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

Chair: Krassimir Kanev
Deputy chair: Desislava Simeonova

Members of the General Assembly:
<table>
<thead>
<tr>
<th>Contents</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Political developments in Bulgaria during 2013</td>
<td>5</td>
</tr>
<tr>
<td>Right to life, protection from torture, inhuman and degrading treatment</td>
<td>7</td>
</tr>
<tr>
<td>Right to liberty and security of person</td>
<td>12</td>
</tr>
<tr>
<td>Independence of the judiciary and fair trial</td>
<td>16</td>
</tr>
<tr>
<td>Right to respect for private and family life, home and the correspondence</td>
<td>21</td>
</tr>
<tr>
<td>Freedom of conscience and religion</td>
<td>23</td>
</tr>
<tr>
<td>Freedom of expression and access to information</td>
<td>26</td>
</tr>
<tr>
<td>Conditions in places of detention</td>
<td>33</td>
</tr>
<tr>
<td>Protection against discrimination</td>
<td>42</td>
</tr>
<tr>
<td>Right to asylum, freedom of movement</td>
<td>53</td>
</tr>
<tr>
<td>Women’s rights</td>
<td>60</td>
</tr>
<tr>
<td>Rights of the child</td>
<td>64</td>
</tr>
<tr>
<td>LGBTI rights</td>
<td>69</td>
</tr>
<tr>
<td>Abbreviation</td>
<td>Description</td>
</tr>
<tr>
<td>--------------</td>
<td>-------------</td>
</tr>
<tr>
<td>AEJ</td>
<td>Association of European Journalists – Bulgaria</td>
</tr>
<tr>
<td>AIP</td>
<td>Access to Information Programme</td>
</tr>
<tr>
<td>BHC</td>
<td>Bulgarian Helsinki Committee</td>
</tr>
<tr>
<td>BNT</td>
<td>Bulgarian National Television</td>
</tr>
<tr>
<td>BSP</td>
<td>Bulgarian Socialist Party</td>
</tr>
<tr>
<td>CBS</td>
<td>Correctional boarding schools</td>
</tr>
<tr>
<td>CEM</td>
<td>Council for Electronic Media</td>
</tr>
<tr>
<td>CPA</td>
<td>Child Protection Act</td>
</tr>
<tr>
<td>ECHR</td>
<td>European Convention on Human Rights</td>
</tr>
<tr>
<td>ECtHR</td>
<td>European Court of Human Rights</td>
</tr>
<tr>
<td>ESDRA</td>
<td>Enforcement of Sentences and Detention under Remand Act</td>
</tr>
<tr>
<td>FRA</td>
<td>EU Fundamental Rights Agency</td>
</tr>
<tr>
<td>FTAC</td>
<td>Family-type accommodation centres</td>
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<tr>
<td>GDBOP</td>
<td>Directorate General on Combating Organised Crime</td>
</tr>
<tr>
<td>GERB</td>
<td>Citizens for European Development of Bulgaria</td>
</tr>
<tr>
<td>HCDPC</td>
<td>Homes for children deprived of parental care</td>
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<tr>
<td>HCMD</td>
<td>Homes for children with mental disabilities</td>
</tr>
<tr>
<td>HMSCC</td>
<td>Homes for medical and social care for children</td>
</tr>
<tr>
<td>ITAMJ</td>
<td>Institutions for temporary accommodation of minors and juveniles</td>
</tr>
<tr>
<td>LSMDA</td>
<td>Liability of the State and the Municipalities for Damages Act</td>
</tr>
<tr>
<td>MOEW</td>
<td>Ministry of Environment and Water</td>
</tr>
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<td>Mol</td>
<td>Ministry of Interior</td>
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<td>MRF</td>
<td>Movement for Rights and Freedoms</td>
</tr>
<tr>
<td>SAC</td>
<td>Supreme Administrative Court</td>
</tr>
<tr>
<td>SANS</td>
<td>State Agency for National Security</td>
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<td>SBS</td>
<td>Social educational boarding schools</td>
</tr>
<tr>
<td>SCC</td>
<td>Supreme Court of Cassation</td>
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<tr>
<td>SDIA</td>
<td>Sofia Directorate of Internal Affairs</td>
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<tr>
<td>SJC</td>
<td>Supreme Judicial Council</td>
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<tr>
<td>SRAC</td>
<td>Sofia Region Administrative Court</td>
</tr>
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<td>SSM</td>
<td>Special surveillance means</td>
</tr>
<tr>
<td>UJB</td>
<td>Union of Judges in Bulgaria</td>
</tr>
</tbody>
</table>
Political developments in Bulgaria during 2013

