registered in Bulgaria grew by 54% on a year-to-year basis, from 11,081 in 2014 to 20,391 in 2015. Iraq ranked first as a country of origin, with 6,959 persons or 34%, followed by Afghanistan with 6,193 persons or 30%. For the first time in three years, Syria dropped to the third place: 5,993 persons or 29%. Pakistan and Iran ranked fourth and fifth, with 578 persons (3%) and 175 persons (0.8%), respectively. Nevertheless, in the past year Bulgarian remained mainly a transit country, insofar as the persons applying for protection mostly did this when they were caught by the police, many of them while they attempted to leave the country en route to a final destination in Northern and Western Europe. Almost a quarter of those who had submitted asylum applications to the police later withdrew their applications and refused to be officially registered by the Council of Ministers’ State Refugee Agency as protection seekers in Bulgaria. Apart from their unwillingness to remain in the country and receive protection here, another reason was to avoid fingerprinting for the Eurodac system under the Dublin Regulation, as this would allow the country of their desired final destination to have them returned to Bulgaria. Thus, approximately 76% (20,391 persons) of those who had initially submitted protection applications (26,939 persons) were officially registered in Bulgaria in 2015 as protection seekers. Some 61% of the applications were submitted when the foreigners were caught trying to leave the country, mainly at the border with Serbia. For another consecutive year, this confirms the finding that Bulgaria continues to be viewed by the refugees as a transit country and not as a final destination. Nevertheless, only 3% (262 persons) of the 8,131 information requests filed by different European countries were returned to the country under the Dublin Regulation. Apart from the undermining of the Dublin system as a result of the refugee crisis in the final destination countries created in the summer of 2015 by the opening

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of the so-called Western Balkan route, the poor admission conditions (see below) were the main reason for this, and most of all the complete lack of programme, means and support to the integration of persons who have been awarded refugee status in Bulgaria. This situation has been going for four years now.

The worsening of the admission conditions at the State Refugee Agency’s (SRA) refugee centres, together with the opening of the Western Balkan route, contributed to the early leaving of Bulgaria. Following the significant improvements in 2014 of the material conditions at the registration and admission centres and at the reception centres, as well as of the services and support provided by them, 2015 marked a significant reversal. It started with the refugee administration’s failure to ensure financing for the most basic procedures and services owed to protection seekers under the European and the national legislation. The registration and the issuing of documents, especially to persons who voluntarily presented themselves directly at the SRA’s refugee centres to apply for international protection, did not occur within the compulsory three or six-day deadline. Other basic services were provided irregularly and unevenly at the different centres, while some were not provided at all. By the end of November 2015, both adult and juvenile protection seekers were given food only twice per day, with some sporadic exceptions for the juveniles accommodated at the Registration and Admission Centre (RAC) in Harmanli. For some time in the middle of the year, the SRA wasn’t capable of providing foodstuff deliveries for refugee centres’ kitchens and was therefore forced to publicly appeal for basic food donations. Thus, a year and a half after the autumn of 2013, refugee sustenance was once again left to the charity of the Bulgarian producers and the public. Healthcare services were also limited. And while emergency medical care was generally provided, the State Refugee Agency encountered serious budget difficulties in providing basic medicines and medical consumables; these had to be once again supplied by monetary or targeted donations or with the assistance of the Bulgarian Red Cross. Refugees’ access to interpretation in a language understood by them was completely impossible outside the procedures in which they were involved and for information and communication they relied mainly on the assistance of

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150 From Greece through FYROM, Serbia, Slovenia, Croatia, Hungary (until September 2015) and Austria, with Germany as main final destination.
151 The last annual programme for integration in Bulgaria ended on 31 December 2013.
interpreters and social mediators from non-governmental organisations and the UNHCR staff. However, they were unable to replace the missing state care. Interpretation during the SRA proceedings for the evaluation of protection applications’ merit was not provided for significant periods of time, sometimes up to several months, due to issues with the public procurement of a service provider. Due to this, many proceedings and interviews, including the initial registration of asylum seekers, were either postponed on multiple occasions or not carried out at all. By the end of 2015, monitoring found out that interpretation from certain languages is not provided at all SRA centres, resulting in interviews being conducted in a language the refugees don’t understand. Last but not least, as of 1 February 2015, the State Refugee Agency retroactively terminated the monetary payments of BGN 65 per month to protection seekers in its centres, thus completely depriving them of the social assistance to which they are statutorily entitled. The termination of these payments was motivated by the State Refugee Agency with an instruction to have them replaced by the provision of food three times per day; by the end of 2015, this instruction had not been implemented by all accommodation centres. Given the fact that by law social assistance and food provision are to be provided in parallel and not alternatively, the direct result from the termination of the monthly monetary payments was that the refugees were deprived of means for covering their other basic needs, such as clothing, medicines, sanitary or hygienic accessories.

The quality of the international protection awarding procedures also dropped. By law, the interview must be carried out in a language declared by the applicant or, when this is impossible, in a language the applicant understands. As already noted, for a large period of time in 2015 the SRA hadn’t signed contracts with interpreters for the main spoken languages because its public procurement procedures for the provision of interpretation services during refugee procedures were contested and repeated several times between April and October 2015. The number of unaccompanied minors seeking protection in Bulgaria continued to grow over the year, to 1,816 of whom 1,706 boys and 110 girls, almost doubling in comparison to 2014 when a total of 940 unaccompanied minors filed protection applications. As in the previous 16 years, the most serious issue in the refugee procedure involving unaccompanied mi-

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153 Order No. 03–310 of 31 March 2015 of the State Agency for Refugees, enforced as of 1 February 2015.
154 Article 29(1)(2) of the Law on Asylum and Refugees; Article 17 of Directive 2013/33/EU (Reception Conditions Directive).
155 Article 63a, Article 7 of the Refugees and Asylum Act.
nors was carrying it out without an appointed guardian or trustee, in violation of the imperative requirement of the law.\textsuperscript{156} According to the established case law,\textsuperscript{157} such procedures are deemed unlawful. The same holds true for procedures involving unaccompanied minors and carried out without the assistance of a lawyer as their procedural representative and protector of their best interest. With regard to the protection seekers returned by other EU countries under Dublin procedures, Bulgaria had to re-initiate the procedure and hand a decision on the merits of the protection application. However, the monitoring found out that the terminated procedures of persons returned under Dublin procedures were not re-initiated; instead, these persons were required to submit a subsequent application and provide at their own expense a place of residence outside the refugee centres, which constitutes a direct violation of the explicit European provision.\textsuperscript{158}

The legal assistance during status procedures and its quality remained problematic in 2015. The legal assistance and representation provided by a non-governmental organisation under a project financed by the SRA with European Refugee Fund money ended on 30 June 2015. Still, even during the period when such assistance was available, it was provided irregularly and only at the Ovcha Kupel accommodation centre of the Registration and Admission Centre in Sofia and at the Transit Centre in the village of Pastorgor. A legal advice office existed only at the former, between 1 January and 30 June 2015 but only operated for an insignificant portion of this period, remaining closed during the rest of the time. The quality and the effectiveness of the assistance provided under the European Refugee Fund were also questionable. The provision of procedural representation and protection to asylum seekers taken in as clients under the project was terminated immediately after project completion on 30 June 2015, regardless of the fact that cases were still pending in the administrative or the judicial phase. Protection seekers reported that

\textsuperscript{156} Article 25(1) of the Refugees and Asylum Act.

\textsuperscript{157} Decision No. 5137/14 April 2014 on administrative case No. 13176/2013, 3 division, SAC; Decision No. 5930/19 October 2014 on administrative case No. 13176/2013, 3 division, SAC; Decision No. 8570/23 June 2014 on administrative case No. 490/2014, 3 division, SAC; Decision No. 4453/30 June 2014 on administrative case No. 3132/2014, 42, SCAC; Decision No. 5068/21 July 2014 on administrative case No. 5346/2014, 44, SCAC; Decision No. 5014/18 July 2014 on administrative case No. 5283/2014, 11, SCAC; Decision No. 5307/4 August 2014 on administrative case No. 8635/2013, 6, SCAC; Decision No. 4731/8 July 2014 on administrative case No. 5054/2014, 20, SCAC; Decision No. 4230/24 June 2014 on administrative case No. 3900/2014, 45, SCAC; Decision No. 8570/23 June 2014 on administrative case No. 490/2014, 3, SCAC; Decision No. 3833/10 June 2014 on administrative case No. 1995/2014, 16, SCAC; Decision No. 2418/10 April 2014 on administrative case No. 8526/2014, 12, SCAC; Decision No. 33/6 January 2014 on administrative case No. 10102/2013, 44, SCAC; Decision No. 360/20 January 2014 on administrative case No. 12298/2013, 43, SCAC, etc.

\textsuperscript{158} Article 18(2) of Regulation (EU) No. 604/2013 (Dublin).
additional undue payments were requested as a condition for the continuation of the work on their cases. The quality of the procedural representation itself was very controversial, insofar as the monitoring of the procedures under the *Refugees and Asylum Act*\(^\text{159}\) found out that the lawyers employed by the SRA under the ERF project were only present pro forma at the interviews and did not intervene to protect the rights or the interests of the protection seekers they represented. The BHC reminds that the contractors for this legal assistance project under the European Refugee Fund were given precedence over the Ministry of Justice’s National Legal Aid Bureau; the State Refugee Agency justified this decision by saying that they possessed greater expertise and capacity to perform the necessary activities than the National Legal Aid Bureau.

By the end of 2015, there was no new invitation to submit project proposals for legal assistance under the existing Asylum, Migration and Integration Fund. Protection seekers in the second half were thus left without the possibility to use legal assistance and representation before the administration and access to court in case of a negative decision on their protection application.

In 2015, the recognition rate dropped to 24% compared to 55% in the previous year. The rate is based on 23,258 decisions of the Council of Ministers’ State Refugee Agency, including decisions to suspend and terminate the procedures because protection seekers have abandoned the procedure and have left Bulgaria. Subsidiary protection in 2015 accounted for 4% (899 humanitarian statuses) of all decisions, unlike the previous year when it accounted for 15% (1,838 humanitarian statuses out of 12,787 decisions on protection applications). The granting of refugee status remained relatively high as a percentage (20% or 4,708 refugee statuses) but marked a 20% reduction over the previous year when it accounted for 40% of all decisions. The rejection rate dropped to 3% (623 rejections of protection applications), compared to 6% (738 rejections) in 2014. The main reason behind this is the high percentage of protection seekers who abandon their procedures and leave the country to other European and EU countries, so a decision on the merits of their application cannot be made. In 2015, refugee status to persons from countries of origin different than Syria was granted in only 4% of the positive decisions (188 out of 4,708 refugee statuses), while subsidiary protection was provided in 10% of the positive decisions (87 out of 889 humanitarian statuses), with rejections of international protection in Bulgaria accounting for 89% (556 out of 623 rejections).

The rights of the persons with mental problems and intellectual difficulties placed in specialised institutions have been subject to monitoring by BHC researchers for 20 years. Alternative social services began appearing in the past 10 or 12 years but still cannot displace the traditional Bulgarian model of institutional care.

