HUMAN RIGHTS IN BULGARIA IN 2018

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

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Human Rights in Bulgaria in 2018
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<th>Abbreviation</th>
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<tr>
<td>AC</td>
<td>Administrative Court</td>
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<tr>
<td>APIA</td>
<td>Access to Public Information Act</td>
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<tr>
<td>ASA</td>
<td>Amending and Supplementing Act</td>
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<td>BHC</td>
<td>Bulgarian Helsinki Committee</td>
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<tr>
<td>CBS</td>
<td>Corrcational Boarding School</td>
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<td>CC</td>
<td>Constitutional Court</td>
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<tr>
<td>CCCIAP</td>
<td>Commission on Combating Corruption and Confiscation of Illegally Acquired Property</td>
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<tr>
<td>CCCIAPA</td>
<td>Combating Corruption and Confiscation of Illegally Acquired Property Act</td>
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<tr>
<td>CEC</td>
<td>Central Electoral Committee</td>
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<td>CJEU</td>
<td>Court of Justice of the European Union</td>
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<td>CNS</td>
<td>Family Housing Centre</td>
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<tr>
<td>CPD</td>
<td>Closed Prison Dormitory</td>
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<td>CPT</td>
<td>European Committee for the Prevention of Torture, Inhuman and Degrading Treatment and Punishment</td>
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<tr>
<td>CRPD</td>
<td>United Nations Committee on the Rights of Persons with Disabilities</td>
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<tr>
<td>DC</td>
<td>District court</td>
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<tr>
<td>DGEP</td>
<td>Directorate General for Execution of Penalties</td>
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<td>EC</td>
<td>European Commission</td>
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<tr>
<td>ECHR</td>
<td>European Convention on Human Rights</td>
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<td>ECtHR</td>
<td>European Court of Human Rights</td>
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<td>EPDRA</td>
<td>Execution of Punishments and Detention on Remand Act</td>
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<td>EU</td>
<td>European Union</td>
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<tr>
<td>HADD</td>
<td>Home for Adults with Developmental Disabilities</td>
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<td>HAMD</td>
<td>Home for Adults with Mental Disorders</td>
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<tr>
<td>HRC</td>
<td>United Nations Committee on Human Rights</td>
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<td>HTPMA</td>
<td>Home for Temporary Placement of Minors and Adolescents</td>
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<tr>
<td>IADD</td>
<td>Institution for Adults with Developmental Disabilities</td>
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<td>IAMD</td>
<td>Institution for Adults with Mental Disorders</td>
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<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>ICDD</td>
<td>Institution for Children with Developmental Disabilities</td>
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<tr>
<td>ICDCPC</td>
<td>Institution for Children Deprived of Parental Care</td>
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<tr>
<td>IMSCC</td>
<td>Institution for Medical and Social Care for Children</td>
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<tr>
<td>ISJC</td>
<td>Inspectorate to the Supreme Judicial Council</td>
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<tr>
<td>JDA</td>
<td>Juvenile Delinquency Act</td>
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<tr>
<td>LGBTI</td>
<td>Lesbian, Gay, Bisexual, Transgender and Intersex People</td>
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<td>MH</td>
<td>Ministry of Health</td>
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<td>MIA</td>
<td>Ministry of the Interior Act</td>
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<td>MLSP</td>
<td>Ministry of Labour and Social Policy</td>
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<td>MPA</td>
<td>Municipal Property Act</td>
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<td>NBCSSM</td>
<td>National Bureau for Control on Special Surveillance Means</td>
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<td>NHIF</td>
<td>National Health Insurance Fund</td>
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<td>OPD</td>
<td>Open Prison Dormitory</td>
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<tr>
<td>Acronym</td>
<td>Description</td>
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<tr>
<td>PADA</td>
<td>Protection against Discrimination Act</td>
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<td>RDA</td>
<td>Religious Denominations Act</td>
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<tr>
<td>SAA</td>
<td>Social Assistance Agency</td>
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<td>SAC</td>
<td>Supreme Administrative Court</td>
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<tr>
<td>SAC</td>
<td>Sofia Area Court</td>
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<tr>
<td>SAD</td>
<td>Social Assistance Directorate</td>
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<td>SANS</td>
<td>State Agency for National Security</td>
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<tr>
<td>SAR</td>
<td>State Agency for Refugees</td>
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<tr>
<td>SBS</td>
<td>Social and Pedagogical Boarding School</td>
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<td>SCAC</td>
<td>Sofia City Administrative Court</td>
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<tr>
<td>SCC</td>
<td>Supreme Cassation Court</td>
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<tr>
<td>SCC</td>
<td>Sofia City Court</td>
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<tr>
<td>SCIS</td>
<td>State Commission on Information Security</td>
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<tr>
<td>SCPO</td>
<td>Supreme Cassation Prosecutor’s Office</td>
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<td>SHTAF</td>
<td>Special Home for Temporary Accommodation of Foreigners</td>
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<tr>
<td>SPA</td>
<td>State Property Act</td>
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<tr>
<td>SPLA</td>
<td>Spatial Planning Act</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UNCRPD</td>
<td>United Nations Convention on the Rights of Persons with Disabilities</td>
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Chapter 1.
POLITICAL DEVELOPMENTS IN BULGARIA IN 2018

Throughout 2018, Bulgaria was governed by the coalition government of the pro-European centre-right Citizens for European Development of Bulgaria (GERB) and the United Patriots. The latter are a coalition of three small extremely nationalist neo-totalitarian parties: Ataka, National Front for the Salvation of Bulgaria (NFSB) and Internal Macedonian Revolutionary Organization – Bulgarian National Movement (VMRO-BND). These three parties are publicly known for systematically instigating hate, discrimination and violence against the Roma, Muslims, migrants and the LGBTI communities.

The government was formed after the March 2017 elections. Despite the fact that the two coalition partners have a stable parliamentary majority, internal contradictions and differences in the foreign policy positions of the nationalist coalition sometimes required the larger collation partner, GERB, to resort to support from the opposition. The Bulgarian Socialist Party (BSP) was the largest of the latter. The mid-2016 leadership change in this political party resulted in a serious ideological re-orientation towards conservative and anti-European policies, which led to several conflicts with the Party of European Socialists (PES). The other two parliamentary parties that did not take part in government were the Movement for Rights and Freedoms (DPS) and Volya. The former is a centrist party traditionally supported by the Turkish and Roma minorities. The latter is a populist party, which at the end of 2018 became an official partner of Marine Le Pen's National Rally.

As a whole, the capacity of both the ruling and the opposition parties to discuss and solve serious human rights issues in Bulgaria was at a record low in 2018. This, however, did not result in significant negative legislative changes in the first half of the year, when Bulgaria took over the rotating presidency of the Council of the European Union. Certain negative trends emerged in the second half of the year. Racist and xenophobic instigations, targeted mostly at the Roma and muffled during the presidency, proliferated at the end of 2018. The parties from the United Patriots coalition, and more notably VMRO-BND, were the main source of origin. In mid-November, NFSB chair Valeri Simeonov resigned as deputy prime minister after weeks of protests organised by parents of disabled children in connection with defamatory comments he had made about them and their children in October.

The judiciary failed to serve as a corrector of negative trends in the field of human rights in 2018. This became especially evident in the Constitutional Court decision of 27 July 2018, in which the court found the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention) inconsistent with the Bulgarian Constitution. This unjustified decision followed a campaign of lies and manipulations against this international treaty organized by conservative political and social circles in the course of several months.\(^1\) With this decision, the Constitutional Court, which on many past occasions had demonstrated a lack of capacity to discuss human rights, showed not only that it had failed to understand the very essence of the Istanbul Convention, but also that it succumbed to populist attitudes.

\(^1\) See Chapter 14, Women’s Rights.
Chapter 2.
COOPERATION WITH INTERNATIONAL AND LOCAL HUMAN RIGHTS ORGANIZATIONS

In 2018, two United Nations bodies – the Human Rights Committee (HRC) and the Committee on the Rights of Persons with Disabilities (CRPD) – reviewed the periodical reports on Bulgaria with regard to the implementation of the obligations under the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of Persons with Disabilities (UNCRPD). The review of Bulgaria’s obligations under ICCPR was carried out on 16 and 17 October 2018 in Geneva. HRC formulated its recommendations on 15 November 2018. The Committee established a series of issues with regard to the implementation of the Covenant’s provisions and formulated a substantial number of recommendations. The more important ones include:

- With respect to the many cases of hate crimes and hate speech against Roma, religious minority representatives, LGBTI, migrants and other groups, the Committee recommends to amend the Criminal Code and the Radio and Television Act to explicitly include sexual orientation and gender identity as hate motives and grounds of discrimination. The Committee recommends that existing criminal provisions be effectively enforced in order to ensure that such crimes are prosecuted and punished with appropriate sanctions.

- The Committee expresses concern that same-sex couples cannot enter into any form of legally recognised union, and recommends that any discrimination based on sexual orientation and gender identity is eliminated, including by amending the Protection against Discrimination Act (PADA) and other laws.

- The Committee recommends to step up combating discrimination against the Roma in the areas of housing, education, healthcare and employment. More specifically, it recommends to amend the Spatial Development Act (SDA) as to introduce the principle of proportionality in the demolition of illegal structures and to avoid forced evictions.

- The Committee expresses concern with the delayed legislative reform with regard to the deprivation of legal capacity and the continuing discrimination against persons with disabilities, including in exercising their voting rights. It recommends to speed up the deinstitutionalization of the care for persons with disabilities and to protect against violence the persons in psychiatric institutions and social care homes.

- The Committee believes that violence against women in Bulgaria has reached an “alarming extent and intensity,” and that serious legislative and practical measures are needed to combat it. In this respect, along other measures, it recommends the ratification of the Council of Europe’s Istanbul Convention.

- The Committee expresses concern with regard to the continuing cases of torture and physical abuse of persons upon arrest by law enforcement officers, as well as against Roma through “punitive raids” in Roma neighbourhoods. It also expresses concern about the ill-
treatment of migrants by the police, and their return to countries where their lives and security would be threatened. The Committee once again recommends the criminalization of torture in the Criminal Code, the establishment of an independent oversight mechanism for police abuse, and the implementation of all legal safeguards against such practices from the very onset of deprivation of liberty.

• The Committee is concerned about numerous reports of threats and harassment of journalists and of political pressure on journalists and the media. It recommends effective protection of journalists against such practices, increasing media pluralism and creating fair and non-discriminatory criteria for channelling public funding to the media.

• The Committee recommends a reform of the juvenile justice legislation and further deinstitutionalisation of child care.2

BHC participated in the review of the implementation of the obligations of the Republic of Bulgaria to the HRC by presenting an alternative report and participation of a BHC representative in a briefing for Committee members. Much of the comments and recommendations in BHC’s alternative report were adopted in the Committee’s Concluding observations and recommendations.

The review of Bulgaria’s obligations under the UNCRPD took place on 3 and 4 September 2018, and the recommendations of the CRPD were published on 22 October 2018.3

Bulgaria’s implementation of the judgments of the European Court of Human Rights (ECtHR) continued to be a problem in 2018. The number of outstanding judgments under supervision by the Committee of Ministers of the Council of Europe decreased in comparison to 2017, to 208 by the end of December 2018. However, the cases for which the monitoring was terminated during the year were mainly relatively trivial. Those concerning severe structural human rights issues in Bulgaria continued to be under enhanced supervision. The latter include: cases of death resulting from the excessive use of force and firearms by law enforcement authorities (Velikova v. Bulgaria group of cases); the absence of a mechanism for independent investigation of the Prosecutor-General’s actions (Kolevi v. Bulgaria); inhuman and degrading conditions in places of detention (Kehayov v. Bulgaria group of cases); lack of guarantees against arbitrary placement in homes for persons with mental disorders (Stanev v. Bulgaria group of cases); arbitrary wiretapping by law enforcement bodies (European Integration and Human Rights Association and Ekimdzhiiev v. Bulgaria group of cases); forced evictions from illegal buildings constituting only homes (Yordanova and Others v. Bulgaria group of cases); refused registration of citizens’ associations of Macedonians (UMO Ilinden and Others v. Bulgaria group of cases); and the ban on voting for convicted inmates (Kulinski and Sabev v. Bulgaria). The above cases, as well as several others, reveal infringements across almost the entire spectrum of rights guaranteed by the ECHR. In 2018, the enhanced supervision was not terminated for any of these cases. Some of them, such as Velikova v. Bulgaria, have been under supervision since 2000, while the Bulgarian authorities consistently refuse to implement the measures resulting from these judgements.


3 For the findings and the recommendations, see Chapter 13, Rights of people with mental disabilities.
The cooperation of the Bulgarian institutions with local human rights organisations remained at a very low level in 2018. Hostility and intimidation to human rights and other non-governmental organisations intensified significantly.

No significant legislative initiatives in the area of human rights were undertaken by the government, and ministries and other governmental institutions excluded human rights organisations from working groups. In contrast to its past practice, the Constitutional Court did not invite the BHC to present an opinion on the case of the constitutionality of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention). During the debate on the ratification of this convention, human rights organisations were systematically by politicians, religious representatives and media.4

The stigmatisation of human rights and other non-governmental organisations as so called ‘Sorosoids’5 that reportedly undermine national sovereignty and identity and promote foreign interests hostile to the interests of Bulgaria continued throughout the year. Such systematic propaganda also involved some media, which demonstrated close proximity to the government. For example, two days after the BHC awarded its annual Human of the Year Award to the protesting parents of children with disabilities, the pro-governmental propaganda website Pik declared BHC to be a fascist organisation that is “a disgrace to our society and democracy”.6 Three days later, the entrance of the seat of the organisation was vandalised and covered with hostile graffiti (“BHC-freaks, fascists, garbage, scum”) by an unknown person. At the end of January, at the peak of the debate around the Istanbul Convention, Alfa television, property and main propaganda tool of the Ataka party, which is part of the governing coalition, initiated a systematic harassment of non-governmental organisations implementing projects concerned with gender equality and protection from violence against women. Reporters and cameramen of the above media outlet were trying to enter their offices without the consent of the occupants, and publicly denigrated them.

In 2018, BHC continued to seek opportunities to continue its monitoring of placement institutions of the Ministry of Health (MH). On two occasions, at the end of April and in the beginning of May, BHC approached the minister of health to request access to state psychiatric hospitals and to nursing homes for children for monitoring purposes. The second request was motivated by the alarming findings of the European Committee for the Prevention of Torture with regard to Bulgarian psychiatric institutions as described in its report published on 4 May 2018. In a letter of 22 June, deputy-minister of health Boyko Penkov stated without any reasoning that “at this time the Ministry of Health considers it appropriate to refrain from support to the implementation of your initiative relating to the visit of [the state psychiatric hospitals] and the DICDG”.7

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4 See Chapter 14, Women’s rights.
5 After American financier and philanthropist George Soros.
7 Letter from deputy-minister Boyko Penkov to the BHC Chair, Reg. no 05-00-3/22.06.2018, available at the BHC.
Chapter 3.
RIGHT TO LIFE, PROTECTION AGAINST TORTURE, INHUMAN AND DEGRADING TREATMENT

In 2018, the living conditions in places of detention places continued to improve due to the lower number of inmates and prison renovations. However, no significant progress was made with regard to the illegal use of force by law enforcement authorities.

Several cases of mass beatings of Roma by police officers trying to deal with criminal incidents became known during the year. They remain unpunished. On 6 February, a race and a clash between Roma and police officers evolved into a police raid in Ihtiman's Roma neighbourhood, in which people were physically assaulted. An elderly man died during the raid. The police announced that there had been no "physical contact" between him and the police officers. However, there was no comprehensive investigation into the death of the deceased in this case. The use of force during the police raid was also not investigated. The major media mostly published the police version.

On 14 October, police officers used indiscriminate force in a conflict with Roma in the Roma neighbourhood in the town of Galabovo. The conflict began with a loud music complaint. Residents of the Roma neighbourhood then complained that the police were beating everyone, including children. No comprehensive investigation into the legality of the use of force was conducted.

On 28 October, a large number of police forces entered the Roma neighbourhood in the town of Maglizh in an attempt to arrest a young man who was hiding after assaulting a police officer on the road between two villages. According to independent journalists, the police used massive force and restraint against neighbourhood residents. The author of one of the publications on the subject wrote: “The Roma gathered around me and started telling me their nightmarish recollections of the evening of the raid and the anxious sleepless night. They claim that gendarmerie and police officers started indiscriminately hitting people, including children, immediately upon getting out of their vehicles. They threw people on the ground, handcuffed them. A young woman claims that her uncle had been beaten in front of her for no apparent reason”. The BHC referred the matter to the prosecutor’s office, but the latter refused to initiate pre-trial proceedings. The preliminary investigation only took the statements of the police officers involved in the incident.

In January and February 2019, a BHC team conducted a survey among inmates in the prisons in Stara Zagora, Vratsa, Lovech and Pazardzhik, whose pre-trial proceedings had started after 1 January 2017. In previous years, BHC has conducted similar surveys in the same prisons and among similar groups of inmates. The results of these surveys are presented in Table 1 below.

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8 See Chapter 10, Conditions in places of detention.
Table 1. Percentage of respondents reporting use of force against them, by year

<table>
<thead>
<tr>
<th></th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2017</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>During detention</td>
<td>26.2</td>
<td>27.1</td>
<td>24.6</td>
<td>22</td>
<td>23</td>
<td>25</td>
<td>15.5</td>
</tr>
<tr>
<td>Inside the police station</td>
<td>17.4</td>
<td>25.5</td>
<td>18</td>
<td>23.3</td>
<td>22.4</td>
<td>18</td>
<td>21.6</td>
</tr>
</tbody>
</table>

The results reveal a reduction with almost 10% in the use of physical force by police officers during detention in comparison to 2017. At the same time, the share of those who complain about the use of force inside the police stations, which is absolutely prohibited, has increased to 21.6%. It should be noted that in 2018 there was an increase in the share of persons reporting that they were not detained at police stations (from 24% to 34%). This is due to the greater share of inmates convicted for driving offences, very few of whom are being detained at all until their final conviction. Therefore, the above results as a whole reveal a continuing alarmingly high level of police violence, especially following detention inside police stations.

On 4 May 2018, the European Committee for the Prevention of Torture, Inhuman and Degrading Treatment and Punishment (CPT) published its report of its periodic visit to Bulgaria in September and October 2017. The CPT delegation once again received many complaints of physical ill-treatment of persons detained by police. The complaints referred to punches, kicks and truncheon blows, but there were also a few allegations of having been subjected to electric shocks by means of electric discharge weapons (Tasers). Such practices, as well as inter-resident violence, were also reported to the CPT at the Special Home for Temporary Accommodation of Foreigners in the town of Lyubimets.

CPT found improvements in the living conditions in several prisons visited by its delegation, but also serious living conditions issues in the Sofia Central Prison and in particular in the sections for the accommodation of foreign nationals. The Committee also established inhuman and degrading conditions in the Sliven investigation detention facility. These include overcrowding (four inmates on 7 m² of living space), poor hygiene, lack of access to natural light and to toilets.

CPT found the worst conditions and treatment in the Radnevo Psychiatric Hospital and in three institutions for persons with mental disorders under the jurisdiction of the Ministry of Labour and Social Policy: those in Batoshevo, Kachulka and Radovets. The Committee issued seven immediate observations during its visit. They concern the generalised infestation of penitentiary establishments with bed bugs; the living conditions in the sections for the accommodation of foreigners in the Sofia Central Prison, as well as in the investigation detention facility in Sliven; the investigation of the suspicious death of a resident at the social home in Tvarditsa; the living conditions in the ward for the most disabled residents in the social home in Radovets, as well as the use of an isolation cell in it, and the use of isolation cells in the social home in Kachulka.

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10 CPT (2018). 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 25 September to 6 October 2017 (CPT/Inf (2018) 15), Strasbourg, 4 May 2018, § 20. Available at: https://rm.coe.int/16807c4b74.
11 Ibid, § 78.
12 For more details, see Chapter 13, Rights of people with mental disabilities.
In February, a committee of three judges ruled on the case of *Hristoskov v. Bulgaria*. The applicant, who is serving a prison sentence, was placed in a cell between 26 October 2009 and 28 October 2010 with a cement floor which was heated with wood- and coal-burning stoves (fuel for which was scarce), broken windows and dilapidated door. The cell measuring between 30 and 35 m² of floor space housed between 16 and 22 prisoners. Cold water was available for 2 hours in the morning and evening, and warm water was available for one hour a day. As a result, the applicant developed arthritis. After 28 October 2010, he was transferred to another unit, where his cell was not overcrowded and the conditions were much better in terms of heating, lighting and hygiene. The only problem remained the lack of water due to low pressure, and it was only possible to have a shower after 10 p.m. He also complained about the lack of adequate healthcare at the place he was serving his sentence. ECtHR referred to the reports of the Committee for the Prevention of Torture from 2010, those of the BHC from 2008, and to the reports of the Ombudsman as National Preventive Mechanism from 2012 and 2016, which note severe overcrowding, poor hygiene and bad sanitary and living conditions in the Kremikovtzi prison hostel. ECtHR indicates that the lack of sufficient living space in the cells is an important factor that is taken into account when assessing whether the detention conditions constitute ‘degrading treatment’ within the meaning of Article 3 of the Convention and may reveal an infringement, alone or in combination with other shortcomings. The Court also recalls its pilot judgment on *Neshkov and Others v. Bulgaria*, which found a violation of Article 3 with regard to complaints similar to the case under review. ECtHR concluded that the conditions of detention of the applicant during the period between 21 August 2009 and 28 October 2010 constituted a violation of Article 3 of the Convention, whereas after that date it did not find that the conditions had reached the threshold of severity required to hold a violation.

In June, a committee of three judges of the ECtHR ruled in *Petrov and Others v. Bulgaria*. The applicants are four Bulgarian citizens; the first serving a 20-year sentence, the second sentenced to life, and the other two sentenced to life without parole. They all raise complaints with regard to the poor living conditions in the prisons in which they are serving their sentences: absence of sanitary facilities in the cell and use of a bucket for physiological needs; lack of running water; moisture in the winter and lack of sufficient ventilation during the summer. Because of the special regime under which they are serving their sentences, each of them has been permanently locked in his cell and has fed there, either standing or on newspapers on his bed. They were not involved in any collective activity, were only entitled to communicate with other inmates with the same sentences. ECtHR recalls that all forms of isolated detention without adequate mental and physical stimulation are likely to have adverse effects in the long term, leading to a deterioration of the individual’s mental ability and socialisation. Also, the special treatment of persons sentenced to life imprisonment and their automatic segregation from the rest of the prison population and one from each other can, on its own, raise issues within the scope of Article 3 of the Convention. The Court held that the isolation must be justified on particular grounds of security. However, in the case under review, the Bulgarian government had not provided evidence of the need for each applicant to be kept in isolation and under enhanced security measures. The Court also noted the unsatisfactory living conditions in which the applicants were serving their sentences, which were criticised in many of its decisions. ECtHR found inhuman and degrading treatment within the meaning of Article 3 of the Convention, as well as a violation of Article 13 with regard to the

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complaints made by the second, the third and the fourth applicants. The Court noted that the national legislation had indeed changed recently and that it subsequently found that the two new remedies introduced in respect of inhuman or degrading detention conditions could be considered effective. The government, however, did not argue that these legal changes, adopted after the submission of the applications, constitute an effective domestic remedy to the applicants’ complaints, which also apply to the special regime in addition to the material detention conditions. The Court stressed that this conclusion was made in the context of the specific circumstances of the cases and cannot prejudge any future examination of cases concerning, in particular, complaints relating to the application of the “special regime” to prisoners serving similar sentences.
Chapter 4.
RIGHT TO PERSONAL LIBERTY AND SECURITY

No legislative and practical measures were taken in 2018 to address the main problems with guaranteeing the right to personal liberty and security in Bulgaria. These problems concern the placement of children and adults in institutions, as well as the judicial review of placement.

Placement of children in crisis centres

In 2018, there was no change to the Regulation on the Implementation of the Social Assistance Act concerning the stay of children in crisis centres, which is excessive (6 months) for the purpose of crisis intervention and leads to the violation of several rights of the child. There is no evidence of an improvement in the practice of non-compliance with the time limits for judicial review of the placement decisions, which are also excessively long.

Placement in specialised institutions of people with mental disabilities under partial guardianship

The group of cases Stanev v. Bulgaria (Grand Chamber ruling) and Stankov v. Bulgaria remained under enhanced supervision by the Committee of Ministers in 2018. In these judgments the ECtHR found that there had been no possibility for periodic assessment of the health status of a person under long-term institutionalisation and no opportunity to challenge the legality of the placement. The Bulgarian legislation continues to contain no requirement for periodical assessment of the health status of the person in case of involuntary placement in an institution or for the explicit consent of the person subjected to limited incapacity in case of voluntary placement and judicial review of the placement. It still does not provide direct access to a court of incapacitated persons, regardless of their guardian’s consent.

In its last session of June 2017 on the execution of Stanev and Stankov, the Committee of Ministers of the Council of Europe asked to be informed by 1 October 2017 about:

- The manner in which the ability of persons under partial guardianship to give their consent for placement in a specialised institution will be assessed, and the authority that will have competence to make this judgement and to inform those persons about the placement;
- the additional guarantees regarding the temporary administrative placement and the termination thereof, and the procedure to be followed in order to place people who are unable to express their wish/will;
- the measures needed to provide persons under partial guardianship with direct access to court, in order to restore their legal capacity, including through temporary solutions before the implementation of the planned ambitious reform of the legal protection of adults;
- the concrete results achieved in improving the living conditions in specialised institutions, the mechanisms enabling the improvement of the living conditions of an
individual placed in an institution, as well as the additional safeguards put in place for an effective remedy under the State Liability Act.

Of all the points listed above, some minimal progress can only be noted with regard to ensuring participation and taking into account the wishes of the persons who are being placed with institutions, i.e. on the voluntary nature of the placement. Changes to the Regulation on the Implementation of the Social Assistance Act were introduced at the end of 2016, but their entry into force was postponed to 1 January 2018, due to the lack of preparedness of the social services system to implement them. They provide for the development of an individual needs assessment and an individual plan to support persons who wish to use social services, including in a specialised institution. The assessment of the needs of the persons and the availability of the services/support measures will be carried out by administratively designated “specialists” in a multidisciplinary team whose independence and competence is not guaranteed by law. The evaluation and the plan will be reviewed at least every 12 months, again by the multidisciplinary team, and in case of long-term placement in an institution, by a team within the institution. In other words, there is no provision for judicial review of the placement of persons with limited incapacity in institutions or community-based services. Under the provisions of the regulation, the person to whom services are to be provided (including persons with limited incapacity) is included in the preparation of the assessment and the plan, his wish is taken into account and is reflected in the assessment and the plan, which are signed by the person. But there is no written procedure on how this needs to happen. There is also no explicit procedure for the placement of persons who are unable to express their will. There are no guarantees for the temporary administrative placement of persons with limited incapacity, a possibility to access a court with a view to removing their interdiction, nor an effective means of redress under the State and Municipalities Responsibility for Damages Act. There was no movement in 2018 with regard to the aforementioned deficiencies regarding the procedure for the placement of persons in resident services and institutions.

Judicial review of the placements in homes for temporary detention of minors and adolescents, correctional boarding schools and social educational boarding schools

In its judgments on *A. and Others v. Bulgaria* (2011) and *I.P. v. Bulgaria* (2016), ECtHR found violations of Article 5 § 4 of the Convention due to shortcomings in the Juvenile Delinquency Act (JDA). Article 37 JDA provides that the stay at the homes for temporary placement shall not exceed 15 days, and any stay over 24 hours shall be permitted by a prosecutor. In exceptional cases, with the respective prosecutor’s authorisation, the stay in the home may be extended to 2 months. The Act does not foresee judicial review of the lawfulness of placement, and the procedure therefore fails to comply with Article 5 § 4 of the Convention. The judgment in *D.L. v. Bulgaria* (2016) concerns the lack of periodic judicial review of the detention of a minor or adolescent in a correctional boarding school, as well as the impossibility for the detained person to directly address a court asking for a change of the measure. It calls for legislative changes to the JDA, which would provide for judicial review of detention in CBS, as well as for periodical judicial review, including at the request of the detained person, of detention in correctional boarding schools and educational and pedagogical boarding schools. A third case, *D.K. v. Bulgaria*, filed at the end of 2016 by BHC, raises again the issue of the lack of judicial review on the detention of minors in homes for temporary detention of minors and adolescents.
Unfortunately, the issues at stake in the three cases remain unresolved, and in 2018 the Juvenile Delinquency Act was not amended in line with the ECHR, while the draft bill on diversion of minors from criminal proceedings and the imposition of educational measures, which is expected to radically reform the juvenile justice system, was not tabled in parliament.
Chapter 5.
INDEPENDENCE OF THE JUDICIARY AND FAIR TRIAL

The new Combating Corruption and Confiscation of Illegally Acquired Property Act (CCCIAPA), which concentrated great power in the hands of the Commission on Combating Corruption and Confiscation of Illegally Acquired Property (CCCCIAP) was promulgated on 19 January. The new anti-corruption commission took over powers from the former Commission for the Prevention and Identification of Conflicts of Interest, the Centre for Prevention and Combating Corruption and Organised Crime, the respective unit of the Court of Auditors and a directorate at the State Agency for National. President Rumen Radev vetoed the act on the grounds that it was not an effective means of combating corruption, but created premises for the Commission to be used as a 'bat in dealing with uncomfortable persons'. Under the new CCCIAPA, the proceedings to seize assets begin with the indictment for a wide range of different crimes, only some of which are corruption-related. The law lacks safeguards for the independence and the impartiality of the commission members, who in turn have functional immunity and cannot be held liable. The presidential veto was ruled out in January 2018 and the new act came into force.

As if the Commission's great powers were not sufficient, in December 2018 the CCCIAPA was amended swiftly in response to Interpretative Decision No 4/2016 of the General Assembly of the Supreme Court of Cassation of 7 December 2018.\(^{15}\) In its ruling, the Supreme Court of Cassation held that the termination of criminal proceedings for a criminal offence subject to the repealed Confiscation in Favour of the State of Illegally Acquired Property Act constitutes an absolute procedural obstacle to the existence and to the due exercise of the right to claim confiscation of illegally acquired assets in favour of the state. In response to this authorisation, although concerning the repealed law, member of parliament Danail Kirilov from the GERB party tabled a proposal,\(^{16}\) which undermined the judgement of the Supreme Court of Cassation, thus infringing fundamental principles of the democratic society, violated the separation of powers and undermined the rule of law. The BHC issued a negative opinion on the submitted bill.\(^{17}\) Within days, the National Assembly adopted the proposals and the so-called civil confiscation of property can now be carried out in cases when there is no criminal activity. A new Amending and Supplementing Act to the CCCIAPA, which\(^{18}\) further extends the powers of the Commission, although in practice it’s not accountable, was tabled at the end of December 2018. There is a lack of information on how many proceedings initiated by the Commission were against corrupt politicians, officials and civil servants, and how many were against private business. There is also a lack of transparency concerning the CCCCIAP proceedings, which is also demonstrated by the Commission’s refusals to provide information under APIA that are promptly repealed by the courts.\(^{19}\)

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\(^{16}\) ASA to CCCIAPA of 10 December 2018, reg. no. 854-01-87.