In 2013, Bulgaria was governed by three consecutive governments. The government of the Citizens for European Development of Bulgaria (GERB) was in power until the end of February. On 20 February 2013, following several days of street protests in several Bulgarian cities, targeted at the resignation of his government. On 13 March 2013, President Rosen Plevneliev appointed a caretaker government headed by Prime Minister Marin Raykov. The main purpose of this cabinet was to organise early parliamentary elections.

The elections were held on 12 May 2012. They were marked by severe confrontation between the main political parties, discrediting war, vote-buying suspicions and use of unethical propaganda practices. The discovery that the former government had arbitrarily tapped the phones of its political opponents and the suspicions that election results were falsified tainted the situation even more. Media coverage of the election campaign, especially by the private media, was not balanced. This holds true especially for the Alpha and SKAT television channels, owned by the two largest neo-totalitarian nationalist parties, Ataka and the National Front for the Salvation of Bulgaria (NFSB). The major ethnic minorities, the Turks and the Roma, had difficulties in understanding the election messages as the Electoral Code prohibits electoral campaigns to be held in a language other than Bulgarian. The elections were monitored by a mission of the OSCE Office for Democratic Institutions and Human Rights. The monitoring report that was published on 25 July 2013 contained many recommendations. The most important ones concerned the need for adopting measures against vote-buying, ensuring the timely application of electoral laws, providing greater opportunities for appeal of all election-related decisions, allowing election campaigning in minority languages, guaranteeing a balanced media coverage of the elections as well as transparent media ownership.¹

Most of the votes went to GERB. Another three political parties also won parliamentary seats: the Bulgarian Socialist Party (BSP), the Movement for Rights and Freedoms and Ataka. In the first weeks after the new parliament was constituted, GERB MPs refused to enter the National Assembly. BSP and DPS formed a government headed by BSP-nominated Prime Minister Plamen Oresharski. However, they were one vote short of parliamentary majority and quorum. The lacking vote was provided by Ataka, making the government dependent on this party. Ataka is an extreme nationalist party, which opposes basic political democracy and human rights principles. It consistently instigates hatred, discrimination and violence against the ethnic and the religious minorities, as well as against asylum seekers in Bulgaria. Having the new government rely on the support of this party made the country dangerously dependent on its neo-totalitarian ideology and hindered the adoption of any positive measures in the area of minority rights. In reality, no such measures were adopted by the end of the year and the situation in many fields degraded substantially, even more so with regard to the policy on asylum seekers and refugees in Bulgaria.

One of the new government’s first acts was to amend the legislation on combating organised crime. The State Agency for National Security (SANS), a service acting as secret police, burdened by the heritage of the communist secret services and largely excluded from the democratic oversight mechanisms, was given additional investigative and detention powers. On 14 June 2013 the government nominated MRF Member of Parliament Delyan Peevski – a businessman and media tycoon who is widely thought to have amassed his fortune through the political protection of several previous governments – for SANS chairman.

One of the areas, where the situation deteriorated, was the failure to implement the decisions of the European Court of Human Rights.

Systematic and severe violations of human rights in Bulgaria occurred under all governments during the year. The most severe and widespread ones were related to the treatment of the newly arrived asylum seekers, most of whom were running away from the conflict in Syria, between September and December 2013. Most areas showed stagnation, while in some there were certain improvements.