The successful transition to a dignified and independent life of social services’ users is impossible without adequate changes of the legislation. However, in 2015 the Republic of Bulgaria once again failed to comply with its commitment to ensure the application of the standards under article 12 of the UN Convention on the Rights of Persons with Disabilities (CRPD), which it ratified in 2012. Under this article, the persons with disabilities have the right to equal recognition before the law, regardless of their disability. According to the Action Plan Containing Measures on Making Republic of Bulgaria’s Legislation and Policies in the Field of Persons with Disabilities Compliant with the Provisions of the CRPD (2013-2014), adopted by Council of Ministers’ Decision No. 868 of 19 October 2012, bills introducing changes in the areas of guardianship and trusteeship, as well as introducing alternative forms of supported decision-making, were to be adopted by the end of 2014. This plan was never implemented and the obsolete Persons and Families Act (PFA) remained in force throughout 2015. In 2014, the former ombudsman Konstantin Penchev submitted to the Constitutional Court a request to declare article 5 of the PFA unconstitutional. The article defines the conditions with regard to full and partial guardianship. The Constitutional Court dismissed the request but pointed out the urgent need of measures to change the legislation in the field of the independent exercise of
rights by persons with disabilities, and bring it in line with the direction outlined in article 12 of the CRPD, which is a job for the National Assembly. A year and a half later, the future of the Natural Persons and Support Measures Bill is still unclear. The draft envisions a substantive change of the approach to the rights of persons with disabilities: “not as if they were objects of care but as active subjects of rights, from a mercy-based approach to a rights-based approach, from paternalism to empowerment.” And even though this means repealing the guardianship statute, the National Assembly adopted at first reading in 2015 and at second reading in early 2016 amendments and supplements to the Social Assistance Act, some of which change the procedure for the placement of persons under full guardianship in specialised institutions and family-type services. Under the Social Assistance Act, the placement and the termination of placement in a specialised institution is carried out “upon the declaration of such wish in writing” on behalf of the person under full guardianship. The lack of an option as to what would happen if the person is incapable of declaring a placement wish “in writing” is an omission. The amendments introduce judicial review of the placement in social homes for persons with mental disorders.

In October, vice prime minister and social minister Ivaylo Kalfin announced that a new social assistance act will be adopted by mid-2016 that would separate social services from social assistance, thus improving the integration of the persons with disabilities and combining different types of assistance unrelated to income. A geographical change will also occur in the delivery of services which are currently provided at centres, while the idea is for the service to be received at the home of the users, i.e. the service to go those in need.

In the past years there has been a reversal in the implementation of the 2008–2015 Strategy to Ensure Equal Opportunities for Disabled Persons. Explanatory notes to the Natural Persons and Support Measures Act, 31 July 2015, Ministry of Justice website https://mjs.bg/t5/ See Right to liberty and security of person above.

161 http://sofia.topnovini.bg/node/633641
163 http://constcourt.bg/contentframe/contentid/2807
tive 6 of the strategy featured the following measure: “Gradually decrease the number of facilities providing social services to people with disabilities and the places in such facilities by the introduction of incentives and measures aimed at keeping the people in their habitual environments and families”. Although most of the amendments and supplements to the Social Assistance Act affected the Social Services chapter, they didn’t offer the services that would support the persons with mental problems or intellectual difficulties if they were to remain outside the specialised institutions or the family-type services. The existence of such services is a prerequisite for real deinstitutionalisation. Instead of regulating assistance services to people with disabilities who prefer to live independently, the state continues to keep them without options, referring them to the established services where they receive what is most needed for their physical survival, thus relieving them of the responsibility for their own existence. The fact that the DEINSTITUTIONALISATION slogan means splitting the large institutions in smaller ones but not social inclusion and support to the users on their way to independent life is further illustrated by the statistics kept at the Social Assistance Agency (SAA). On one hand, it tracks the changes in the number, the capacity and the persons placed in specialised institutions and in family-type services, as well as the number of persons on the waiting list for each category. On the other hand, the SAA does not have information on the number of personal and social assistants to elder citizens with mental problems or intellectual difficulties in 2015, much less on how many people need such assistants. Protected and transitional houses are created as an intermediary link between institution and independent life. But the planned “transition” ends at the family-type service because those who dare leave it don’t get any support from the state or the municipality: the lack of an address in the community in which the former user settles in is the first insurmountable barrier to applying for assistance. The adopted amendments to the Social Assistance Act, however, indicate that the state’s priority is to regulate the institutional care in more detail instead of providing any independent life support.

A process of closing, moving or changing the purpose of some specialised institutions for persons with disabilities, such as institutions for adults with developmental disabilities (IADD) and institutions for adults with mental disorders (IAMD) began at the end of the 1990s. At the same time, however,
institutions were created in better preserved buildings and users were transferred to better conditions but in smaller communities. Another change concerned the institutions for children which continued to operate but renamed as institutions for adults, when the children placed in them came out of age. A total of ten IADD and IAMD were closed or moved to newer building between 1999 and 2013. Ten new institutions were opened during the same period, some of them former institutions for children with developmental disabilities (ICDD) in which the children had come out of age. The most embarrassing aspect of this change was that despite the improved material conditions, the institutional culture remained the same as 15 or 20 years ago and even the deployment of the full spectre of alternative family-type services in the past ten years did not lead to the expected closure of the institutions, or at least to the reduction of their number. It turned out that those wishing to utilise institutional care are much more than the expected, and when some users were moved to new services, the freed places were taken by new users coming out of a family environment. The Bulgarian institutional model thus proved to be extremely resilient and could not be brought down even by the alternative services which provide better conditions and a broader package of services. The table below shows the number and the capacity of the specialised institutions in 1998 and in 2015.

Table 5: Number and capacity of the specialised institutions in 1998 and in 2015

<table>
<thead>
<tr>
<th></th>
<th>1998</th>
<th>2015</th>
<th>Capacity reduced by</th>
</tr>
</thead>
<tbody>
<tr>
<td>IADD</td>
<td>27 (2707)</td>
<td>27 (2118)</td>
<td>22%</td>
</tr>
<tr>
<td>IAMD</td>
<td>13 (1445)</td>
<td>13 (1036)</td>
<td>28%</td>
</tr>
<tr>
<td>IAD</td>
<td>13 (846)</td>
<td>14 (825)</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>4998</td>
<td>3979</td>
<td>20%</td>
</tr>
</tbody>
</table>

The reduction of the institutions’ capacity roughly follows the demographic drop in Bulgaria during the period.

The institutional care for the persons with mental disabilities cannot and should not be allowed to develop also because out of 27 IADD, 23 are located in villages, some of which with less than 100 residents, while nine are also

located outside the communities. Similarly, out of 13 IAMD, 11 are located in small villages, geographically isolated from larger towns, while seven are even located outside the communities. The location of these institutions hinders the attempts at re-socialising the users, the hiring of specialised staff and the improvement of the quality of care. The latter is limited to mainly physical care, such as feeding, clothing, sleeping, and does not include meaningful activities and development of social skills. In addition, the facilities at some institutions (the IAMD in the village of Govezhda, the IAMD in the village of Lyaskovo, the IAMD in the village of Lakatnik and the IAMD in the village of Radovets) are extremely depreciated, with most of the buildings in need of urgent repair, rehabilitation or reconstruction. Nevertheless, they operate at full capacity and every freed placed is immediately taken due to the large number of persons on the waiting lists. Figure 3 below shows the number of persons on the waiting lists by type of institution.  

The number of persons on the waiting lists for the institutions for people with mental disorders has increased in comparison to previous years, despite the fact that the quality of service in these institutions is very low. The actual number of chronically ill persons who could be placed in these institutions is much bigger because psychiatric wards accommodate persons who don’t need active treatment but who are kept there for social reasons, most often

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167 Social Assistance Agency, information provided to the BHC under an access to public information request, ref. No. 92 - 58 of 2 February 2016.
because there is no one to take care of them or because they are homeless. In individual cases, the Social Assistance Directorates resort to urgent placements, in which despite the many persons on the waiting list a user is placed not because his turn had come but because his case was deemed urgent. The reason behind the large number of persons on the waiting lists is the lack of adequate community-based services for persons with mental disorders.

Another measure under Objective 6 of the above-mentioned 2008–2015 Strategy to Ensure Equal Opportunities for Disabled Persons envisions “Restructuring the specialised institutions in order to transform them into different community-based social services”. The preservation of the number of specialised institutions at its 1998 level, the continuous admission of new users and the stalemate with regard to the reduction of the capacity in the past three years also mark a reversal from the desired objectives. The capacity of the IADD in the village of Kudelin, Vidin Region, was reduced by 16 beds in 2015; the capacity of the IADD in the village of Batoshevo, Gabrovo Region, was reduced by 2 beds.168 Figure 4 below shows the specialised institution capacity reduction rate since 2009, based on data provided by the Social Assistance Agency.

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168 Ibid.
In September 2015, the UN Committee on the Rights of Persons with Disabilities stated that the European Union must stop financing institutions accommodating persons with disabilities, this putting an end to funding their segregation. Pressure arguments are related to the provision of rehabilitation and social inclusion options to the users, which the institutions are incapable of. Currently, tens of millions of Euro from the European Union funds are being spent on the renovation of old and the construction of new buildings which only keep the persons with disabilities “in storage”. In the Committee’s opinion, spending huge amounts on maintenance, painting and buying new furniture for the institutions is meaningless.\(^{169}\)

The strategic documents of the deinstitutionalisation are twofold: towards the closure of existing institutions and the opening of new community-based services as alternatives to institutional care. Until now, the closure of the specialised institutions for adults is being delayed. At the same time, however, alternative services are being set up rapidly. Paradoxically, the increasing number of alternative family-type service users doesn’t lead to a reduction of specialised institution users. This is confirmed by information provided by the Social Assistance Agency in response to a BHC request for information. According to this information, only 136 users in specialised institutions were moved to community-based social services in 2015, while 17 users of community-based social services were admitted – or rather returned – to IADD or IAMD.\(^{170}\) The data provided also shows the number of new family-type services in 2015: a total of 31 sheltered housings (SH) and family-type centres (FTC), of which:

- 16 SH for persons with developmental disabilities;
- 4 SH for persons with mental disorders;
- 7 FTC for adults with developmental disabilities;
- 4 FTC for adults with mental disorders.

In response to a BHC query on the number of newly created family-type services located in spin-off buildings in the immediate proximity of the institutions or in their courtyards, the Social Assistance Agency informed that 7 such services (3 SH and 4 FTC) were created on the grounds of closed or operating specialised institutions (ICDD, ICDPC and IADD). By January 2016, the number of the family-type social services was as follows:


\(^{170}\) Social Assistance Agency, information provided to the BHC under APIA, ref. No. 92 – 58 of 2 February 2016.
• Sheltered housing: 127, of which 97 for adults with developmental disabilities and 30 for adults with mental disorders;

• family-type centres: 54, of which 22 for adults with developmental disabilities, 24 for adults with mental disorders and 8 for adults with dementia;

• transitional housing: 10;

• monitored housing: 25.