\(^{18}\) ASA to CCCIAPA of 10 December 2018, reg. no. 854-01-90.

\(^{19}\) See, for example, Decision No 1448 of 6 March 2018 of the Sofia City Administrative Court in Administrative Case No 12102/2017, and Decision No 2679 of 20 April 2018 of the Sofia City Administrative Court in Administrative Case No 13895/2017.
The annual report of the European Commission for Bulgaria under the Cooperation and Verification Mechanism (CVM) was published in November 2018. In contrast to previous years, this report was extremely positive and allowed the termination of the monitoring of several indicators. The report did not mention some key actions of the Bulgarian authorities (e.g. the detention of the mayor of Sofia’s Mladost Municipality, Desislava Ivancheva, and deputy mayor Bilyana Petrova), did not devote any attention to absent investigations that generate great public risk (for example, the revealed scheme for the sale of Bulgarian passports; the lack of adequate inquiry into the draining of the Corporate Commercial Bank; the failure to investigate allegations of involvement of the Bulgartabac tobacco in international corruption, etc.). The report noted the lack of action on the introduction of an accountability procedure for the Prosecutor General, but did not draw any conclusions from this circumstance.

Despite the controversial situations created by the CCCIAPA and the critical opinions of human rights activists and civil society organisations, the EC report found that the anti-corruption reform carried out in January 2018 was comprehensive and corresponds to the recommendations of the Commission as expressed in earlier reports. On the one hand, the Commission explicitly states that there is a lack of consistent efforts to combat high-level corruption and that there are no specific results from the functioning of the new commission, but on the other hand, it concludes that significant progress has been made by Bulgaria in this area. In practice, the European Commission refuses to recognise that the Bulgarian state has established an extraordinary penal system, albeit dressed up as ‘civil confiscation’. The report bypassed the complete unaccountability of the CCCIAP and the absence of any data to verify its activity given its ever-increasing powers. The report lacks an analysis of the series of attacks through various violation verification procedures against the SCC’s Chair, Lozan Panov, as well as of the inspections initiated by CCCIAP against judges, even though such inspections are within the remit of the ISJC. The EC report also does not mention any of the public attacks against other critics of the political majority, such as that against a judge from the Sofia City Court by the CCCIAP Chair, resulting from a request for a preliminary ruling.

The report shows progress in judicial reform implementation, despite the fact that currently even achievements are being reversed, such as the posting of judges which is easily turned into a way of making magistrates dependent.

Major amendments to the Administrative Proceedings Code were promulgated in September and entered into force on 1 January 2019. President Radev vetoed some of these amendments, but parliament rejected it and the contested changes became effective. The amendments included a drastic increase of the fees for cassation cases before the SAC, with the fees for legal persons substantially higher than the fees for natural persons, and for the first time the principle is that the fees for cassation appeals are higher than the fees for initial referral to the court.

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22 Decree No 201 on returning for further discussion in the National Assembly of the Amending and Supplementing Act to the Administrative Procedures Code, adopted by the 44th National Assembly on 25 July 2018.
Changes were made to the jurisdiction of the Supreme Administrative Court, which became the first instance mainly for regulations by the government and the ministries, while tax cases were transferred to all administrative courts in the country, and the jurisdiction of individual administrative acts is now related to the applicant’s address. The new single instance review of a number of important cases (under the MPA; under the Social Security Code - sickness, maternity, unemployment and temporary incapacity benefits; under the APIA; coercive administrative measures under the Road Traffic Act; under the Foreigners Act — against the prohibition on entry into the country, expulsion, etc.). Another contested amendment contrary to the public interest is the possibility to hold closed court meetings in all cases, unless one of the parties, the prosecutor or the court has requested that a public hearing be held. Public hearings will be reviewed by five-member panels, and by three-member panels in single instance cases.

When his veto was overruled, President Radev referred to the Constitutional Court with a request to declare unconstitutional 13 texts of the Amending and Supplementing Act to the Administrative Procedures Code. A similar request was also tabled by a group of MPs. The Constitutional Court ruling is pending. Among the aspects attacked under this procedure are the possibility for closed court meetings, as well as the increased fees for cassation appeals which will result in difficulties for citizens and legal persons to appeal administrative acts. The wider legal community is concerned that the amendments to the APC, which have an impact mainly on individuals and small and medium-size businesses, deal a serious blow to the rule of law.

The year was also marked by tension around the election of the chair of one of the country's busiest courts, the Sofia City Court. The March election failed, as none of the two self-nominated candidates received the required eight votes from the members of the Supreme Judicial Council. The first contender was Evgeni Georgiev, who got the support of the judges' chamber in the SJC through its chair, Lozan Panov, and who won the votes of the majority of the city judges at the SCC’s General Assembly. The second one was the former SCC chair, Svetlin Mihailov (2004-2009), whom former SAC chair Konstantin Penchev had called a ‘disgrace to the judiciary’.

In November, the SJC held a new election for chair of the Sofia City Court and elected Aleksei Trifonov, a judge at the Sofia Appellate Court, with nine votes against Evgeni Georgiev’s four votes. This choice triggered a wave of comments as the SJC once again ignored the votes of SCC judges who reconfirmed their support for Georgiev with an overwhelming majority at the Court’s General Assembly, and there were doubts about Alexei Trifonov's political commitments, as he was a member of the CEC nominated by the Movement for Rights and Freedoms. The failure SJC members to provide strong arguments why preference should be given to Trifonov at the expense of Georgiev remained the most significant gap.

During the year, BHC continued to work on a number of projects related to the transposition of the directives of the Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings, adopted by a Resolution of the Council of the European Union on 30 November 2009. These directives set standards for the right of access to interpretation and translation, the right to information, the right to access legal assistance and free legal aid. They also concern the procedural rights of vulnerable suspects and accused persons.

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None of the directives of the Road Map have so far been satisfactorily transposed in the Bulgarian criminal justice system. The main reason for this is the refusal of the Bulgarian authorities to extend their standards on police detention under Article 72 § 1 (1) of the Ministry of the Interior Act (MIA) in cases where there is indication that the detained person has committed a criminal offence.  25 'Exploratory interviews' are held with such persons, and the resulting information may become part, albeit indirectly, via the testimonies of field agents, of their criminal proceedings and justify their conviction. Individuals are offered to fill in a statement in which they are notified of certain rights, including their right to have a lawyer during police detention; however, expressing a wish to have a lawyer does not prevent operational actions, including "exploratory interviews", from continuing in the absence of a lawyer. Detainees are often subject to physical mistreatment, threats and other forms of psychological pressure if they refuse to cooperate in the investigation. Their right to interpretation and translation during police detention is widely violated, and cases in which detainees are granted free legal assistance are isolated.  26

ECtHR ruled in March on the key case of Dimitar Mitev v. Bulgaria.  27 The applicant was sentenced to life imprisonment for murder. He claims that his sentence was based on a confession given under pressure to two police officers immediately after his arrest, and that he had not been provided with a lawyer at that time. It was not contested that the applicant requested a lawyer before the so called "exploratory interview" but did not have a lawyer before or during it. The Court ruled that, in order to be effective for Convention purposes, any waiver of the right to legal assistance must be established in an unequivocal manner and be attended by minimum safeguards. Such a waiver does not need to be explicit, but must be voluntary and constitute a knowing and intelligent relinquishment of a right. The government has not shown this to be the case. It is significant in this regard that upon arrival at the police station, the applicant signed a declaration stating that he wished to be assisted by a lawyer. There is no indication that he changed his position afterwards. Accordingly, the Court cannot conclude that the applicant waived his right to legal assistance. That right was, therefore, restricted. The Court recalled that restrictions on the right to legal assistance are only permissible if expressly provided for by law, for 'compelling reasons' and in exceptional circumstances. They must also be of a temporary nature and be based on an individual assessment of the particular circumstances of the case. The Court found that there is no provision in national law allowing for a restriction of the right to lawyer of persons in police custody in exceptional circumstances and the government have relied on no such exceptional circumstances. The court further analysed the fairness of the proceedings in general, and noted that the applicant was questioned by the police officers investigating the murder outside the procedure prescribed by the Code of Criminal Procedure. They were subsequently summoned as witnesses in the murder trial. In addition, following his confession before the two police officers, the investigating authorities charged him and detained him on remand for another minor crime. It was only six months later that the applicant was charged with the murder and questioned in accordance with the procedure prescribed in the Code of Criminal Procedure. The Court found that all these circumstances cast doubt on the accuracy and reliability

25 See, for example, the Supreme Cassation Prosecutor’s Office’s opinion on the bill amending the 2016 Code of Criminal Procedure: https://www.prb.bg/media/cms_page_media/5580/Становище.pdf.


of the testimony of the police officers relating the applicant's confession. The effect of allowing the testimony of the two policemen was, for all practical purposes, precisely the same as the testimony of the applicant himself. The Court also noted that the applicant's confession in the absence of a lawyer was made at the earliest stages of the criminal proceedings and that its impact on the subsequent development of the proceedings cannot be neglected. The confession, included in the body of probative evidence through the witness testimony of the police officers, appears to have been one of the important elements of evidence which secured his conviction. This is even more relevant in the light of the fact that the body of evidence examined at the trial also contained exonerating evidence, but on balance the national courts found that the accusations have nevertheless been proved. In the light of all relevant circumstances, the Court ruled a violation of Article 6 §§ 1 and 3 (c) of the Convention.

In April, the Court also ruled on the case of Boyan Gospodinov v. Bulgaria concerning the refusal of the national authorities to have a criminal lawsuit against the applicant be heard by another court of the same level of jurisdiction, as the local jurisdiction at the time of the criminal case was also the defendant in the applicant's claim under the State and Municipalities Responsibility for Damages Act (SMRDA). In 2002, the applicant was held in custody for the possession of cannabis at his home. He was sentenced to one year of imprisonment. He was released in 2004 after being imprisoned for 1 year, 7 months and 8 days. He filed an action for damages under SMRDA against the Stara Zagora Regional Court on the grounds of excessive duration of pre-trial proceedings, which exceeded the duration of his one-year sentence. In the meantime, a second criminal procedure against the applicant, for drug trafficking, was initiated at the same court. The applicant requested that the case be transferred to another court of the same level of jurisdiction, alleging that the judges were not impartial, as their court was a respondent in the action for damages filed by the applicant. His request was dismissed. In a 2006 decision, the SCC imposed a final sentence of 3 years in prison. Later that year, the applicant's claim under SMRDA was also dismissed. The Court held that, in the second criminal case, he was found guilty and sentenced to three years in prison, with his pre-trial detention of 1 year and 7 months deducted from the sentence. The ECtHR held that the fact that one of the defendants in a civil case that had taken place in parallel with the criminal proceedings is the same court that was also examining the criminal case may raise legitimate doubts as to the objective impartiality of magistrates. Moreover, the very rules stipulating that the compensation should be paid from the budget of the institution, i.e. from the budget of the Stara Zagora Regional Court (if the applicant's claim were sustained), could have influenced to some extent the judges' decision, and might have legitimately intensified the applicant's doubts. The Court also considered the fact that, despite repeated requests, neither the judges of the court of first instance had withdrawn from the case, nor the higher authorities have taken account of complaints in this respect, citing very formal reasons without further reflection on the specific circumstances of the case. Thus they failed to dispel the applicant's doubts. ECtHR found that the Regional Court, when examining the second criminal case, did not fulfil the requirements of objective impartiality, and the higher-level courts did not redress the infringement of that safeguard on the fairness of criminal proceedings. It therefore held a violation of Article 6 § 1 of the Convention.

In June, ECtHR ruled on the case of *Dimitrov and Momin v. Bulgaria*\(^{29}\) concerning the impossibility for the accused to question the victim of the offence they were accused of, due to the latter’s death before the trial. The application was filed by two men who were convicted for the abduction and the rape of a young woman (S.D.). Pre-trial proceedings were initiated as a result of her complaint to the police. During the examination, she withdrew her statements. She later sent a letter to the public prosecutor seeking to discontinue the proceedings because she had withdrawn her initial statement and because she had been subjected to chemotherapy. The prosecutor asked the district court to have the witness questioned by a judge, pursuant to Article 210a § 1 of the Code of Criminal Procedure, since her testimony was of the utmost importance for the investigation. The hearing was carried out by a judge in the presence of a prosecutor. Before the judge, the victim reiterated her original version. She explained this change in her position with the pressure exerted on her by the first applicant. In April 2001, the two applicants were charged with kidnapping and raping S.D. In May, they requested a confrontation with the victim, but the request was dismissed. In June S.D. died from her illness. The court decided to include in the case the statements made by the victim before a judge in the pre-trial proceedings. The two applicants complained to ECtHR that their right to a fair trial had been violated, as they were convicted on the basis of the testimony of a witness who they could not question. ECtHR found that S.D. was indeed not heard during the criminal proceedings against the two applicants, as she passed away before the case had entered the judicial phase. Her testimony during pre-trial proceedings was read in the course of the trial and was admitted in evidence by the criminal courts. ECtHR held that her death constitutes ‘good reason’ for not hearing her as a witness. It further accepted that there have been good reasons to avoid a confrontation between the two applicants and S.D. in the course of the pre-trial proceedings, taking into account the nature of the crime committed and the fragile psychological state of rape victims. The victim also suffered from a serious illness and was under pressure to withdraw her testimony. The Court then found that, although the applicants’ conviction was based primarily on the victim’s testimony, the courts had submitted to a thorough analysis the other evidence, which confirmed the final conclusion on the guilt of the two applicants. In the Court’s opinion, their conviction was therefore based on a body of evidence where the testimony of the victim was only one of the elements. Finally, ECtHR noted that the applicants had sufficient procedural safeguards with regard to the fairness of the proceedings as a whole. They had actively participated in the trial, had the opportunity and expressed their arguments to justify their acquittal. ECtHR did not find a violation of Article 6 §§ 1 and 3 (d) of the Convention.

In July, ECtHR ruled on the case of *Kamenova v. Bulgaria*.\(^{30}\) On 20 August 1997, a road accident caused by a lorry driver resulted in the death of the applicant’s daughter. The applicant did not file a civil action in the first hearing on the case. Because of violations of the procedural law, the national court sent the case back to the pre-trial phase. At the second indictment, the applicant filed a civil action which was accepted for examination. The defendant was convicted but the court did not rule on the applicant’s civil action. Following an appeal, the SCC held the civil action to be inadmissible because it was filed outside the deadline, as this should have been done before the first hearing of the case at the time of its initial examination. In August 2007, the applicant filed a civil lawsuit for non-pecuniary damages. Her claim was rejected on the grounds that it had been filed outside the 5-year limitation period, counted from the date of the damage, 20 August 1997.

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The civil court held that the criminal court was obliged to dismiss the civil action during the retrial, and to refer it to the civil court (at the time the 5-year limitation period had not yet expired) but failed to do so. Before the ECtHR, the applicant complained that she had been denied access to court because her claim had not been examined in substance in any of the proceedings. The ECtHR observed that the right of access to a court is not absolute, and agreed that the national court had indeed committed an error in accepting to examine the claim in the criminal proceedings. The applicant nevertheless omitted to make use of the clear and undisputable possibilities for a proper consideration of her request, thus placing herself in that position. The ECtHR judgment, taken by a majority of four to three votes, was that there was no violation of Article 6 § 1 of the Convention.

In July, the ECtHR also ruled on the case of *Alexander Sabev v. Bulgaria*. The applicant was a military intelligence major, who had been informed that his access to classified information at national level has been revoked. The letter only stated the legal basis without any justification. His complaint to the State Commission on Information Security (SCIS) was dismissed without justification. Later that year, the applicant was released from military intelligence and relocated to the General Staff of the Ministry of Defence. In a letter, the Commission informed the minister that the applicant did not qualify for the post as his access to classified information had been revoked. On that basis, it was decided to terminate the applicant’s contract. The applicant contested the order for termination of the contract. The SAC ruled the complaint inadmissible. The judges agreed that, in line with the legal provisions, the withdrawal of the authorisation did not have to be justified and was not subject to judicial review. The Government made two objections to the inadmissibility of the complaint. The first one was that the complaint was filed outside the 6-month period, which in the Government’s view should be counted from the date of the withdrawal of the authorisation for access to classified information, and not from the date of the closure of the proceedings to contest the dismissal order. The second argument was that, following the expiry of a 3-year period from the withdrawal of the authorisation for access to classified information, the applicant had lost his status of a victim (the withdrawal of such authorisation was temporary, for three years) because he was no longer affected. The Court did not accept these objections. It pointed out that the applicant’s complaint was related to the limited judicial review of his dismissal, and not to the withdrawal of the security clearance itself. The Court noted that the applicant’s complaint was not related to his right of access to classified information (which is not guaranteed by the Convention), but to his right to hold a governmental post which was affected by the revocation of his access to classified information. The Court accepted that the complaint fell within the scope of Article 6 § 1 in its civil law aspects, due to which the time limit for the referral to the ECtHR should be counted from the date of SAC’s ruling. In this sense, the government’s first plea of inadmissibility was dismissed. The second question analysed was whether the national court had the full competence to examine all relevant issues of factual and legal nature raised in the applicant’s complaint. The Court found that the minister had no discretion as to whether or not to dismiss the applicant after the SCIS had revoked his security clearance, the existence of which is an essential condition for working at the General Staff. It was therefore necessary to clarify whether the revocation of the security clearance was justified or not. This issue was addressed by the SCIS, but it gave no justification in rejecting the applicant’s complaint. In the Court’s opinion, this procedure did not comply with the requirements of Article 6 § 1, since the Commission is not independent of the executive power: it is elected by the government on proposal by the Prime Minister. The Commission did not inform the applicant of the reasons why

his authorisation for access to classified information was revoked. SAC refused to analyse the applicant's objections in substance. ECtHR therefore held that the dispute over the dismissal of the applicant was not examined by a court of 'full jurisdiction' which could discuss all relevant factual and legal circumstances of the case. It therefore ruled a violation of Article 6 § 1 of the Convention.

A panel of three judges ruled on the case of Delin v. Bulgaria in December. The applicant complained that the unjustified revocation of his authorisation for access to classified information in his capacity of a SANS employee had automatically resulted in his dismissal. The order for the termination of his contract was appealed to the SCIS and in court. SAC accepted that the procedure for issuing the order had been complied with and that the administrative act was issued in line with the rules of the legislation in force. The court recalled its case-law in similar cases, where the withdrawal of the authorisation for access to classified information automatically results in termination of the contractual relationship of the person concerned. It had ruled that, when the courts had accepted as decisive the fact of the revocation of the authorisation without examining the grounds for it, there was disproportionate interference with the applicant's right of access to a court. While the courts' decisions were in line with the applicable domestic law, the absence of any form of judicial review of decisions revoking access to such information was not justified, and the government did not provide any reasonable explanation for this. The Court found that the Protection of Classified Information Act was amended shortly after the SAC ruling, and the changes were largely due to the judgment in the case of Miryana Petrova v. Bulgaria. However, this change had forward application and the applicant could not benefit from it. The Court held a violation of Article 6 § 1 of the Convention and noted that the most appropriate remedy for the applicant in cases of established violation of Article (1) due to deprivation of access to a court, is for the proceedings to recommence, observing all the rules and requirements of a fair trial.

Chapter 6.
RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE, HOME AND THE CORRESPONDENCE

In 2018, the problems related to respect of the right to personal liberty and security in Bulgaria deteriorated. The deterioration affected the safeguards against arbitrariness in secret surveillance, control on the collection of personal data and forced evictions of Roma from their only homes.

Secret wiretapping and control on the collection of personal information

In 2018, the issues of the control on secret wiretapping and the collection of personal information by state institutions deteriorated. The National Bureau for Control on Special Surveillance Means was dealt a major institutional blow and its operation became impossible. This happened after the former NBCSSM chair announced the Bureau’s 2017 Activity Report, in which he explicitly stressed that SANS was refusing to provide statutorily required information, which resulted in blocking three verifications, and that this had become an official position of the Agency. The report quotes a letter from SANS to NBCSSM, which denied access of Bureau representatives to SANS materials. The Bureau was thus prevented from exercising its powers. Almost two years of pressure by the public prosecutor’s office and the State Agency for National Security (SANS) have reduced the NBCSSM to a mock-up institution, leaving it without the ability to exercise its powers and to defend the interests of the citizens. Bureau members were replaced in December 2018. Plamen Ivanov, an individual close to the ruling party who is not expected to create difficulties for SANS or other state bodies, was elected chair.

In another negative development, amendments to the Implementing Rules of the State Agency for National Security Act were tabled for public consultation in June 2018. BHC issued a negative opinion. In essence, the changes referred to the work of undercover agents, who were to be able to work in all bodies and institutions as well as in civic associations, legal persons and as freelancers. Following a negative opinion from the Supreme Bar Council, the regulation explicitly stated that agents would be able to work everywhere except in the Bar. The potential interference with the rights of citizens who are unable to exercise neither ex ante nor any subsequent control over the collection of data by agents, despite the fact that their legal rights or interests are affected, remains problematic. The use of undercover agents lacks any safeguards of lawfulness, which raises important questions with regard to the reasonable balance that needs to be maintained.

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between the protection of national security, on the one hand, and the legitimate rights and interests of persons, on the other.

**Forced evictions from Roma dwellings**

In September 2017, in the context of the monitoring on the implementation of ECtHR’s judgments, the Committee of Ministers of the Council of Europe expressed regret that for yet another consecutive year, the Bulgarian authorities were not taking any action to amend the State Property Act (SPA), the Municipal Property Act (MPA) and the Spatial Planning Act (SPLA), which would ensure proportionality of the actions aimed at dealing with the illegal occupation of public property and the orders for the demolition of illegal structures. The Committee invited the State to submit by 1 February 2018 information on the work done and timetable for the adoption of the required legislative reforms. Although a 2016 report by the minister of justice on the execution of cases in the group *Yordanova v. Bulgaria* stated with regard to the convicting decisions that ‘a point should be made for the explicit introduction’ of the principle of proportionality in the demolition of illegal structures under Articles 195, 225 and 225a of the Spatial Planning Act, Article 80 of the State Property Act and Articles 46 and 65 of the Municipal Property Act, in cases where the right to respect for private and family life and home within the meaning of Article 8 of the ECHR has been violated, no action in this regard was taken in 2018.

**The Arman Mahala case, Plovdiv**

In April 2018, the Plovdiv municipal authorities proceeded with the demolition of the buildings of the six applicants represented by BHC before ECtHR in the case of *Yuseinova and Others v. Bulgaria*. With regard to the demolition scheduled for 18 April without the provision of alternative shelter for the persons concerned, BHC requested interim measures from the Court. One of the applicants in the case advised BHC that on the following day the mayor of the Northern Area, Municipality of Plovdiv, met with her and gave her a letter prepared in advance and addressed to the ECtHR, stating that she was withdrawing her application. She was asked to make sure that the other five applicants sign the letter. This was the condition for the start of the procedure for provision of municipal housing. Initially, the applicant refused to sign, and later the mayor was quoted on a local site, saying that ‘the Roma who filed complaints in Strasbourg have already withdrawn them after a discussion with the administration’. The applicant later agreed to withdraw the application from the ECtHR. The Plovdiv municipal authorities provided municipal housing to two of the applicants in the case, while other two are on the waiting list.

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One of the applicants was awarded a satisfactory decision by the SAC, which annulled the order of the mayor of the Northern Area, as the order was issued in violation of Article 8 of the Convention and of Article 6 of the Code of Administrative Procedures, which requires that a test of proportionality between the administrative measure and the consequences of its enforcement be carried out. This applicant withdrew from the case before the ECtHR because his rights were safeguarded at national level. The ECtHR’s judgement on Yuseinova and Others v. Bulgaria is pending. The applicants in the case also raised the issue of undue pressure on behalf of the municipal authorities to withdraw the case.

The Orlandovtsi case, Sofia

In 2017, following the forced demolition of illegal structures that were only homes for their inhabitants, the municipal administration of the Serdika Area in Sofia left at least 50 people without shelter, of whom at least 30 children. As of January 2019, BHC did not have information that the authorities had offered alternative accommodation to any of the affected families. In 2018, some of the inhabitants of the Orlandovtsi neighbourhood in the capital, left homeless and in the absence of alternative shelter, gradually returned to and lived in the ruins of the demolished houses — some in trailers, others built improvised dwellings and moved in with their families, including babies and children of pre-school age. In November 2018, the municipal authorities began clearing the sites, moving the trailers to neighbouring properties. When the equipment and the workers involved in the clearing left, the people returned.

During all these events, the houses of the three households in the Orlandovtsi neighbourhood, whose legal protection was assumed by the BHC at the end of 2017, remained standing. One of them grew up by a member in November 2018. In the past year, the six legal cases filed by the BHC on behalf of representatives of these households in the administrative court to contest the orders by which the municipal authorities justified the demolition of all houses were resolved. The orders did not contain a fair description of the houses that would allow the identification of the applicants’ homes.

Of the six separate proceedings, three were terminated without the court examining the individualisation of the buildings. In the other three proceedings, the court allowed technical expert opinions, which found that the applicants’ homes were located on sites different than the quoted in the demolition orders. The experts found that the individualisation of the buildings for demolition was made by means of a sketch plan, while in one case the illegal structure was described as being part of two sites which had no common border. Nevertheless, the judicial panels of two instances ruled that the victims of eviction who were applicants in these cases were not the recipients of the orders, because they were not owners, did not have limited property right, and had not built the structures, and were therefore not interested parties in the proceedings, the orders did not infer any rights and obligations to them, and did not violate their legitimate rights. All six proceedings were terminated without consequences to the stability of the administrative acts, some of which were clearly impossible to achieve, and without the court examining in essence the situation of the persons claiming to be affected by them, and without respecting the principle of proportionality.

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41 SAC (2018). Decision No 11731 of 03.10.2018 on Administrative Case No 1517/2018, 2nd division.
BHC also helped the three applicants and their families to get registered as needing municipal housing under the *Ordinance on the terms and conditions for the management and the disposal of municipal housing within the Municipality of Sofia*. In February 2018, the competent Commission under the ordinance adopted decisions by which the applicants were placed in the lowest priority, fifth group, which includes families or households ‘occupying insufficient living space’. These decisions destroyed the families’ hopes of getting housing. This became apparent from the public information requested by BHC and provided by the mayor of the Serdika Area, which showed that the total number of municipal residences in the Serdika Ward allocated for rental accommodation of citizens with established housing needs was 204, none of which was unoccupied, and the number of the waiting for accommodation was 44; there were also no spare dwellings available, which according to the Ordinance are provided for temporary accommodation of up to two years to families with acute social and health problems.

The three applicants contested these decisions, initially in administrative proceedings, as unlawful and inappropriate before the Mayor of the Serdika Area. In the complaints, BHC lawyers laid out the circumstances that led to the threat of rendering the applicants homeless, and the fact they had not complained about “insufficient living space”. The mayor rejected the complaints on the grounds that the existence of a home which was illegal and as such would be demolished, and therefore the threat of the applicants becoming homeless, was contradicted the Ordinance and, in particular, of the circumstances declared by the applicant to the Committee, i.e. that she owned no property. The administrative authority equalises the right of property ownership, which is not claimed by the applicants, with the right to a home, the deprivation of which would, in certain circumstances, constitute a violation of Article 8 of the ECHR.

The proceedings against the decisions of the committee continued in court. At first instance, the judicial panels repealed the decisions as unlawful and ordered the files to be returned to the committee. In one of the judgments, the court gives binding instructions that the applicant must be placed in the first group of persons in need of housing under the Ordinance. As of January 2019, the cases were in the cassation stage and were being reviewed by the SAC.

This development, which has not yet reached its end, is the result of the legal assistance that these three specific households received from BHC. However, persons who are poor, poorly educated and possess limited social knowledge and skills — such as the 50 who lost their homes — are particularly vulnerable to such measures, as in practice they hardly ever have the opportunity to obtain effective protection of their right to a home. The actions of the authorities in this specific example appear to be aimed at leaving these people in the street — on the one hand, they take action to demolish their homes without first providing shelter, and, on the other hand, when those whose homes have not yet been destroyed, try to benefit from the only legal mechanism to obtain a lasting shelter — municipal housing — they are rejected. This calls into question the good faith of the authorities’ actions and the real motives behind them. The obvious defects in the administrative procedure and the acts of the three households to which the BHC provided legal assistance also raise the question of whether the actions of the ward administration were also as vicious in other cases that made 50 people homeless.
The Batalova Vodenitsa case, Sofia

In 2017, BHC provided legal assistance to five families of approximately 40 members in total, in relation to the attempt of the Vazrazhdane Area administration in the capital to forcibly demolish their only homes without providing them with alternative shelter.\(^{43}\) BHC requested, on behalf of the applicants, interim measures to protect their homes, given that their destruction would seriously affect their right to a home. In the communication to the ECtHR, the Bulgarian Government stated that the demolition would be preceded by a discussion of alternative accommodation options. As a consequence, the ECtHR considered the request for interim measures premature. As of January 2019, the BHC had no information of alternative accommodation offered to any of the families. The only exception was a person involved in another, older case, \textit{Yordanova and Others v. Bulgaria}, who was placed in a municipal housing, but only because it had been granted to his spouse with a registered address in another ward and not to him.

At the same time, the children – son and daughter – of one of the applicants in the \textit{Yordanova and others v. Bulgaria}\(^{44}\) case, who had passed away, approached the BHC with regard to local authorities’ adamant refusal to register their address at their permanent address.\(^{45}\) Since birth, their sole address had been the address of their parents, located in Batalova Vodenitsa. Their parents were registered there without interruption since the 1980s and the 1990s. The lack of permanent address data in the electronic database of the population registry is grounds for the staff of the Bulgarian Identity Documents units at the Sofia Directorate of the Interior to receive, process and register applications for personal documents of the two persons who are already adults. The adverse consequences of the situation for them were of various nature. The man had already been repeatedly detained by the police because he was unable to identify himself to the Ministry of Interior bodies, and was prevented from taking the final exam at the end of his secondary education. And the woman, also an adult, expected and gave birth to her first child without any support from the Social Assistance Directorates, which explicitly referred to her lack of identification documents as the reason for refusing her the benefits she was entitled to with regard to her pregnancy, birth and for raising her child. She was also under severe stress due to the uncertainty whether she would be admitted to a hospital without an identity card. Without personal documents, these and many other people, children of the residents of Batalova Vodenitsa, cannot get a job, cannot vote in the forthcoming elections and cannot submit documents for legal placement in municipal housing.


\(^{44}\) In this case, the ECtHR concluded that there would be a violation of Article 8 of the ECHR in the case of an enforcement of the Order of the Mayor of Vazrazhdane of 17 September 2005 for the seizure of municipal property and the removal of the squatting offenders, since it is based on legislation which does not require a proportionality test and has been issued and reviewed under a decision-making procedure which not only has not offered safeguards against disproportionate interference, but also has involved a failure to act and review the question of the “necessity in a democratic society”. The parents of the two children left without formal registration of a permanent address and, respectively, without identity cards, are explicitly mentioned in the annex to the order (see the ECtHR judgment in the case of \textit{Yordanova and Others v. Bulgaria}, application No 25446/06).