One of the areas, where the situation deteriorated, was the failure to implement the decisions of the European Court of Human Rights (ECtHR, the Court). Although the judgements on applications against Bulgaria over the year were not that many (a total of 26, of which 5 by a committee), by mid-February 2014 the number of judgements monitored by the Committee of Ministers of the Council of Europe as not implemented by the Bulgarian government reached a record high of 372. Some of these were delivered as far back as 2002. A joint delegation of the Council of Europe’s Advisory Committee on the Framework Convention for the Protection of National Minorities and the European Commission against Racism and Intolerance visited Bulgaria in November. By the end of the year, none of these two bodies had published its observations and recommendations.
Despite the fact that the legislative framework on the use of force and firearms in the Ministry of Interior Act was improved in 2012, this had no tangible effect on the frequency of the use of excessive force and firearms in 2013. In 2013, BHC received many reliable complaints by citizens who had been mistreated by police officers and by officers in places of deprivation of liberty. In at least three cases in 2013, people lost their lives in circumstances that give rise to justifiable doubts that excessive force and firearms were used by the law enforcement bodies:

- On 23 March, a police officer shot and killed Nikolay Petrov, a Roma, in the vicinity of the railroad tracks at the village of Banya, Razlog municipality. On 31 January 2014 the Blagoevgrad Regional Prosecutor’s Office notified BHC that pre-trial proceedings had been initiated on a count of premeditated murder, and that charges were pressed against the police officer. At this time, however, no indictment has been filed.

- On 20 June, 19-year-old Roma, Violeta Gospodinova, was found dead in her Sofia home. She had been detained earlier at one of Sofia’s district police directorates. Her relatives claim that she had been severely beaten by an investigator in order to tell which of the prostituting girls were involved in theft. In a letter to BHC of 5 February 2014, the Sofia District Prosecutor’s Office informed that the pre-trial proceedings on the case were terminated in early September and that no charges have been pressed. According to the prosecution, Gospodinova died of heroin overdose.

- On 17 September, police officers in Lovech killed Ivo Ivanov when an illegal logging incident turned into a chase. Relatives and eyewitnesses claim that the officers shot at Ivanov’s van which was riddled with bullets. Upon stopping the vehicle, he was beaten to death in the vicinity of the railroad tracks in the Zdravets neighbourhood. The victim’s sister saw multiple injuries on Ivanov’s head and body in the morgue. However, the investigating officer told her that Ivanov had died of a heart attack at the time of his detention. On 30 January 2013, the Lovech Regional Prosecutor’s Office informed BHC that no charges had been pressed with regard to the case and that the investigation was at the stage where the materials from the investigation would be presented to the heirs.

Between December 2013 and January 2014 BHC researchers interviewed convicted inmates at the prisons in Vratsa, Pazardzhik, Lovech and Stara Zagora, whose pre-trial proceedings were initiated after 1 January 2012. The questions concerned the use of force during their detention by the police and during their stay inside police stations. While the data is not representative of the system as a whole, it is comparable with the data from similar surveys conducted by BHC on the same topics in 2010, 2011 and 2012 by interviewing similar groups of inmates. The data from the four surveys is presented in the table below.

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<table>
<thead>
<tr>
<th>Use of force by police officers, by year</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>During detention</strong></td>
<td>26.2</td>
<td>27.1</td>
<td>24.6</td>
<td>22.0</td>
</tr>
<tr>
<td><strong>Inside the police station</strong></td>
<td>17.4</td>
<td>25.5</td>
<td>18.0</td>
<td>23.3</td>
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</tbody>
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The data indicates a reduction in the number of complaints of use of force by police officers during detention; however, there is a significant increase in the use of force at the precincts, where this is totally unacceptable. Force inside the police stations is usually used to coerce confessions or other information. The 2013 increase is similar to the 2011 values when the BHC survey registered a peak in police violence under the GERB government.