The fact that a third of the sheltered housings are located in villages, and that 54% of the FTC are in villages, poses an objective barrier to the support to independent life. The FTC location and material condition standards require that:

• FTCs be located in communities which possess a developed and effective system of community-based services (social, educational, cultural, sports and recreational);

• the community be able to provide specialised medical assistance and rehabilitation;

• the community have at its disposal trained specialists, or such with appropriate education, experience and training, so as to secure the human resources necessary for the operation of the social service;

• FTCs be located in communities with established transportation and communication facilities.171

It is quite obvious that these standards cannot be met by more than half the FTC in the country. This raises the question why the Social Assistance Agency itself is not respecting the rules that it imposes and why is it licensing and permitting the creation of social services which blatantly contradict the established standards and criteria? The study of the family-type services showed that only several sheltered housings in towns with well-developed infrastructure manage to impose a working model of social inclusion for most of their users: external contacts, free travel, paid employment, food provision and facility maintenance. Partial results have been achieved by a fifth of the sheltered housings; all other services are replicating the institutional model of care and are unable to upgrade their users’ social skills. Despite the unsatisfactory quality of these services, they are better than the services provided by specialised institutions. They operate at full capacity and by 31 December

171 http://www.asp.government.bg/ASP_Files/SISURT/%D1%85%D1%85-%D0%A0%D0%9401_0401_%D0%BE%D1%82_02.04.2013_17_28_2.tif
2015 the waiting list of adults with mental disabilities and mental disorders totalled 708 persons.172

In 2014, when it became clear that many of the children in FTC have to be moved to FTC for adults when they come out of age, the Social Assistance Agency adopted the idea that users aged 18 years and over would stay at the FTC until they reach the age of 29. The upcoming closure of the institutions for children with disabilities, in which some of the children had come out of age, contributed to the creation of a new social service, the family-type centre for children and youth (FTCCY). A new methodological guide was developed for this service and is to be also applied to FTC that will be created for the target group of children and youth. According to this guide, all venues must have been exhausted for the users of the new FTCCY service, or they must be in need of support to lead an independent life. The latter case logically raises the question why the FTC for adults or the sheltered housing services have not been made available to these users.

After 2014, every region began using EU operational programme funds to create new Family-Type Centres for Children and Youth with Disabilities (FTCCY). These operate in parallel to the existing FTC for children which were transformed into FTCCY and their number may not exceed 149. “The goal is to have the existing institutions for children with disabilities closed by 2014. 149 new family-type centres will be created, each accommodating up to 12 children and the necessary staff”.173 The proposal of the NGOs that their capacity should not exceed 8 users was rejected during the discussions. At 12-user capacity, the planned number of the FTCCYD equalled the number of children with disabilities in institutions for children with developmental disabilities (ICDD) and institutions for medical and social care for children (IMSCC). In other words, the closure of the ICDD and the IMSCC would fill in the capacity of all FTCCY. In the end, capacity was set not at 12 but at 14 users, with the two additional places in each FTCCY allocated for crisis placements by the community. Altogether, these two places resulted in a surplus of over 200 beds in the FTCCYD and in the necessity for the Social Assistance Directorates to try to find and place users at any cost, as project phase financing was provided by number of children and persons accommodated. 13 FTCCY and 3 sheltered housings were created under the Regional Development Operational

172 Social Assistance Agency, information provided to the BHC under APIA, ref. No. 92 – 58 of 2 February 2016.
Programme in the Sofia Municipality alone. According to data provided by the Social Assistance Agency, 55 FTCCY were created from November 2015 to mid-January 2016. By January 2016, the total number of these centres was 280, of which 140 for children and youth with disabilities. To get a clearer picture of the total number of young persons with mental disorders and developmental disabilities placed in FTCCYD, by the end of 2015 the BHC officially asked the Social Assistance Agency to provide such data. The Agency’s response stated that “…the agency does not administrate in its centralised information system data under the stated criteria, and therefore cannot objectively provide such data.”

BHC’s visits to several FTCCYD showed that every month their managers compile information about the users broken by gender and age and send it to the Social Assistance Agency. This means that the Agency has such information at its disposal but is unwilling to provide the BHC a summary of the adults accommodated in FTCCYD. This is probably due to a concern that in these family-type services, in which adults should be placed rather by exception, the users aged over 18 years are probably more than the children below 18. Alarmingly, minors, juveniles and adults co-habit in these centres. For example, the several FTCCYD visited by the BHC were home to both 10-year-old and 30-year-old users. At the FTCCYD in Montana there was even a 47-year-old user. Mixing children and adults in these services hinders the identification of their needs and the provision of activities, individual and group care.

FTCCYD are being created extremely quickly which should be related to the hiring of qualified staff who would be capable to provide the necessary quality of service. Some service managers believe that the co-habitation of children and adults has a negative effect on the children who start imitating adults’ aggressive behaviour in an attempt to attract attention or express emotion. The risk for the children arising from clashes or conflicts with adult users should not be neglected as well. The mixing of persons diagnosed with “mental retardation” and others whose leading diagnosis is related to the mental disability is another problem of the new FTCCYD. Unlike the other family-type services (SH, FTC) which are profiled on the basis of diagnosis (for people with developmental disabilities and for people with mental disorders), the co-habitation of the two categories at the FTCCYD also has a negative effect on the activities carried out in these facilities. It should also be noted that some of the new buildings of the centres created under operational programmes were constructed on municipal lots in distant neighbourhoods or in com-

communities that lack developed infrastructure, without any consideration for the proximity of educational, cultural and sports institutions and transport facilities. This would replicate the practice of transforming the new services into micro-institutions, which lack the capacity to work towards the social inclusion of institutionalised users.

The users of social services placed in institutions for persons with mental disorders, developmental disabilities and dementia, as well as in alternative social services, have the same access to healthcare as the other citizens of the Republic of Bulgaria. Nevertheless, their affiliation with vulnerable groups is not taken into consideration. Paradoxically, these groups are in a favourable position with regard to healthcare as almost all of them have health insurance. They cannot independently choose a general practitioner or a dentist – large institutions usually don’t offer alternative choices – but can be referred to medical specialists if the institution staff are pro-active. In some cases, the psychiatric stigma requires that services be sought far away from the place of residence. Under the healthcare standards and criteria under the Regulation on the Implementation of the Social Assistance Act, the medical offices do not provide directly medical and dental care but only assist its provision. The status of these offices is still unclear, as they are not included in the Medical Institutions Act despite the fact that they actually are carrying out medical activities and may on their initiative ensure access to a general practitioner, depending on users’ condition. Once identified, the psychiatric diagnoses of the users are not subject to change, or new diagnoses are added in order to obtain medicines financed by the National Health Insurance Fund (NHIF). In most cases, the psychiatric treatment does not change significantly over the years; for many patients, the therapy is aimed at making life easier for the staff and not at achieving a meaningful effect with regard to the illness or the behavioural development.

Despite the existence of some positive examples, therapy's main purpose is to control the symptoms and not to change users’ quality of life. Patients with aggressive and self-aggressive behaviour might have their doses increased or be hospitalised in a psychiatric ward if need should arise. Interviews with medical officials at the institutions clearly indicate that the lack of individual specialised care and social rehabilitation of the users is the main reason behind their lack of independent life skills and burdened mental and physical condition. There is no algorithm for statutory and regulated counteraction of anxiety and actions in case of aggression and self-aggression. Staff are not
trained to deal with anxiety and aggression. There is no job description for the post of occupational therapist and it may be occupied by individuals with lower qualifications, without specific specialisation, which makes it difficult for the persons resident at institutions to acquire vocational skills.

Unlike the family-type services which are home to fewer and more preserved users, in the large specialised institutions it’s more difficult to counteract conflicts, aggression and fights between users. At several such institutions the BHC found practices involving the use of force and restraint by staff. At the IADD at the village of Kudelin, for example, improvised means of restraint were used: “guards” beating with sticks of “naughty” users; violence against users who refused to do cleaning; tying with chains to trees or courtyard benches as punishment for a broken window. Users at this institution told about the systematic sexual violence against a specific victim on behalf of other users, in the restroom or in the room. “Now, tonight there will be go – go, they love him, make him sex”. The reason for such contacts, whose consensuality could be disputed if the victims had the capacity to do so, is the prevailing single-sex division in the institutions and the lack of opportunities to meet sexual needs. Staff interviews at the institution in the village of Kudelin showed that there are 16 to 18 “road maniacs” (potential absconders) who are forced to sit on specific benches in the courtyard during the whole day. This is employees’ way of dealing with them, trying to keep them inside the institution. They take turns guarding them. Cases of violence and immobilisation were also reported in 2015 in the IADD in the village of Batoshevo. A user there said that “…some staff members, not all of them, hit us when we are not obedient, when we are not good”. A specific staff member has punched him in the stomach, pushed him in the abdomen and tied him with “straps”. He has been punched for listening to music, he has been tied for fighting another user of for trying to escape. He’s been tied with “straps” to the bed for 24 hours and “…inside you piss, inside you eat”.

Such practices could have been identified and penalised had an independent system of inspecting the institutions and the social services been in place, combined with regular and comprehensive inspections checking not only how the documentation but also the quality and the volume of the care and including user interviews, regardless of the doubts and the prejudices with regard to the truthfulness of their statements.
In 2015, the government elaborated and tabled in the National Assembly the long-awaited *Equality between Men and Women Bill*. The non-governmental sector and the Ombudsman, however, were unanimous that the text is incapable of achieving the desired objectives due to formalism, lack of substantive provisions and enforcement guarantees and obscurity of the terms used.

As an important, albeit delayed step toward safeguarding equality between men and women in exercising their right to occupation, we need to acknowledge the repealing of Decree No. 7 on hazardous employment prohibited for women in 2015 (repealed in 2015). The Order banned women, irrespective of their age and wish, to work as divers, in mines and in different spheres of the chemical industry, to work as excavator, bulldozer, etc. engine-drivers reportedly to protect their reproductive health. In its essence, however, this ban was illustrative of stereotypes linked with the distribution of gender roles and responsibilities within the family and society, disregarding their educational and professional wishes and their right to professional fulfillment according to their wishes. The new Decree No. RD–07 of 15 June 2015 on improving conditions of work for pregnant employees, employees who have recently given birth and nursing employees does not contain such restrictions, but rather guarantees motherhood in the narrow sense of the word.

**Protection against domestic violence and other forms of violence against women**

In 2015, the government failed to deliver on its commitment to sign and ratify the Council of Europe *Convention* on preventing and combating violence against women and domestic violence (the *Istanbul Convention*). According

to the Plan for the Implementation of the recommendations of the UN Committee on the Elimination of the Discrimination against Women, the country had to join the Convention by July 2015. The Istanbul Convention is undoubtedly the most modern and comprehensive international legal instrument which introduces effective prevention and protection measures against all forms of violence against women, and delaying its ratification is inexplicable and in detriment to the Bulgarian citizens.

In this respect, in 2015 several non-governmental organisations in the field of women’s rights started advocacy initiatives, insisting that the government immediately ratify the Istanbul Convention. Among the most wide-scale ones were the campaigns of an association between the Alliance for Protection against Gender Violence and the Bulgarian Fund for Women, the Violence against Women: Let’s Open Our Eyes and Break the Silence national campaign.