\(^{45}\) This refusal is not surprising in view of the public statement made by the mayor of Vazrazhdane in 2016 on the bTV national television station: “The persons with registered addresses in Batalova Vodenitsa, at the addresses there, are 174. Since 2006, [...] currently registering an address there is not allowed, as these addresses are illegal”. The was published on the TV station’s website on 24 March 2016 with the title “An illegal ghetto growing only 4 km away from the Parliament” at: \url{https://bivnovinite.bg/bulgaria/nezakonno-geto-se-shiri-samo-na-4-km-ot-parlamenta.html}. 
The BHC lawyers appealed in the administrative court the administrative authorities' refusal to carry out the registration of the individuals and to issue certificates thereof, and the refusals to accept and register the applications for their first ID cards. As of January 2019, the cases were pending; in one of them the court of first instance annulled the refusal and referred the file back to the mayor to decide on the permanent address application.

The authorities' policy in this case, as well as in the Orlandovtsi case described above, gives the impression that the legality of the building is not the actual target of their actions. The restrictions imposed by the administration on the rights of the affected persons far exceed the formal objectives of re-establishing ownership of municipal property and, in practice, prevent the Batalova Vodenitsa residents from vacating the municipal lots, moving to live in other dwellings on legitimate grounds, using lawfully utilities, studying, using health services and receiving statutory compensations and benefits. Residents of the neighbourhood, independently from each other, also reported to the BHC that their access to the municipal administration is being restricted, as security have been given instructions to prevent residents from the neighbourhood from entering the building. BHC also received reports of verbal bans for the residents of the neighbourhood to carry out repairs to their homes, issued by individuals who identified themselves as municipal staff and were accompanied by police officers. This behaviour of the authorities gives the impression of a targeted harassment aimed selectively at the Roma in Batalova Vodenitsa.

Alternative accommodation

The BHC did not find a single instance among the many Roma evictions throughout the country in recent years where the authorities had contacted the affected persons in advance, in order to identify the individual needs of each household and to assist them in obtaining an alternative and legal permanent accommodation so as to vacate the illegally occupied property and to remove the illegal structures. On the contrary, such actions are isolated (e.g. in the case of the new five households of Batalova Vodenitsa described above) and the widely employed practice of the authorities is to do nothing in this respect.

Given that the builders of illegal structures come mainly from the lowest strata of the social fabric and are unable to afford renting a home in the free market, municipal housing is the only option for them to prevent becoming homeless and find a long-term solution to their housing problems. The accommodation at municipal shelters for homeless people – where they exist – does not provide a long-term solution to this problem, as it is usually for short periods of several months.

However, the accommodation in municipal housing turns to be only a formal, theoretical possibility. In practice, it is significantly hindered by both the secondary legislation that does not treat it as accommodation of people in dire need, and by the policy of the authorities which usually don’t take sufficient care of municipally-owned dwellings. The latter is demonstrated not only by the often poor physical condition of the dwellings, but also by the overall municipal policies, which often fail to tailor the needs of municipal housing to property management and begin to sell dwellings, regardless of the long waiting lists for municipal housing. In Sofia’s case, the BHC collected data that drew this picture through a series of requests for information under the Access to Public Information Act. The information is summarised in Table 2 below.
Table 2. Municipal housing in Sofia, by municipality

<table>
<thead>
<tr>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
<th>F</th>
<th>G</th>
</tr>
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<tbody>
<tr>
<td>Bankya</td>
<td>17</td>
<td>2</td>
<td>10 P</td>
<td>16 P</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Vitosha</td>
<td>184</td>
<td>3</td>
<td>28 P</td>
<td>27 P</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Vrabinitsa(^{46})</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Vrazhodane</td>
<td>475</td>
<td>0</td>
<td>66 F/H</td>
<td>55 F/H</td>
<td>1</td>
<td>7</td>
</tr>
<tr>
<td>Izgrev</td>
<td>49</td>
<td>0</td>
<td>18 P</td>
<td>18 P</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Ilinden</td>
<td>251</td>
<td>2</td>
<td>15 F/H</td>
<td>31 F/H</td>
<td>13</td>
<td>3</td>
</tr>
<tr>
<td>Iskar</td>
<td>1032</td>
<td>14</td>
<td>61 F/H</td>
<td>73 F/H</td>
<td>15</td>
<td>48</td>
</tr>
<tr>
<td>Krasna</td>
<td>262</td>
<td>0</td>
<td>-</td>
<td>205 F/H</td>
<td>-</td>
<td>3</td>
</tr>
<tr>
<td>Poliana</td>
<td>255</td>
<td>0</td>
<td>63 F/H</td>
<td>31 F/H</td>
<td>7</td>
<td>8</td>
</tr>
<tr>
<td>Krasno Selo</td>
<td>439</td>
<td>2</td>
<td>30 F/H</td>
<td>34 F/H</td>
<td>6</td>
<td>2</td>
</tr>
<tr>
<td>Lozenets</td>
<td>41</td>
<td>-</td>
<td>15 P</td>
<td>19 P</td>
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<td>2</td>
</tr>
<tr>
<td>Lyulin</td>
<td>2159</td>
<td>10</td>
<td>100 F/H</td>
<td>103 F/H</td>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td>Mladost</td>
<td>539</td>
<td>2</td>
<td>246 F/H</td>
<td>231 F/H</td>
<td>13</td>
<td>8</td>
</tr>
<tr>
<td>Nadezhda</td>
<td>740</td>
<td>0</td>
<td>86 F/H</td>
<td>110 F/H</td>
<td>30</td>
<td>15</td>
</tr>
<tr>
<td>Novi Iskar</td>
<td>33</td>
<td>2</td>
<td>8 P</td>
<td>8 P</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Oboristske</td>
<td>94</td>
<td>20(^{49})</td>
<td>34 F/H</td>
<td>35 F/H</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Ovcha Kupel</td>
<td>198</td>
<td>0</td>
<td>20 P</td>
<td>18 P</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>Pancharevo</td>
<td>40</td>
<td>-</td>
<td>14 P</td>
<td>4 P</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Poduyane</td>
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<td>0</td>
<td>-</td>
<td>97 F/H</td>
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<td>4</td>
</tr>
<tr>
<td>Serdika</td>
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<td>0</td>
<td>36 F/H</td>
<td>44 F/H</td>
<td>2</td>
<td>7</td>
</tr>
<tr>
<td>Slatina</td>
<td>540</td>
<td>0</td>
<td>52 P</td>
<td>65 P</td>
<td>12</td>
<td>6</td>
</tr>
<tr>
<td>Sredets</td>
<td>52</td>
<td>-</td>
<td>32 P</td>
<td>29 P</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Studentski</td>
<td>87</td>
<td>0</td>
<td>16 F/H</td>
<td>17 F/H</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Triaditsa</td>
<td>235</td>
<td>5</td>
<td>27 P</td>
<td>27 P</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td><strong>TOTAL</strong>(^{50})</td>
<td>8706</td>
<td>60</td>
<td>224 P</td>
<td>231 P</td>
<td>148</td>
<td>141</td>
</tr>
</tbody>
</table>

\(^{46}\) The mayor of Vrabinitsa failed to provide information on municipal housing in his municipality. His silent refusal was repealed at first instance by the SCAC. By the end of the reporting period, the case was being appealed by the administrative body and was pending review by SAC.

\(^{47}\) Of 18 reserve dwellings in the Kremikovtsi municipality, 9 are unfit for living.

\(^{48}\) Of 15 reserve dwellings in the Lyulin municipality, 6 are unfit for living.

\(^{49}\) All vacant municipal dwellings in the Oboristske ward are semi-demolished, unfit to live in, declared dangerous or in need of overhaul.

\(^{50}\) The mayor of the Municipality of Sofia failed to provide information on municipal housing within Sofia. The line deputy-mayor's decision was repealed at the first instance by the SCAC. By the end of the reporting period, the administrative body was appealing the case and it was pending review by the SAC.
**Legend**

A = municipality within the Municipality of Sofia.

B = number of municipal dwellings for rental accommodation of people with proven housing needs, managed by the municipality mayor at the end of February 2018.

C = number of vacant municipal dwellings for rental accommodation of citizens with proven housing needs, managed by the municipality mayor at the end of February 2018.

D = number of persons waiting for municipal housing in the municipality, as per the list under Article 15 of the Ordinance on the terms and conditions for the management and the disposal of municipal dwellings within the Municipality of Sofia, separately for 2016 and 2017. Note: many ward mayors provided information on the number of families/households (F/H) in the lists, rather than on the number of persons (P).

E = number of municipal housing sold or intended for sale on the territory of the ward, for 2016 and 2017, respectively.

F = number of reserve municipal dwellings in the ward at the end of February 2018. Note: Municipality of Sofia’s reserve dwellings are intended to provide temporary living space, for a period of 6 months but no longer than 2 years, to individuals: 1) whose dwellings have become unfit to live in due to natural catastrophes and disasters or other exceptional circumstances, or are in danger of collapsing; 2) with acute social or health issues in their households.

G = the number of procedures for establishing the circumstances referred to in Article 28 § 1, points 1-2 of the Ordinance on the terms and conditions for the management and the disposal of municipal dwellings within the Municipality of Sofia in 2017. Note: according to this provision, Municipality of Sofia’s reserve dwellings are intended to provide temporary living space, for a period of 6 months but no longer than 2 years, to individuals: 1) whose dwellings have become unfit to live in due to natural catastrophes and disasters or other exceptional circumstances, or are in danger of collapsing; 2) with acute social or health issues in their households.

The data show a lack of sufficient municipal housing, with an increase in the number of families registered as being in need. At the same time, the number of the sold municipally-owned residential properties remains relatively high. The small number of reserve dwellings – 48 – is quite noteworthy. These are intended for use by individuals in dire need. They are intended for the most deprived persons. Given the limited duration of the accommodation in them, the possibility of managing these properties in a flexible manner makes them potentially the most effective means of social support by the municipal authorities, which, however, meets housing needs in the short-term only. Under Article 28 § 1 of the Ordinance on the terms and conditions for the management and the disposal of municipal dwellings within the Municipality of Sofia, Municipality of Sofia’s reserve dwellings are intended to provide temporary living space, for a period of 6 months but no longer than 2 years.

**ECtHR Case-law**

In its judgment in February on the case of *Hadzhieva v Bulgaria*, the ECtHR found that Bulgaria had violated the right to respect for private and family life under Article 8 of the ECHR, after the authorities arrested the parents of a 14-year-old girl in 2002, but did not inform the child protection services, leaving her unattended for days. Dzheren Hadzhieva arrived with her parents in Bulgaria at the end of 2001, at the age of 13. Their move was provoked by the participation of her father in a political movement criticising the regime in Turkmenistan and the repressions to which the family was subjected. After moving to Bulgaria, the family settled in Varna where Dzheren started attending high school in 2002 and her father opened up a private business. In the same year, the Turkmen authorities charged both her parents with aggravated embezzlement of public funds and requested their extradition from Bulgaria to their home country. In the morning on 4 December 2002, police officers arrived at Hadzhievi’s home, where they found 14-year-old Dzheren alone and informed her that they were there to arrest her parents. She immediately called her parents and informed them about what was going on. While waiting the parents’ return,

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the police officers ordered Dzheren not to move freely in the apartment and used the situation to question her in the absence of a social worker or a psychologist, although they knew the girl’s age. The parents were arrested immediately upon their arrival and were not allowed to take any personal belongings. In the next few days, the girl was left at home unattended because the police did not notify the competent services, although they were obliged to do so under the provisions of the Child Protection Act and despite the fact that the Code of Criminal Procedure explicitly states that ‘the children of the detainee, if they have no relatives to take care of them, shall be placed immediately via the relevant municipality or town hall in a childcare, kindergarten or boarding facility’. In the end, the Bulgarian court refused to extradite the family as it found that the charges against them were completely unsubstantiated. The ECtHR divided the period of the applicant’s unattended stay to two periods and held a violation of Article 8 of the Convention for the initial period from the arrest of the parents to the first hearing in the examination of the extradition request. For this period, the Court held that the Bulgarian authorities did not fulfil their positive obligations to ensure that adequate care was provided to the minor applicant in the absence of her parents. For the period following the first hearing, the Court found no violation of the country’s positive obligations under Article 8 of the Convention.

In April, the ECtHR ruled on the case of Doktorov v. Bulgaria concerning the refusal of the Bulgarian courts to consider a paternity contest requested by a man who years after the birth of his child learned from a DNA test that he was not the child’s father. In 2006, the applicant and his wife divorced amicably and he agreed to pay a monthly child support for their two children. He later learned that during their marriage his wife had an extramarital relationship with another man who was the biological father of his second child, born in 2003. A 2007 DNA test confirmed this fact. Mr Doktorov brought legal action contesting the paternity. The court dismissed the claim claiming that it was time-barred due to the expiry – in 2004 – of the year-long limitation period counting from the child’s birth. The decision was sustained by the two higher courts. In 2008, the applicant asked the court to adopt a decision by which he was to stop paying child support for his younger child. The court rejected the request, holding that it had not been proven that he was not the child’s father given that he had not rebutted the legal presumption of paternity. The ECtHR found that the decision of the national courts constituted an interference in the applicant’s private life. As regards the one-year limitation for bringing an action for the rebuttal of the presumption of paternity, the Court held that the purpose of such a provision is to ensure legal certainty, i.e. there is a legitimate aim. The fundamental question is therefore whether such an intervention was ‘necessary in a democratic society’. The Court noted that the introduction of such a restrictive rule in the legislation — in this case, one year from the birth of the child and not from the date the revealing of the fact — may lead to a distortion of the fair balance between the two competing interests. It stated explicitly that the applicant referred the case to the national court very shortly after he became aware that before the birth of their second child his wife had an extramarital relationship and having been convinced of the veracity of the information. The national court has refused to review the documentation of the DNA test performed, assuming that the contest lies outside the statutory time limit, although the applicant cannot be reproached of this delay. The Court found that the decision-making process was problematic when the national authority did not examine the personal circumstances of the applicant. The applicant could not have recourse to any preliminary procedure or verification, in which the courts could consider the particular circumstances of his case and assess whether the establishment of the fact would be in the best

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interests of the child, in order to allow for the examination of the merits of his claim, as such possibility does not exist in the law. While accepting that such a restriction should have a reasonable explanation and justification, the Court found that other possibilities should also be provided for situations such as the one in the case. In conclusion, it held a violation of Article 8 of the Convention.

In May, a panel of three judges ruled on the case of Dimova-Ivanova and Ivanov v. Bulgaria. The applicants are spouses. The applicant worked as chief accountant of the municipal transport company in Varna. The application concerns the events during a police operation against criminal groups carried out by the Ministry of Interior code-named Jellyfish. In 2009, the Sofia City Prosecutor’s Office initiated criminal proceedings against an unknown perpetrator for abuse of power by a civil servant and a waste of public funds causing significant damage to the Varna municipal transport company. Under this criminal procedure, a police team searched the applicants’ home. The minutes drawn up by the police indicate that the search was carried out under the conditions laid down in Article 161 § 2 of the Code of Criminal Procedures, i.e. without prior authorisation by a judge, on the grounds that this is the only way of preserving or collecting evidence related to the criminal proceedings in question. The minutes form contains a standard sentence in which the applicant is invited to submit to the police office all objects, documents or computer systems that contain information related to the criminal proceedings. No subject relevant to the criminal proceedings was identified during the search. The first page of the search minutes bears the stamp of the Varna Regional Court, the name, surname and signature of one of the judges of that court and the decision “Approved”. This approval was granted on the day of the search but after it had ended. The two applicants claimed that the search of their house constitutes a violation of their right to respect for home guaranteed by Article 8 of the Convention. The Court took the view that Article 8 of the Convention was violated, as the search of the applicants’ home had been carried out without prior authorisation by a judge and the approval was granted hastily as a consequence. The ECtHR pointed out that the search of the applicants’ apartment constitutes an interference with the exercise of their right to respect for their home, and that such interference is not 'provided for by law' within the meaning of Article 8 § 2 of the Convention. After examining the admissibility of the complaint under Article 8 of the Convention, the ECtHR held that an action for damages against the State could not constitute a sufficiently effective domestic remedy in this case, and that the persons concerned did not have any internal remedy that would allow them to exercise their right to respect for their private and family life. Consequently, the Court found a violation of Article 13 in conjunction with Article 8 of the Convention.

Chapter 7.
FREEDOM OF THOUGHT, CONSCIENCE, RELIGION AND BELIEF

Throughout 2018, the freedom of thought, conscience, religion and belief came under serious threat by the bills tabled in the National Assembly with regard to the amendment of the Religious Denominations Act (RDA), which stipulated restrictive and discriminatory statutes. At the end of the year, upon pressure from a number of local and international organisations, the restrictive amendments and supplements were rejected.

In the course of the year, there were several attacks against prayer homes and cemeteries of several religious denominations. Hate speech directed against certain religious communities continued to rage with impunity.

Legislative changes

In May, the GERB political party and the opposition parties BSP and MRF tabled in parliament a bill amending the RDA. Another bill was tabled by the United Patriots, a coalition partner in the government. The main motives behind both bills were the protection of national security and the stopping of dangerous foreign influences. The draft bills provided for financial support only for religious denominations that have the support of more than 1% of the Bulgarian citizens, based on the latest census. This limits financial support only to Orthodox Christianity and Islam. The United Patriots’ draft prohibited the holding of religious posts by people who have completed studies abroad, banned donations from abroad or from foreign citizens, as well as foreign nationals to hold religious services. It also provided a ban on the creation of spiritual schools by religious denominations, which have the support of less than 1% of Bulgarian citizens. It provides for restrictive measures, including a ban on religious activity due to “religious radicalism”. However, it is very broadly defined and includes the rejection of the secular nature of the state, the challenge to the primacy of secular law, the adoption of preachings or doctrines which “are contrary to the Universal Declaration of Human Rights and related UN instruments of international law, and to the EU Charter of Fundamental Rights”, “religious or sectarian opposition”, “the use of religion for political purposes”. Viewing the values of a religion as higher than ordinary life norms is intrinsic to any religious denomination. Criteria that rely on the content of the faith itself, and not on the behaviour of the believers which may not question the secular nature of the state, for example, are inappropriate and lead to arbitrary narrowing the circle of religious denominations treated as ‘non-radical’.

The changes, in particular those of the United Patriots, met great resistance by all religious denominations because of the risk of state interference in their internal affairs and of restricting religious freedoms. Several denominations organised a series of public protests in front of the National Assembly. Several international organisations also spoke out against the bill.

In December, shortly before the parliamentary recess, the National Assembly reviewed the bill at second reading. The parliamentary groups of GERB and MRF had swiftly tabled amendments which almost fully rejected the United Patriots’ draft. The amendments were adopted at second
reading, and the major part of the restrictive provisions of the United Patriots' bill were disregarded. All religious denominations are allowed to receive government subsidies, albeit on a different basis.

Some restrictive provisions remained. According to Article 29 § 5 of the final act, foreign priests are allowed to take part in religious services only upon notifying the Council of Ministers’ Religions Directorate, a completely opaque institution with some religious police functions, such as oversight and collection of information on religious denominations, their priests and their institutions' staff, as well as the power to restrict their rights. It is also authorised, pursuant to § 18 of the Transitional and Final Provisions to the Act, to “carry out the control over the curriculum and to certify the diplomas issued by spiritual higher schools” until the registration of the religious higher school under the Higher Education Act.

Muslims

In 2018, as in previous years, a number of hate crimes targeting the Muslim religion in Bulgaria were recorded.

On 21 March, in an interview for the Focus News and Trafik News radio stations, public prosecutor Nedyalka Popova, who acts as supervising prosecutor in the case of religious hate preaching against Ahmed Moussa and 12 Muslim preachers, called the Muslim community ‘a monolithic mass’ that ‘is easily manipulated during elections’, ‘almost as a paramilitary organisation’. In her view, the state is threatened because the number of Muslims in Bulgaria will increase with ‘the arrival in Bulgaria of Muslims from abroad’, with the ‘return of part of those who have relocated to Turkey’ (referring to the events surrounding the so-called ‘Revival Process’), as well as with ‘the promotion of the birth rate’. According to her, when the Muslim population reaches 30% of the total population of our country, “the state would already be threatened”. Prosecutor General Sotir Tsatsarov categorised these statements as ‘unacceptable’ and pointed out that public prosecutors cannot make statements ‘which confront the Bulgarian citizens on a religious basis’. He announced that Prosecutor Popova will be scrutinised by the inspectorate of the Supreme Cassation Prosecutor’s Office. It was never disclosed, however, whether such scrutiny was carried out and what were the results.

In 2018, the Chief Mufti’s Office registered two attacks against Muslim cemeteries:

- On 2 July at the cemetery of the village of Gradnitsa, Municipality of Sevlievo, scores of graves were desecrated, and some of were excavated. The Gabrovo police detained two people and initiated pre-trial proceedings against them under Article 164 § 2 of the Criminal Code, which treats desecration or damage to gravestones;
- On the night of 6 to 7 September 2018, at the Muslim cemetery in Dobrich, the gravestones of some 40 graves were broken and thrown to the ground. Pre-trial proceedings were initiated. The identity of the perpetrator was subsequently identified.

54 ‘The Inspectorate will deal with prosecutor Nedyalka Popova for statements against the Muslims’, news.lex.bg, 3 April 2018, available at: https://news.lex.bg/?p=6868.
According to the Chief Mufti’s Office in Sofia, Islamophobia is still present in many places in Bulgaria. It is expressed most at all in the form of hate speech against Muslims and Islam, and to a lesser degree in the form of discrimination and hate crimes.

**Jehovah’s Witnesses**

Two Jehovah’s Witnesses female followers were attacked on 1 July in Nova Zagora. A young man caught up with them while they were walking in the street and hit them with his fists. Both women sustained bruises. When the offender was arrested by the police, it became clear that this was not his first act of violence against followers of this religious community. On 29 June, he insulted two other people on the street. The following day, 30 June, another two were preaching in the same area. When they reached the attacker’s door and he found out who they were, he pushed one of them down the stairs.

In the past year, incidents occurred in Petrich, Varna, Nova Zagora, Erden and Sofia, in which Jehovah’s Witnesses representatives were intimidated and insulted. On 19 May, a prayer home of the organisation was vandalised following an online publication of the *Struma* newspaper alleging that Jehovah’s Witnesses are ‘hooking up people and inciting them to commit suicide’. The windows of the leased property that was used as a place of pilgrimage were broken. Fearing future vandalism, the property owner terminated the contract with Jehovah’s Witnesses.

On 26 May, the police were called by a family in the Sofia’s Mladost 2 municipality. The family complained that two Jehovah’s Witnesses representatives tried to talk to them. Upon arrival, police officers roughly told the Jehovah’s Witnesses that they ‘have no legal right to preach in residential building entrances or over intercoms’, but only in the street. The police officers refused to identify themselves and said that this is just a warning, and that the next time they will resort to more severe measures.

Despite several rulings in their favour in 2018, Jehovah’s Witnesses report a lack of cooperation on behalf of state institutions. Local authorities provide some help but generally fail to prosecute attackers and to protect victims.

**Anti-Semitism**

For a second year in a row, Sofia’s mayor Yordanka Fandakova prohibited the torch rally in memory of General Hristo Lukov. The so-called Lukov March is organised by the Bulgarian National Union since 2003. General Lukov is famous for its close ties with the nationalist regime of the Third Reich and was the last head of the Union of Bulgarian National Legions, a pro-fascist nationalist organisation that existed until the mid-1940s. The Municipality of Sofia announced that it had not agreed to a mourning torch procession, but only to the placing of flowers in front of General Lukov’s memorial plaque in Trakia Street. The ban was imposed because the police had information that foreign citizens involved in neo-Nazi groups from Germany, Sweden, Hungary and Poland will take part in the march with knives, batons, sprays, i.e. items prohibited at public events. The 2018 ban was also justified by Bulgaria’s presidency of the European Union and the expected arrival of foreign delegations in the centre of Sofia. For this reason, the Sofia Directorate of the Interior (SDI) developed and submitted to the Municipality of Sofia an opinion that the event, involving a procession and the laying down of wreaths at 1 Trakia Street, should be
prohibited. This time not only the SDI, but also the National Protection Service (NPS) gave a negative opinion on the march. In early February 2018, the President of the World Jewish Congress, Robert Singer, together with the President of Shalom, Alexander Oscar, in a conversation with Prime Minister Boyko Borissov and the Minister of Foreign Affairs, Ekaterina Zaharieva, urged them to take action against the big Nazi march. However, both in 2017 and 2018, the government did not take any further steps to oppose this event, the decision to ban it was appealed and dismissed by the court, and the march took place.

On 1 November, the Israeli newspaper *Haaretz* published the article 'The European Capital with a Swastika Epidemic'. According to it, 'a walk around the city streets reveals a shockingly large amount of Nazi imagery spray-painted on the walls with the authorities seemingly in no hurry to tackle the problem'. In a statement for *Haaretz*, the Israeli Embassy in Sofia said that “the Bulgarian government is committed to combating anti-Semitism” and that in this regard it has appointed a national coordinator to combat this phenomenon. This is Deputy-Minister of Foreign Affairs Georg Georgiev, who has been in charge of GERB’s youth organisation since 2014. However, the embassy added that Bulgaria needs to have “profound learning of the Holocaust” and be more active in combating “groups and individuals such as extremist football hooligans and far-right racist groups who, apart from everything else, also spread hate speech”.

On 27 January, International Holocaust Remembrance Day, the memorial of the Jews killed in the burned down concentration camp in the Kayluka area of the city of Pleven, on 11 July 1944, was desecrated by inscriptions sprayed in red paint: ‘Enemies of Boris III’, ‘the Tzar is not a fascist’, ‘lustration’. In the early hours of 2 February, the Bratska Mogila memorial in Plovdiv was painted with swastikas and insulting political calls. In both cases, the perpetrators were not identified.
Chapter 8.
FREEDOM OF EXPRESSION

The collapse in freedom of expression in Bulgaria continued in 2018. The year was marked by continuous, targeted attacks by the government against critical publishers. At the same time, government-friendly media were rewarded by the government with advertising and media coverage contracts, including for promoting the Bulgarian Presidency. Funds were funnelled to publications, which disseminated fake news. For yet another year in a row, we witnessed unprecedented political pressure, attacks and threats towards journalists and media. There was no real positive development with regard to the opaque ownership and funding of media, the wide suppression of ethical rules, and the lack of distinction between editorial and paid content. Fake news became part of the new ‘normal’. Media continued to provide uncritical floor to hate speech.

Overall situation

For another year in a row, Bulgaria remained the country with the least free media in the European Union, according to Reporters Without Borders’ Freedom of Expression Index. The country ranks 111th in media freedom from a total of 180 countries, which places it between Bolivia and the Central African Republic. In the previous report, Bulgaria was ranked 109th; in 2006, the country occupied 35th place. In 2018, Bulgaria ranked lower than any country on the Western Balkans. It is also the only EU country in the “difficult situation” category. This is the penultimate of five categories in the index, and it hosts three other European countries: Turkey, Russia and Belarus.

The part dedicated to Bulgaria in the report is entitled ‘Opaque and corrupt’, and states that “corruption and collusion between media, politicians and oligarchs is widespread”. The report also highlights:

“The most notorious embodiment of this aberrant state of affairs is Delyan Peevski, who ostensibly owns two newspapers (Telegraph and Monitor) but also owns a TV channel (Kanal 3), news websites and a big chunk of print media distribution. The government continues to allocate EU funding to media outlets with a complete lack of transparency, with the effect of bribing recipients to go easy on the government in their reporting, or to refrain from covering certain problematic stories altogether. At the same time judicial harassment of independent media, such as the Economedia group, has increased. Threats against reporters have also increased in recent months, to the extent that journalism is now dangerous in Bulgaria.”

Reporters Without Borders’ Executive Director Christian Mihr, said in an interview for Deutsche Welle: “It’s a fact that there are smearing and defamation campaigns led by government

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representatives in Bulgaria. There have been some dirty campaigns by the government on several occasions.\textsuperscript{57}

In November, the EC placed a special focus on the state of the media environment in Bulgaria, in the framework of its regular CVM report. The report notes the substantial deterioration of the environment, as well as the opaque ownership and the poor implementation of journalistic standards in the Bulgarian media sector.\textsuperscript{58} The EC report focuses on the risk of restricting public access to information because of the limited number of independent sources. The EC also notes that “the media environment has a specific significance for judicial independence, with targeted attacks on judges in some media connected to intransparent interests, and with difficulties in finding effective redress” and that “the ability of the media, as well as of civil society, to hold those exercising power to account in a pluralistic environment free from pressure is an important foundation stone to pursue the reforms [...] as well as for better governance more generally”.

The EC findings were downplayed by Prime Minister Boyko Borissov and Foreign Minister Ekaterina Zaharieva. According to Borissov, Bulgaria does have media freedoms, because ‘cartoons have been drawn in Bulgaria every day, for years’, while Zaharieva said that ‘the report’s criticism is not aimed at the government, but to media self-censorship and self-control’.\textsuperscript{59}

As early as the beginning of 2018, the Leipzig-based European Centre for Media Freedom (ECPMF), called the EU to monitor how European funds are allocated to media in Bulgaria because ‘part of the European Union funds for projects in Bulgaria are distributed exclusively to media friendly to the authorities’.\textsuperscript{60} The Centre recommended to the government “to promote pluralism and diversity in the media market, because in Bulgaria it could be described as almost monopolised”, and to take the issue of the safety of journalists very seriously, by ensuring "comprehensive and effective investigations of crimes against journalists".

The final statement of the International Conference on Media Freedom and Pluralism, held in May in Sofia and organised by the European Newspaper Publishers’ Association, the European Federation of Journalists, the European Magazine Media Association and the Bulgarian Publishers’ Union, states that:

“Media freedom in Bulgaria has been deteriorating at an alarming rate in the past years. There is a growing political pressure and an increasing number of physical threats against investigative journalists, publishers and independent media. The main instrument for exerting pressure is the concentration of media ownership, economic dependencies and other forms of political control over the majority of the media landscape and a monopoly on media content distribution channels. The model also includes a strong influence on the government, the prosecution and the judiciary, as well as control over most of the independent regulators. All

\textsuperscript{57} 'A depressing 111th place for Bulgaria', Deutsche Welle, 25.04.2018, available at: \url{https://p.dw.com/p/2wbB0}.


\textsuperscript{60} “European media Centre calls the EU to monitor how European funds are allocated to media in Bulgaria”, Dnevnik.bg, 25 January 2018, available at: \url{https://www.dnevnik.bg/3118832}. 
this is a huge political and business conglomerate led by the incumbent politician, a former magistrate, a businessman and media owner, Delyan Slavchev Peevski. [Boyko Borissov] enjoys the comfort of the media controlled by Peevski. Prime Minister Borissov not only consistently refuses to acknowledge that there is a threat to media freedom, but plays a key role in increasing Mr Peevski’s access to public resources, while at the same time providing him with additional institutional repression tools, including legislative solutions used against independent media. ⁶¹

The results of the 2017 Media Pluralism Monitor, presented at the end of 2018, show significant media environment risks in Bulgaria. ⁶² There is a noticeable increase in risk in the areas of fundamental protection of the freedom of expression (35% in 2016, 41% in 2017), social inclusion and minority group access to media (64% in 2016, 73% in 2017) and political independence of the media (56% in 2016, 63% in 2017). The highest individual risk levels were found in the indicators on the distribution of state advertising, on the concentration of ownership, on the intervention in editorial content and on the state of media literacy.