The National Assembly adopted in September 2015 amendments to the Criminal Code transposing Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography. In another long-awaited change, Article 158 of the Criminal Code was repealed in 2015. The article provided an opportunity to have the penal persecution terminated or to avoid the enforcement of a penalty for sexual abuse or rape of a minor if the perpetrator later married the victim. Although the amendment was adopted, the debates at the parliamentary committee on legal matters showed that some members of parliament still support the archaic purpose of the provision motivating themselves with the preservation of the “honour” of the victim of a sexual crime. At the same time, the members of parliament decided not to change the procedure for the initiation of penal proceedings for assault, battery and grievous bodily harm caused by ascendant, descendent, husband, brother or sister. Currently, such penal persecution is initiated only upon explicit referral by the victim to the court, with the victim being required to collect evidence and prove the accusation. This task is often impossible for domestic violence victims, who are often physically, mentally and financially dependent on the perpetrator. In this respect, the UN Committee on the Elimination of the Discrimination against Women explicitly recommends that this text of the Bulgarian legislation be amended.

176 For more information about the campaign, see http://goo.gl/mb7JRQ.
177 For more information about the campaign, see http://www.vsekichetvarti.org/.
In May 2015, the UN Committee on Human Rights held the second universal review of the state of human rights in Bulgaria.\textsuperscript{179} Many of the recommendations to the country targeted the elimination of domestic violence and the other forms of violence against women, including through the criminalisation of domestic violence, banning juvenile marriages, providing more and better financed services for women and children victims of violence.\textsuperscript{180}

**Human trafficking**

According to a US State Department report published in 2015, Bulgaria has not only failed to achieve any progress in combating human trafficking, but suffers from significant lack of success compared to the results in previous years.\textsuperscript{181} The report notes that Bulgaria remains a main source of trafficking children and women for sexual exploitation in Europe. It also points out the insufficient number of the crisis centres for trafficking victims and their inadequate funding. In this respect the report, which divides countries in four categories depending on the demonstrated efforts and achievements in persecuting and preventing human trafficking, downgrades Bulgaria, placing it on the Tier 2 Watch List. The report from the second universal review of Bulgaria in 2015 also contains a series of recommendations on improving the protection of women at risk of becoming victims of trafficking, sexual exploitation and forced prostitution, and women victims of such acts.\textsuperscript{182}

**Gender equality**

In 2015, the government elaborated and tabled in the National Assembly the long-awaited Equality between Men and Women Bill.\textsuperscript{183} The non-governmental sector and the Ombudsman, however, were unanimous that the text is incapable of achieving the desired objectives due to formalism, lack of substantive provisions and enforcement guarantees and obscurity of the terms

\textsuperscript{179} See http://www.mfa.bg/bg/events/6/1/3783/index.html.
\textsuperscript{183} See http://www.parliament.bg/bg/bills/ID/15643.
used. According to the Ombudsman’s opinion, the bill reaffirms the status quo without offering new regulations corresponding to the state of development of societal relations.\textsuperscript{184} The Ombudsman also notes that the bill does not regulate the principles of equality between men and women, does not define the type of measures to achieve the equality, their duration, the implementation mechanism, the oversight of their implementation and the monitoring of their effectiveness. The Gender Alternatives Foundation pointed out the following significant deficiencies of the proposed legislation:

- Lack of substantive part, namely compulsory rules for behaviour and for regulating a specific group of societal relations which in this case fall within the topic of gender equality;
- Lack of legal definitions of the basic categories, legal statutes and criteria concerning gender equality;
- Lack of common compulsory rules of behaviour, penalties for their violation and procedures for exercising oversight and imposing penalties;
- Lack of a clearly defined explicit equality body, its structure and composition, the term of office of its members and the principles of replacement/rotation, competences, ways and methods of operation, dispute resolution procedure in the field of gender equality, penalties for allowing gender inequality, as well as explanations which body has to impose them and how.\textsuperscript{185}

**Women in prison**

In 2015, the BHC carried out its first study dedicated entirely to the situation of women’s rights in the only women’s prison in Bulgaria.\textsuperscript{186} The main conclusion in the study report is that the penitentiary system treats men and women deprived of their liberty in the same way, applying universal rules and policies to both inmate groups. Treating them in the same way, however, it ignores women’s specific needs – health, psychological, educational, occupational and social – which leads to unequal results, i.e. to discrimination of women in prison. The report pays special attention on the right to family life; the pregnancy, the birth and the raising of children in the women’s prison.\textsuperscript{187}

\textsuperscript{184} See http://www.parliament.bg/pub/CW/201602171156440MB.STAN.pdf.
\textsuperscript{187} For more information on this topic, see also Conditions in places of detention.
Rights of childbearing women

A survey was carried out in December 2015 among over 5,000 women who had given birth in Bulgaria during the past three years. The survey utilised an on-line questionnaire and was organised by the Network of Non-Governmental Organisations Working in the Field of Mother Healthcare (Parents for Parents Foundation, Naturally Association, Poppies for Mary Foundation, Association of Bulgarian Doulas, Rodilnitsa Association, Friendship Foundation, Bulgarian Helsinki Committee, journalists and activists). The topics in the questionnaire cover practices with regard to the contacts between the newborn and the mother established with the World Health Organisation (WHO) recommendations and the international organisations for child and female health: the American Academy of Paediatrics, the International Association of Gynaecology and Obstetrics (FIGO), UNICEF, the National Institute for Health and Care Excellence (NICE), etc. The general conclusion is that many of these practices are not applied optimally or are not observed at all in many maternity wards in the country.

The survey results indicate that barely one-seventh of the new-born babies in the Bulgarian hospitals have not been separated from their mothers in the first hour of their life, and more than a third were breastfed for the first time more than six hours after their birth.

The first contact between the mother and the new-born occurs immediately after the birth. The baby is dried slightly and is left naked on the mother’s abdomen for at least one hour. This connection between the new-born and their mothers in the first hour after the birth has been broken in 86% of the cases. The fact that in more than half of the cases the separation of the baby from the mother has been carried out on the basis of internal regulations and procedures of the hospitals is alarming.

According to the survey, 60% of the mothers who have made first contact have breastfed their babies within one hour of the birth. This, however, translates in barely 85 of all mothers interviewed.
14. Children’s rights

Children in institutions

In the first five years of the deinstitutionalisation the state closed 87, or over half of all 137 specialised children’s institutions, the institutions for medical and social care for children (IMSCC), the institutions for children with developmental disabilities (ICDD), the institutions for children deprived of parental care (ICDPC) which must be closed by February 2025. By the end of 2015, all children with disabilities had left the ICDD. The total number of the children in specialised institutions dropped almost five times, from 7,150 to 1,530. Nevertheless, in 2015 the state continued to stumble on the road to the return of the children from the social institutions to the community.

The progress in numbers

Three key projects of the Action Plan for the Implementation of the Strategy for the Deinstitutionalisation of Children in Bulgaria were completed in 2015. The first project, Childhood for Everyone, was aimed at returning to the community 1,797 children with disabilities aged less than 3 years from 24 ICDD and 32 IMSCC ended on 2 June 2015, with a 6-month delay. The DIRECTION: Family project, aimed at closing the first 8 IMSCC in the country, ended on 25 October 2015, after being delayed for a year. The purpose of the closure of the pilot IMSCC was to provide a model for the closure of all IMSCC by 2025. The project had to implement a sustainable model of foster care.

188 Summary data on the progress of the deinstitutionalization of specialized institutions for children, 2010–2015, SCPA, provided to the Lumos Foundation on 20 January 2016.
Summarised comparison data of the State Agency for Child Protection (SACP) on the deinstitutionalisation of the specialised institutions for children for the period from 31 December 2010 to 31 December 2015 indicate that 130 specialised institutions for children with a total of 7,150 children and youth were operating at the end of 2010.\(^{190}\) By 31 December 2015, there were 50 specialised institutions with 1,350 children and youth, including:\(^{191}\)

- 18 IMSCC with 748 children (49%);
- 2 ICDD with 1 young adult;\(^{192}\)
- 30 ICDPC with 780 children (51%).

According to SACP statistics, by 31 December 2015 a total of 4,373 children and young people had been moved to family-type alternative services opened under the Let’s Not Abandon a Single Child Operation. These include: 236 FTC with 3,898 children and young people (of which 136 for children and youth with disabilities, accommodating 2,415 children and youth with disabilities); 19 sheltered housings (SH) with 121 young people with disabilities; 17 transitional housings (TH) with 139 children; 16 crisis centres with 96 children; 2 shelters with 28 children. In other words, by the end of 2015 90% of the total number of children moved to family-type services have been placed in FTC. 2,415 or 60% of them were children and young people with disabilities. A total of 2,333 children were moved to foster families.

The summarised conclusions behind the numbers

By 1 January 2016, the state had got closer to the achievement of one of the four specific goals of deinstitutionalisation: the closure of more than half of the children’s institutions. However, instead of decreasing as indicated in the 2010 action plan,\(^{193}\) the total number of children in formal care (outside their families) increased over five years by 1,086,\(^{194}\) from 7,150 to 8,236. This is the total number of children and youth accommodated in formal care (specialised

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\(^{190}\) 32 IMSCC with 2,334 children (35%); 24 ICDD with 956 children (14%) and 74 ICDPC with 3,440 children (51%). Other 420 young adults also live in ICDD.

\(^{191}\) According to information provided by the SACP to the BHC in a letter from the SACP chair No. 14–00–39 of 21 January 2015, as at 21 January 2016 there were 49 children’s institutions, with only one ICDD in Ilakov Rut, near Elena, Veliko Tarnovo Region.

\(^{192}\) According to data provided by the town of Elena to the BHC on 20 January 2016, no users were residing at the ICDD in Ilakov Rat at that date.

\(^{193}\) Results planned in the 2010 action plan: no more than 2,000 children left in institutional care by 2020; reduction by 30% of the children in the formal care system by 2025.

\(^{194}\) Summary data on the progress of deinstitutionalisation of specialized childcare institutions, 2010–2015, SACP.
institutions, community-based family-type services and foster families) by 31 December 2015. In other words, more than 1,000 live in formal care after five years of reform, although the objective is to gradually reduce by a third the children in the formal care system by 2025. The number becomes greater when the children accommodated with relatives (another type of formal care) are added. Although reduced, the transfer of children between institutions has not been eliminated. According to the SCPA statistics which takes into consideration the results from the Childhood for Everyone project, 46 children have moved to other specialised institutions:

- Young people who leave ICDD and move to IADD when they came out of age – 2;
- young people transferred to social educational and vocational centres – 6;
- children transferred to ICDPC – 38.

The entrance is not closed yet

SACP’s comparative data at the entry of the institutions indicate that 883 were admitted to children’s institutions in 2015. Despite the fact that the number of children admitted in 2010 was three times greater – 2,930 of whom 1,847 in IMSCC, 60 in ICDD and 1,023 in ICDPC – the transfer of mostly new-born with severe disabilities from maternity wards and families has not been stopped. According to information provided by the managers of the three largest IM-SCC in the country, the influx of new-borns with severe pathologic conditions is growing and accounts for between 62% and 83% of the total number of children admitted in the 0 to 3 years age group. The entrance to the children’s institutions remains open for babies mostly due to the deficit of early intervention and prevention of abandonment, the weakest link in the deinstitutionalisation. There is an apparent lack of a developed network of alternative services in the community, which could provide adequate support to the parents of the most vulnerable groups, that of the babies with severe and multiple disabilities, starting at the maternity wards and continuing for a long time after that.

195 Results from the implementation of the State Agency for Child Protection’s project Childhood for Everyone, http://sacp.government.bg/.
196 IMSCC Stara Zagora – of 140 newly admitted in 2015, 87 came from maternity wards (78 premature and 13 from families); IMSCC Pleven – of 98 newly admitted, 82 came from maternity wards (61 premature and 11 from families); IMSCC Burgas – of 191 newly admitted, 154 came from maternity wards (117 premature and 37 from families).
The exit trends for the children aged 0 to 3 years also remain unchanged. The share of those taken out – re-integrated, adopted or in foster care – is the largest. Return to the families is the most frequent exit for premature babies.\textsuperscript{197} Children with severe disabilities do not return to their families, they are still being adopted mostly abroad.\textsuperscript{198}

\textbf{Deinstitutionalisation at the eleventh hour}

The number of the institutions and of the children in them is falling most rapidly during the final months of the fifth year of deinstitutionalisation. Only seven of the existing 24 ICDD were closed by the end of May 2015. By November 2015, the number of institutions for children with developmental disabilities in operation was 11.\textsuperscript{199} According to data provided by the Social Assistance Agency, by 31 December 2015 there were six ICDD with a total capacity of 91 places. By orders of the Social Assistance Agency’s executive director issued in December 2015, five ICDD were closed at the same time on 1 January 2016.\textsuperscript{200} Thus, by 1 January 2016 there was only one operational ICDD with 25 places. The residents there were three young adults with severe and multiple disabilities; by mid-January 2016 they were transferred to alternative services.\textsuperscript{201}

The situation with regard to the closure of the IMSCC is similar. The eight pilot IMSCC were closed with a delay of one year. In the first four years of the reform, only three IMSCC were closed. 29 of the 32 IMSCC were still operational in mid-May 2015. The closure of 11 IMSCC occurred in the final months of 2015.

In 2015, the deinstitutionalisation of the ICDPC, which started with the expansion of the target groups by including the children with disabilities from IMSCC and ICDD and the children without disabilities from the ICDPC, kept the momentum gained in 2014. Accelerated construction of FTC for children

\begin{addendum}
\item[197] Of 62 babies who returned to their families from the IMSCC Pleven, 52 were premature; of 94 re-integrated babies from the IMSCC Stara Zagora, 70 were premature; of 126 re-integrated babies from the IMSCC Burgas, 103 were premature.
\item[198] According to data provided by IMSCC managers. All adopted children with disabilities in 2015 from the IMSCC Stara Zagora (2) and the IMSCC Pleven (9) were adopted abroad.
\item[199] See \url{http://www.asp.government.bg}.
\item[200] Data quoted in a SCPA letter to the BHC, ref. No. 14–00–39 of 21 January 2015.
\item[201] \url{http://www.asp.government.bg/ASP_Client/ClientServlet?cmd=add_content&lng=1&sectid=24&st=22&seldId=22}
\end{addendum}
and young people began in mid-2014. But the last two months of 2015 were record-breaking. 36 FTCs were opened in 60 days, or more than one every two days: 19 in November and 17 in December 2015.

Deinstitutionalisation = FTCsation? Or where did the children from the ICDD go?

On 27 May 2015, SACP reported that under the Childhood for Everyone project 1,172 children and young people with disabilities have so far been taken out ICDD, IMSCC and ICDPC – out of 1,797 planned – and placed in 121 family-type centres and 16 sheltered housings in 72 municipalities. At project completion in early June 2015, 227 children and young people with disabilities had still not been taken out: 125 children and young people placed in 15 ICDD and 102 children in 17 ICDPC; 46 had been transferred to other institutions. In other words, at the time the Childhood for Everyone project ended, there were 273 children and young people still living in institutions. The data provided by SACP in May 2015 indicate also that 396 children and young people have moved to families under the Childhood for Everyone project (61 returned home, 279 were adopted in the country and abroad and 56 were accommodated by foster families).

The 1,172 children and young people with disabilities were divided between the new family-type services as follows:

- 977 children and young people with disabilities coming from ICDD and IMSCC were placed in FTC;
- 51 children with disabilities coming from ICDPC were placed in FTC;
- 28 children at risk coming from the community were placed in FTC;
- 116 young people with disabilities coming from ICDD live in SH.

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204 New services by 27 May 2015: 121 FTC for children and young people with disabilities; 16 SH for young people with disabilities; 24 FTC and 1 SH for children without disabilities. See the results from the implementation of the State Child Protection Agency’s project Childhood for Everyone http://sACP.government.bg.
205 Results from the implementation of the State Child Protection Agency’s project Childhood for Everyone http://sACP.government.bg.
In a nutshell, for two out of three children with disabilities, or 65% of all 1,797, the exit from the institution does not lead to the family, but to small-group homes.

**Condition of the FTC**

The greatest problem faced by the new micro-institutions mushrooming in the final months of the fifth year of reform is that for the most vulnerable group, that of the children and young people with severe and multiple disabilities, the deinstitutionalisation often stops at the entry of the new FTC. The issues related to the insufficient number, the low qualifications and the large turnover of staff at the new services remain unsolved.

The BHC was informed on several occasions in 2015 of stalled or even regressive development of children placed in FTC. Practices of negligence and even abuse against children at the alternatives, which are expected to make the care more humane, were also reported. One of the most drastic reports concerned the FTC in Burgas, which is home to 13 children with severe disabilities. According to the referral, the children are systematically subjected to inhuman treatment. “Children are systematically not given water, water is used to dilute food. Children are often hospitalised for dehydration. No quality personal care is provided, ears are not cleaned, nails are not cut… Treatment often recurs to slapping. The staff puts an overexcited child in its room and ties the door handle from the outside with a pantyhose. We’ve seen the same child eating its diapers, excrement all over him and the walls… Children are often called “idiots, retarded, decumbent…”

The BHC visit at the end of May 2015 added more facts to the picture. For example, five children at the FTC with acute viral infection were not diagnosed by a doctor until the fourth day of showing the first symptoms. The deficiencies of the new FTC include the co-habitation of 8 to 12-year-olds with a 46-year-old. Such a case was found at a FTC in Sofia, but similar practices involving the placement of adults in children’s centres equipped with climbing frames, slides and swings, are not an exception. A BHC inspection in 2015 established a prevailing share of users aged 20 or more at two FTC in Sofia, three FTC in Burgas and one FTC in Botevgrad. In two FTC in Targovishte the ratio between children and adults was 1:1.

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206 Referral sent to the BHC on 14 May 2015 by a team of specialists appointed under Activity 6 of an “inclusive education” project at the Peyo Yavorov school in Burgas, with regard to the “issues encountered” at FTC 3 in Burgas.
An evaluation of the development of 1,172 children with disabilities placed in 121 FTC under the Childhood for Everyone project was carried out at the end of 2015, five years after the start of the deinstitutionalisation process. The Lumos Foundation was the leading evaluator. One of the conclusions was that the Deinstitutionalisation Vision’s objective “to create a wide spectrum of community-based services for children and families” has not been achieved. The number of the accompanying services, day care centres and social rehabilitation and integration centres (SRIC) remains inadequate in comparison to the needs of support of the children and their families. The accompanying services, especially at the day care centres, remain inaccessible to the children and youth with disabilities in FTC because their full capacity is spent on children from the community or because the children with severe and multiple disabilities are unwanted.

The IMSCC metamorphosis blocked

The Ministry of Health’s DIRECTION: Family project ended on 25 October 2015. Eight pilot IMSCC207 were closed by Council of Ministers Decree No. 208 of 10 August 2015. The decree also defined conditions with regard to the operation of FTC for children and youth in need of constant medical care. This service is also regulated by a single state standard for 2016.208 The decree obligated the mayors of the pilot municipalities “within 30 days of the date of entry in force of the Council of Ministers Decree to take the necessary actions to have the municipal councils adopt the necessary decisions to open the service as a local activity”. At the start of the project in early 2012, there were 342 children in the pilot institutions; in early 2015, 66 children with severe health problems, 36 of them aged more than 3 years, were living IMSCC. Despite a delay of one year, by the end of 2015 all children in the pilot IMSCC had been taken out. Still, the expectation that the children with severe disabilities would be placed in the new specialised medical care centres was not met. Such centres were either not created in the pilot IMSCC (municipality of Pazardzhik) or were created but at the end of 2015 their staff was laid off or had to take unpaid leave (the remaining pilot municipalities).

The so-called Health and Social Services Compounds have been non-operational since November 2015. Apart from FTC for specialised healthcare, they

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207 In the municipalities of Gabrovo, Montana, Pernik, Plovdiv, Sofia, Ruse, Targovishte and Pazardzhik.
208 Council of Ministers Decision No. 859 of 3 November 2015.
had to also provide services in support of parents, adopters and foster families and to ensure early prevention of abandonment and adequate development of the children in their natural environment. In places where services, such as family consultation centres, day care centres, foster care centres or family-type replacement services for children with disabilities, were created, they remained functional for a short time, until the completion of the DIRECTION: Family project. This was due to the fact that these services are still not legally regulated. Nothing is done to provide for their sustainability and financing.\textsuperscript{209}

There is also no clarity with regard to the services created in the end of 2015 with the \textit{Medical Institutions Act}\textsuperscript{210} and the \textit{Healthcare Act}.\textsuperscript{211} The existing 18 IMSCC were not included in the reform and currently there is no vision on their closure. The lack of early intervention and prevention of abandonment remain the greatest blank spots of the IMSCC deinstitutionalisation. There is no network of alternatives for adequate support to the parents of the children in the most vulnerable groups – the babies with disabilities since the maternity ward. The best practices are still being created by the non-governmental sector. The For Our Children Foundation, which is carrying out baby abandonment prevention activities in Sofia and Plovdiv, is reporting a success rate of over 80\% in retaining new-born in their families. In 2015 the foundation’s two public support centres have worked on 227 cases of abandonment prevention; of these, 186 were successful and 41 unsuccessful, bringing the annual success rate to 82\%. In the seven years since 2009, the foundation has, through abandonment prevention, provided support to 1,249 children aged 0 to 3 years and its services have prevented the placement in institutions of 1,051 children aged up to 3 years (84\% success rate in comparison to the total number of cases). Of these, 964 children have stayed with their biological families while 96 were placed in family care (relatives or foster families).\textsuperscript{212}

\textbf{292 deaths in ‘baby institutions’}

In 2015, the BHC was informed by the managers of the 29 IMSCC operating in the country that 292 children aged 0 to 7 years have died in the institutions for the period 1 June 2010 to 31 December 2014.\textsuperscript{213} The institutions with

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{209} Opinion of the Childhood Coalition, June 2015.
\item \textsuperscript{210} \textit{Centre for Comprehensive Services to Children with Disabilities and Chronic Illnesses, Medical Institutions Act}, Article 27a (New – SG No. 72 of 2015).
\item \textsuperscript{211} \textit{Integrated health and social services, Healthcare Act}, Article 125b (New – SG No. 72 of 2015).
\item \textsuperscript{212} Data provided to the BHC by the For Our Children Foundation.
\item \textsuperscript{213} The information is provided in March and April 2015 by the managers of IMSCC on access to
\end{itemize}
\end{footnotesize}
the greatest number of child deaths over that period include: the IMSCC in Pleven – 41; the IMSCC in Stara Zagora – 36; the IMSCC in Varna – 30 and the St. Ivan Rilski IMSCC in Sofia – 20.\textsuperscript{214} When the BHC referred to the SACP, the SACP chair sent a request to the Supreme Cassation Prosecutor’s Office to perform an inspection and provide information about criminal proceedings initiated with regard to the data provided by the BHC. By 21 January 2016, the SACP had not received feedback from the Supreme Cassation prosecutor’s Office about any measures taken or inspection results.\textsuperscript{215} According to the statistical data of the National Statistical Institute, every 11\textsuperscript{th} child of the 641 children who have died in Bulgaria in 2014 was raised at an IMSCC.\textsuperscript{216} Following a drop in 2013, child mortality began increasing again in 2014.\textsuperscript{217}