According to a study by Alpha Research commissioned by the Konrad Adenauer Foundation and presented in November 2018, almost two thirds (63%) of the citizens in a national representative survey said that the Bulgarian media were dependent. Only 10% collectively represent the group that believes there is complete media independence (1%), or that the journalists cover events rather truthfully (9%). ⁶³

Legislation

The media act tabled by a group of MPs from the Movement for Rights and Freedoms, including Delyan Peevski, was adopted in November 2018 at second reading. ⁶⁴ The Association of European Journalists - Bulgaria (AEJ - Bulgaria) raised a number of questions about the uncertainties in the actual application of the law, and contested the high amount of foreseen penalties (5,000 EUR for a first-time violation and 10,000 EUR for a second one). ⁶⁵ AEJ - Bulgaria also drew attention to the obligation for the media to provide the State information about individuals who have donated even small amounts, which may result in the discouragement of donors, constitutes an administrative burden and, in general, threatens independent media sustainability.

Amendments to the Personal Data Protection Act were adopted by parliament in early 2019. ⁶⁶ They stipulate that the processing and the disclosure of personal data for the purpose of journalism, as well as for academic, literary or artistic expression, shall be lawful subject to respect for privacy. According to experts, the amendments open the door to checks on media publications.

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⁶³ “The media are dependent, say 63% of Bulgarians in an Alpha Research study”, Dnevnik.bg, 21 November 2018, available at: https://www.dnevnik.bg/3346375.
⁶⁴ Amending and Supplementing Act to the Mandatory Deposit of Printed Works and Other Works Act (promulg. SG No 94 of 13 November 2018).
Criteria are foreseen to assess whether there is a balance between the freedom of expression and the right to protection of personal data; lawyer Alexander Kashamov from the Access to Information Programme called them too broad and subjective. AEJ - Bulgaria urged President Radev to veto the law, which he did at the beginning of February with the reasoning that the 10 criteria set out unnecessary over-regulation. The requirement to meet these criteria, even individually, constitutes a restriction.

Attacks, assaults, intimidation

In the course of the year, we witnessed threats and attacks against journalists. In May 2018, journalist Hristo Geshov from the About the Truth website was attacked in front of his home in Cherven Bryag. "I associate this attack a 100% with my investigations and referrals to the competent authorities against the local authorities in Cherven Bryag", wrote Mr Geshov in Facebook.

In August, government press service expert Lyubomir Methodiev was disciplinary dismissed after he punched Elena Krumova, a reporter from The Monitor, while she was performing her duties.

Political pressure against journalists continued in 2018. Deputy Prime Minister Valeri Simeonov preserved his job after the inadmissible attacks against journalists in the autumn of 2017. In March, the leader of the Ataka party and coalition partner in government, Volen Siderov, while a guest in a show of Bulgarian National Television's Channel 1, asked whether Goran Blagoev, a journalist of the same channel, is still the anchor of the Faith and Society show, ending his statement with the rhetorical "Really?". In July, The Telegraph and The Monitor, two media close to the government, published a material urging the bTV television to be “cleansed” of journalists like Svetoslav Ivanov.

The police and the court continued to be used as a tool to exert pressure on uncomfortable journalists. During an investigation into abuses of euro funds, in September 2018, journalist Dimitar Stoyanov from Bivol, and his Romanian counterpart, Attila Biro, were illegally arrested by
the police in Radomir. Their detention raised a wave of public discontent and brought back to the agenda the issues of the violation of the rights of citizens, journalists, as well as the drastic restrictions on independent journalism in Bulgaria. The detainees were subsequently released. According to their own statements, they were arrested on the night of Thursday together with a lawyer on the basis of a report which they themselves had sent to the Ministry of the Interior. AEJ - Bulgaria commented that actions of law enforcement authorities raise doubts about state arbitrariness and an attempt to restrict media freedoms.

In November, Blagoevgrad News cameraman Assen Dimitrov was subject to a police check after covering a protest close to the city. Although he indicated that he had attended the protest in his capacity of cameraman, Dimitrov summoned to the police station and the city, where he was served a police warning.

In January, the Burgas District Court ruled against two websites for quoting press releases of the Ministry of Interior and the Public Prosecutor’s Office. AEJ - Bulgaria called this scandalous. BurgasNews and BurgasInfo were convicted in the first instance in cases filed by Petar Nizamov (Perata). The applicant claims that the two editions violated the presumption of innocence because in March 2012, referring to press releases of the Ministry of Interior and the prosecutor’s office, they informed the public that Nizamov was accused and detained for an incident in a Burgas night club. The court accepted the claims in part and sentenced the two media to pay a total of BGN 2 500 in compenation to Nizamov plus the expenses associatated with the case.

A claim for 2,000 EUR, a part of an overall claim for 25,000 EUR, was filed against Blagoevgrad investigative journalist Marieta Dimitrova by the leader of the Green Party group in Blagoevgrad, Andon Todorov, for 'anxiety and suffering' caused to him by comments Dimitrova made in a publication.

In July, Reporters Without Borders published a report on the state of play of investigative journalism in Bulgaria. It says that the country’s investigative journalists face a wall of silence, authorities with 'eyes wide shut', or they are followed, harassed and deterred by smear campaigns, and called 'enemies of the state'. Part of the causes: corrupt editors and publishers, pressure from the authorities, and media ownership concentrated in the hands of oligarchs. The organisation recalls that the Bulgarian Criminal Code allows to launch an investigation against a journalist or

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newspaper only by lodging a defamation complaint with the prosecution; and that civil and criminal law procedures are often used by public officials to exert pressure on journalists and to exhaust them financially.

**Pressure on publishers**

In January 2018, the Union of Publishers in Bulgaria (UPB) stated that, in addition to a strong public response, in order to preserve what little freedom of speech is left, there is also a need for external interference and support from European institutions.\(^2\)

In early 2018, UPB presented its White Paper on Media Freedom in Bulgaria, a project of journalists and editors from UPB’s member media.\(^3\) It states that "if the different sets of problems illustrated in this White Paper are not addressed in a timely manner, the free media in Bulgaria will disappear completely", and states that "the main problem is the use of the prosecution headed by Sotir Tsatsarov, and hence many other state institutions, as instruments of pressure and censorship, as a means of repression of political and public opponents. This blocks the functioning of the entire democratic process."

In November 2018, following a series of attacks against Ivo Prokopiev, co-owner of Econo media, the group publishing Dnevnik and Capital,\(^4\) Reporters Without Borders disseminated a sharp protest, calling on the Bulgarian authorities to cease harassing Prokopiev. Pauline Ades-Mevel, Head of EU and Balkan desk, said: "Any opposition media opposition that dares to criticise the government [of Bulgaria] or government oligarchs becomes subject of attacks".\(^5\)

**Quality**

The decline in media content quality in Bulgaria is a constant process. In 2018, scandalous speech continued to dominate the Bulgarian media, reaching a peak with regard to the Istanbul Convention.\(^6\) Sensationalism and catastrophes ruled the news flow for yet another year.\(^7\) The murder of journalist Victoria Marinova in October fuelled a wave of hasty speculations, including in media that provide quality content in principle.\(^8\) In September, the Electronic Media Council (EMC) refused to give a ruling on the participation in the Big Brother reality of former rapper Ivan Glavchev, known as Vanko 1 and sentenced in 2003 to 12 years of imprisonment for soliciting, on the grounds that the case did not constitute a violation of the media legislation.\(^9\) The launch of

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\(^{3}\) "How to solve the problems of the Bulgarian media", Capital.bg, 11 January 2018, available at: https://www.capital.bg/3110146.

\(^{4}\) "Several months later the prosecutor’s office announced an indictment of Ivo Procopiev", Dnevnik.bg, 26 October 2018, available at: https://www.dnevnik.bg/3334411.


\(^{9}\) “For the media regulator, the participation of Vanko 1 in VIP Brother is not a problem, but a provocation”, Dnevnik.bg, 26 September 2018, available at https://www.dnevnik.bg/3316845.
the news activity for Bulgaria and Romania of Radio Free Europe, “as an attempt to strengthen the media situation in both countries”, may be noted as a positive development during the year.90

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Chapter 9.
FREEDOM OF ASSOCIATION

2018 marked a deterioration in freedom of association in Bulgaria. The main reasons for this were the chaos and the lack of capacity at the Registry Agency to implement standards related to freedom of association, as well as restrictive and discriminatory solutions that were adopted with regard to the registration of several associations of Macedonians in Bulgaria.

The new rules on the registration of non-profit legal entities came into effect at the beginning of 2018. It was created by amending the Non-Profit Legal Entities Act and the Commercial Registry and Registry of Non-Profit Legal Entities Act in December 2016. Instead of in court, non-profit legal entities now have to register with the Registry Agency at the Ministry of Justice. The requirements for non-profit legal persons to register and to declare changed circumstances were set out in a specific ordinance which was issued together with the adoption of the laws. It formulates requirements that are much more in number and more difficult to implement than those required for the same actions under the old rules. This, combined with the low capacity of Registry Agency officials to apply the standards of the right to freedom of association, led to chaos and arbitrariness in the Agency's actions, especially in the first half of 2018.

According to the information submitted by the Bulgarian government in November 2018 in relation to the review of the implementation of the group of decisions *UMO Ilinden and others v. Bulgaria* by the Committee of Ministers, 1,615 applications for the registration of non-profit legal entities were submitted in the period 1 January — 14 October 2018, of which 805, or about 50%, were rejected. Such a high proportion of rejected applications is an attestation of opacity and arbitrariness in the application of the law and represents a serious deterioration in the situation of freedom of association in Bulgaria.

The deterioration did not bypass the Macedonians in Bulgaria, a group which is traditionally discriminated in the exercise of its right to freedom of association. On 6 March, in Sandanski, the UMO Ilinden organisation made another attempt to register having being refused on multiple previous occasions by the Bulgarian judicial authorities. On 11 June, its registration was denied by the Registry Agency on three grounds: 1) the application lacks a copy of the by-laws, in which the statutorily required personal data is deleted; a list of the constituents, with the handwritten signature of each individual, and a copy of the constituent decision separately from the articles of association; 2) lack of clarity and contradictions in the attached documents on who will represent the organisation; 3) contradiction between one of the objectives of the association, which allows for running for election by nominating independent candidates for MPs and municipal councillors, and Article 151 of the Electoral Code and Article 12 § 2 of the Constitution of the Republic of Bulgaria, according to which the associations of citizens, including trade unions, cannot set adopt political objectives and pursue political activities inherent only to political parties. In judicial

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appeals, the first two grounds were dismissed by the courts. However, by decision of 31 October 2018, the Sofia Appellate Court confirmed the refusal on the basis of the third ground only. It agreed that the wording of the by-laws “could be interpreted as meaning that the association itself would nominate independent candidates for MPs, municipal councillors and mayors, which is contrary to the law”. This wording, according to the court, “would point out to the conclusion that the association will be involved in political activities” which a civil society association cannot carry out. However, a similar argument was examined by the European Court of Human Rights in its first ruling related to the denial of registration to OMO Ilinden of January 2006. In this case, the Court stressed out that the findings of the national courts concerning the alleged material contradiction between Ilinden’s by-laws and the Constitution and the laws of the country at that point were not sufficient justification for the contradictory interference.93

Another organisation of Macedonians in Bulgaria, the Society of Repressed Macedonians in Bulgaria, Victims of the Communist Regime, was also not registered during the year, despite several attempts. In each of them, the Registry Agency found different technical reasons to refuse registration. Although it appealed the refusals, by the end of 2018 this organisation was not able to obtain a final judgment on these refusals.

On 11 January, the ECtHR ruled on three applications concerning the right of freedom of association of Macedonians in Bulgaria. The cases United Macedonian Organisation Ilinden and Others v. Bulgaria (No 3)94 and the case Yordan Ivanov case and Others v. Bulgaria95 refer to the refusal of the Bulgarian courts to register the OMO Ilinden non-governmental organisation on several occasions during the period 2010-2015. The applicants argue that the refusal of Bulgarian courts to register Ilinden violates their right to freedom of association. They also argue that the refusal, which they believe is based on the Bulgarian state’s policy to deny the existence of a Macedonian minority in Bulgaria, is discriminatory. In both judgments, the ECtHR found a violation of Article 11 (freedom of assembly and association) of the Convention. The Court held that the refusal to register Ilinden represents a restriction of the right to freedom of association of both the organisation and its members. It is not necessary to examine whether this restriction is ‘prescribed by law’ or whether it pursues a legitimate objective, because even if it does, it is not ‘necessary in a democratic society’. Refusals of registration were given on grounds which were previously considered and rejected by the ECtHR. Due to the repeated violations, the Court awarded substantial damages in both cases.

The third case concerning the Macedonians in Bulgaria is Kiril Ivanov v. Bulgaria.96 The applicant claims that a rally planned for 30 September 2006, in the organisation of which he was involved, was prohibited by the authorities and he had no effective internal means of protecting his right to peaceful assembly. He claims that this was due to the Macedonian ethnic self-awareness of the people who intended to take part in the mass event. The applicant alleges that another rally planned for 12 September 2007, for the organisation of which he was also helping, was banned by the authorities for the same reasons. The ECtHR held that it was not necessary to examine whether


the restriction was ‘prescribed by law’ or whether it pursued one or more of the purposes set out in Article 11 § 2 of the Convention, because in any event it was not ‘necessary in a democratic society’. The mayor and the court, which confirmed his decision, justified the prohibition by referring to a municipal event that was taking place at the same time and in the same place, and to the need to protect the participants in that event from being exposed to conflicting statements on historical issues treated as sensitive. The ECtHR found that these grounds were insufficient for the purposes of Article 11 § 2. The responding state did not provide any information as to logistical or security-related difficulties, which two parallel events could create. Furthermore, it is important to note that on a previous occasion when the authorities do not prohibit a rally organised by Ilinden, they allowed a counter-demonstration on the same day. The ECtHR also found a violation of Article 13 of the Convention.
Chapter 10.
CONDITIONS IN PLACES OF DETENTION

In 2018, the material conditions in prisons improved. The conditions at the police detention facilities, however, continued to be in many cases inhuman and degrading. The preventive and compensatory remedy for torture, inhuman and degrading treatment introduced in 2017 revealed serious problems in its functioning.

Prisons and prison dormitories

In 2018, for a fourth year in a row, the trend towards a decrease in the number of prisoners in the country continued. According to the Directorate General on the Execution of Sentences (DG ES), the average number of inmates in 2018 was 6,977, of whom 217 were women (see Figure 1 below).

![Figure 1. Average number of inmates for the period 2009–2018](image)

As of December 2018, the country operated 12 prisons (main prison buildings), 7 prison hostel of a closed type, 19 prison hostels of an open type and two reformatory institutions for minors at the Vratsa and Sliven prisons. Two new dormitories were opened during the year, one of the open type at the Burgas prison, and one of the closed type in Boychinovtsi. Before the beginning of the school year, in August 2018, the reformatory home for minors in Boychinovtsi was moved to the prison in Vratsa. This was done following amendments to the Execution of Sentences and Detention on Remand Act, by which the correctional home was transformed from an independent structure into a prison unit. The buildings of the Boychinovtsi home were used to create a closed-type dormitory to the prison in Vratsa, in order to reduce the overcrowding of its prison structures.
In addition to the investigation detention facilities, which are used for the detention of accused persons, prisons are also used to detain people without an effective sentence: accused and defendants. Their number in recent years has not changed significantly (see Figure 2).

![Figure 2. Number of accused and defendants in prison by 31 December, for the period 2011–2018](image)

Source: DG ES.

In 2018, the number of inmates in closed-type dormitories did not change, unlike the number of inmates in open-type dormitories. In 2017, an amendment to the Execution of Sentences and Detention on Remand Act led to a rapid increase in the number of inmates accommodated at prison dormitories of the open type, but in 2018 there was a decrease in this number (see Figure 3).

![Figure 3. Number of inmates in closed and open-type prison dormitories by 31 December, 2011 - 2018](image)

Source: DG ES.
Together with the general prison population, the number of juvenile prisoners also decreased. Compared to 2013, in 2018 the number of newcomers (accused, convicted and defendants) in juvenile correctional homes fell by half, from 90 to 44. By the end of December, the number of juvenile prisoners was 25, of whom one was female. The material conditions in the new correctional facility for boys at the prison in Vratsa are good, but as of September 2018, the building stock was insufficient to provide adequate conditions for group activities, creative, cultural and sporting activities. The facility does not have a library, has no reception room, no room for appointment, no sports room. All juveniles attend a special school, which is specially set up for them in the courtyard of the correctional facility.

In recent years, the ECtHR judgment on the case of Neshkov and Others v. Bulgaria gave a major push for legislative changes and improvement of prison material conditions. The main problems of Bulgarian prisons, according to the Court, were overcrowding, poor material conditions and hygiene; it was therefore recommended to carry out extensive renovation works or to replace some of the prisons. This gave impetus to large-scale reconstruction projects in detention, which were funded by the budget and by the Norwegian Financial Mechanism. Another major recommendation of the Court was to establish means for the protection of prisoners against poor material conditions, that would be both preventive and compensatory. Legislative amendments in the beginning of 2017 introduced a preventive and compensatory remedy against poor detention conditions, as well as a minimum floor space standard per inmate of not less than 4 m². In 2018, however, this standard was not respected in certain prisons. The Ombudsman’s National Preventive Mechanism found in its report of July 2018 that violations of this standard had occurred at the prisons in Pazardzhik, Plovdiv and Sofia. The Council of Europe’s Committee for the Prevention of Torture (CPT) also reported a similar violation: in its report to the Bulgarian government of 4 May 2018, it reported overcrowding in the 2nd, 5th, 7th and 12th wards of the Sofia prison. Overcrowding and the absence of individual sanitary facilities in the cells were established by the BHC in some open and closed-type dormitories, such as Keramichna Fabrika, Kremikovtsi, etc. In October 2018, the Execution of ECtHR Judgments Department of the Committee of Ministers left the case of Neshkov and Others v. Bulgaria under “enhanced supervision” for failure to comply with the general measures prescribed by the Court.

In addition to overcrowding, the 2018 CPT report raised other serious issues of the penitentiary system, including: the proliferation of bed-bugs, the inadequate medical care, the restricted access to work and education, the restrictive conditions on visits, the overly restrictive detention regime for accused and defendants in police detention facilities, the violence among inmates, the insufficient number of prison staff. The mystery surrounding the construction of a new prison in Sofia was not resolved either in 2017 or in 2018. The need for a completely new prison building was identified and made public by the Ministry of Justice more than 15 years ago, when inmates initiate a protest against the deplorable living conditions. In 2017, the Ministry of Justice reported that the Norwegian Financial Mechanism would provide 25 million EUR to improve prison

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conditions, with a pilot prison with a learning centre to be created at the Kremikovtsi prison dormitory. In April 2018, the Minister of Justice reported that 35 million BGN (17.5 million EUR) have been allocated for the construction of a new prison in the Kremikovtsi area of the capital city, and added that the lot has been selected, the state property acts had been drafted, and the signing of a contract was pending. So far, however, the Ministry has not communicated why there has been no development with regard to the new prison project.

At the beginning of April 2018, two armed multiple offenders escaped through the central entrance of the Sofia Prison. The escape created tensions among law enforcement agencies and triggered a serious public debate, including on prison security. The examination of the case revealed severe omissions in the exercise of the duties and favouritism of certain prisoners. The head of DG ES and the Sofia prison warden were dismissed, while 14 officers were penalised for the escape.

Legislative amendments in early 2017 eased the conditions for conditional release and the inmates were allowed to personally address the court in this regard. In 2018, a total of 970 prisoners were conditionally released from prison, which is 25% less than in 2017, when the number released on this ground were 1,282. The statute of pardon, for which there is no clear set of rules, still does not function effectively. According to DG ES, only three prisoners were pardoned in 2018, although there were 396 requests to the presidential institution.99

According to the 2018 CPT report, corruption remains a serious problem in prisons. It quotes allegations that some staff requested payments to make a positive assessment of the prisoner’s conduct.100 In confirmation of this, in the middle of the year the court gave an effective sentence against the head of one of the open-type dormitories who, through an inmate serving as an intermediary, asked for and received bribes, in order to ensure employment and to give opinions to change prisoner status. As a result, the employee was sent as an inmate to the same prison he was working at for many years.101

In recent years, the most severe sentence in Bulgaria, life imprisonment without parole, was analysed in two BHC thematic studies. According to DG ES, as at 31 December 2018 there were 190 persons serving life sentences, of whom 61 without the possibility for parole. In a series of ECtHR judgments, including against Bulgaria, the Court ruled that the existence of this penalty in the Bulgarian Criminal Code leads to direct and indirect violation of Article 3 of the ECHR. In his studies, BHC proved that life without parole is in flagrant contradiction with European standards and recommended that it be eliminated from the Criminal Code. In 2018, the same recommendation was made once again by the CPT in its report to the Bulgarian government. In 2018, there was no substantial change in the number of employed inmates. According to DG ES, as at 31 December 2018 the total number of working prisoners was 3,366, of which 1,883 were in paid and 1,483 in unpaid employment. For another year in a row, the number of prisoners attending school is declining; as of 15 September 2018, there were 1,170, of whom 130 in first grade.

100 CPT (2018), op. cit., § 65.
101 “Boss takes 1,500 Euro per inmate to fix them with jobs. He will now occupy an adjacent cell”, www.24chasa.bg, 20 August 2018, available at: https://www.24chasa.bg/novini/article/7015927.
In trying to comply with the CPT recommendations to establish safeguards against ill-treatment of prisoners, registers of traumatic injuries began being kept at prison medical facilities. The implementation of this measure contributed to the reduction of violence, but in 2018 prisoners and lawyers continued to report use of physical force by prison staff. Most often cases of violence were reported at the hospital of the Sofia prison, against prisoners suffering from mental disorders. Violence between inmates themselves was also found during the year. In this regard, in its report to the Bulgarian government of 4 May 2018, the CPT recommended that prison staff should be periodically reminded that the mistreatment of prisoners is a criminal offence that needs to be sanctioned.

According to information provided by GD ES, after the introduction of the preventive remedy there were only three court orders in 2018 to prevent or terminate actions or inactions constituting a violation of Article 3 of ESDRA. On the other hand, a non-exhaustive overview of case-law in 2018 carried out by the BHC found six orders in which the court sustained the applicants’ requests for protection. In four cases, the administrative court obliges the prison to provide applicants with the necessary medical care (consultation with a doctor, surgery or dental treatment, accommodation in an external facility). In another case, the court ordered the termination of the practice to have the applicant handcuffed to the hospital bed during his treatment. Only one case of a court order concerning the termination of inhuman or degrading treatment related to cell overcrowding was found. The speed of preventive proceedings is a fundamental requirement for their effectiveness. According to the regulations, the court must rule on the inmate’s application within two weeks of being referred to. In practice, this deadline is not respected. One of the dispositions subject to analysis was given five months after the lawsuit was filed.

Regardless of the exact number of cases, it can be concluded that the preventive remedy has insignificant application. Some of the reasons for this may be attributed to the lack of obligation for prison authorities to inform about prisoners’ right to address a court, the virtually impossible access to free legal assistance for the purpose of filing a lawsuit, and the fear of reprisals.

According to DG ES, there were 175 newly launched cases for monetary compensation under the Responsibility of the State and the Municipalities for Damages Act (RSMDA) in 2018. The number of resolved cases was 132, out of which 56 rulings were in favour of DG ES and 76 against. It is striking that in 2018 the number of compensation claims has fallen dramatically, by almost 60% compared to 2017. It is also significantly lower (by 30%) compared to the number of lawsuits under SMRDA in 2016, when the special compensatory remedy for the protection of inmates did not exist yet.

The analysis of some of the 2018 case-law outlines at least two sets of issues related to the application of the compensatory remedy. Firstly, a significant number of cases are closed without

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examination of the substance, due to minor deficiencies in the claims, including of including unpaid state fee, unspecified monetary claim, addressing the claim to the wrong defendant. The reasons for termination are directly related to the vulnerable situation of the prisoners, which excludes free access to legal information for the purposes of self-preparation for the lawsuits, as well as a lack of sufficient financial means to cover fees and expenses for professional legal advice and procedural representation. Secondly, the Supreme Administrative Court establishes a shockingly low amounts of monetary compensation for non-pecuniary damages, by times lower than those of the ECtHR, which should serve as a reference for national courts. The review of the Supreme Administrative Court’s case-law shows that the average amount of the daily compensation for damages caused by inhuman and degrading detention conditions, including the failure to provide minimum floor space, access to sanitary facilities and running water, direct access to light, and a possibility for natural ventilation of the premises, amounts to between BGN 1 and BGN 2 daily (between 0.50 and 1 EUR).

In view of these findings, the effectiveness of the measures put in place in response to the pilot decision Neshkov and Others v. Bulgaria to protect against inhuman or degrading treatment in prisons seems to be strongly compromised.

Investigation detention facilities

Since April 2018, the long stay in a detention facility of two women who had held senior local government positions has highlighted the issue of the conditions in the places of detention and the treatment of the detainees. This refers to the widely reported in the media detention of the former mayor of Sofia’s Mladost municipality, Desislava Ivancheva, and of the Deputy Mayor, Bilyana Petrova. It was not until November 2018 that the numerous complaints filed by the two women, some of which were covered by the media, revealed that, on the one hand, the prosecution and the executive power, represented by the leadership of the Police Detention Section in Sofia, did not see any violation of these standards. On the other hand, the Ombudsman’s photos of the cell of the two applicants showed conditions that were a violation of current European standards. The examination by the Ombudsman’s National Preventive Mechanism concluded that the detainees’ complaints about the poor sanitary conditions were legitimate: it was found that their cell had wet walls and wet spots due to leaks from the drainage system on the upper floor, the plaster was chipped and falling apart, and there was insufficient daylight and fresh air. With regard to these revelations, the Ministry of Justice declared that it’s calling an emergency meeting on the issue of detention facilities, but it never takes place after the apprehension measure against the two public figures was changed. Thus, as one newspaper reported, “the misery in the detention facilities comes to an end now that Ivancheva is no longer in them”.108 With the exclusion of the topic from the media space, it became clear that neither the Norwegian Financial Mechanism nor the judgments of the ECtHR nor the recommendations of the CPT can initiate a reform to improve the conditions in the detention facilities. However, the issue of the deplorable conditions in the detention facilities may preserve its relevance if other public figures who are subject to enhanced public attention continue to be held in them.

In 2018, the country had 32 functioning detention facilities, of which 26 stand-alone and 6 within prisons or prison dormitories. One detention facility in Dupnitsa was closed during the year, and at the beginning of 2019 it became clear that, by order of the Minister of Justice of 1 January 2019, the detention facilities of four other cities – Pernik, Targovishte, Razlog and Montana – are being closed. Among the reasons for their closure were the low workload, the reduction of administration and maintenance costs.\textsuperscript{109} The relocation of detention facilities to dedicated premises or hallways in the prisons, wherever possible, began in recent years, due to the inadequacy of the existing building stock. In 2018, premises were being prepared in two more prisons, and the relocation of the detention facilities to the prisons was pending in the cities of Sliven and Stara Zagora.

According to DG ES, the total number of detainees in detention facilities in 2018 was 12,618, of whom 1,002 foreign nationals. The average daily number of people in detention facility premises for the whole year was 951, and as of December 2018 they were 856 individuals.

Figure 4 below shows the number of persons in investigation detention facilities as of December, by year:

\begin{figure}[h]
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\includegraphics[width=\textwidth]{figure4}
\caption{Number of persons in investigation detention facilities by December 2018, by year}
\end{figure}

Source: DG ES

According to DG ES, the duration of detention in investigation detention facilities is as follows:

- up to 72 hours — 1,475 persons;
- up to two months — 10,340 persons;
- between two and six months — 1,650 persons;
- more than six months — 625 persons.

The maximum duration of the stay in an investigation detention facility can be no longer than one year and six months, but there were no persons in detention for more than one year in 2018. As in the previous year, according to DG ES, in 2018 overcrowding was observed at the investigation detention facilities in Ruse, Svilengrad, Vidin and Haskovo. As these detention facilities are located on the country’s borders, they have sometimes been used to hold a large number of persons at the same time, arrested for example for illegally crossing the border; in such cases, considerably more people were held in the cells than the number of beds available. Bulgaria's report to the Committee of Ministers of the Council of Europe on the implementation of the pilot judgment in the case of Neshkov and Others v. Bulgaria, which is monitored by the Committee of Ministers within the group of judgments Kehayov and Others v. Bulgaria, makes it clear that when the investigation detention facilities' capacity was calculated on the basis of 4 m$^2$ of floor space per person, overcrowding was found at a total of 11 investigation detention facilities. Already in 2017 there were plans to carry out activities leading to the improvement of the conditions in the investigation detention facilities. In 2018, only the investigation detention facility in Dupnitsa was closed, and the investigation detention facilities in Sliven and Stara Zagora were to be moved to the respective prisons. A series of planned activities are still pending: the relocation of the Kyustendil investigation detention facility to the Bobov Dol prison; the relocation of the investigation detention facilities in Veliko Tarnovo and Gabrovo to a new building in the Velko Tarnovo prison dormitory; the construction of a new investigation detention facility in Silistra; and the repair of several investigation detention facilities in regional capital cities. The investigation detention facility in Sandanski was also to be moved to a new building of the investigation detention facility in Petrich, but the latter is not functional yet.

In contrast to prison conditions, the cells in most investigation detention facilities cannot provide sufficient floor space, lighting, ventilation, conditions for exercise and communication options. The country’s largest investigation detention facility, the one on G. M. Dimitrov Boulevard in Sofia, has cells of 15 m$^2$ which until recently were used to hold up to 5 detainees; in 2018, they were used to hold no more than 4 detainees. In its report of 4 May 2018 to the Bulgarian government following its visit to Bulgaria, the CPT found that 2 m$^2$ of each cell in this investigation detention facility are unusable because of a grid along the entire width of the cells in front of the windows. Of a total of 80 cells in the detention facility, only ten designated for women and minors have access to a seated toilet. The remaining toilets in the cells are of an Asian type (squatting) making their use by people with lower limb disabilities. Apart from insufficient light and ventilation, a major issue in the investigation detention facility is the presence of toilets that do not provide the necessary privacy: the partition is 1.2 m high. In this regard, the Committee recommended that all WCs would be fitted with a full partition (up to the ceiling).

The material problems of the investigation detention facilities' system remained unresolved in 2018. In most investigation detention facilities that are not located in a prison there is insufficient daylight because they have no external windows. The investigation detention facility in Gabrovo,
which is below ground zero, is still being used. The cells in many of the old investigation detention facilities are not ventilated. Five of them do not have any exercise ground outside the cells and do not provide the necessary outdoor stays. In ten investigation detention facilities the exercise grounds are of the closed type, with empty rooms used for the purpose. In 17 investigation detention facilities the cells have no toilets, there is a common sanitary unit; to use the toilet outside the access hours, the detainees need to bang on the door.