**238 deaths in special needs’ childcare institutions left without consequence**

By January 2016, the prosecution had started 241 pre-trial proceedings and files, which the BHC is monitoring, about crimes against children and young people with mental illnesses, mental disabilities and intellectual difficulties who had lived in ICDD from 2000 to 2010. For over five years of investigation, from the autumn of 2010 to the spring of 2016, not a single indictment was submitted to court with regard to these cases. 91\% of the cases are almost completed, 5\% are still pending. The BHC has filed applications with the European Court of Human Rights with regard to 10 cases. This picture of justice is telling given the real intensity and number of child abuse for which the prosecution and the public have been informed from the joint inspections carried out by the prosecution and the BHC. 224 of the files involve individual victims, 216 children and young people; seven involve the same victims. 18 cases and files involve groups of victims, at least 134 children and young people.\textsuperscript{218}
The Brownian motion of the IMSCC or deinstitutionalisation as administrative chaos

The implementation of the IMSCC deinstitutionalisation project, which was postponed for 2015-2020, but had in fact began in 2014, continued in 2015. By a decision of the Monitoring Committee of the Human Resources Development Operational Programme of 7 November 2013, the target groups of the Childhood for Everyone project were expanded to include children and young people without disabilities residing in ICDPC. In 2014, children without disabilities began being taken out of the ICDPC. By 30 September 2015, there were 37 institutions for children deprived of parental care; by 31 December 2015, there were 30. The questions how were the needs of the children and the young people in ICDPC evaluated and how was it decided where to move them were left unanswered. Some attempts at replacing the institutional model of care for the children in ICDPC became bogged down in administrative chaos and formalistic evaluations. The speedy filling of new alternatives with healthy children from ICDPC in some cases was provoked by mayors’ unwillingness to create services for children with disabilities. The BHC was informed about such cases in Montana and Balchik. In 2015, the BHC referred to the prosecution on three occasions concerning the transfer of systematic abuse stereotypes from the institution to the new alternative, which was established in the beginning of the year in relation to the deinstitutionalisation of the children from the ICDPC in Doganovo to the FTC in Samokov. 219 On the first occasion, the prosecution initiated pre-trial proceedings for torture; on the second, a preliminary verification is being carried out; on the third, the prosecution refused to initiate pre-trial proceedings and the refusal is being appealed.

500 foster families without children

The number of foster families in Bulgaria has increased more than six-fold in comparison to 2011 when they numbered 391. The total number of foster families approved and registered by 31 December 2015 was 2,451 (71 voluntary and 2,381 professional). For the same period, the total number of children in foster care was 2,323 of whom 2,229 in professional foster families. A total of 1,231 children were placed in foster families in 2015.

due to incidents such as frostbite, drowning and suffocation, 36 due to pneumonia, 2 due to violence. In 15 cases the cause remains unknown. See http://deca.bg/

219 For more information, see BHC, Human Rights in Bulgaria in 2014, Sofia, March 2015.
The *I Have a Family Too* project played an important role for the development of foster care in 2015. It is a part of the *Accept Me* operation of the Action Plan for the Implementation of the Vision for Deinstitutionalisation of the Children in the Republic of Bulgaria National Strategy. The project ended in late 2015. The project had to also elaborate a single financial standard for foster care, which in turn had to continue as a municipal activity funded by a delegated budget. This did not happen in 2015 and a decision was made to extend the *Accept Me* operation into *Accept Me 2015* under the Human Resource Development Operational Programme for the 2014–2020 plan. The plan is to have foster care financed by European money until 2018 and then make it a delegated state activity.

According to data provided by the Social Assistance Agency, despite the progress in foster care, there are no children in more than 500 professional foster families.\(^\text{220}\) In 2015, foster care continued to be a successful temporary care mostly for younger children. Children aged 7 to 18 years and children with severe disabilities are not preferred by the foster families in Bulgaria. An adoptive family abroad is a more realistic option for them.

### 16-year-olds again in Ministry of Justice’s registries

Children with disabilities account for more than 80% of those on the adoption registry in 2015.\(^\text{221}\) Italy, USA and France are the three countries in which more than 70% of all internationally adopted Bulgarian children are adopted. Over the past five years, the largest group of children adopted under the special protection measures went to the USA.\(^\text{222}\) But the adoption of children from the institutions is hindered not only by severe diagnoses. The late inclusion in the registry remained a stumbling block in 2015 as well. At the end of 2015, the official registry of the Ministry of Justice for the implementation of special adoption measures for children with health problems, special needs or aged over 7 years included 1,165 profiles. Some children were not listed in this special registry until they were 13 years old; in some cases, this takes place after...

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\(^\text{221}\) Based on Ministry of Justice data, available on the Ministry of Justice website, see [https://mjs.bg/83/](https://mjs.bg/83/).

\(^\text{222}\) Amendments to the *Family Code*, which entered in force in 2009, allow a child to be adopted without parental consent if within 6 months the parents fail to request that the child be returned to the family. The provision of Article 21 of Ordinance No. 13 of 30 September 2009 initiated the application of a special procedure for international adoption, including keeping separate statistical data on the adoption of children with specific health needs.
their 16\textsuperscript{th} birthday, sometimes even days or months before they turn 18. At this time, they had no chance to find a family. Out of 174 child profiles published on the Ministry of Justice’s website from January to October 2015, 82 (47\%) were aged over 13 years, 46 of whom (56\%) were aged over 15 (31 over 15, 11 over 16 and 4 over 17 years – two girls of 17 years and 11 months and 17 years and 8 months, respectively, and two boys of 17 years and 10 months and 17 years and 11 months, respectively).\textsuperscript{223} The comparative data indicate not only that the practice of listing 16 or 17-year-old children in the international adoption registry is preserved but also that the number of children of greater age is increasing.

**Educational integration of children from ethnic minorities**

In June 2015, the Ministry of Education and Science adopted the 2015 – 2020 National Strategy for Educational Integration of Children and Pupils from the Ethnic Minorities and an action plan for its implementation.\textsuperscript{224} According to the strategy, the share of Roma children aged 3 to 6 years enrolled in kindergartens is 30.9\%, while the share of ethnic Bulgarians in kindergartens is above 55\%. By 2011, the share of Roma children aged 7 to 15 and not attending school was 22.3\%, while the share of the ethnic Bulgarian pupils was 5.6\%.\textsuperscript{225} The plan envisions various measures with regard to: working with the families to explain the benefits of integrated education; including parents and local communities, teachers’ and parents’ boards in the process; appointment of assistant teachers and assistant tutors; conducting an analysis of the need of minority pupils in order to overcome segregation; planning and implementation of the desegregation process at municipal level; delivery of support for an early start of vulnerable children and pupils; provision of additional Bulgarian language training for children whose mother tongue is different; additional support to children at risk of dropping out or leaving school; training teachers to work with minority children; development of an early warning system

\textsuperscript{223} Of 47 children’s profiles published on the Ministry of Justice’s website in 2014, 18 (40\%) were of children aged over 12 years, of which 3 aged over 15 years (two girls of 17 years and 4 months and 16 years and 9 months, and 1 boy of 15 years and 3 months), according to information provided by the Ministry of Justice in March 2014 on the decisions of the International Adoption Board concerning the listing of children in the registry under Article 113(1)(i) of the Family Code.


for children at risk of dropping out or leaving school; introduction of extracurricular and multicultural activities for minority pupils; development of teaching aids for multicultural activities; introduction of teaching aids in the mother tongue. All measures are formulated generally, do not contain clear instructions on their implementation or specific financing (with a couple of notable exceptions). The plan therefore does not provide real guarantees for the educational integration of the children from ethnic minorities.

The Ministry of Education and Science responded to a question asked by the BHC that it did not collect information about the children from ethnic minorities and did not provide information about the number of children from ethnic minorities attending kindergarten and school and the number of those who have dropped out or have never attended educational establishments.\textsuperscript{226} According to the ministry, activities to explain the benefits of educational integration to the parents are being carried out under projects by the Centre for Educational Integration of Children and Pupils from Ethnic Minorities. By the end of 2015, 962 parents had taken part in such activities, while the Roma parents motivated to support their children were 789. In 2015, the children from ethnic minorities adapted in the educational system were 1,258. 13,468 pupils during the 2014/2015 academic year and 16,925 pupils in the 2015/2016 academic year have received additional Bulgarian language training and training in other subjects.\textsuperscript{227} With the purpose of integration and desegregation of the children from ethnic minorities in the general education schools, the Centre for Educational Integration of Children and Pupils from Ethnic Minorities manages projects for intercultural extracurricular activities (240 in 2015) and the number of pupils retained and re-integrated in schools was 1,147. 898 teachers were trained to work in a multicultural environment in 2015, while 186 teachers were prepared to introduce models of working with parents.\textsuperscript{228}

Review of the situation of children’s rights by the UN Committee on the Rights of the Child

On 8 October 2015, the UN Committee on the Rights of the Child held a preliminary meeting with non-governmental organisations and children select-

\textsuperscript{226} Letter 1104-2, 1 February 2016, signed by deputy minister Vanya Kastreva.
\textsuperscript{227} For this purpose, the educational establishments apply for additional financing when there are groups of 4 to 8 children in need of additional training.
\textsuperscript{228} Letter 1104-2, 1 February 2016, signed by deputy minister Vanya Kastreva.
ed by them, in order to discuss the state of children’s rights in Bulgaria in 2006 – 2015. Three organisations sent reports to this end: BHC, the National Network of Children and UNICEF. All of them pointed out major issues of concern, such as: lack of information about the children in Bulgaria broken down by age, disability, gender and risk; lack of detailed legislation on hearing children and involving them in decision-making; lack of specific financing for the implementation of objectives and measures under national programmes, strategies and plans; lack of a clear mechanism and of a body for independent and effective monitoring of children’s rights; ineffectiveness of the deinstitutionalisation and the educational integration of children with disabilities and children from ethnic minorities; ineffective access to healthcare services; the stalled reform of juvenile justice; the lack of guaranteed equal access to educational and healthcare services for children from ethnic minorities; the lack of social assistance and service packages for vulnerable groups of children and families.

As a result, the UN Committee on the Rights of the Child sent the Bulgarian government a list of issues. The government had until March 2016 to provide answers. The list of issues reflects all critical points and issues raised by the NGOs in Bulgaria. A meeting between the Committee and the government is expected to take place in June 2016.

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15. LGBTI rights

The lesbian, gay, bisexual, transgender\(^{231}\) and intersex\(^{232}\) people (LGBTI) in Bulgaria face social and legal challenges and discrimination, not experienced by the heterosexual and cisgender\(^{233}\) residents.

Equality and non-discrimination

In 2015, LGBTI people continued to be treated less favourably in legislative terms in comparison to people not belonging to these groups and to other minority communities.