The conditions described above are in direct violation of Article 3 § 2 of the SMRDA, which contains a detailed description of the conditions that constitute torture and cruel, inhuman or degrading treatment. Due to these conditions, detained persons could claim compensation for the treatment they were subject to in the investigation detention facilities. DG ES statistics, which shows that in 2018 there were 14 suicide attempts and one fatality, is a testimony of the inhuman treatment in the investigation detention facilities.

The regime in the investigation detention facilities remained one of the most significant defects of the detention under remand measure. In essence, it is similar to the special regime for persons presenting a real risk to prison security. The regime in the investigation detention facilities comprises accommodation in permanently locked rooms for 23 hours a day, except for an hour daily of outdoor stay. Accused and defendants detained in investigation detention facilities do not have access to employment, education, training, sports or other useful activities outside the cell. The CPT defines this regime as unacceptable and makes repeated recommendations to Bulgaria to make the same the regimes of unconvicted detainees and convicted prisoners.

The lack of reforms in the investigation detention facility system forced the Committee for the Prevention of Torture to recommend that the Bulgarian authorities gradually phase-out all investigation detention facilities in Bulgaria.112 In 2018, this recommendation, as well as most of the recommendations made by the European institutions, continued to be disregarded by the executive power in the country.

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Chapter 11.
Protection from discrimination

In 2018, as in previous years, several groups within Bulgarian society faced systematic discrimination in a number of areas of public life. These groups were the Roma, LGBTI people, refugees and migrants, as well as Bulgarian citizens who self-identify as Macedonian and Pomak. Roma face systematic discrimination in particular in the fields of education, housing, health and labour, and in the criminal justice system. Legislation, practices and public attitudes towards LGBTI people were also discriminatory.\(^\text{113}\) The Roma, Muslims, LGBTI people and migrants were the subject of systematic hate speech that remained unpunished. The Bulgarian state does not allow the recognition of the identity of the Pomaks. The official policy is based on the allegation that Pomaks are Islamised Bulgarians. It is imposed in the public education system and in the propaganda literature. The expression of Pomak identity is not tolerated and is considered a betrayal. However, very few of the problems faced by these communities were reflected in the practice of official anti-discrimination institutions. There are many reasons for this. They are rooted both in the mistrust of their capacity and in the inadequate access to legal assistance of those affected.

In the course of the year, the case-law related to the Protection against Discrimination Act (PADA) and other laws governing equal treatment marked some progress in areas where progressive case-law has been observed for years (e.g., protection of disabled persons against discrimination), but at the same time exacerbated certain malpractices.

The SAC is the cassation court for the decisions of the Administrative Courts on complaints against CPAD’s decisions. The SCC is the cassation court in cases brought before a district court under the Protection against Discrimination Act.

During the year, the highest courts’ case-law on protection from discrimination based on gender and sexual orientation did not provide any outstanding judgments. This chapter will look at the case-law related to other main grounds.

General issues

In March, SAC ruled in a case in which the cassation applicant passed away before the review of the cassation complaint.\(^\text{114}\) The Court ruled that the protection against all forms of discrimination is a personal, non-inheritable and non-transferable right of the physical persons referred to in Article 3 § 1 of PADA, and that, after the death of its bearer, this right does not pass on to his or her successors. In the court’s reasoning therefore, the proceedings should be terminated on the basis of the lack of legal personality of the complaining party and the absence of reasons for his successors to take his place.

\(^\text{113}\) See Chapter 16, Rights of LGTBI people.

In May, SAC ruled on the question of the request to suspend the provisional enforcement of an involuntary administrative measure imposed by CPAD. The proceedings concerned the contesting of a CPAD decision by a community centre, for which the Commission had found that the existence in its by-laws of the applicant’s place of residence as a prerequisite for membership was discriminatory. CPAD prescribed the community centre to amend its by-laws by deleting this criterion within a period of two months. The community centre motivated its request to suspend the implementation of the contested decision with the short period of time given for the implementation of the prescription. The court of first instance sustained the request, arguing that compliance with the time limit is uncertain, since the enforcement requires legal and organisational changes subject to paid registration. SAC repealed this decision and ruled that, since it was provided for in a special law, the request to suspend the provisional enforcement under Article 47 § 2 and § 3 of the Protection against Discrimination Act also falls under the rules and the grounds of Article 166 § 2 and § 4 of the Administrative Procedures Code. This rule expressly stipulates that the court shall review a request to suspend provisional enforcement allowed by law only on the basis of new circumstances, i.e. arising after the challenged act has been issued. The burden of proof on such new facts and circumstances and their effects on the legal sphere of the act’s recipient fall on the person requesting the suspension. The legislator requires that the damages be caused by the provisional enforcement, not by the act. In the case at hand, however, the community centre did not indicate any circumstance that had occurred after the issuance of the contested act which would be able to generate significant or difficult to remedy damages from the provisional enforcement. Instead, it had claimed damages caused by the enforcement of the act, not by any new circumstances, and namely, the period for the enforcement of the compulsory prescription. Arguments relating to the time and cost of registering the prescribed changes to the by-laws, as well as arguments with regard to overriding interest in stopping the enforcement of the act, were not provided by the community centre, as indicated in the reasoning of the court of first instance. The court has incorrectly accepted that the prescribed two-month period for the enforcement of the prescription in question did not allow the applicant to comply with it. This time limit relates only to organising and holding a general assembly of community centre members, but not to consequent actions of registering changes in by-laws.

In July, SAC ruled on another case concerning the provisional enforcement of a CPAD compulsory administrative measure. Pursuant to Article 77 of the Protection against Discrimination Act, provisional enforcement has been allowed for a Council of Ministers prescription to reinstate the part-time study of law, since its elimination constituted indirect discrimination on the grounds of ‘age’, ‘disability’, etc. SAC ruled that the importance of the public good protected in this manner cannot be invoked against the public interest in the foreseeability of the factual and legal consequences that will arise from the time between moment the measure was implemented and the final the outcome of the case (the substance of the matter, i.e. challenging the CPAD decision in the part which finds indirect discrimination, is not part of the procedure to suspend provisional enforcement) that will rule whether or not the prohibition of discrimination has been violated. The possible adjustment of legal effects in a direction opposite to the one originally set out by CPAD would cause significant and damage which would be difficult to repair, a precondition for the application of Article 166 § 2 of the Administrative Procedures Code.

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In June, SAC ruled on a case concerning the extent of the liability of the employer and that of an individual employee who has committed an act of discrimination. In this case, the court held that when the dismissal is found to be unlawful by the employer or by the court under Article 344 § 1 (1) of the Labour Code (LC), the worker or employee is entitled to compensation from the employer for the damage caused limited to the pecuniary damages under Article 225 of LC. The same holds true for legal acts governing the compensation when the unlawful termination of contractual relations was repealed. These rules are specific to Article 49 of the Obligations and Contracts Act. If the dismissed employee has suffered more actual damages, he may claim that they be compensated by the official who had signed the dismissal order, if this action has caused him tort. In this case, the claim is legally based on Article 45 of OCA and is filed against the issuer of the unlawful dismissal order. If the action on the dismissal is also found to be discriminatory, the special Protection against Discrimination Act is applicable, and the claims are reviewed under Article 71 § 1 (3) or Article 74 § 1, respectively, § 2 PADA, and may be filed both against the direct perpetrator of the discriminatory action and against the contracting legal entity. There is no limit on the type of damages for which compensation may be claimed: the general principle of Article 51 § 1 of OCA is that any damage that is a direct consequence of a damaging action is subject to compensation.

In October, SAC ruled on a case dealing with the exemption from fees and expenses under PADA. According to the decision, contesting a regulation as discriminatory is not exempt from fees and expenses under Article 75 § 2 of PADA, since the case for such a contest should be dealt with in accordance with Chapter X, Section III of APC. Unlawfulness of the regulation may be sought on the ground that it contradicts of higher-ranking act. However, this is a question of the substance of contesting the act itself or a provision thereof. The court of first instance therefore correctly concludes that the objection on the grounds of contradiction between a contested rule and PADA’s provisions does not define the procedural order in which the case is reviewed, and hence the rule for exemption from fees and expenses in proceedings before a court under PADA is not applicable.

Disability

In January, SAC ruled on cassation appeals against a Decision of the Plovdiv Administrative Court which sustained a complaint against the Municipality of Plovdiv by a person with a motor disorder who moves around in a wheelchair to find discrimination and award compensation for the non-accessible urban architectural environment in Plovdiv. In order to find a violation of the prohibition of discrimination, the court reviewing the case has resorted to the opinion of technical experts. The expert’s task was to check whether the environment is accessible by people with disabilities solely with regard to public buildings, transport facilities, streets and sidewalks, junctions and communal amenities in Plovdiv, seventeen in total. An individual conclusion was provided for each of these public places. The awarded compensation was EUR 1,750.

In January, SAC also ruled in a case challenging some provisions of the Implementing Provisions of the Integration of Persons with Disabilities Act. The Court found that Article 42 § 1 and § 3 contradict Article 24 § 2, § 25 and § 26 of IPDA. Article 42 § 13 of IPDA delegates to the competent

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117 SAC (2018). Decision No 144 of 08.06.2018 on commercial case No 4603/2017, 4th division.
authority the power to regulate the amount, the conditions and the procedures for granting, amending, suspending, terminating and renewing the social integration allowance. This allowance is monetary and intended to cover additional costs for transportation services, information and telecommunications services, training, balneotherapy and/or rehabilitation services, accessible information, rent of municipal housing, dietary and medicinal products. However, the implementing provisions adopt the so called ‘guaranteed minimum income’ (the minimum income of a person deemed necessary to cover basic living needs) as a basis for the calculation of the monthly social integration allowance. SAC found that this is not in line with the legal requirement, according to which only the individual needs of persons with disabilities are a criterion defining the amount of the social integration allowance. The allowance should supplement one’s own income and meet the specific needs of each person, as reflected in the social assessment. Fixing in the contested provisions of Articles 25 and 26 of the implementing provisions of the amount of the monthly allowance for transportation services and of the monthly allowance for information services as a percentage of the guaranteed minimum income means that every disabled person is entitled not to a supplement according their individual needs, but to an amount of the social integration allowance equal to that of all the other persons. SAC therefore repealed these provisions.

In the course of the year, SAC confirmed the case-law according to which employees with disabilities are subject to the protection under Article 333 § 1 of LC, although the Civil Servants Act (CSA) does not provide for protection of civil servants suffering from a disease under Ordinance No 5 of 20.02.1987 on diseases for which workers suffering from them are subject to special protection, nor does it refer to the Labour Code.\(^{121}\) This arises from the CJEU judgement on the case of Petia Milkova v. the Executive Director of the Privatisation and Post-Privatisation Control Agency (C-406/15), and from subsequent SAC case-law.

In April, SAC ruled on an appeal of the Sevlievo District Court against the decision of the Gabrovo Administrative Court, which found that the Sevlievo court had committed an act of discrimination against a person with motor disability by maintaining an inaccessible architectural environment in the court's building.\(^{122}\) In its defence, the district court argued that it was determined by a disposition that the cases to which the applicant was party were to be held in a chamber on the first floor of the court building, that the technical capacity of the building was limited, and that there were no funds for reconstruction. SAC found that in reality, despite the holding of the meetings on the first floor of the building, the applicant did not have independent, non-assisted access to the courtroom, and had to be carried by hand into the courtroom. SAC also found that the technical and financial difficulties concerning the access to the building were irrelevant to fulfilling the legal obligation to build an accessible architectural environment and should be adequately addressed, given the public service carried out by the court.

In April, SAC also confirmed the decision of an administrative court of first instance by which the mother of a child with special educational needs was awarded compensation for pecuniary damages caused by the refusal of the principal of a municipal kindergarten to admit the child for full-time attendance.\(^{123}\) The municipal kindergarten initially admitted the child for an hour a day

\(^{121}\) SAC (2018). Decision No 13700 of 08.11.2018 on administrative case No 8499/2018, 5-member panel and preceding case-law quoted therein.

\(^{122}\) SAC (2018). Decision No 4931 of 17.04.2018 on Administrative Case No 10370/2016, 5\(^{th}\) division.

on promises of a future full-time admission. However, the child was subsequently denied attending the kindergarten for more than one hour a day without an assistant hired by the parents, because of insufficient levels of social adaptation and difficult communication. The court awarded the plaintiff an amount representing the difference between the price of her son’s attendance of a private kindergarten and the price that would have had to be paid for the same attendance to the defendant during the period in which the child was attending the private kindergarten.

In May, SAC confirmed a SCAC decision sustaining a CPAD decision holding that by imposing a neutrally-formulated requirement for personal presence during the signing of telecommunications contracts with natural persons, the Telenor Bulgaria company had put persons with disabilities in a less favourable position, as they would not be able to personally sign such contracts: a violation of the prohibition of indirect discrimination under the Protection against Discrimination Act. SAC explicitly pointed out that, in order to find this violation, it was irrelevant under the substantive rules whether the perpetrator has had the intention to discriminate, i.e. intent does not matter.

In September, SAC sustained a decision of the Vratsa Administrative Court which confirmed a CPAD decision holding direct discrimination against a teacher with a disability working at a secondary school, due to the fact that she hired at 58% of the teaching hours, which determined her salary. According to the SAC ruling, five other teachers with reduced working capacity were employed at the school, but only the applicant among all employees, with or without disabilities, was to work significantly reduced hours. The decisions of CPAD and the courts in this case contradict the Protection against Discrimination Act. They do not take into account the factual statute of direct discrimination, which does not require unequal treatment in comparison with all other persons within a group subject to treatment by the defendant, but only in comparison to those persons who do not bear the protected attribute. This is because discrimination is treatment based on a protected attribute. Therefore, in order to have direct discrimination, the defendant does not need to have treated other persons bearing the same protected ground more favourably than the person who claims to be victim of discrimination. If other persons with disabilities were treated more favourably than the person with a disability who is applicant in a case, this means either that the controversial treatment is not based on a protective attribute (i.e. it is not discriminatory), or it had to be examined whether the specific damage to the person was not specifically targeted by the defendant’s conduct. In this case, CPAD and the courts neither complied with the former nor examined the latter.

Age

In March, SAC ruled on a complaint by a person complaining of, inter alia, discrimination on the grounds of age that occurred in the course of making the decision to prevent him from taking part in a competition for an assistant professor at the Varna Technical University. In this case, the reasoning is plagued by countless defects. Firstly, the court sets out the elements of the direct discrimination factual statute as follows: ‘[...] in order to establish direct discrimination [...] it should have been found: (1) different treatment of the person committed intentionally and (2) in relation, on the basis of a specific attribute among those listed in Article 4 § 1 of the Protection

124 SAC (2018). Decision No 6072 of 10.05.2018 on Administrative Case No 1225/2017, 5th division.
125 SAC (2018). Decision No 10724 of 03.09.2018 on Administrative Case No 2220/2017, 5th division.
126 SAC (2018). Decision No 4159 of 30.03.2018 on Administrative Case No 4591/2016, 5th division.
against Discrimination Act, i.e. demonstrating the direct causal link between that different, unfavourable treatment and the reason for it [...]’. And further: ‘the applicant’s duty is to present facts with regard to all elements of the alleged discrimination, which includes [...] and such with regard to the causal link between the manifested attitude and the relevant protected attribute.’ This ruling is not in line with substantive law. For direct discrimination to be established, at least three of the four elements of its factual statute must be present: attribute, controversial treatment and comparison of that treatment with another person (comparator) who doesn’t bear the protected attribute. The fourth element — the causal link — may, but does not have to be, proven in view of the statutory presumption introduced by Article 9 of PADA. These are the only elements of direct discrimination. Mental experiences, such as intent (‘to have been intentionally conducted’), are not part of this statute, and illegally burden the victims of discrimination with obligations to provide proof, while no such obligations are conferred to them by law. At the same time, the court shows a complete lack of understanding of the statute of the comparator by deciding: ‘denying [the appellant] participation in the competition on the grounds of non-compliance with the [university’s rules on academic posts] could be subject to the protection sought under PADA, if identical or similar circumstances existed with regard to the age of the other applicant who was admitted to the competition for the academic post ‘Associate Professor’ (our accent). This ruling is based on poor understanding of the standard prohibiting direct discrimination, which stipulates exactly the opposite — the victim and the comparator must bear the protected attribute with the opposite sign — a woman will be compared to a man, a man of Roma origin will be compared to people of other origins, a homosexual will be compared to non-homosexuals, etc.\textsuperscript{127}

**Race, ethnicity, nationality, origin**

In June, SAC ruled on a complaint by a group of persons of Syrian origin against a SCAC decision sustaining a CPAD decision establishing that all but one of them have not been discriminated against by former member of parliament and current talking head at the nationalist, party-owned Alpha Television, Magdalena Tasheva, in her statements against refugees made during three broadcasts in 2013.\textsuperscript{128} In a series of broadcasts, Tasheva presented Syrian refugees as bogus refugees, Islamists, extremists and criminals. She called them ‘freaks, ‘scum, ‘mass murderers’, ‘cannibals, ‘savages’, ‘Islamic fundamentalists fleeing justice’ and ‘lying to the authorities’, ‘odious low-level primates fleeing the law in Syria’ and who ‘have started to steal, fight’ in Bulgaria; who will ‘start raping, cutting heads’. Tasheva described the refugees also as ‘another invading wave of Islamisation’, ‘bringing in a huge, radical Islamic population — hostile to Bulgaria and to Christianity’. Tasheva believes refugees and Al Qaeda are the same thing, calls them ‘cuthroats’, and attributes them the goal ‘to modify the demographic [...] national and religious constitution, our national identity as Bulgarians and an Orthodox Christian people. To finish pilfering us [...]’. Refugees are also called ‘dense jihadi Arabic masses’, ‘brought in’ to ‘transform Bulgaria into a second Bosnia and a second former Yugoslav Republic of Macedonia [...]’ and after 25 years, these same aliens, mojahir, as called in the Koran, — because that’s how Islam is expanding, through mojahir, that is to say, migrants into new lands, this is an Islamic dogma’, to ‘wave in Sofia, the ‘Saudi flag’ in the alleged analogy with Skopje and Sarajevo. Tasheva directly calls the Bulgarians


\textsuperscript{128} SAC (2018). Decision No 7863 of 12.06.2018 on Administrative Case No 697/2017, 5th division.
to ‘organised riots’ and ‘uprisings’ against ‘the invasion of this Islamist scum in the form of Syrian refugees’. Her guest in the studio, Georgi Sengalevich, advisor to the Ataka Parliamentary Group, states that the refugees constitute the ‘Syrian free army’ and its ‘terrorist divisions’ that someone is ‘transporting’ to Bulgaria. He suggests that they ‘have committed a crime against peace; a war crime or a crime against humanity’. Sengalevich says that the refugees have led to an exacerbation of the criminal environment, i.e. that they commit crimes. He claims that the refugees have entered into ‘conflicts’ with the ‘Bulgarian population’, with which he believes they have an ‘apparent cultural, civilizational incompatibility.’ According to the applicants and the BHC which provided legal assistance in the case, these statements constitute ‘harassment’ within the meaning of PADA, of the whole refugee community, and simultaneously, ‘incitement to discrimination’ against them, within the meaning of the same Act. These statements create an offensive, humiliating and threatening environment not only for refugees from Syria, but also for all Muslims, other refugees and foreigners in general. The courts did not sustain the applicants’ complaints. SAC ruled that Tashheva’s statements “concern only those foreigners who, as a result of the events of 2013 in Syria, left their country and crossed the borders illegally”, and that “Neither from the statements quoted in the complaint to [CPAD], nor from the provided evidence, can it be concluded that the expressions used concern other groups of foreigners residing legally in the country”. In other words, the court finds it legitimate for them to be referred to as “illegal aliens”, “jihadists” and “cannibals” and be presented as a danger to national security. What is more, the court demonstrates complete detachment from reality showing a lack of awareness of the situation with the refugee influx in 2013, when not only Tasheva, but also many other political actors and media disseminated the view that anyone who crossed the Bulgarian border not at the dedicated border crossings is “an illegal immigrant” and a criminal. This view is widely shared even today, and is apparently also shared by the SAC, despite the provision of Article 279 § 5 of the Criminal Code, and despite the well-known fact that no country in the world issues asylum visas; refugees arriving through the Republic of Turkey from Syria, Afghanistan and other countries cannot be let through the border crossings as they have no way of obtaining documents for that purpose. The SAC decision then tries to exclude the applicants from the circle of interested parties. First of all, it does this with formalism, by indicating that most of them are not refugees, even though their original application contains a complaint of hate speech against refugees and all of Syrian origin, as well as Muslims. SAC omits to discuss this fact and concludes that the applicants have no right to complain. Then, relying on the perverse analysis of the facts in the file of the CPAD act, SAC accepts that Tasheva’s statements have not been addressed at all Syrians, but only at those who have been members of terrorist groups. And cynically reasons that the applicants did not identify themselves as bearers of a ‘member of a terrorist group’ attribute. This ruling loses touch with reality, in which almost the entire speech of Tasheva, accumulated multiple expressions and segments of her broadcasts, is downplayed at the expense of several relegations on her part, that not all of the Syrians were what she describes with their expressions. What is more, SAC adopts completely CPAD’s mistake to highlight the use of the word “Islamists” by the defendant, distinguishing it from the term “Islam”: a distinction made solely by CPAD, as in her broadcasts Tasheva doesn’t make it and doesn’t send such a message to her viewers. CPAD and the administrative courts completely ignore the social context of Tasheva’s statements and the impression that the speech leaves with the average viewer, perversely and pointedly finding in her statements nuances to which they then give excessive weight.

In December, SCAC repealed a CPAD decision in which the equality body holds that scholarships for Roma students awarded under a joint project of a private Roma educational fund and the
Ministry of Education as a measure to support the disproportionately affected by school drop-out Roma pupils are not discriminatory, as they constitute an incentivising measure within the meaning of Article 7 § 1 of PADA. Eligibility for receiving scholarships depends on a single condition: in the first year of the project the students need to have a grade point average of at least 3.50, and in the second year the amount of the scholarship is adjusted according to the achieved grades. To find that the granted scholarships did not constitute a positive action, SCAC took the view that the measure was not proportionate to the pursued objective. According to the reasoning of the decision, this is because it is not the only way to reduce the Roma students’ school drop-out rate. The court highlighted that poverty is not the only reason for Roma students not to attend school, pointing out that the lack of willingness is also a contributing factor. The court stated that the efforts to tackle the problem should be focused on this reason. The panel also adopts a comparator: other non-Roma children affected by poverty, who in order to be awarded a scholarship have to achieve much higher grade point averages. This ruling does not take into account the substance of the positive actions provided for by law, and therefore does not correctly apply it. Firstly, the comparison with someone else serves no purpose. The positive measures referred to in Article 7 of PADA preclude the general prohibition of discrimination and therefore the presence or the absence of a comparable relationship is an irrelevant matter which, in this case, the court takes into account in violation of the law. The presence of a comparator in a less favourable position does not lead to the conclusion that the measure is disproportionate or that it falls outside the admissible unequal treatment under Article 7 of PADA. On the contrary, the positive measures as a rule contain a certain degree of unequal treatment on the basis of a protected attribute. They do, by their very nature, attack inequalities that are based on a protected attribute, by turning out the optics of inequality “to the extent and for as long as these measures are necessary”. Secondly, the argument that people who are not bearers of a protected attribute are also affected by poverty is not related to the merits of the case. This is so because in practice every public phenomenon can be found in any public group. Such an argument would undermine any special measure and would make the special measures meaningless in principle, dead standards. According to the law, it is only relevant whether a measure such as the scholarship is excessive, i.e. apparently not relevant to the problem. The problem itself is a notorious. In its reasoning, the court has avoided this issue by simply not taking into account and discussing the fact that Roma are disproportionately affected. Thus, it has circumvented the core issue of the positive measures. There is no doubt that poverty also exists among the non-Roma. Of relevance in this case is only that Roma are affected to a much greater extent. Thus SCAC, in contradiction to the essence of the positive measures under PADA, is seeking equal resources to promote groups which are in clearly different positions as groups. Thirdly, there is no legal basis for the requirement that the applied positive measure be the only way of achieving the objective pursued. Positive measures are dealt with in Article 7 § 1 (9), § 14, § 15, § 16 and § 17 of PADA. Neither in these provisions, nor elsewhere in the Act, is there a requirement that the measure is the sole means of achieving the objective. According to the CJEU case-law, the principle of proportionality implies that the applied measure is necessary, i.e. the objective cannot be achieved without it, rather than being the only one. EU member states have a wide margin of discretion not only in choosing the objective, but also in defining the measures to achieve it. Obviously, if Roma school drop-outs are due to poverty, among other reasons, the objective to reduce school drop-outs cannot be achieved without a measure that addresses poverty. The absence of a measure which

131 Ibid, § 68.
addresses the other reasons cannot justify the non-application of the measure which treats one of all reasons. Apart from this, it’s subject to discussion whether the judgment of this issue is a matter of the purposefulness of the measure or goes further and attacks its expediency. The decision was appealed in the Cassation Court.

**Religion and belief**

In April, SAC issued a detailed and correctly reasoned decision on an appeal by Jehovah’s Witnesses in Bulgaria against party nationalist television Skat and two of its journalists. In this case, CPAD found that the defendants had committed harassment within the meaning of Article 5 of PADA, through the recurrent lie that they were a cult that robbed people of their property and inclined them to commit suicide, as well with regard to calls against the exercise of the right of religion by the members of the organisation as a whole. The Burgas Administrative Court, serving as the court of first instance, sustained this decision, reasoning that the terms “cult” and “cult members” used by the two Skat journalists in their materials are offensive descriptions of the religion, detrimental to the reputation and dignity of all members and followers of the religious institution, as they were used either in combination with qualifiers such as “Satanical” and “suicide”, or were accompanied by comments that the religious denomination was dangerous and prohibited in a number of countries as it prohibits its members from having blood infusion and honouring symbols of the state. To confirm these rulings, SAC provided detailed reasons. It pointed out that the request for protection against violations of Article 4 § 1 and Article 5 of PADA, submitted by the religious institution Jehovah’s Witnesses on behalf of all its members, falls within the scope of Article 3 § 2 of PADA. The freedom of expression of journalists is subject to the limits of Article 39 § 2 of the Constitution, according to which it may not be used to undermine the rights and the reputation of another person and to instigate hatred or violence against the person. A restriction of the free expression of opinion is contained in Article 8 § 1 of RTA, whereby media services should not incite hate based on race, gender, religion or nationality, as well as in Article 10 § 1 (5) and (6) in conjunction with Article 17 § 2 of RTA, on the exclusion of programmes suggesting intolerance between citizens, or exonerating violence or inciting hatred on the basis of race, gender, religion. The television’s broadcasts did not provide the information in a precise and non-biased manner. SAC looked in detail at allegations expressed in a long series of Skat broadcasts, which have been rebutted by the religious institution, such as that the religion was banned in Greece and Cyprus. Another broadcast shows physical violence against members of the religion, and SAC finds that “[t]he stories are trying to exonerate the violence that is displayed and to justify it by years of accumulate tension”, with “mainly activists of the [nationalist party] VMRO shown in the footage” and “the residents of the neighbourhood” are dealing with general concepts such as “we are protesting against these people and their leaders who have taken the souls and lives of many innocent Bulgarians”. The report in question ended with the phrase “as long as there are Jehovists, you are not seeing this for the last time”. According to the decision “[e]ven if we admit that “informing” the viewers is a protected objective under Article 4 § 3 of PADA, it should be noted that the information should be served as objectively as possible, by referring to publicly known sources of information (e.g. encyclopaedias and other similar public data). SAC finds that the speech in the television’s broadcasts is “hate speech” and to define this concept refers to its definition given in the Council of Europe’s Committee of Ministers’ Recommendation No 20 of 1997: “all forms of expression that propagate, incite, encourage or justify racial hatred, 132 SAC (2018). Decision No 4238 of 02.04.2018 on Administrative Case No 70/2017, 5th division.
xenophobia, anti-Semitism or other forms of hatred based on intolerance, aggressive nationalism, ethnocentrism, discrimination and hostility towards minorities, migrants and immigrants”. The Court also refers to Recommendation No 21 of 1997 of the Committee of Ministers of the Council of Europe, according to which the promotion of tolerance aims to involve the media in the fight against intolerance, particularly in promoting a culture of understanding of different ethnic, cultural and religious groups in society. SAC held that none of the contested programmes contained any convincing evidence of the offensive statements made in relation to Jehovah’s Witnesses. The court provides a number of examples, such as a report involving a deeply saddened mother, whose son has drowned, and who argues that the tragedy took place because he was a follower of the Witnesses. SAC found that such a statement is not supported by other data, and the tale of the mother is “strongly emotional and she is not able to quote specific convincing facts in support of her claims of inciting suicide, other than her human grief”. The court also provides detailed reasoning based on the case-law of the ECtHR and the Constitutional Court with regard to the freedom of expression and the balance between it and the right to freedom from discrimination and freedom of religion.
Chapter 12.
RIGHT TO ASYLUM AND INTERNATIONAL PROTECTION

In 2018, the number of persons seeking international protection continued to decrease. Many of the problems related to access to procedure, pushbacks, including through physical violence, detention and the integration of recognised refugees, remained unsolved.

Access to international protection

In 2018, pushbacks, physical violence, robbery and degrading practices against migrants entering the country continued to be widely used on the border with Turkey. International and Turkish organisations reported that on average some 11,000 people had been pushed back monthly from Bulgaria and Greece to Turkish territory. The low number of those entering Bulgaria in the first half of 2018 and its threefold increase in the second half of the year point to an implicit, but very effective cooperation between Bulgarian and Turkish authorities aimed at stopping the migratory flows through this external border of the European Union, at least during the Bulgarian Presidency from 1 January to 30 June 2018. In addition to the already widely used general pushback policy applied at our entry border, including with regard to people fleeing from war and humanitarian crises, this Bulgarian - Turkish collusion has further created barriers to access to territory and international protection for people who really need them.

According to MoI’s annual statistics, a total of 3,132 foreigners are established in the country, of whom 2,581 newcomers, representing a 5% reduction compared to 2017 and pointing to a low overall migratory pressure.

In 2018, 689 persons were apprehended on entry and 353 on exit, while 1,809 were apprehended in the country’s interior. In other words, if the persons intercepted at entry and exit fall by 7% and 20% respectively, the proportion of foreigners caught and detained in Bulgaria continues to grow to 70%.

These statistics clearly demonstrate that the fence built along the Bulgarian-Turkish border is not a serious obstacle to entry. Despite doubts that the construction has benefited civil engineering companies close to the government, the latter continues to regularly allocate additional funds for the building of the fence, with the expenses already reaching almost 100 million EUR. Nevertheless, both foreigners and public authorities recognise that the fence can be easily

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133 In 2018, 718 foreigners from 1 January to 30 June and 2,133 foreigners from 1 July to 31 December.
134 In 2017, 4,597 foreigners for the whole year.
136 In 2017, 441 foreigners at exit.
137 For 2018, 1,809 foreigners in the interior of the country out of 2,581 foreign newcomers.
140 “Karakachanov admits that migrants are crossing the fence with Turkey by means of stairs”, dnevnik.bg, 20 October 2017, available at: https://www.dnevnik.bg/3062947.
overcome by ladders and blankets or directly through sections where the fence is damaged, fallen or through doors that do not close.141

Against this background, the information gathered during the year from a variety of sources reveals at least 118 individual cases of alleged pushbacks at the Bulgarian-Turkish border involving approximately 1,570 people. In eight of these cases, the information was directly provided by 71 individuals involved in the pushback who subsequently entered the Bulgarian territory. In three cases, the persons indicated that they were subject to beatings, pillage and intimidation with border patrol dogs before they were pushed back to Turkey. Similar practices are also used at the Bulgarian-Greek border, albeit at a significantly smaller scale, namely two pushbacks involving 90 individuals.

The total number of pushbacks detected constitutes only a part of the presumed number of violations committed in reality, when compared to the 11,000 persons reported by the Turkish organisations. However, even this partial number exceeds threefold the number of asylum seekers who in 2018 managed to file an application for asylum and protection142 at entry and exit borders. In 2018, the State Agency for Refugees (SAR) registered 2,536 foreigners as persons seeking international protection. This a decrease of 20% compared to 2017,143 but at the same time represents 98% of all foreign arrivals144 during the year.

With regard to the existing delays in access to the refugee procedure by the administrative detention centres of the Ministry of the Interior, the special institutions for temporary accommodation of foreigners (SHTAF), there has been a significant improvement. If during the previous year the average detention period for persons who had applied for protection at SHTAF had increased to an average of 19 calendar days, in 2018 this period reverted to an average of 9 calendar days. Thus, the delay in relation to the statutory deadline of 6 working days for registering an application submitted to a public authority other than SAR amounted to only one calendar day. In comparison, the ratios between the average detention periods and the number of protection seekers in the past years were, respectively, 9 days of detention against 19,418 asylum seekers in 2016, 10 days of detention against 20,391 asylum seekers in 2015; and 11 days against 11,081 asylum seekers in 2014.

**Quality of the refugee procedure**

The most significant improvement in the implementation of the refugee procedure in 2018 was the provision of legal assistance at the administrative stage to vulnerable persons. In March 2018, the National Legal Assistance Bureau launched a pilot project for representation of vulnerable persons in the procedures before SAR financed by European Union funds. The quality of the legal assistance was also adequate through the selection and additional qualification of the lawyers granting assistance and representation. As a result of this activity, a total of 272 vulnerable persons received legal assistance at the administrative phase of their refugee procedure, including

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142 655 persons seeking asylum at the border in 2018.
143 3,700 foreigners registered as asylum seekers in 2016.
144 In 2018, 2,581 foreign newcomers for the whole year.
208 unaccompanied children, 10 unaccompanied children, 9 single parents, 37 parents with accompanying children, 1 widow, 2 persons aged over 65 and 5 persons with disabilities. The pilot project was extended until 31 January 2020.

Applications for protection from persons from countries of origin such as Turkey, Ukraine, China and Algeria were in practice treated as manifestly unfounded with a zero rate of recognition and protection. The recognition of asylum seekers from Iraq has decreased sharply compared to previous years, to a 12% recognition rate, despite the unstable environment and the security threats in that country. Reversely, for asylum seekers from Afghanistan there has been an improvement, and from barely 1.5% last year, the overall recognition rate increased to 24% in 2018, although in the vast majority of cases this was achieved on the basis of court rulings repealing SAR refusals to award status. Abandonment by the refugees of their procedures initiated in Bulgaria remained at extremely high level: a total of 79% of the procedures initiated in 2018 were suspended or terminated, compared to 77% in 2017, 88% in 2016, 83% in 2015 and 46% in 2014.

Concerns about the effectiveness of judicial review in refugee proceedings grew in 2018. In March, Georgi Cholakov, the newly-appointed Chair of the SAC, announced that he had ordered measures to overcome delays in certain types of cases, including 146 refugee status cases, for which he had provided instructions to be closed before 30 June 2018. In application of this instruction, 100 cases were reallocated from the specialised third division to the fourth division of the Supreme Administrative Court, which previously had not dealt with refugee cases. All cases were rescheduled, reviewed and resolved by the specified date and, as a result, 94% of the applications received final rejection, including by annulment of previous court decisions. This approach continued throughout 2018, with similar results.

In the autumn of 2018, the European Commission sent a formal notification to the government on identified inconsistencies in the implementation of EU asylum legislation in Bulgaria. In the notification, EC raised the issue of the failure to provide a number of safeguards in the refugee procedure and of support and services due during its course, which is contrary to the common European standards and the EU Charter of Fundamental Rights. More specifically, it points out the issues related to the accommodation and legal representation of unaccompanied minors, the proper identification and support to vulnerable persons, the provision of adequate legal assistance and the detention of protection seekers, as well as the lack of safeguards in these procedures.


146 SAR: Compared to 2,015 protection seekers, of whom 1,301 persons with proceedings initiated in 2017 and 2,536 asylum seekers registered in 2018 minus 1,822 asylum seekers with proceedings pending at the end of 2018. From them, 36.6% or 739 proceedings suspended; 42.4% or 860 proceedings terminated; in the case of 21% or 2,092 cases, decisions on the merits.


148 Ibid.


Reception conditions

In December 2018, SAR announced the indefinite closure of the refugee centre in the Vrazhdebna neighbourhood and the transfer of its residents to other refugee centres in Sofia and the country. This decision was motivated by the appeals filed against the tender procedure for security services, which made it impossible for the centre to function safely. The Vrazhdebna centre was the only refugee centre with adequate material conditions, which housed mainly families with small children and persons relocated from Greece and Italy.

Detention

Status procedures continued to be carried out at the deportation centres of the Ministry of the Interior. Although the number of such proceedings was significantly limited, having them carried out outside the designated refugee centres of open- or closed-type, constituted a severe violation of the law. Unlike in previous years, in 2018 the most affected persons were those perceived as being ‘deportable’ by the immigration police (the Migration Directorate of the Ministry of the Interior) due to the possession of valid documents, which was the main reason for their illegal detention at SHTAF, irrespectively of the submitted first asylum and protection applications. Thus, the assessment of their applications for protection was predefined and void of thorough and objective investigation. However, national courts continued to regard this violation as minor and in general rejected complaints against refusals of status and protection made in conditions of immigration detention.

A minimum number of asylum seekers\(^{151}\) were affected in 2018 by orders for detention in closed-type refugee centres. However, it should be noted that the duration of the detention in these centres was excessive for the purpose of the law, reaching an average of 196 days.

In mid-2018, legislative amendments were introduced, which created additional safeguards for the effective implementation of the detention ban for unaccompanied minors. An expedited procedure for the immediate forwarding of unaccompanied minors identified by the police in mixed migration groups, to the relevant child protection services for the purpose of further care and accommodation,\(^{152}\) was set out in immigration law. As a result of the legal change from the autumn of 2018, unaccompanied minors under the age of 14 were generally not detained at the Ministry of the Interior’s deportation centres. However, the practice of detaining unaccompanied adolescents continued due to the lack of an adequate age assessment methodology in the absence of valid identity documents.

Integration of recognised refugees

No specific integration measures or activities were available to recognised refugees or foreigners with awarded humanitarian status. In 2018, only 13 beneficiaries of international protection received integration support: not under the national integration mechanism, but under the EU-funded relocation scheme. Thus, the situation of zero integration of refugees in Bulgaria continues for the fifth consecutive year.

\(^{151}\) A total of 10 protection seekers in 2018.

\(^{152}\) Chapter Two “a” of the Implementing Rules to the Foreigners in the Republic of Bulgaria Act.
Chapter 13.
RIGHTS OF PEOPLE WITH MENTAL DISABILITIES

In September 2018, at the initial review of the report by Bulgaria, the UN Committee on the Rights of Persons with Disabilities expressed concern that it is a common practice for people with mental disorders from institutions and in the community to stay in hospitals for a long time due to lack of available rehabilitation services after active treatment and of adequate services and housing in the community. Regretting that the transition from institutional to community-based care is foreseen to continue until the end of 2034, and that the envisaged priority alternative is life in family housing centres for the majority of adults in need of care, which the UN Committee has stated is contrary to Article 19 of the CRPD, the international organisation recommended to Bulgaria:

- to accelerate the transition process from institutions, including psychiatric hospitals, to community-based services that would provide the right to independent living;
- to direct funds for the development of individualised support services and personal support services;
- to adopt legislation on individualised and managed by the person with disability personal assistance, as well as social and support services;
- to implement a consultation procedure to discuss with the people with disabilities every aspect of the implementation of Article 19 of the CRPD, including plans, strategies and the deinstitutionalisation process;
- to channel funds from the state budget and the EU to promote the inclusion of people with disabilities in society and to introduce effective means of protection and guidelines, in order to avoid investing funds in infrastructure, housing and/or services that are not accessible (or which people cannot afford) to all persons with disabilities.

The overall picture in numbers

According to SAA, as of 31 December 2018, there were 27 institutions for adults with developmental disabilities (IADD) with a total capacity of 2,082 places, and 13 institutions for adults with mental disorders (IAMD) with a total capacity of 1,028 places, or a total of 40 institutions for adults, with 3,110 places. No specialised institutions for adults were closed in 2018. As of the end of 2018, there were 37 family-type centres (FTC) for adults with mental disorders, with a total capacity of 503 places, and 37 FTC for adults with developmental disabilities, with a total capacity of 468 places, or a total of 72 FTC with 971 places. One FTCADD was created in 2018. Adult social institutions are full: there are no vacancies. By the end of 2018, the number of people waiting for accommodation was as follows: IAMD — 686, IADD — 168. In 2018, 18 persons were taken out of specialised institutions and accommodated at family-type

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153 Under Article 19 of the CRPD, all persons with disabilities have the right to live in the community and be included in the community.
155 Information provided by SAA to BHC under APIA, ref. no 92-00 0088/25.01.2019.
social services. According to SAA, there were also 144 sheltered housings with a total capacity of 1,265 places.

The 2018-2021 Action Plan on the Implementation of the National Strategy for Long-Term Care,\textsuperscript{156} which affects the deinstitutionalisation of the elderly, was finally adopted in 2018 after years of delay. Its adoption provides the specific steps for the first year of the adult reform. On 22 February, the inter-service group on the management and coordination of the deinstitutionalisation of the care for the elderly and the disabled at MLSP adopted a proposal for the closure of 10 specialised institutions for persons with mental disorders and developmental disabilities. A map of community support services and a map of family-type services under the Action Plan on the Implementation of the 2018-2021 National Strategy for Long-Term Care were also adopted.

What next?

All institutions for adults with disabilities should be closed by 2035. This is foreseen in the social services bill, which was presented to the members of the parliamentary social committee at the end of 2018, and was voted at first reading in January 2019.

By 2020, during the first phase, 100 new social services should be created:

- 68 resident services (family-type centres for 1,020 adult clients) — 30 centres for persons with mental disorders, 22 for persons with intellectual disabilities, 7 centres for persons with dementia and nine for adults, for a total of 20.6 million EUR from the Regional Development Operational Programme (2014-2020) financed by the European Regional Development Fund;
- 32 support services — 16 day centres for persons with disabilities, including with severe multiple disabilities, for EUR 5 million, with 480 places; 10 centres for social rehabilitation and integration for people with mental disorders and developmental disabilities, with a capacity of 400 places; six day centres to support people with dementia and their families.

EUR 1.5 million is planned for the creation of social enterprises employing more than 150 people. 17,000 persons with disabilities and elderly people will be provided assisted care, while more than 25,000 will receive social services in their homes, with funding available for 3 years in the amount of 75 million EUR. From the beginning of 2020, the state will provide two new social services for children and persons with disabilities and their families. One of them will allow parents or relatives of a person with a disability to break off temporarily from their commitments to that person by means of de facto care, while the other will provide assistants to elderly people without LEMC and to people with disabilities who do not use personal assistance. The new forms are laid down in the social services bill.

White fields in new laws

The steps taken undoubtedly confer a strategic advantage on the model of managing deinstitutionalisation in Bulgaria. However, despite the declared political will and the legislative changes, deinstitutionalisation with regard to the elderly remains at a standstill. The 2018-2021 Action Plan on the Implementation of the National Strategy for Long-Term Care provides for the creation of a number of community-based services which aim not only to support the deinstitutionalisation of persons with psychosocial and intellectual disabilities already placed in an institution, but also to develop sustainable community-based services that will allow independent living and respect for the fundamental rights of these people in order to prevent their institutionalisation. It is this course of development which is not guaranteed in the adopted new legislative texts.

In 2018, Ombudsman Maya Manolova expressed concern about the mechanism for the regulation, provision and payment for personal assistants to people with disabilities. Most of the complaints received by the Ombudsman last year concerned the provision of highly insufficient (1 or 2 hours a day) personal assistance to persons with disabilities. The cumbersome bureaucratic procedure for access to technical equipment, its expensive maintenance (often paid by the user), the inadequate aids and appliances available, the lack of user participation in supplier selection tenders, are all barriers to ensuring independent life, raised by the Ombudsman in 2018.

The Persons with Disability Act and the Personal Assistance Act, which were adopted by the Parliament at the end of 2018 and entered into force on 1 January 2019, are based on the medical assessment of disabilities carried out by a Labour Expert Medical Commission (LEMC). According to experts, the lack of a new type of assessment of individual needs, based on the actual functionality and the lack of possibilities to compensate the disability, are the main points of non-compliance of the new laws with the CRPD. The lack of any support for persons with estimated loss of ability of less than 50% is the second problem in the two legislative texts. The provision of financial support (including personal assistance), medical devices and technical resources is based on a percentage of loss of ability defined by LEMC and not substantially different from the amounts and types of aid provided so far. Persons whose loss of ability is deemed to be higher than 50% will not be sufficiently supported to participate in education or employment, as the financial support is extremely low (in 2019, the amount varies from BGN 24.36 (12.50 EUR) to BGN 198.36 (100 EUR)) in order to achieve an adequate quality of life. Another worrying fact is that the new Personal Assistance Act excludes persons living in community-based services and institutions from the group that is entitled to personal assistance. The same applies to the personal assistant service.

The EU Agency for Fundamental Rights: Bulgaria at the bottom in the EU

According to a 2018 study by the EU Agency for Fundamental Rights (FRA) concerning respondents’ perception of independent living and social inclusion, the share of adults in Bulgaria who say they “strongly agree” with the statement “I feel that I can choose how to live my life” is only 45%. Bulgaria is the country with the lowest level of elderly satisfaction among EU members. 30.7% of those with health problems say they do not feel free to decide how to live their lives.

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Around 38% of the people with mental and physical deficiencies feel abandoned by society, while only 14.6% of the people without disabilities feel the same way. Around 50% of the people with deficiencies in Bulgaria say they have difficulty accessing at least one service (food shops, banking or postal services, primary healthcare services, public transport). With regard to the assistance received by adults in need of care, the share of those using domestic assistants is the highest (95.3%), while those who use technical resources are only 27.3%. The share of those using mobile support at home is the lowest, barely 4.7%.

Typical cases

In 2018, BHC visited three institutions for adults: in the village of Radovets, in the town of Tvarditsa and in the village of Kachulka near Sliven. The mission focused on the implementation of the Council of Europe Committee against Torture (CAT) recommendations following its visit to Bulgaria in October 2017.

The Radovets case

On 25 May 2018, BHC visited the IAMD in Radovetz, which is home to 75 men. There are 240 on the waiting list. The institution is located in the area of the Sakar Planina, 22 km away from the municipal centre. It occupies old buildings of former barracks, on a plot in a state forest. The BHC monitoring report indicates:

“Following the recommendations of the Committee against Torture of the Council of Europe, two problematic dormitories were equipped with toilets. During the BHC visit, there was no hot water and no toilet paper. Despite the repairs, the open windows and the washed floor, there was an unpleasant smell of urine. Staff explained that the users with the most severe mental disorders "use the floor of the rooms as a toilet. Piss on the floor. Especially at night. Every morning there is faeces on the floor". According to five users, violence is exercised at the institution both by nurses against clients and between clients. It was said that the client with the 'most aggressive behaviour', K.T., "throws stones, breaks tiles, breaks water ducts with his head, hits with fists, once bit an employee...". According to the IAMD director, there was a project to close the institution and redirect users to 4 new FTCs in the villages of Dobroselets, Oreshnik and Radovets (outside the institution).”

The Kachulka case

On 4 July 2018, a BHC team visited the IADD in the Kachulka area near Sliven. The institution is located in a mountainous area 28 km away from the municipal centre. It is home to 242 men and women. Some 20% of the residents suffer from mental disorders. The BHC team noted in its report:

"Violence seems to be a routine practice at the IADD. The director told a story about a woman with a broken spine who died. No investigation had been carried out. Complaints of physical and sexual violence were numerous. Verbal and emotional manifestations of violence were also recorded in the communication between staff and clients. Isolation from the external world is the

158 Source: Topolovgrad Social Assistance Directorate.
rule. About 20 users were gathered in the so-called "activity room" on the first floor of one of the buildings with nothing to do. One of the users was in a modified strait-jacket. Details of over-medicalisation of users, including persons with intellectual disabilities, were briefly explained by the IADD director: "The psychiatrists define the therapy. The municipality does not plan to invest in alternative services for IADD users. The judicial system supports the status quo, despite the CPT findings. In 2018, the Sliven District Court reviewed more than 90 HIM cases of individuals accommodated at the IADD. The trial is an example of the nominal legality of illegal detention in inhuman and degrading conditions. The review of court decisions found that judicial proceedings were conducted in a formalistic manner, expert opinions were not requested. The court had accepted that the people are incommunicado, and that the placement in the institution is in their 'best interests'. The court did not request information from the staff. The users were not represented by lawyers”.

Institutions for active treatment

During 1996 – 2006, the bed stock of psychiatric clinics was reduced by more than 70%, without creating an effective alternative service system. Human resources were also reduced by more than 60% as a result of mass emigration of health professionals and a shift away from this field of study. Academician and national psychiatric consultant Drozdstoy Stoyanov summarises the 2018 state of play of mental health services in Bulgaria as "mismanagement of material resources and degradation of human resources”.

The reform crisis was not addressed in 2018. There were no strategic investments. In 2008 - 2017 alone, the number of Bulgarian psychiatric professionals was halved, from 891 to 440. The number of psychiatric beds according to the most recent MoH data (for 2016) is about 5,000.

The report of the seventh periodical visit to Bulgaria by the Council of Europe Committee for the Prevention of Torture (from 25 September to 6 October 2017) was published in 2018. The report focuses, inter alia, on reports of physical aggression at the institutions for active treatment of persons suffering from mental illnesses. Patients at the Radnevo State Psychiatric Hospital reported that they had been 'hit, kicked and pushed by orderlies'. Complaints were filed that orderlies have threatened patients with sticks, which the observers found in the building. The report states: 'The premises in the visited psychiatric hospitals in Radnevo and Sevlievo were derelict, empty, without the necessary equipment and guarantee of privacy and respect for the private life of patients. Patients were locked in rooms and were severely limited in accessing fresh air, sometimes not being able to go outside for weeks or even months on end. At the psychiatric hospital in Radnevo, the delegation found the unacceptable practice of employing a number of in-patients to act as orderlies to help control and restrain other patients.”

In 2018, the European Psychiatric Association (EPA) was invited to visit Bulgaria to review the mental health services and to advise the Ministry of Health on the necessary change to reach a consensus that the necessary reforms of the mental health services should be implemented. The EPA Advisory Group held consultations with stakeholders, responsible institutions and politicians, visited mental health services in Bulgaria and took note of written information and previous recommendations.
EPA found severe violations of human rights: material conditions in violation of Article 3 of ECHR and a number of violations of CRPD. In general terms, the problems identified are the result of chronic underfunding and include: depreciated buildings, overcrowding and fragmented services. There is a lack of sufficient staff, therapeutic activity, national strategic planning, quality control and performance monitoring, as well as a lack of joint work, including between the Ministry of Health and the Ministry of Labour and Social Policy, which is a particular obstacle to achieving timely care for many patients who need longer-term support in the community and/or support for accommodation in a service.

The EPA Advisory Group found that the lack of joint planning and accountability is a pervasive problem for the whole mental health system, which has contributed to the current impasse in which stakeholders are locked in disagreement with each other and high levels of mutual distrust. There are significant staff-related issues: insufficient clinical staff, loss of staff due to emigration and ageing, lack of investments in training and uneven staff distribution. Wages are too low, creating distortions in incentives to seek other sources of income.

The longstanding serious investment gap and the insufficient funding of mental health services in Bulgaria is another identified problem. Any improvement or meaningful reform will require more investments. Nevertheless, the economic benefit that the reform will bring the Bulgarian society will be significant, with more people receiving one-off benefits for people with disabilities, in employment and needing lower total healthcare expenditures. Existing funding mechanisms are not sufficiently coordinated and are complex and confusing. A disproportionate share of people with mental health problems are not covered by the NHIF, which in turn does not fund psychiatric research and treatment.

The fragmented and chaotic nature of mental healthcare services in Bulgaria is reflected in deep divisions and lack of agreement among stakeholders. This is an important obstacle to change and may contribute to delays, if not to avoiding the necessary change. However, the Advisory Group notes that there seems to be a consensus on the nature of the current challenges they are facing, and therefore the need for change. Negative social attitudes are also seen as an obstacle to change and, most importantly, they are an obstacle to the creation of community-based mental healthcare services.

EPA also expresses concern that it’s possible that there is no sufficient recognition of the financial benefit to the country as a whole of investing in mental healthcare services, as well as of the size of the additional investments needed, including in preventive services in the context of the 2018-2021 Action Plan on the Implementation of the National Strategy for Long-Term Care. In the opinion of EPA experts, the marginalisation of psychiatry as a field of study is also a barrier to the reform: psychiatry and psychiatric services have been greatly underfunded for years in comparison to other medical fields, and are often placed far from them and are subject to discrimination and indifference.

The EPA Advisory Group noted continued violations of fundamental rights already identified by previous visits by international organisations such as WHO. Examples of such violations include:

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• the National Register of People with Mental Disorders under Article 147 of the Health Act is in violation of Article 5 § 2 of CRPD;
• the long-term hospitalisation in state psychiatric hospitals of patients who no longer need in-patient/active treatment, but remain in healthcare institutions due to the lack of community-based health and social care constitutes a violation of Article 19 of CRPD;
• the discriminatory funding and provision of services for the treatment of mentally ill persons is in violation of Article 25 of CRPD;
• the lack of rehabilitation services, of activities for hospitalised mentally ill persons, of hospital activities and the unacceptable poor conditions, coupled with overcrowding and lack of privacy (including men and women who share accommodation) and hygiene are in violation of Article 26 of CRPD. Most institutions do not offer any activities to patients, with the majority of patients found in their beds during the visits, irrespective of the time of the day.

The EPA Advisory Group was concerned about the fact that institutions for people with persistent serious disorders were often inadequate, overcrowded, without being able to secure privacy, without targeted rehabilitation, with poor maintenance and hygiene and inadequate personnel: a hopeless environment from therapeutic point of view.\footnote{European Psychiatric Association (EPA) Report on Bulgarian Mental Health Care and Reform Process 2018, pp. 6-7, available at: \url{http://ncpha.government.bg/files/news/EPA-BG.pdf}}
Chapter 14.
WOMEN’S RIGHTS

If in previous years there had been stagnation or even a slight progress with respect to women’s rights in Bulgaria, in 2018 we witnessed an unprecedented failure of the institutional efforts to ensure gender equality and non-discrimination of women. This collapse reached the lowest possible level when the Constitutional Court declared unconstitutional the Council of Europe Convention on Combating Violence against Women and Domestic Violence (Istanbul Convention). The “worst judgment” in the history of the Constitutional Court, an act of humiliation for all Bulgarian citizens, and above all for Bulgarian women. This is how a group of non-governmental organisations, including BHC, qualified this decision.\textsuperscript{161} Immediately after its delivery, the Council of Ministers repealed its commitment to ratify the Istanbul Convention, and women in Bulgaria were deprived of the chance to have a more effective protection against gender-based violence and domestic violence. At the same time, lethal violence against women intensified, with at least 35 women murdered by their current or former partners in 2018.\textsuperscript{162}

The campaign against the Istanbul Convention

The campaign against the Istanbul Convention in Bulgaria, initiated by the Association Society and Values organisation in 2017\textsuperscript{163}, quickly gained momentum in the first days of January after being embraced by a party in the government coalition, VMPO — BND, and mainly by its chair, Deputy Prime Minister and Minister of Defence Krasimir Karakachanov. The campaign was based on lies, on rough distortions of the meaning of the provisions of this international treaty, and on deliberately cultivated homophobia, transphobia and bias against women. One of the initial allegations made during the campaign was that the Istanbul Convention recognised the existence of a third gender and introduced into our internal law a framework for it without public debate.\textsuperscript{164} This statement was immediately denounced as a lie, but the lie continued to be repeated throughout 2018. Subsequently, the statement that the philosophy of the Convention was based on the so-called ‘gender ideology’, a concept defined as a type of ‘social engineering’, seeking to change "the gender identity of the man and the woman" became the focal point of the campaign.\textsuperscript{165} This untruthful assertion which also has nothing to do with the text of the Convention continued to be reproduced by a large number of media propagandists throughout the year.


Four main groups opposed the ratification. Firstly, the main religious denominations represented by the Bulgarian Orthodox Church and the Chief Mufti's Office, separate organisations of the Catholic Church and numerous Protestant churches, including civil society organisations which do not define themselves as religious, but which are in fact linked to Protestant churches and oppose the right to abortion and LGBTI equality. Secondly, the conservative political parties, including — in addition to the neo-totalitarian parties with or without parliamentary representation — the leader of the parliamentary opposition, the Bulgarian Socialist Party, which took a stance contradicting that of the Party of European Socialists. And thirdly, many conservative public figures, some of whom proven agents of State Security, the former secret police of the Communist totalitarian regime. A fourth group, highly overlapping with the first and third, was comprised by a large number of formal and informal civil society organisations and public figures, known in society with their support for current Russian state leadership's policies. The wide range of media which adopted strong editorial policies in opposition to the ratification comprised mainly yellow newspapers and websites known in society by numerous publications against refugees and migration, against the Roma and the LGBTI people. The intensity of the publications on the subject was very high and the word 'gender' gradually became an offensive qualifier for the LGBTI people.

In April, the European Parliamentary Forum on Population and Development (EPF), a regional association of parliamentarians from different European countries, published a report entitled "Restoring the Natural Order": The religious extremists’ vision to mobilize European societies against human rights on sexuality and reproduction. The report analyses information leaked to a French television about a secret coordination network of conservative civil society organisations from Europe and the USA, working since 2013 on “achievable goals” aimed at dismantling the progress achieved in the field of sexual and reproductive rights. EPF disclosed documents showing some of the objectives of the network, such as annulment of the right to divorce, of women’s access to contraception, assisted reproduction or abortion, and the criminalisation of homosexuality. The opposition to the Istanbul Convention is included among the targets of the network, and the table of network activities notes also the campaign in Bulgaria. According to the table, the campaign had actually started in 2016 and was successfully completed in 2018. “ADF and partners at national level” are identified as campaign owners. The abbreviation “ADF” stands for the name of the American conservative NGO Alliance Defending Freedom, based in Scottsdale, Arizona, with annual revenues exceeding 55 million USD. Indeed, an ADF opinion translated in Bulgarian was submitted to the National Assembly with regard to the Istanbul Convention ratification bill, accompanied by a letter from the Freedom for Everyone "legal rights protection and publishing organisation", committed to "protecting the freedom of consciousness, speech, religion and traditional family rights".

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166 EPF (2018). “Restoring the Natural Order”: The religious extremists’ vision to mobilize European societies against human rights on sexuality and reproduction”. Available at: https://www.epfweb.org/node/690.
167 Ibid., pp. 12 and 35.
168 Ibid., p. 33.
On 27 July, by a majority of eight to four votes, the Constitutional Court ruled that the Istanbul Convention did not comply with the principle of primacy conferred by the Constitution of the Republic of Bulgaria. The decision of the Constitutional Court is deeply flawed. With long and confused reasoning, without any scientific opinion to serve as a basis, the Constitutional Court ruled that the concept of gender was part of a 'gender ideology', which teaches that gender is not biologically predetermined and can be chosen by the person. The Constitution and the whole Bulgarian legislation, states the court, is based on the understanding of the binary existence of humankind, and the concept of “gender” is used by the constitutional legislator as “unity of the biologically determined and the socially structured”. Social gender cannot be independent of the biological and therefore not only the Convention is not compatible with the Constitution, but also the establishment of procedures ensuring the legal recognition of a gender other than the biological one would be contrary to the Constitution. These reasons are directly taken from the yellow press and from biased propaganda sources, by which the Constitutional Court once again demonstrated a lack of capacity on fundamental human rights issues.

**Violence against women**

Following the failure of the ratification of the Istanbul Convention and under the pressure of civil discontent and the expectations of the international community, in October 2018 the GERB parliamentary group tabled in the National Assembly a bill amending and supplementing the Criminal Code. The stated purpose of the bill was to replace the lack of ratification of the Convention and to ensure “an adequate and comprehensive criminal law protection against all types of violence against women and domestic violence”. In fact, however, the draft law hardly addresses violence against women. Among the envisaged amendments and supplements were:

- introduction of aggravated circumstances for murder and bodily injury committed as part of domestic, violence but not for acts based on gender or gender stereotypes, and only when physical, sexual or psychological violence, economic dependence, forced restriction of privacy, personal freedom and individual rights has been ‘systematic’;
- criminalisation of psychological violence, but only when it has been ‘systematic’;
- criminalisation of stalking;
- a change in the nature of the crimes associated with medium and severe bodily injury by a spouse, descendant, ascendant, brother or sister, from private to general;
- introduction of aggravated circumstances for the repetition of the offence referred to in Article 296 of the Criminal Code, related to non-compliance with a judgment or protection order in accordance with the Protection against Domestic Violence Act;
- elimination of the incentive rule which provided for total exoneration of an adult who, having lived in marital co-habitation with a female under the age of 16, has married that woman.

Although the bill shows some similarities with the package of measures for the introduction of the Istanbul Convention standards into national legislation, developed in 2016 by the Ministry of

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172 Bill Amending and Supplementing the Criminal Code (2018), Available at: [https://www.parliament.bg/bills/44/854-01-76.pdf?fbclid=IwAR19j0DMez2YJEZys1sSvr13w-sdkBAlAq1Oy5xAdK-1QmMIBnKihXAmrgdag](https://www.parliament.bg/bills/44/854-01-76.pdf?fbclid=IwAR19j0DMez2YJEZys1sSvr13w-sdkBAlAq1Oy5xAdK-1QmMIBnKihXAmrgdag)
Justice with BHC participation, without the involvement of all the organisations that took part in the working group, including BHC, the bill was significantly shortened and a large number of provisions were eliminated. It was therefore criticised by the human rights community as being “very limited and not a comprehensive attempt to tackle gender-based violence.” Among the noted deficiencies were the abandonment of the original approach, which included criminalisation of gender-based violence and sexual orientation of the victim, lack of definition of domestic violence, lack of planned measures on prevention of violence and victim protection, etc.