Sexual orientation, gender identity and gender expression\(^{234}\) are still not included in Article 6 of the Constitution of the Republic of Bulgaria, which proclaims equality before the law on the grounds of race, nationality, ethnic origin, gender, origin, religion, education, convictions, political affiliation, personal and social status and wealth.

\(^{231}\) Transgender: a general category covering all people whose biological sex differs from their gender identity (the sense of belonging to the male or the female gender). Persons living with gender dysphoria (a strong sense of depression, discomfort and even distress due to one’s own gender, which is seen as inconsistent with one’s own gender identity) are called transsexual/transgender. Persons who do not feel that they belong to the male/female binary gender are called genderqueer.

\(^{232}\) Intersex in humans and other animals describes variations in sex characteristics including chromosomes, gonads, or genitals that do not fit typical binary notions of male or female bodies. The obsolete medical term for this condition is hermaphroditism.

\(^{233}\) Cisgender: a term denoting all people who are not transgender or transsexual. For example, it may refer to someone who was born with female primary sex characteristics, feels like a woman and self-identifies as a woman.

\(^{234}\) The latter two are recognised in Directive 2012/29/EU of the European Parliament and of the Council.
Consensual same-sex acts, when not performed in public, are decriminalized under the current *Criminal Code* of 1968. However, the law still contains statutes which divide the criminal sexual acts into regular (undefined) and performed “with a person of the same sex” (Article 155(4); Article 157(1), (3) and (4)). The provisions of Articles 149 and 150, referring to sexual molestation in its two forms (with a person under the age of 14 and with a person over the age of 14) are an example of non-discriminating wording. Here, the sex of the perpetrator and the victim of the crime are not important: it can be the same or different.\(^{235}\)

In 2002, the age of statutory consent to sexual acts was equalized for both heterosexual and homosexual acts by amending Article 157(2) of the *Criminal Code*.\(^{236}\)

The vicious doctrine, according to which rape is understood solely as an act against a female person, specifically involving involuntary penal-vaginal penetration, is still valid in criminal law. In some cases it is treated differently than other types of sexual coercion. All other types of sexual coercion, including involuntary penal–oral or penal–anal penetration, are categorised as “molestation”.\(^{237}\) When the victim is an adult, involuntary penal–vaginal penetration is punished by imprisonment from 2 to 8 years (Article 152(1) of the *Criminal Code*). The same punishment is provided for involuntary penal–anal penetration when the perpetrator and the victim are both male, but under a separate provision (Article 157(1) of the *Criminal Code*). However, the punishment would not be the same if the perpetrator and the victim are both female and the involuntary penetration is performed not with a penis, but with another body part or an object. Furthermore, the Bulgarian criminal law doctrine does not recognise the possibility of using 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 gratification. Such are the cases when one is being raped on the basis of a protected characteristic, for example, a man or woman being raped because of their sexual orientation, gender identity or gender expression, or as an expression of intolerance or humiliation due to the victim’s religion, race or ethnic origin.

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235 See Supreme Court (1981), Decision No. 77 of 18 February 1981 on criminal case No. 26/1981, 1 criminal division.
237 See, for example, Supreme Cassation Court (2010), Decision No. 122 of 25 March 2010 on criminal case No. 772/2009.
Sexual orientation is a protected characteristic under the Protection against Discrimination Act (PADA, Article 4(1)). Gender identity and gender expression, however, are not included among the characteristics under Article 4 of PADA. On 25 March 2015, the National Assembly adopted a bill amending and supplementing the Protection against Discrimination Act. According to the text, a new item 7 was added to §1 of the Additional Provisions: “[w]ith regard to Article 4(1) the characteristic of sex shall also include the cases of sex change”. The text is a transposition 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). Even though the BHC sent an opinion to the parliamentary committee on legal matters stating that the wording sex change leaves room for interpretation and may be understood to only protect the post-operative transsexual people, the bill was adopted by the members of parliament. Thus, both pre-operative transsexual people and persons not feeling that they belong to any specific gender (genderqueer) may be deprived of protection. The BHC did not find case law of the domestic equality body or of the court on this matter from the period covered in the current report.

In May 2015, the European Union Agency for Fundamental Rights (FRA) presented a summary of its comparative analysis of the data from the study of LGBT rights in the EU, with a focus on transpeople in the member states. The results indicate that the fundamental rights of transpeople are violated frequently: discrimination, violence and abuse to an extent much higher than that to which the other respondents – lesbians, gay or bisexual – are subjected. According to the FRA’s recommendations, the member states should regard gender identity and gender expression as human rights subject to protection and as elements of anti-discrimination policies, action plans and awareness campaigns. The Agency for Fundamental Rights recommends that in the implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime the member states pay due attention to the protection needs of the victims of crime committed because of the victim’s gender identity (in consistency with recitals 9, 17 and 56 of the Directive). It is also recommended to introduce criminal law provisions, which allow pro-

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tection against crimes on the basis of transphobia and which guarantee that the law enforcement bodies are trained to deal effectively with transphobic crime, including raising the awareness on issues related to transpeople. Another recommendation points out that the EU member states have to guarantee full legal recognition of the gender preferred by a person, including the change of one’s own name and other gender characteristics in the identity documents. Gender recognition procedures need to be accessible, transparent and effective, to guarantee respect for human dignity and freedom. More specifically, the legal procedures of gender recognition should not require divorce and medical interventions, such as sterilisation. The EU member states should completely recognise documents and decisions issued by other EU member states in the field of the legal recognition of gender, in order to enhance the exercise of the right to free movement of transpeople in the EU.

Also in May, the EU Agency for Fundamental Rights published a short report on the situation with regard to the fundamental rights of intersex people in the EU member states. The report concludes that Bulgaria is one of the member states in which a new-borns are mandatorily attributed a male or female sex at the time of issue of the birth certificate. Bulgaria is also among the countries where minors with an intersex condition have genitals constructed operatively without any regard for their gender identity and before they reach an age when informed consent would be required.

**Private and family life**

Bulgarian legislation still does not recognise any form of same-sex family. Both the *Constitution* (Article 46(1)) and the *Family Code* (Article 5) define marriage as a voluntary union between a man and woman. Most parliamentary represented political parties have no position on this issue or comprehensive policies for LGBTI equality. Active public debate on these topics 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. These include visiting rights, parental rights, matrimonial assets, some types of leave, widower’s pension, assistance, compensations for the death of a partner, protection against domestic violence and tax relief. Unlike

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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 child’s adoptive parent has been legalised.

The Protection against Domestic Violence Act regulates the rights of the victims of domestic violence, the measures for their protection and the procedures for imposing these measures. This law protects persons in a kinship relation, who are or have been in a family relation or in cohabitation (Article 2(1)). In theory, this provision should also provide protection to cohabiting same-sex couples, but as a rule, this does not happen in reality.241

Hate crime and hate speech

Under the current Criminal Code, the preaching or the incitement of discrimination, violence and hatred, as well as the use of violence, the damaging of property and the forming, leading or participating in an organisation, group or mob with the purpose of committing such acts on the basis of sexual orientation, gender identity or gender expression of the victim are not regarded as crimes, unlike when this is done on the basis of race, nationality, ethnic origin, religion or political affiliation (Articles 162 and 163, Criminal Code). Homophobic and transphobic motives are not recognised as particularly meaningful characteristics of the motivation of the crime and as aggravating circumstances, unlike racist or xenophobic ones (Article 116(1)(11) and Article 131(1)(12) of the Criminal Code). There is no case that would regard committing a crime on the basis of these characteristics an aggravating circumstance. The acts committed on such motives are treated as ordinary crimes.

Hate speech based on sexual orientation may be punished under the administrative or the civil law proceedings of the PADA.

241 See, for example, Sofia District Court (2014), Disposition No. 26 of 7 October 2014 on civil case No. 53154/2014 of the 83rd panel. By this disposition the court rejects an application under the Protection against Domestic Violence Act and terminates the case because the applicant is a lesbian who is requesting protection against domestic violence from her partner with whom she is co-habiting. The court held that she is not among the persons allowed to seek protection against domestic violence because by law such protection is only granted to persons in actual marital cohabitation, which according to the court may be only between a man and a woman because the legislation recognises only the matrimonial union of man and woman.
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(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 therefore inconsistent and penalises the citizens.\(^\text{242}\)

For the same reason, there is also inconsistent case law on the obligation to have surgical intervention before changing legal gender.\(^\text{243}\)

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 age.

Freedom of association and freedom of expression

The LGBTI community in Bulgaria generally enjoys broad freedom of association and freedom of expression. In 2015, there were at least three non-governmental organisations focused on the LGBTI community whose activities were publicly visible: the Bilitis Resource Centre Foundation, the GLAS Foundation, and the Deystvie Youth Association.

Two campaigns were organised on the occasion of the International Day against Homophobia and Transphobia (IDAHO) on May 17. A rally was held on that day in protest against the lack of legal regulation of hate crimes on homophobic or transphobic grounds. The rally was organised by an infor-

\(^{242}\) See Bilitis Resource Centre Foundation (2012), *Gender change of trans- and intersexual people in Bulgaria: legal framework and case law study and a strategy on improving them*, available at: [http://www.bilitis.org/db/images/Gender%20Reassignment%20in%20Bulgaria_BG.pdf](http://www.bilitis.org/db/images/Gender%20Reassignment%20in%20Bulgaria_BG.pdf); and Dobreva, N. (2015), *Private law procedure for the change of gender: case law and trends in 2014*, available at: [http://www.bilitis.org/db/images/2014-%D0%BF%D1%80%D0%B0%D0%B4%20-%D1%82%D0%B8%D0%BA%D0%B0%20-%D1%81%D0%BC%D1%8F%D0%BD%D0%B0%20%D0%BD%D0%BE%D0%BB%D0%B0.pdf](http://www.bilitis.org/db/images/2014-%D0%BF%D1%80%D0%B0%D0%B4%20-%D1%82%D0%B8%D0%BA%D0%B0%20-%D1%81%D0%BC%D1%8F%D0%BD%D0%B0%20%D0%BD%D0%BE%D0%BB%D0%B0.pdf).

\(^{243}\) Compare, for example, Decision No. 1835 of 11 June 2007 on civil case No. 1953/2007 of the Varna District Court and Decision No. 1126 of 6 April 2010 on civil case No. 10044/2009 of the same court.
mal volunteer team, the LGBT-XXX-team. The participants marched from the Courthouse to the Ministry of Justice. The rally was supported by the Bilitis Resource Centre Foundation, the Bulgarian Helsinki Committee and the Deystvie Youth LGBT organisation.\textsuperscript{244} The WeAreTolerant.com online platform, a project of the GLAS Foundation, was launched on the same day. The purpose of the website is to provide an opportunity for every victim or witness to report a homophobic or transphobic crime, thus helping to collect information on the topic and to solve the issue.\textsuperscript{245}

The eight consecutive Sofia Pride took place on 27 June 2015, attracting at least 1,500 participants.\textsuperscript{246} A newly-established liberal political party, DEOS, which ran for local elections nominating the first openly gay candidate for mayor of Sofia, Victor Lilov, also took part in the Pride. For another consecutive year, the parade was supported by the party of the Greens, as well as by 18 diplomatic missions. The eight pride was dedicated to the non-discrimination of the LGBTI people in the field of education. A declaration was adopted to this end.