In November 2018, the MPs adopted the bill at first reading. The debate in the plenary that preceded the vote demonstrated mediocrity and lack of understanding of the matter, use of sexist language, a romantic view on and normalisation of violence, reasons for the adoption of the draft law related mainly to the idea of the preservation of the family and Christian values. The apparent discrepancy between the aims of the proposed legislation and the statements made by many MPs left a feeling that the reform is no more than a front.

**Gender equality**

In 2018, Bulgaria was the subject of a periodic review of the implementation of the obligations under the United Nations’ International Covenant on Civil and Political Rights. In the area of gender equality, the Human Rights Committee expressed concerns about the persisting gender pay gap and the disproportionate distribution of responsibilities between men and women in caring for dependent family members. The Committee was concerned that women are still under-represented in leadership positions in the public and private sectors, especially the Roma women. It therefore recommended to Bulgaria to:

- continue its efforts to eliminate the gender pay gap and to combat stereotypes about the roles and responsibilities of women in family and society as a whole through public information, education and training programmes;
- increase the representation of women in leadership positions in the public and private sectors, including, where necessary, by taking appropriate temporary special measures to implement the provisions of the Pact.

Gender inequality and discrimination against women are fuelled by gender stereotypes. In 2018, the Constitutional Court, in the case of the constitutionality of the Istanbul Convention, manifested itself as a promoter and defender of such harmful stereotypes. Interpreting the constitutional provisions, it held that the social roles traditionally assumed with regard to gender, such as maternity for women, are biologically defined and not subject to change. This perception is anachronism and, in essence, untrue. According to the Constitutional Court:

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174 Comments on the bill are available on the Internet at: https://www.parliament.bg/bg/bills/ID/78257.


"The Constitution and the entire Bulgarian legislation are based on the understanding of the binary existence of the humankind. In fact, the social dimension of gender in interaction with the biologically defined is clearly incorporated in the Constitution: Article 47 § 2 of the organic law. In this constitutional provision, the biological gender "woman" is associated with the social role: "mother", "birth", "midwife assistance". In summary, the term "gender" is used by the constitutional legislator as a unity of the biologically defined and the socially constructed. The social dimension in the Constitution does not create a social gender independent of the biological one, as provided for in the Convention.

Traditional human society is built on gender binary, that is, the existence of two contrasting genders, each with specific biological and social functions and responsibilities.”

Data published in 2018 by the National Statistical Institute in the field of employment, wages and income, are a strong testimony to continuing economic gender inequality: women get lower wages, lower pensions and spend more time on unpaid domestic work and care.177 The average gender pay gap in 2017 was 12.7%.178 The biggest pay gap was in the human health and social affairs sector, where women’s wages were 28% lower than those of men.179 80% of the employed in this sector are women.180

According to official statistics, the economic inactivity rate is 24.6% for men and 32.9% for women.181 For men, participation in education and training is the main reason for not being in the labour market, while for women it’s personal and family reasons.182 Of all categories of employment status, the share of women is higher than that of men only among unpaid family workers, where the ratio of women to men is approximately 2:1.183 It is important to note that women in the 20-49 age group allocate twice as much time per day to take care of their home and family than men, while their working day is equal to that of men.184 42% of female and 17% of male pensioners receive pensions of up to EUR 100, and the number of men receiving the maximum pension amount is 5 times higher than that of women.185

The statistical data of the National Social Security Institute on the use of paid leave for raising children and sick family members by gender provide another strong evidence of the great inequalities in taking care of one’s family.186 In 2018, 99.3% of the number of parental care allowances for children aged up to 2 years and 95% of the allowances for taking care of a sick family member were paid to women.

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177 The National Statistical Institute data published in 2018 refer to 2017 or earlier. At the time of the preparation of this report, the relevant data for 2018 were not published.
179 Ibid.
182 Ibid., p. 40.
183 Ibid., p. 39.
184 Ibid., p. 113.
185 Ibid., p. 65.
Table 3. Benefits paid for certain types of causes of incapacity for work in the first nine months of 2018, by gender of the insured persons

<table>
<thead>
<tr>
<th></th>
<th>Women</th>
<th>Men</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pregnancy and childbirth</td>
<td>99.65%</td>
<td>0.25%</td>
</tr>
<tr>
<td>Raising a child below the age of 2</td>
<td>99.3%</td>
<td>0.7%</td>
</tr>
<tr>
<td>Care for a sick family member</td>
<td>95%</td>
<td>5%</td>
</tr>
</tbody>
</table>

Source: NSSI

Labour and social legislation do not provide tangible measures to promote the shared and balanced upbringing of children by both parents, although the achievement of this objective is included annually in the national gender equality plans. In view of the constitutional decision on the Istanbul Convention and the Court's view that maternity is a biologically predetermined social role of the woman, there is a danger that these measures are completely removed from future strategy documents.

In 2018, an amendment to the Social Security Code provided an incentive for early return to work for women who benefit from maternity leave. According to the new arrangements, the mothers who interrupt their leave and return to work continue to receive 50% of the compensation to which they are entitled. However, this measure serves more the employers rather than being aimed at encouraging men to assume a more balanced share of family responsibilities.

The proportion of women in the legislative and executive powers also remains critically low. As of August 2018, there were 231 male mayors of municipalities (87.2%) and only 34 female ones (12.8%). Although allowed by national law, there are currently no temporary incentives to address the lack of enough women in government.

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188 Social Security Code (1999), Article 50 § 1.
In 2018, the recommendation of the UN Committee on the Rights of the Child to prohibit all exceptions to the *Family Code* allowing the marriage of persons under the age of 18 remained outstanding. Under the current rules, "exceptionally, if important reasons so require, a person who has reached the age of sixteen may also enter into marriage, subject to approval by the area judge".\(^{190}\) Child marriages are a serious violation of human rights, in particular the rights of girls, including the rights to equality, independence and physical integrity, access to education and protection against exploitation and discrimination. The number of child marriages in Bulgaria increased by more than 450% between 2010 and 2017.\(^{191}\) The population affected the most by this phenomenon were girls, who accounted for 95% of the minors who married in 2017 (649 in total).

The provision of Article 14 of the Civil Registration Act, which stipulates that the child’s surname is formed only on the basis of the father’s surname, without the possibility to use the mother’s, regardless of whether the father’s origin is established or not, a practice recognised as discriminatory by the European Court of Human Rights, continues to be in force.

** Trafficking in human beings **

A 2018 European Commission study covering the period 2015-2016 ranks Bulgaria among the five EU Member States with the highest number of individuals registered as victims of human trafficking.\(^{192}\) According to this study, women make up 92% of all registered victims of trafficking, with an EU average of 68%. Three quarters of the victims registered during the period were victims of human trafficking for sexual exploitation; 98% of them were women. According to the National Commission for Combating Trafficking in Human Beings, the profile of victims of trafficking for sexual exploitation is mainly "young women, mostly from a minority background, with low education and in a difficult material situation".\(^{193}\) According to a United States Department of State report published in 2018, Bulgaria has made progress in combating trafficking in human beings in comparison to previous years.\(^{194}\) The report assesses positively the allocation of more resources to services for victims and the opening of two new facilities for victims of trafficking, including a crisis centre for children. The lack of training for judges and prosecutors to work with victims of trafficking, and the lack of knowledge by officials to identify victims, especially among foreign nationals and women exploited for prostitution, are seen as problem areas.

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Women with disabilities

Last year, the UN Committee on the Rights of Persons with Disabilities reviewed the compliance of Bulgarian legislation and practice with the standards of the UN Convention on the Rights of Persons with Disabilities. In its final recommendations, the Committee pays particular attention to the problems faced by women and girls with disabilities in Bulgaria, making the following recommendations:

- take effective measures, including in cooperation with human rights organisations, in combating multiple discrimination and gender-based violence against women and girls with disabilities;
- integrate the perspective of persons with disabilities into gender equality policies and legislation, and include the gender equality point of view into specific policies and legislation related to persons with disabilities;
- adopt public policies to protect the sexual and reproductive rights and health of women and girls with disabilities.

Regarding the right of persons with disabilities not to be subjected to exploitation, violence and abuse, the Committee urges Bulgaria to take the following measures:

- start collecting data on persons with disabilities exposed to violence, in particular women, girls and boys with disabilities and persons still in institutions;
- allocate human, technical and financial resources to improve the accessibility of shelters and to provide rehabilitation services for women and girls with disabilities exposed to gender-based violence;
- intensify its efforts to protect all persons with disabilities from exploitation, violence and abuse, including by conducting official investigations into all cases of alleged violence and abuse and establishing working groups to give priority to the prosecution of cases of gender-based violence against women and girls with disabilities and to the conviction of perpetrators.

Rights of childbearing women

No progress was made in Bulgaria in 2018 with regard to ensuring respect for the rights of childbearing women. Moreover, a series of maternal deaths in the summer provoked a sharp public dialogue on the quality of maternity care in the country which, however, did not lead to a clear commitment on the part of competent professional organisations or the health institutions to specific actions to improve the situation in this sector.

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196 Ibid.
197 Ibid, § 38.
198 The struggle to respect the childbearing woman’s human rights emerged as a specific area of human rights due to the special features of the situation in which a woman is placed in the period of pregnancy, birth and recovery. The four fundamental human rights on the basis of which the Charter on the Rights of Childbearing Women was subsequently developed are the right to life, to access to healthcare, to personal integrity and to equal treatment.
The year passed without the creation and adoption of a medical standard on obstetrics and gynaecology. The previous one was repealed by a decision\(^{199}\) of a five-member panel of the Supreme Administrative Court in March 2017, which resulted in regulatory chaos because of the ambiguity surrounding the legal consequences of the annulment of a regulation when there was a preceding one dealing with the same subject matter. Some lawyers claimed that the standard was reinstated in this situation prior to the issue of the contested act. However, according to other views, in the period from the annulment to the adoption of a new standard, there is no regulation governing this matter. Some of the problems that arose, such as setting the fetal viability limits, were resolved by an instruction from the Ministry of Health in mid-2017. In February 2018, a new medical standard on obstetrics and gynaecology was proposed, but was withdrawn because of the harsh criticism from the professional circles and the NGOs and civil society organisations working in this field alike. A corrected version was not proposed by the end of the year and so in early 2019 medical care before and after the birth was still carried out with missing standards and rules of good practice. This poses risks both to the life and health of women and their babies and to the professional liability of the individuals engaged in medical activities. It remains to be clarified how and on the basis of what professional standards the Medical Audit Executive Agency (MAEA) carried out its checks after March 2017 in referrals and complaints concerning medical care during pregnancy, childbirth and post-natal recovery. This issue concerns to a great extent the protection of the rights of childbearing women and their babies, as a MAEA\(^{200}\) analysis for the period prior to the annulment of the medical standard (January 2014 - May 2015) indicates that 34% of the cases related to obstetrics and gynaecology were associated with the death of newborn babies, 12% with damage to the baby, and 18% with the death of a mother or of a woman with a gynaecological condition.

There is also deep concern about the lack of transparency on maternity care practices and on the conditions for exercising the rights of the childbearing women in Bulgarian maternity wards. Four cases of deaths of young women at birth or immediately after birth — in Kardzhali, Burgas, Pleven and Sliven — were reported in the media in 2018. None of these women had documented serious complications during pregnancy and/or accompanying illnesses. In all four cases, the families of the deceased women and the medical facilities in which they died came up with divergent information on the condition of the deceased during the pregnancy and at the beginning of the delivery. Against this background, it was only after the case in Pleven that the responsible institutions, represented by MAEA, committed to an opinion on the causes of the death of the mother. At the same time, at the end of February, the Ministry of Health, in a response to request for information under APIA submitted by BHC, declared that it had no information on the exact number of women who passed away in 2018 during their pregnancy, birth and 42 days later.

At the end of 2018, an obligation of the Bulgarian Doctors’ Union to draft by 30 June rules on good medical practice and submit them to the Minister of Health for approval was introduced in § 23 of the Transitional and Final Provisions to the 2019 NHIF Budget Act. In the event of non-compliance with this obligation, the rules will be drawn up by the newly established Medical Supervision Executive Agency within a period of three months. This makes it possible to have the recommendations of good practice by international professional organisations on both standards


of medical practice and the respect for the ethical rules and the rights of childbearing women implemented in maternity care in Bulgaria. However, it should be noted that the official communication and professional documents of professional and scientific organisations in the field (Bulgarian Doctors’ Union, Bulgarian Association of Healthcare Professionals, Bulgarian Society of Obstetrics and Gynaecology, Alliance of Bulgarian Midwives) lack translated guidelines that can be made available to practitioners in the country. The first Bulgarian translation of the recommendations for normal birth of the World Health Organisation (WHO), updated in 2018, was made by Modern Natal Care Network, a coalition of organisations, as part of a campaign to promote the rights of the childbearing woman in our country. This calls into question the quality and timing of the standard in preparation and of its synchronisation with the requirements to respect the rights of the childbearing woman and provide medical care based on modern scientific evidence, which requires continued civil monitoring of this area.

Data on health indicators in the maternal and child health sector available at the end of February 2019 show a decline in the total birth rate and relatively persistent levels of mortality in the perinatal, neonatal and post-neonatal period; these measures are a valid indicator of the quality of natal care and the respect of childbearing women's rights worldwide.201

Table 4. Live births and deaths in Bulgaria in 2018

<table>
<thead>
<tr>
<th>Total born</th>
<th>Live births</th>
<th>Stillbirths</th>
<th>Deceased from 0 days to 6 days</th>
<th>Deceased from 7 days to 27 days</th>
<th>Deceased from 27 days to 1 year</th>
</tr>
</thead>
<tbody>
<tr>
<td>56,451</td>
<td>56,099</td>
<td>352</td>
<td>178</td>
<td>74</td>
<td>130</td>
</tr>
</tbody>
</table>

Source: National Centre for Public Health and Analyses

The exact perinatal mortality rate cannot be calculated from this data, but it is clear that the indicator for child death in the first year of life is 6.76‰ – a level that continues to keep Bulgaria among the worst performing countries in the European Union. According to the latest Eurostat data,202 Bulgaria is among the top three countries with the highest child mortality rates in the EU, after Malta and Romania. To date, there is no qualitative institutional analysis of the reasons for such negative statistics. Many years of monitoring the access to qualified healthcare for non-insured pregnant women, however, show that this access is massively distorted.

In Bulgaria, the monitoring of the pregnancy of uninsured pregnant women takes place on the basis of Ordinance No 26 of 14 June 2007 on the provision of obstetric care services to uninsured women and on carrying out studies outside the scope of compulsory health insurance for children and pregnant women.203 The document stipulates that these women are entitled to one medical examination, including gynaecological examination and ultrasound, and to one package of medical diagnostic tests throughout the pregnancy, and to give birth in an establishment that has a

203 Issued by the Minister of Health, promulg. in SG No 51 of 26 June 2007 and last supplemented, SG No 103 of 30 December 2015. Available at: https://lex.bg/laws/idoc/2135556407.
contract with the National Health Insurance Fund. Already in April 2015, a report by the NGO Largo - Kyustendil indicated that the limits of this ordinance contradict higher-level legislation ensuring equal access to pregnant and childbearing women, without regard to their health insurance status. By the beginning of 2019, however, the rules for the provision of medical care to uninsured future mothers was not changed. It is even more worrying that, according to data provided to BHC by NHIF under APIA, even this minimum package of medical services remains unavailable to childbearing women without health insurance.

Table 5. Number of births of uninsured women, paid by the NHIF in 2018, and number of obstetrics and gynaecological examinations of uninsured pregnant women during the same period, and amounts paid for them

<table>
<thead>
<tr>
<th></th>
<th>Births</th>
<th>Gynaecological examinations</th>
<th>Package of medical and diagnostic tests</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number</td>
<td>Amount paid</td>
<td>Number</td>
<td>Amount paid</td>
</tr>
<tr>
<td>9,061</td>
<td>5,837,460</td>
<td>3,395</td>
<td>69,745</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>40</td>
</tr>
</tbody>
</table>

As demonstrated by the currently available data, in 2018 there was no progress in the efforts to better respect the rights of childbearing women in the country.
Chapter 15.
RIGHTS OF CHILDREN IN INSTITUTIONS

Although the deinstitutionalisation process in Bulgaria is considered irreversible, the risks for the social exclusion of children, including up to three years of age, remain. Among the most vulnerable are the children from the social bottom and the children with disabilities.

At the end of 2018, 10,793 children were living outside their families, according to SAA data. The deinstitutionalisation of infants and children up to three years of age came to a standstill in 2018. IMSCC were most difficult to close. Every third child in institutions, ICDPC and IMSCC, is under than 3 years old, and every second new placement in an institution in 2018 was of a newborn baby. The social exclusion of children with severe and multiple disabilities continued in the new services. Despite the statutory inclusive education for every child, only about half of the children with disabilities are integrated in the mainstream education system, with some 8,000 children with disabilities not attending school.

According to Eurostat, nearly half of the Bulgarian children — 41.6%, or 489,726 children — live at risk of poverty or social exclusion. The country ranks second after Romania in the EU on this indicator for 2017.

The context

Between 2010 and 2018, the number of children in institutions has decreased more than 11 times, and alternative and support services for families have been developed. The period until 2030 will be key to completing the deinstitutionalisation and to significantly reduce the number of children separated from their families. This is also foreseen in the draft National Strategy for the Child 2019-2030 that was published for public consultation on 26 December 2018, contrary to certain opinions that the strategy aims to take the children away from the parents.
The bill on social services, tabled in the National Assembly at the end of 2018, served as a catalyst for the deinstitutionalisation process for children. For the first time, a Bulgarian law lay down deadlines for the closure of the institutions for children and adults: of all institutions for children – by 2021, of all institutions for persons with disabilities – by 2035.\footnote{The draft was presented to the parliamentary social committee in December 2018 and voted at first reading in January 2019.}

**Achievements in 2018**

Six ICDPC and two IMSCC were closed down in 2018. According to SAA,\footnote{Information under APIA provided to BHC by SAA, ref. No 94K00-0117/13.11.2018.)} by 30 September 2018 there were 614 social services for children, including family-type, with 14,528 occupied places. 29 specialised institutions for children were in operation: 14 institutions for children deprived of parental care (ICDPC), accommodating 221 children and young people aged 7 to 18; and 15 institutions for children aged 0 to 3 (IMSCC), accommodating 440 children. The total number of institutionalised children is 661. The placement of 391 children and young people from two types of institutions was terminated by 30 September 2018.

In May 2018,\footnote{In May 2018, minister Biser Petkov terminated by an order the placement in IMSCC of children under 3 years without disabilities. According to the Updated Plan, the accommodation of children without disabilities and under 3 years of age had to be discontinued in 2017.} with a one-year delay, admission to institutions of healthy children aged up to 3 years was terminated.\footnote{In 2018, 250 or more than half of the children in IMSCC were babies and children under the age of 3.} This key step of social minister Biser Petkov significantly decreased IMSCC admissions. In comparison to 31 December 2017, there were 585 children in IMSCC, every third one of them healthy.\footnote{NSI data.} About two thirds, or 50 out of 81 newly accommodated in IMSCC in 2017 children from biological families, aged 0 to 3 years, were healthy (62%). According to the Ministry of Health, in 1 January 2017 – 28 February 2018 alone, there were 165 healthy children admitted to the existing 16 IMSCC, of whom 156 were less than 3 years old.

**IMSCC: the most difficult reform**

Overall, however, in 2018 the implementation of the Updated Plan for the Deinstitutionalisation of Children in IMSCC (2016-2020)\footnote{Council of Ministers. National Strategy “Vision on the Deinstitutionalisation of Children in the Republic of Bulgaria”. Available at: http://www.strategy.bg/StrategicDocuments/View.aspx?lang=bg&Id=601.} has stalled. The data show that the results are almost identical at IMSCC entry and exit. As of 31 December 2018, 226 leave IMSCC\footnote{According to the Ministry of Health, 226 children were taken out of IMSCC until 31 December 2018: 48 returned to their biological family, 6 were placed in next of kin families, 74 were placed in foster care, 74 were adopted, and 24 were placed in the FTC.} and almost as many, 221 infants and children, are placed in IMSCC. The lack of coordinated early intervention, prevention and support in the community leaves the entrance to the children’s institutions open. The network of alternative care for effective prevention of child abandonment does not work.\footnote{“Direction: Family” plans the closure of 8 pilot IMSCC and their replacement by 45 alternative services managed by the municipalities. As of 1 January 2018, only 17 new services were operational in 7 pilot municipalities: 6 day-care centres for children with disabilities, 8 FTC for children with disabilities and 3 units for mothers and babies. According to the mayors of the pilot municipalities, the utilization rate of renovated buildings varies between 30% and 100%. The 14 functioning IMSCC have not been covered by the reform yet.}
By 2020, there should be 20 specialised centres for health and social care for children with disabilities in need of permanent medical care, as well as eight centres for children with high risk behaviour and special care needs under a project of the Operational Programme "Regions in Growth" 2014-2020. In 2018, none of the centres for integrated alternative care for babies and children under the age of three, foreseen in the updated plan already in 2016, was built. With a two-year delay, the first in Bulgaria Centre for the Integrated Care of Children with Disabilities and Chronic Diseases became operational on 3 December 2018. The pilot health institution was established in the place of the closed IMSCC in Silistra and will provide health services accompanying the social system, support (rehabilitation, speech therapy and psychological services) to 461 children aged 0 to 16 years, with an incapacitation of more than 50%. IMSCC deinstitutionalisation remains a serious challenge for another important reason: IMSCC are managed by the Ministry of Health, an "institution which identifies itself the least with the social model than needs to be followed by the deinstitutionalisation" and encapsulates its activity.

Each fifth foster family — without a child

According to SAA, there are 2,205 children in foster families, of whom 1,738 or 86% aged between 0 and 7 years. According to the National Foster Care Association, no children are placed in 515 foster families out of 2,172 approved throughout the country. According to SAA data, 1,918 children and young people in foster care are healthy, and only 178 are with disabilities. Most children are aged between 6 and 14 years, there are 657 babies (0-3 years old), 392 children of pre-school and school age (6-14 years old). 92% of the children were placed in foster families by their own family or by a family of relatives or next of kin.

The picture at the exit of foster families is most often the following: by 31 November 2018, for example, out of 67 adopted children 4 were adopted by their foster parents, 43 by Bulgarian adoptive parents and 20 by foreign parents, 4 were reintegrated into their own families, and 4 were sent to FTC. The summarised assessment is that foster care remains unbalanced in 2018: the service for children with disabilities is poor, there is no development with regard to foster care for children with deviant behaviour, the role of mobility, crisis response and direct work with families remain white fields in the reform.

The high number of children in formal care (outside their biological families) is the most serious deficiency of deinstitutionalisation in Bulgaria. As mentioned, there are 10,793 children in formal care and this number has not changed significantly in recent years. Of them, every third child is in some form of residential care: 3,074 children and young people, including 1,434 children and young people with disabilities, lived in 269 community-based residential care facilities.

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221 Information provided by MoH to BHC under APIA (ref. no 93-00 3/30.01.2019).
222 Under the Updated Plan, preparing children and staff for the relocation to the new services by 2021 will be done under the Human Resources Development Operational Programme.
223 The Medical Establishments Act provides for the construction of medical facilities: Centre for the Integrated Care of Children with Disabilities and Chronic Diseases. A regulation on their activities was adopted on 15 November 2016.
(transitional housing, crisis centre and FTC) as of 30 September 2018. In 2018, there were 73 new placements of children and young in FTC. Together with the children in the institutions, the total number of children living in formal residential care services 3,735.

**Residential care as a ‘crisis management place’**

In 2018, the main factors that separate children from their families in 2018 included: poverty; lack of quality community-based child services and resources to support families, especially children with disabilities; stigma; early pregnancy and, in some Roma communities, child marriages. The children in residential care were also among the most vulnerable groups.\(^{226}\)

In 2018, BHC carried out a multidisciplinary study in 65 FTC for children and young people with disabilities in the country. The main finding of this monitoring is that the social exclusion of children with disabilities is continues also in some new services. The group of the children with severe and multiple disabilities is most endangered of social exclusion. The study found that the quality of care varies between the different residential services. In some FTC, ‘problematic’ children experience several stays in psychiatric hospitals or are redirected to crisis centres, while return for good to the specialised institutions from which they were removed. Both staff and children are severely traumatised. Without cross-sectoral cooperation between the different spheres, and without proper coordination and capability to support service professionals within the protection system, without prioritising new models of alternatives, such as mobile teams and assisted living, the deinstitutionalisation in Bulgaria, on the precise assessment of experts at the New Bulgarian University Know-How Centre for Alternative Care for Children, is like a "crisis management log".\(^{227}\) The BHC monitoring in FTC for children and young people with disabilities in 2018 confirmed the evaluation of the experts that "the higher the degree of child impairment, the more institutional the physical environment in which they live".\(^{228}\)

**Immobilisation is not social inclusion**

In 2018, BHC human rights monitoring with regard to residential care registered a multiplication of institutional stereotypes in most inhuman and unacceptable forms, including isolation and immobilisation (physical and medicinal immobilisation).

Examples of almost 24-hour physical immobilisation, medication-induced immobilisation and isolation without surveillance were registered at the FTC in Pazardzhik, the FTC in Sevlievo, at FTC Hrizantema and FTC Mirni Dni in Gabrovo. A death case was also registered at the end of 2016: a 20-year-old girl diagnosed with a several mental disability passed away at the Gabrovo hospital due to supposed over medicalisation. According to the medical papers, the case concerns a patient who was "periodically hospitalised at the Sevlievo Psychiatric Hospital, due to impossibility to cope with her behaviour". The patient’s medical file No. 14040/2016, issued by the Gabrovo hospital, states: “Admitted under clinical path 107: “Diagnostics and treatment of

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\(^{228}\) Ibid.
poisonings and toxic effects of medicines and domestic poisons”. The girl’s death was not investigated.

At the beginning of 2018, according to a communication by the government press centre, the chair of the State Agency for Child Protection (SACP) was replaced on proposal by Prime Minister Boyko Borisov for “failure to take adequate measures against violence at the Hrizantema FTC for children and young people with disabilities in Gabrovo”. Video recordings made available to the media revealed physical and verbal abuse of children with disabilities in this centre. Aggressive behaviour of a caretaker and nurse, including slaps and threats: “I'll smash your head. Lie down now...”, was also filmed. The inspections by the Regional Prosecutor’s Office and the Social Assistance Directorate confirmed the allegations.

In reality, the social inclusion of children with disabilities is limited in time and place, including their educational integration. The new Pre-School and School Education Act of October 2015, for example, guarantees all children access to education. Children with disabilities are not formally considered as 'uneducable', but the BHC study in 2018 found that in practice the children and the young people with the most severe disabilities remain out of the classrooms. The children with disabilities in FTC are “included” mainly in “extra-school classes” at the FTC. It is estimated that only about half of the children with disabilities are integrated into mainstream education, with around 8,000 children with disabilities not attending school.229

**The Bulgarian response to the United Nations’ recommendations**

At the end of 2018, the Bulgarian government submitted to the UN Committee against Torture230 information in response to the concluding observations of the CAT on the sixth periodic report of Bulgaria from the end of 2017.231 In its recommendations, CAT had expressed concern about the absence of any progress in the investigations into 238 deaths at institutions for children with intellectual disabilities (2000-2010) revealed by a joint inspection of the prosecutor’s office and the BHC in 2010-2011. 232 By the end of 2018, after eight years of investigation, no indictment has been submitted to the court for failure to act, resulting in serious consequences or death, and for failure to conduct an effective investigation of what happened. CAT demanded re-start of the investigations and recommended that the government report on the outcome by 6 December 2018.

In its reply of 6 December 2018, the Bulgarian Government stated: “The Prosecutor’s Office has conducted 187 inspections and pre-trial proceedings in relation to 243 reported cases of child deaths in specialized institutions. All of them have been concluded and have established that there is insufficient evidence of intentional or negligent criminal activity that has led to the death of children. In the course of these inspections, inhuman treatment of children by staff in specialized institutions has not been proven. All pre-trial proceedings were monitored and verified by the

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Supreme Cassation Prosecutor’s Office. [...] It should be noted that all cases have happened over 15 years ago. In order to overcome the gaps in the then existing legal provisions for establishing the causes of death in children placed in specialized institutions, in 2010 amendments were made to the Ordinance on Criteria and Standards for Social Services for Children and the Law on Health. As a result of the introduced legislative changes, a legal obligation was introduced to notify the child’s relatives/custodians/guardians and the competent authorities, as well as to keep mandatory clear and traceable documentation in the event of death, and to conduct regular inspections by the control bodies.\textsuperscript{233}

In 2015, BHC received information from the directors of 29 IMSCC about other 292 children aged 0 to 7 years, who had passed away between 1 June 2010 and 31 December 2014.\textsuperscript{234} The death of these children was never investigated. On 29 May 2018, the United Nations Committee on the Rights of Persons with Disabilities received from the Bulgarian Government information on the deaths of children at IMSCC:\textsuperscript{235}

\textit{“The Ministry of Health reports that none of the cases of child mortality in the homes for medical and social care for children (HMSCC) can be attributed to the shift from institutional to other forms of residential care, neither to abuse nor neglect. The overwhelming number of children in HMSCC have extremely severe disabilities which greatly reduces their lifespan. No discrepancies have been found between a reported cause of death and the results of a subsequent autopsy. Even as the proportion of health-related cases among the residents of the HMSCC rose significantly — from 57\% in 2011, to 75\% in 2017 — the number of deaths in these facilities has dropped, both among children with disabilities and among their residents in general, to 39 in 2017, as compared to 47 in 2016, 55 in 2015, and 56 in 2014. Procedures to prevent violence, abuse and neglect are in force at every HMSCC, along with procedures on incident and death reporting and on control. The procedure requires that all relevant authorities — the Child Protection Unit of the Social Assistance Directorate, the Regional Health Inspectorate and the Ministry of Health — be notified immediately of such occurrences.”}\textsuperscript{236}

However, most of the children's diseases do not in themselves lead to death, even if they are assumed to be a risk factor for health conditions. Mental illnesses would not cause death in domestic care, for example. Therefore, the arguments put forward by the government appear to be a comfortable explanation relieving the authorities from the responsibility of investigating these cases.

**Child mortality at IMSCC: a constant figure**


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\textsuperscript{233} CAT (2019), op. cit.

\textsuperscript{234} Following an alert by the BHC, the SACP Chair filed a request with the Supreme Cassation Prosecutor’s Office to conduct an inspection. No feedback on action taken by the Public Prosecutor’s Office has been received by the SACP.

\textsuperscript{235} CRPD (2018). List of issues in relation to the initial report of Bulgaria: Replies of Bulgaria to the list of issues (CRPD/C/BGR/Q/1/Add.1), § 31. Available at: https://undocs.org/CRPD/C/BGR/Q/1/Add.1.
children is presented graphically in Figure 6. The numbers clearly show that despite the reduction in the number of children institutionalised in IMSCC, the number of the deceased children in these institutions remains constant, with minimal deviations. Even in 2018, the number of deceased children increased by 10% compared to 2017 (43 and 39, respectively):236

In 2016, the UN Committee on the Rights of the Child published its recommendations to Bulgaria. Bulgaria is expected to actively pursue their implementation until 2022, before presenting the next country progress report on the implementation of the UN Convention on the Rights of the Child and its Optional protocols. One of the 2016 recommendations of the UN Committee on the Rights of the Child related to the following: “*Introduce a thorough investigative review procedure in respect of cases in which a child has died or is seriously injured as a result of abuse or neglect and, in particular, conduct a full investigation into the allegations of the significant number of child deaths in medical and social care institutions*”.237 Systematic documentation and estimates of child mortality rates in institutions and services would help to better understand the causes and reduce mortality. There is still no systematic monitoring and investigation of deaths in institutions and services for children and the elderly in Bulgaria, as well as systematic follow-up and analysis.

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236 If the deceased children accounted for 2% of the institutionalised children in 2010, the rate in the last three years was between three and a half and four and a half times higher: 8% in 2016, 6.8% in 2017, 8.7% in 2018 (the increase in the rate is the result of the decreasing total number of children in institutions, and not of an increase in the number of death cases, which remains practically unchanged).

237 CRC (2016). *Concluding observations on the combined third to fifth period reports of Bulgaria* (CRC/C/BGR/CO/3-5). Available at: https://undocs.org/CRC/C/BGR/CO/3-5.
Chapter 16.
RIGHTS OF LGTBI PEOPLE

The lesbian, gay, bisexual, transgender and intersex (LGBTI) people in Bulgaria face social and legal obstacles and discrimination which are not experienced by heterosexual and cisgender people. In 2018, the opening of the first in Bulgaria LGBTI community centre, Rainbow Hub, marked an important development for the LGBTI community.

However, no significant progress was made on the issues of the equality of these groups. On the contrary, in the first half of 2018, in connection with the attempt to ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention), a toxic debate began which created a problem with the use in the text of the Convention of the word gender (in English) or genre (in French). This word was declared a dangerous ideological concept seeking to eliminate the differences between men and women and to fundamentally change the understanding of the sexes. The homophobia and the transphobia were the main arguments in this debate, and the opponents of the Convention were successful and the Constitutional Court impeded its ratification.

The most pressing issues for the LGBTI community remain the access to education on the sexual and reproductive health of their communities, the legal framework of same-sex marriage, the lack of a facilitated and free administrative procedure to change civil gender along the one-stop shop model, and changing the medical standards and practices affecting mental illness and genital development anomalies. The main challenges to progress are the lack of expert and public debate on the listed issues, lack of policy ownership, lack of resource support and strategic planning by the civil society organisations of these communities, lack of developed and prominent community life, and the fact that the vast majority of LGBTI people continue to live concealing their identity. In 2018, a new obstacle was added: the mobilised and well-financed movement of the conservative reaction, working against the advancement of the rights of the women (mostly in the reproductive sphere) and the LGBTI people.

238 Transgender is 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.

239 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.

240 Cisgender is 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.


242 Gender (Lat. Genus), is an English word denoting a grammatical category, which in the 1970s was borrowed by US feminists to denote the social or cultural significance assigned to certain behavioural and physiological characteristics such as ‘masculine’ or fit for males, and as ‘feminine’ or fit for females, e.g. the designation of the blue colour as fitting for boys and of the rose colour as fitting for girls. The feminists point out that these differences are based on the sex but do not arise from it, but from the culture that attributes gender-related significance to things that are objectively not connected to gender. This social significance, a non-physical dimension of sex, is the gender.
Hate crimes and hate speech

In the Criminal Code in force, preaching or inciting to discrimination, violence or hatred, as well as the use of violence, damage to property and the formation of, directing or participating in an organisation, group or crowd for the purpose of committing these acts on the basis of sexual orientation, gender identity or gender expression of victims are not treated as criminal offences, as is the case when they are committed on the basis of race, nationality, ethnicity, religion or political belief (Articles 162 and 163 of the Criminal Code).

Contrary to racial or ethnic hate speech, hate speech based on sexual orientation may be penalised only under the administrative or civil law provisions of the Protection against Discrimination Act. The general statute of Article 320 § 1 of the Criminal Code, for which there is no case-law, is the only possible criminal remedy for such a speech. In its practice, the Bulgarian public prosecutor’s office refuses to institute pre-trial proceedings for public calls to homophobic violence, and if there were any pre-trial proceedings for such acts with this legal qualification, the case has never reached the trial stage.

There are no aggravated circumstances for murder and bodily injury on homophobic and transphobic grounds, unlike what is available for acts of racist or xenophobic motivation (Article 116 § 1 (11) and Article 131 § 1 (12) of the Criminal Code). There is no case-law to accept that committing the acts on such basis is an aggravating circumstance.

In June 2018, the SCC issued its final judgment on the case of the homophobic killing of a 25-year-old student of medicine, Mihail Stoyanov, in the Borisova Gradina Park in 2008. Stoyanov died after being beaten by a group of young people who in the pre-trial proceedings admitted that had gathered in the park — in an area where gay men set their sexual dates for decades — to "cleanse it" of gays. In 2015, the Sofia District Court as court of first instance established that homophobic motives were behind the formation of the intent of violence against Stoyanov, but that the initial intent was not to commit murder, which had occurred during an occasional (sudden) intention.243 The Sofia District Court ruled that the homophobic motivation of the perpetrators was an aggravating circumstance, as it was an expression of contempt for the individual rights of others, their bodily integrity and the rule of law in society, which pointed to an increased risk for the public.

In 2016, the Sofia Administrative Court as appellate instance ruled that the acts of the defendants were guided by homophobia and not by hooliganism, and therefore found that there was no justification for the complaint of the private prosecutor in the case that the court had incorrectly acquitted the defendants for the qualification of the act as committed on hooliganism.244 The cassation instance briefly and implicitly confirmed the finding of this void in the law, but amended the convictions of the defendants, with no mention of homophobia among the aggravating circumstances, thus eliminating its recognition by the court of first instance.245

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243 Sofia City Court (2015). Sentence No 199 of 22.06.2015 criminal case No 3766/2013, 28th panel.
244 Sofia Administrative Court (2016). Decision No 330 of 12 July 2017 on appellate criminal case No. 84/2016, 5th panel.
Equality and non-discrimination

Article 6 of the Constitution of the Republic of Bulgaria enshrines equality before the law on the basis of an exhaustive set of characteristics: race, nationality, ethnicity, gender, origin, religion, education, beliefs, political affiliation, personal and social status and wealth. These characteristics do not include sexual orientation and gender identity or gender expression.246

Consensual same-sex sexual acts were decriminalised in Bulgaria with the adoption of the current Criminal Code in 1968.247 The legal texts, however, continue to contain aggravated circumstances dividing criminal sexual acts into ordinary (undefined) and perpetrated ‘with a person of the same sex’ (Article 155 § 4, Article 157 of the Criminal Code). It is unclear why the legislator has decided to separate these acts. Moreover, in some cases this leads to unequal punishment. For example, the low limit of the punishment for an aggravated rape (by a man of a woman) is 10 years of imprisonment (Article 152 § 4 (4) of the Criminal Code). In comparison, the low limit of the punishment for aggravated sexual intercourse with a person of the same sex with the use of force or intimidation (de facto rape of a man by a man or of a woman by a woman) is 5 years of imprisonment (Article 157 § 7 of the Criminal Code). This difference in treatment, which regards opposite-sex sexual violence as noticeably more serious, is difficult to be rationally justified and is a clear example of discriminatory legal provisions.

An example of a non-discriminatory relationship are the statutes of Articles 149 and 150 of the Criminal Code concerning the offence of molestation in its two forms: with a person under the age of 14 years, and with a person who has reached the age of 14. The gender of the subject and the victim are irrelevant: they can be both from opposing sexes or from the same sex.248

The minimum age above which the consent of the person to take part in a sexual act is relevant to the criminal nature of the act was levelled in 1986 with an amendment to Article 157 § 2 of the Criminal Code.249 Prior to that date, “homosexual acts” not only with underage persons but with minors in general, were treated as a crime. The levelling was repealed in 1997 when “homosexual activities” with persons up to the age of 16 became a crime,250 while underage remained the minimum age above which consent counts for persons of different sex.251 However, it was reinstated again in 2002 and now the age is the same — 14 years — regardless of whether the sexual act involved persons of different or the same sex.252

The Criminal Code still contains the vicious doctrine that rape is regarded only as an act performed by a man against a woman, specifically through forced penile-vaginal penetration. As described above, in some cases other types of sexual coercion are treated as less serious crimes. All other types of sexual coercion, including forced oral or anal entry, regardless of whether performed with a penis, another part of the body or with an object, are regarded as "sexual abuse".253 Forced

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247 Compared with the 1951 Criminal Code, Article 176: ‘For sexual intercourse or sexual satisfaction between persons of the same sex, the sentence shall be up to 3 years of imprisonment.’
251 See Article 151 of the Criminal Code.
253 SCC (2010). Decision No 122 of 25.03.2010.
penile-vaginal penetration, where the victim is an adult, is punished by 2 to 8 years of imprisonment under the main statute (Article 152 § 1 of the Criminal Code). The same penalty is also foreseen for forced penile-vaginal penetration (sexual intercourse) when the perpetrator and the victim are male, which, however, has a distinct statute (Article 157 § 1 of the Criminal Code) and is not referred to as “rape”. However, the sentence would not be the same if the perpetrator and the victim were female and the forced penetration was carried out not with a penis but, for example, with another body part or with an object. Regardless of the fact that this is commonly understood as rape, the legal definition of rape in the Criminal Code treats similar attacks as lighter in comparison to penile penetration. The reasons for this are unclear. The treatment of rape in Bulgarian criminal law as forced penile-vaginal penetration that is not the same as sexual abuse starts at least with the 1896 Criminal Act and is not unique to Bulgaria. However, while in many other countries this crime has long been regarded as gender-neutral, in this country the doctrine remains conservative and therefore trivialises a wide range of sexual abuses.

Furthermore, the Bulgarian criminal doctrine does not recognise the possibility of rape as a hate crime, i.e. victimisation one the basis of a group to which the victim belongs. It is only understood as an action aimed at achieving sexual satisfaction. In this way, the circumstance that the victim had to be raped on the basis of a protected feature, e.g. because of her or his sexual orientation, gender identity or gender expression (the so-called “corrective rapes”), or as an expression of intolerance to the victim’s religion, race, ethnicity or foreign origin, remains unrecognised as a qualifier of the greater threat the act poses to the public.

PADA provides protection against discrimination based on sex, sexual orientation and genome (Article 4 § 1). The latter is important in many of the intersex conditions. The ban is absolute, for “any” discrimination, and all persons, natural and legal, including public institutions, are covered by the law. However, gender identity or gender expression are not included among the grounds protected by law. According to § 1 (17) of its additional provisions, the “sex” attribute also includes cases of “sex reassignment”. This text transposes Directive 2006/54/EC of the European Parliament and of the Council into national law. However, the expression “gender reassignment”, adopted mechanically by the Directive, leaves room for a restrictive interpretation which would only recognise protection only for post-operative transgender people. In this way, there is a risk of deprived of protection both pre-operative transsexual people and transgender people in general, as well as those who do not feel that they belong to the man-woman gender binary (genderqueer) and do not go through gender reassignment. There is no case-law to support or reject this assumption.

As is evident from its very title, the Equality between Women and Men Act, adopted in 2016, only regulates equality in the context of the gender binary and does not recognise the existence of persons outside it.

**Private and family life**

People in same-sex couples have a de facto family life, bearing all the effects of family life in opposite sex couples, including moral and property relationships arising between those involved in the actual family. However, Bulgarian legislation does not provide a legal form (legal statute) for the occurrence of family relationships and other legal consequences for the families of same-sex couples. The Bulgarian legislation foresees only one legal form that gives rise to family
relationships: the marriage. Both the Constitution (Article 46 § 1) and the Family Code (Article 5) define the marriage as a voluntary union only between a man and a woman, but not of persons of the same sex. There is no legal form in the legislation regulating the relationship of de facto families, such as civil partnership, registered partnership, civil cohabitation, etc. The Bulgarian legal doctrine knows the so-called factual cohabitation, as separate laws, and case-law, primarily that of the former Supreme Court, recognises its statutory power and limited consequences arising from it with regard to family relations and civil law. There are more than 50 rules in the legislation governing a number of rights, obligations, responsibilities or restrictions which are not applicable to the de facto cohabitating persons of the same sex, or from which these persons are deprived. These include the right to visitation, parental custody, the matrimonial property regime, entitlement to certain types of leave, to a widow’s pension, to certain types of benefits and to benefits for the death of the partner, to protection from domestic violence, to tax relief, etc.

A marriage between persons of the same sex concluded under the law of a foreign country should be recognised by the Republic of Bulgaria (Articles 75-77 of the Code of International Private Law). There is no legislative obstacle to entering in a marriage with a person of sex opposite to the changed civil gender of post-operative transgender people.

By law, a child can be adopted by one individual (a woman or a man) or by a married couple, i.e. a heterosexual couple. Two unmarried individuals, even if they are a heterosexual couple, would not be able to adopt the same child. Insofar as they could not get married in Bulgaria, two persons of the same sex cannot simultaneously adopt one and the same child, as only one of them is eligible to adopt. The fact that the two persons de facto take care of the child and that the child perceives them as parents, as well as the emotional connection between the child and the adults, have no legal value. The person who has no custody of the child is a foreign person: he or she does not have any rights over the child, and the child has no rights over the adult, such as the right to inheritance. The same holds true when one of the two individuals in a same-sex family is the biological parent of a child: the other person cannot adopt his/her partner’s biological child.

The artificial insemination (in vitro) procedure is available both to married couples and to single women.

The Protection against Domestic Violence Act regulates the rights of domestic violence victims, the measures to protect them (other than measures in criminal law) and the rules of imposing them. This law protects related individuals who are, or have been, in a family relationship or in a factual marital cohabitation (Article 2 § 1). In theory, this provision should also provide protection to same-sex couples in marital cohabitation, but in practice this is not the case, as the case-law does not recognise that same-sex couples are in a family relationship. As such, case-law accepts only heterosexual couples, since the law uses the term “matrimonial” and the word “spouses” is understood only as persons in a marriage, who, under Bulgarian law, may only be persons of different sex.

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254 E.g. the Protection against Domestic Violence Act (promulg. SG no. 27 of 29 March 2005).
255 For example, Supreme Court of the People’s Republic of Bulgaria (1969). Decision of the Plenum of the Supreme Court No. 5 of 24 November 1969 to supplement item 2 of Section III of Decision No 4/61 of the plenum on the circle of persons entitled to compensation for non-pecuniary damages for death.
In January, the Sofia City Administrative Court ruled on a complaint by a Bulgarian national married to another Bulgarian citizen in the UK under local law, disputing the refusal of the Municipality of Sofia’s Lozenets area to record her marriage as current marital status in her personal civil status record. The reason for the municipality’s refusal was the that the two persons were of the same sex. According to Bulgarian law, the municipal authorities are entrusted with storing information about a marriage concluded abroad and with attesting this fact to the public by issuing appropriate references or certificates to citizens and institutions. Thus, the consequences of not recording the marriage are that each of the two women is deprived in Bulgaria of the marital rights and obligations coming with their marriage. The Sofia City Administrative Court ruled that, pursuant to Article 6 § 3 and Article 76 § 1 of the Code of International Private Law, Bulgarian nationals abroad may enter into a marriage before the competent authority of the foreign country, if this is acceptable under its law, with the conditions for entering into marriage being determined for each of the persons by the law of the country of which the person is a national at the time the marriage was concluded. Therefore, the court held that the provisions of the Constitution and the Family Code which limit the marriage to a right of heterosexual couples only are compulsory: the same-sex of the applicant and the person she had married constitutes an obstacle to marriage under Bulgarian law. The prohibition contained in both rules cannot be ruled out in the examination of the negative substantive conditions of marriage in the proceedings instituted with regard to the request to update the family status in the applicant’s private registration card. The case is currently pending before the Supreme Administrative Court.

In December, SCAC ruled on a complaint by one of the women in the same couple challenging the refusal of the Assisted Reproduction Centre to finance an in vitro procedure, as in the application form the woman applying stated she was married and indicated her wife’s names. According to the legal framework in Bulgaria, a woman seeking funding for assisted reproduction has two possibilities: to request funding for assisted reproduction by an unknown donor or assisted reproduction by a partner or spouse. For the second option, the semen donor is the partner or spouse. The applicant in the case wanted to request assisted reproduction by an unknown donor, but the package of documents she was given contained a family status declaration. She filled in the declaration truthfully, stating that she was married to the other woman. Regardless of the candidate’s choice, the Assisted Reproduction Centre decided to process her application as one for assisted reproduction with a partner or a spouse as donor and, taking into account that the applicant’s partner was also female, refused to provide funding because this donor would not be able to provide semen. The Sofia City Administrative Court ignored completely the factual situation described above and ruled that the refusal of the centre was correct and lawful, since “two women cannot produce offspring in a natural way”. The decision is subject to cassation review.

In May, the Sofia Administrative Court confirmed the Sofia City Court’s refusal to return a child to the Kingdom of Denmark to his non-biological mother, to whom a Danish court has granted temporary custody. The Danish citizen G. and the Bulgarian citizen V. entered into a marriage in Denmark in 2014. In 2015 V. gave birth to a child and G. was recorded in the birth certificate as a joint mother under Danish legislation. In 2016, V. arrived in Bulgaria and filed with the Municipality of Pazardzhik a request to issue a birth certificate and register the child in the population register. In the application G. was declared as “father”, as in the Bulgarian forms this is...
the only option. The municipality refused to issue a birth certificate because the documents provided in the file indicated origin that was not in compliance with Bulgarian law. When the refusal was contested, the Pazardzhik Administrative Court repealed it, holding that under Article 12 § 3 of Ordinance No RD-02-20 9/21.05.2012 on the functioning of the unified civil registration system, when the origin of the parent (mother or father) is not established, for the purposes of issuing a Bulgarian birth certificate, the relevant field for that parent's details is left blank and is stricken, i.e. it was not necessary to have G.'s name in the birth certificate in the first place. Following a complaint by the Mayor of Pazardzhik, the Supreme Administrative Court sustained this decision and returned the file to the Municipality for the necessary actions to be carried out. For these proceedings G. as a legal parent of the child, who is a Danish citizen, has not been notified. In early 2017, the marriage between G. and V. was dissolved. About a month later, G. was granted a schedule of contacts with the child, indicating the days on which she will exercise her parental rights. Several months later V. left Denmark with the child and arrived in Bulgaria without notifying G. and kept the child in Bulgaria against her will. G. notified the Danish authorities that she wished to end the joint exercise of custody and wishes to have custody granted to her alone. She was granted provisionally custody pending an agreement or a judgment of a court. She then submitted through the Bulgarian Ministry of Justice a request under Article 7 (f) in conjunction with Article 8 of the Hague Convention on the Civil Aspects of International Child Abduction for the return of the child to the country of his habitual residence, the Kingdom of Denmark. The Sofia City Court refused to return the child, since under Bulgarian law the parents are the mother and the father: “Our law DOES NOT recognise the statutes of joint maternity or paternity, i.e. parents of the child cannot be two mothers or two fathers. That is why the child’s birth certificate [...] issued by the Municipality of Pazardzhik [...] lists the defendant V. as mother and the field ‘father’ is blank. For Bulgarian law, the child [...] has only one parent who is the bearer of the full set of parental rights and obligations (parental duties) in relation to that child.” In its May judgement, the Sofia Administrative Court sustained this refusal of the Sofia City Court, but with different motives. Unlike the Sofia City Court, the appellate court recognised G. as a joint mother of the child, found it was unlawful to keep the child and that all preconditions for the return of the child were present, but judged that the return of the child to Denmark will result in breaking his link with the “priority relevant adult who takes care of the child” and this would create preconditions for the deterioration of his mental health.

In June, the Sofia City Administrative Court ruled on the refusal of the Migration Directorate to prolong the extended residence permit of an Australian citizen, wife of a French national. The two women married in France in 2014. They moved to Bulgaria for a long stay in 2016. At the end of December 2016, the Migration Directorate at the Ministry of the Interior issued the Australian citizen a long-term residence permit, in her capacity of a family member of a European Union citizen. The authorisation even referred to Directive 2004/38/EC as legal basis. The authorisation was granted for a period of one year. In January 2018, the Director of the Migration Directorate refused to grant a new long-term residence permit to a family member of an EU citizen in the Republic of Bulgaria on the grounds that according to the legislation of the Republic of Bulgaria

only the marriage concluded between a man and a woman was legal. Apart from the Family Code and the Civil Registration Act, the refusal decision refers also to the definition of ‘marriage’ in the Constitution of the Republic of Bulgaria as legal basis. SCAC repealed the refusal. The court motivated its decision with the CJEU ruling on the *Coman case*.

SCAC held that in cases where an EU citizen has made use of his freedom of movement and has went to an EU Member State other than that of which he is a national and is actually residing there, in accordance with Article 7. 1 of Directive 2004/38/EC, and during that time has established and strengthened family life with a third-country national of the same sex whom they married in the host Member State legally, Article 21 § 1 TFEU should be interpreted so as not to allow the competent authorities of the Member State to deny right of residence within the territory of that Member State for reasons that the law of that third country does not provide for same-sex marriages. In addition, SCAC complements that the refusal of the Migration Directorate to recognise marriage between Union citizens of the same sex is a violation of Article 21 § 1 TFEU and consequently restricts the right of the Australian citizen to move and reside freely within the territory of the EU. The Migration Directorate appealed against this decision and it was pending cassation review which wasn’t concluded within the reporting period.

**Recognition of legal gender**

Transgender and intersex people need a statutory civil gender (i.e. gender indicated in official documents) change procedure. The Bulgarian legislation recognises the person’s right to change its civil gender (Bulgarian Identity Documents Act, Article 9 § 1; Regulation on issuing Bulgarian identity documents, Article 20 § 6 and Article 22 § 6 (5); and § 1 (17) of the Additional Provisions to the Protection against Discrimination Act). However, the absence of an established procedure creates serious obstacles for these persons to make such a change. There is an explicit statutory prohibition to change civil gender by administrative procedure (Civil Registration Act, Article 76 § 4). The change can take place at the request of the person to the area court, with the judicial panel creating an *ad hoc* procedure. The documents required by the court, as well as the scope of the decision, if it is in favour of the person seeking to change their civil status, are judged by each chamber separately. For this reason, there is contradictory case-law harmful to the citizens.

For the same reason, there is also controversial case-law concerning the requirement to change physical gender before the civil gender. This leads to frequent refusals on the part of the court to allow such a change, which is contrary to the privacy of the affected, usually transgender and intersex people.

In its recent case-law, the Supreme Cassation Court has two decisions concerning gender recognition of transgender persons. In the first case, the court decided that transgender people cannot be required to have a surgery for the modification of their body against their will as a prerequisite for changing the gender recorded in the birth certificate, since the admissibility of

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such intervention, without a court ruling on gender reassignment, is questionable in light of the provision in Article 128 of the Criminal Code. At the same time, however, SCC held that persons requesting the court to change their civil gender should prove before the court their serious and irreversible decision on the future alignment of their physical gender with the mental one, and that the gender reassignment hormone therapy should have at least started. The latter is not in line with the World Professional Association for Transgender Health (WPATH) standards, which shows that medical and other barriers to the recognition of the gender of transgender persons can damage their physical or mental health. In the second case, SCC confirmed its earlier decision, stating that for the purpose of allowing a change of gender in the birth certificate of a person, it is sufficient, firstly, that the condition of transgenderism, established by means of a comprehensive medical examination (medical criterion), be present, and, secondly, that it be proven to the court that the person had made a serious and irreversible decision to change his or her mental and social gender role.

This contradicts ECtHR case-law in relation to complaints by transgender people who have been refused gender recognition but have not yet undergone gender reassignment surgery, or who do not wish to undergo procedures that would cause them sterility. Bulgarian legislation should be brought in line with international medical and legal standards by the introduction of a clear and streamlined procedure for the change of civil gender in the identity documents of persons with established transgender or intersex conditions, based on the one-stop shop principle. This procedure must not include a requirement to have the physical gender of the requestor surgically reassigned or to undergo any other procedure that would cause sterility. Given the economic inequality of the affected groups caused by the heavy financial burden of changing physical gender by surgical and hormonal interventions, as well as the difficulties faced by these people in accessing the labour market as a whole, this administrative procedure should be free of charge or there should at least be a financial relief. The legal framework should explicitly prescribe that newly issued documents of a person must not indicate in any way the change of civil gender, insofar as such information would reveal the changes to third parties, exposing the person to risk of discrimination and disproportionate interference in their personal life.

On the other hand, there is a lack of medical standards on surgical gender reassignment, and the existing medical standards do not integrate the issues concerning the intersex people. This includes guarantees that no early genital cosmetic surgery will be performed, regardless of the consent of a parent or guardian.

The legal definition of gender is missing from Bulgarian legislation. It should, therefore, be theoretically possible to indicate in civil status documents a third option other than male or female. The practical implementation of such a change is likely to be difficult due to the lack of such a possibility in the software of the civil status authorities. However, the change is necessary for people who do not feel involved in the man-woman gender binary. The only legal barrier to

267 SCC (2017). Decision No 16/30.05.2017 on case No 2316/2016, civil college, IV div.
such a modification is the Constitutional Court’s decision on the *ex ante* constitutionality review of the Istanbul Convention adopted during the year.

The decision of the Constitutional Court on the conformity of the Istanbul Convention with the Bulgarian Constitution is a serious retreat from the protection of human rights in Bulgaria. The Convention was to be ratified by Bulgaria in 2018. The Constitutional Court decision has potential consequences, in particular with a negative impact on persons in need of change of the civil gender indicated in their identity and civil status documents. The judgment came after a six-month campaign of the conservative reaction against the movement for equal rights of women and the movement for equal rights of LGBTI people, which opposed the ratification of the international treaty. As part of this campaign, LGBTI people were severely stigmatised, with the word “gender”, even if foreign to Bulgarian society, becoming an insult designating these communities.

In April, the European Parliamentary Forum on Population and Development (EPF), a regional association of parliamentarians from different European countries, published a report entitled “Restoring the Natural Order”: The religious extremists’ vision to mobilize European societies against human rights on sexuality and reproduction. The report analyses information leaked to a French television channel about a secret coordination network of conservative civil society organisations from Europe and the USA, who have been working on “achievable goals” since 2013, aimed at dismantling the progress achieved in the field of sexual and reproductive rights. EPF disclosed documents showing some of the network’s objectives, including the elimination of the right to divorce, women’s access to contraception, assisted reproduction or abortion, and the criminalisation of homosexuality. The implementation of the Istanbul Convention is included among the network’s targets, and the table of network activities also lists the campaign in Bulgaria. According to the table, the campaign was in fact launched in 2016 and was successfully completed in 2018. EPF concludes that the main driver behind the conservative network, which they call *Agenda Europe*, is the Vatican, or more precisely, organisations directly or indirectly linked to the Catholic Church.

In July, by a majority of eight to four, the Constitutional Court ruled that the Istanbul Convention did not comply with the Constitution of the Republic of Bulgaria. The Court ruled that the concept of gender is a part of ‘gender ideology’, which teaches that gender is not biologically predetermined and can be chosen by the person. Social gender cannot be independent of the biological one, and therefore the Convention is not simply incompatible with the Constitution, but also the establishment of procedures ensuring the legal recognition of gender other than the biological one would be contrary to the fundamental law. The latter in practice blocks the way to the introduction of a legal framework civil gender change. In addition, within the reporting period, at least one transgender person was refused civil gender change by an explicit reference to the Constitutional Court decision.

It remains to be seen whether this extremely negative development will be confirmed by case-law.

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269 See Chapter 14, Women’s rights.
271 Ibid., pp. 12 and 35.
272 Ibid., p. 33.
275 SCC (2018). Decision No 5234 of 1 August 2018 on civil case No 3308/2017, 2nd matrimonial appellate panel.
Freedom of assembly, freedom of association and freedom of expression

The LGBTI community in Bulgaria enjoys great freedom of assembly and association. However, some issues with freedom of expression arose during the year.

The 11th Sofia Pride took place on 9 June 2018 in Sofia. At least 4,000 people took part in it. The event received a record diplomatic support from 24 diplomatic missions, UNICEF Bulgaria and the UNHCR. On the day of the pride, a counter-demonstration organised by the informal fascist organisation National Resistance was attended by several dozens of people.

The project “Together for LGBTI Rights in Bulgaria” took place during the year, with the participation of a number of civil society organisations, including LGBTI organisations. The project sought to inform teachers, politicians, business leaders and civil society, as well as LGBTI youth, about discrimination manifestations in Bulgaria. Part of the project included an external billboard advertising showing back photographs of same-sex couples, and the text “No fear. Simply love”. It was planned to run the campaign in Sofia, Plovdiv, Burgas and Varna. In Varna and Burgas, the campaign was met with sharp protests by citizens and pressure from local authorities on the owners of the advertising space to remove the images, which is what happened.

Institutions, organisations and human rights defenders

The interaction of state and municipal bodies with the LGBTI community and its NGOs and advocates in 2018 remained poor and formal, limited mainly to the coordination of the Sofia Pride. No LGBTI organisation receives state or municipal funding. This year, four legal entities were publicly active in Bulgaria as LGBTI organisations: Bilitis Resource Centre, Action Youth LGBT Organisation, GLAS and Single Step. All of them are actively involved in prevention and government policies to tackle the spread of HIV/AIDS.

In March, the Bilitis, Action and GLAS organisations created the first LGBTI community centre, Rainbow Hub, a community space where events occur and different interest groups meet. The centre has two reception days per week, when it is open to visitors.

During the year, the Action Youth LGBT Organisation “provided legal assistance to victims of human rights violations in several cases. Together with the GLAS Foundation, it published two reports on homophobic hate crimes in Bulgaria. The main conclusion of both is that victims of such crimes do not file complaints with the authorities. Threats are the most frequent crime, which most often happens at school.

The Single Step Foundation continued to develop the online chat platform it launched in 2017 to support LGBTI youth and their families, and complemented it with a telephone line. The

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organisation works with nine psychologists in nine cities and is organising a youth mutual support group.

**Media visibility**

In 2018, the visibility of the LGBTI community in the media remained poor. The Sofia Pride remains the main occasion on which these communities are present in the media. The focus is still on the question whether the LGBTI people in Bulgaria are at all target of discrimination. The media rarely articulate and debate specific individual subjects: legalisation of family relationships, hate crime, bullying in schools, etc. It is not uncommon to invite members of the far right, fascist parties, as opponents to human rights activists.

The representation of LGBTI people in film and TV productions broadcast by Bulgarian TV channels, including foreign movies, remains weak and stereotypical. For example, while the major media regularly plan thematic weeks for film productions which have received the US Film Academy Award (Oscar), recent movies dedicated to LGBTI issues are completely absent. On the other hand, in the days around the Sofia Pride, some media broadcast less popular movies involving LGBTI topics and characters, mainly comedies and representing these communities in a stereotyped and mocking manner.