Unlike the declaration, wide media coverage was given to an open letter by some Bulgarian printed media publishers and other public figures who called for banning the pride, as they believed that it serves as occasion to organise counter-rallies, which violate public order. In the authors’ opinion, “no law in Bulgaria restricts the rights of the people of “non-traditional” sexual orientation” and the pride is therefore a “demand for privileged treatment” and “reverse discrimination”. The letter states also that society is not obliged to tolerate practices and phenomena, which contradict Christian morality and its social roots, and that the pride is not a protest against discrimination, but an attempt to instil “gay lifestyle”, which hurts the feelings of heterosexual people.\textsuperscript{247}

A counter-rally was held on the day of the pride. It was organised by the informal ultranationalist organisation National Resistance. The main slogans

at the rally were “Let’s Keep Our Children Away From Vice” and “I am not tolerant, I am normal”. The protesters called for the resignation of mayor Yordanka Fandakova for not banning the pride and at the end of their rally set the EU flag on fire.248

Different events were organised by the LGBTI community during the year, including the third issue of the Sofia Queer Forum (3 – 19 December in Sofia)249 and the Sofia LGBTI Community Fest (30 November – 5 December in Sofia).250

When the ultranationalist Ataka party tabled in 2014 a draft act envisioning one to five years of imprisonment and a fine of BGN 5,000 to BGN 10,000 (EUR 2,500 – 5,000) for everyone “who publicly manifests his own or others’ homosexual orientation or affiliation, by organising or taking part in rallies, marches and parades or in the media and online”,251 in 2015 the proposal was rejected by the National Assembly at first reading.

Access to justice

A homophobic attack in Plovdiv gained publicity in May 2015.252 One night the victim, 29-year-old Mihail Kosev, met a man in a bar. When the stranger asked him whether he was gay, Kosev responded affirmatively. The stranger later intercepted him in front of the same bar, hit him in the face, pushed him to the ground and kicked him while shouting “Pederast!” (meaning ‘faggot’). Other patrons intervened and the victim left, but was followed by the attacker and assailed again minutes later, suffering multiple hits on the head. When the victim tried to file a complaint at the Fourth Precinct, he was told that he had to be examined by a forensic medic first, in order to have his injuries assessed. Neither the precinct, nor the 112 operator were able to refer Kosev to a forensic medic on duty during the weekend. Three days after the attack, Kosev went to the precinct again, but was sent away because his injuries looked light and he was told that he has to file a private lawsuit. This incident

249 See the event website: http://www.xaspel.net/queer/bg/.
250 See Facebook: https://www.facebook.com/SofiaLGBTartFest/.
raises concern as to how the authorities are tackling homophobic hate crimes in general, as well as specifically when the victim has sustained light injuries. Although causing bodily harm on homophobic grounds may be categorised as an act of hooliganism, which is an indictable offence and is persecuted by the state prosecution (Article 131(1)(12) of the Criminal Code), in this case the victim was sent away and was notified that he had to file a private lawsuit. The victims of homophobic violence who have suffered light injuries can be thus deprived of their statutory rights. Private persecution of this act would not be an adequate solution; this is an issue identified by the European Court of Human Rights in *Abdu v. Bulgaria*.253 Furthermore, the case could lead to the conclusion that there is a lack of adequate information about the places where the victims of crimes could in a reasonable time (immediately after the bodily harm is inflicted) get a forensic certificate.

In June 2015, the Sofia City Court handed down the verdict in the case of the murder of Mihail Stoyanov. The 25-year-old man was attacked in Sofia’s Borissova Gradina Park on 30 September 2008 by a group of young men who admitted to the investigators that they were “cleansing” the park of gay men.254 The prosecution pressed charges for premeditated murder on the grounds of hooliganism (an aggravating circumstance, which increases the punishment). The grounds of hooliganism specified by the prosecutor included disrespect for the people of non-heterosexual orientation. The court found the two defendants, Aleksandar Georgiev and Radoslav Kirchev, guilty of murdering Stoyanov in an especially painful manner. Both were, however, acquitted on the charge of committing the murder on the grounds of hooliganism. The court admitted that Stoyanov was attacked for homophobic reasons, but believed that they served as motivation only to the intent of physical violence against the victim. According to the decision, the intent to kill has appeared consequently and accidentally and it is impossible to conclude beyond doubt that it was also motivated by these homophobic (hooligan) grounds.

In January, the Commission for Protection against Discrimination (CPAD) handed down a second decision on a file concerning abuse on the basis of sexual orientation.255 The defendant was prominent Bulgarian film director Andrey Slabakov. The complaint was filed with the equality body with regard to Slabakov’s public statement in a primetime TV show that “gays are much

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more dangerous [than smoking] because they massively disseminate AIDS, because not all gays are homosexual, some are also bi-”. In 2012, CPAD held that Slabakov had not committed discrimination. This decision was repealed and returned to the Commission for a new ruling by the Sofia City Administrative Court (SCAC)\textsuperscript{256} and the Supreme Administrative Court (SAC)\textsuperscript{257}. Despite the mandatory instructions with regard to the interpretation and the application of the law given by the court, in 2015 CPAD handed down a decision identical to the initial one, without developing new arguments and discussing or considering the acts of SCAC and SAC. The decision was ruled void by SCAC and returned for a ruling taking in consideration the instructions and the arguments in the court decisions.\textsuperscript{258}

In August, CPAD handed down its decision on a case where defendants were the popular journalist Martin Karbovski and TV7 television. The case concerned several issues of Karbovski’s broadcast, \textit{The Karbovski Show}, and external advertising announcing the journalist’s project entitled “Pederasts – out of the church”.\textsuperscript{259} According to the equality body decision, even though the journalist points out in his show that his campaign is against the homosexual employees specifically of the church, and that he calls his studio guests who oppose the performing of Orthodox religious rituals by homosexuals to abstain from using insulting phrases, “this fact by itself does not diminish the severity of the violation of PADA because, in order to express his own opinion on the issue with the desecration of the Holy Home, the show’s author and presenter has used an appeal which rejects the persons with homosexual orientation, qualifying them as something damaging, using vulgar and insulting definitions”. The Commission applied the law correctly, establishing that although Karbovski’s purpose was not to violate the dignity of the non-heterosexual people, the result was such, and this corresponds to the statutes. CPAD held that Karbovski had violated the prohibition of abuse and incitement to discrimination and issued an order that he must abstain in future from statements, which violate the honour and the dignity of persons on the basis of sexual orientation. To TV7 CPAD issued a recommendation for the company to

\textsuperscript{256} SCAC (2012), Decision No. 5625 of 25 October 2012 on administrative case No. 5053/2012, \textsuperscript{33}rd panel.
\textsuperscript{257} SAC (2013), Decision No. 16554 of 11 December 2013 on administrative case No. 27/2013, \textsuperscript{VII} division.
\textsuperscript{258} SCAC (2015), Decision No. 4176 of 16 June 2015 on administrative case No. 1025/2015, \textsuperscript{48}th panel.
\textsuperscript{259} CPAD (2015b), Decision No. 288 of 10 August 2015 on file No. 151/2014 of the V specialised panel.
develop and introduce methods and mechanisms of self-control in order not to allow discrimination. The decision is effective.

In November, CPAD handed down its decision on a case where defendant was Adrian Asenov, a member of parliament from the ultranationalist Ataka party. The Commission initiated the procedure on referral by the Deistvie Youth LGBT organisation concerning an article by the MP published in the party’s newspaper entitled “Ataka is fighting for a stronger Orthodox Bulgaria”. In the article, Asenov writes: “Today, having lost its spiritual beacon, the family is in danger of falling apart. No external impacts and appeals can stop this process. And if the family begins falling apart, the societal models fall apart too. Thus, begins the construction of what atheist Western propaganda sweetly calls “Euro-Atlantic values”, Godless “values” including paedophilia, homosexuality, incest, etc.” The applicants indicate that the speech constitutes abuse and instigation of discrimination under PADA because homosexuality is called a “Godless value” and is listed together with paedophilia and incest. With the argument that Asenov had only appealed to “maintain and strengthen the Eastern Orthodox morality as the basis of Bulgarian society”, CPAD left the complaint of the NGO without consequence.

This year three instances confirmed the refusal of the Sofia District Prosecutor’s Office (SDPO) of December 2014 to initiate criminal proceedings for multiple appeals to violence and threats to the participants in the 2014 Sofia Pride made through Facebook during the weeks preceding the parade. In its 2014 decree, SDPO held that the publications in question have been deleted and are no longer accessible. Despite the fact that the applicant, a BHC employee and a member of the pride’s organising committee, had pointed out to the higher prosecutor’s offices that some of the statements had not been deleted and that it is possible that the deleted statements are kept on the Facebook servers, Prosecutor’s Office ignored him and made the general conclusion that the decree of the district prosecutor’s office was correct, motivated and lawful, without discussing the indicated and still available publications. As a result, no further action was taken to gather the evidence. This refusal of effective review and general confirmation of a contested decree when the authorities have been notified of the existence of publicly available evidence and have ignored it causes concern with regard to the will of the Bulgarian prosecution to effectively persecute public appeals to violence and threats to LGBTI peo-

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ple. Furthermore, no criminal proceedings were initiated on the case. Insofar as the idea that the public gatherings of LGBTI people must be prohibited enjoys great support in Bulgarian society, and given that public incitement and threats largely occur in virtual spaces created by the organisers of the rally against the pride, such behaviour on behalf of the Bulgarian authorities sends an alarming message of encouragement to the restriction and the self-restriction of the freedom of peaceful assembly of LGBTI people and raises serious doubts about the objectivity of the state prosecution.

**Media visibility**

The visibility of the LGBTI community in the media remained paltry, predominantly negative or stereotypical. Through the year, the media once again failed to clearly communicate the goals of the Sofia Pride and the press conference at which a *Declaration of Non-Discrimination against LGBTI People in the Field of Education* was presented. As a whole, the declaration, the issues identified in it and its main recommendations were not covered by the great majority of the Bulgarian media. In fact, it was not discussed in any national television media. The event organisers were not given wide media coverage of their positions and, unlike the public radio stations, which disseminated a letter against the holding of the pride (see the section on *Freedom of assembly and association and Freedom of expression* above). Most electronic media generally tried to put the public debate in the framework set by the pride's opponents (the pride needs to be banned, LGBTI people are not discriminated, the pride contradicts Christian morality and is an attempt at instilling a “gay lifestyle”), instead of discussing the problems that the LGBTI community faces. Many media still involve LGBTI activists in debates in which their opponents are representatives of ultranationalist and extreme right formal and informal groups.

In June, the Association of European Journalists – Bulgaria (AEJ – Bulgaria) published a study of LGBT people in the Bulgarian online media. The study covers all publications in Bulgarian news media from 1 January to 31 December 2014 treating the LGBT topic or LGBT representatives. According to the study, BLITZ, PIK, ibox.bg and DnesPlus.bg are the Bulgarian media, which publish the greatest number and most negative articles about LGBT people.

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They are followed by the online editions of 24 Chasa and Trud dailies, also with predominantly negative publications. The attitude of the CROSS Agency, Darik’s online edition and Dnes.bg is neutral. In the Top 10 by number of publications, only Dnevnik.bg is manifestly positive with regard to LGBT people. The study’s authors note that more than half of all materials studied were negative to LGBT people. Barely 17% of all materials were positive.