On several occasions during the year, security officers at closed institutions for adults widely used unnecessary force and auxiliary means to restrain inmates. Similar incidents occurred at the Sofia Central Prison in January and October, when security personnel used unnecessary and disproportionate force against the wards of foreign inmates, in order to punish them for disobeying an order. Several inmates were severely injured. In December, security and police officers used disproportionate force against protesting foreign citizens at the special institution for temporary placement of foreigners in the town of Lyubimets. At least six persons were severely injured, with broken limbs and body traumas. None of the investigations were adequate, and none resulted in indictments.

The police resorted to illegal use of force against citizens on several occasions during the year. In February, during the protests against the GERB government, the police and the gendarmerie used disproportionate force on several occasions in response to violations of public order. The excessive use of force reached its peak on 19 February, when scores of citizens were inflicted serious injuries. Apart from the disproportionate use of force, there were cases of unprovoked violence against peaceful protesters. In the night of 24 July, the police once again exercised unacceptable excessive use of force in a badly planned operation against peaceful protesters who had gathered around the Parliament in a rally against the BSP-MRF government. The protest was motivated by a series of controversial appointments of high-ranked government officials. Both unprovoked and disproportionate force was used in this case. Among the victims were journalists covering the protests. Despite the promises for a quick, independent and impartial investigation, by the end of the year only one police officer had been identified; in early 2014 he was charged with bodily harm. On 12 November, the police and the gendarmerie once again used excessive force to disperse anti-government protesters. Several journalists were hurt in this case, too. The incident was not investigated.

In 2013, ECtHR held a violation of the right to life in the case Nemcheva and Others v. Bulgaria of 18 June 2013 (application No. 48609/06). ECtHR found procedural violations of art. 2 of the European Convention on Human Rights (ECHR, the Convention) as the authorities failed to protect the lives of 15 children and juveniles at a state institution, in circumstances which created an imminent threat to their lives. The authorities also failed to conduct an effective official investigation of the death cases that had occurred in exceptional circumstances. The case is related to the death of 15 children and juveniles from the Institution for Mentally Disabled Children and Juveniles in the village of Dzhurkovo. They died in the winter of 1996-97 of cold, lack of food, medicines, medical care and provision to other basic needs. The living conditions at the institution were extremely substandard. There was no medical personnel and teaching staff was lacking. Although the first child died on 15 December 1996, eight more children were relocated to this home from another institution. The director tried to ensure funding on many occasions but did not succeed until March 1997 when 15 children had already died. On 30 July 1999, the Prosecutor’s office initiated an investigation against an unknown perpetrator for ten of the fifteen deaths. Almost five years later, charges were pressed against the institution’s director, the paramedic and the head nurse. The prosecutors required the Ministry of Labour and Social Policy, the Ministry of Finance and the Municipality of Luki to provide case-related information.

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documents but none of these institutions has retained the documentation. The case was brought to court in 2005 and all defendants were acquitted. The applicants are the parents of 7 of the 15 children and juveniles who died in Dzhurkovo, and the Association for European Integration and Human Rights. Calling the case “a national tragedy”, ECtHR held that the tragic events had not occurred in a sudden, one-off and unforeseen manner, and that the authorities had not taken speedy, practical and sufficient measures to prevent the death cases, although they had been fully aware of the real and immediate risk to the residents of the institution. With regard to the investigation, the Court notes that the pre-trial proceedings were initiated more than two years after the events and lasted for approximately eight years, including around six years for the preliminary investigation alone. The organs involved in the pre-trial proceedings did nothing between 2001 and April 2005, which the government failed to explain. The trial did not result in the establishment of the actual causes of the deaths. Since no autopsy had been done, it was impossible to establish whether and to what extent the death in each case was due to natural causes. The delays in the proceedings had also made it impossible to ascertain whether the conduct of other persons responsible for the running of the institution might have contributed to the tragic events. The authorities did not act with reasonable diligence, which prevented the establishment of the actual causes of the deaths and of a possible link between those causes and the conduct of the various officials responsible. According to ECtHR, the authorities failed to perform their duty to protect the vulnerable children in the institution, and thus, failed to protect the public interest in particularly tragic circumstances. The Court therefore held a violation of article 2. ECtHR awarded EUR 10,000 to two of the applicants for non-pecuniary damage, while for the others ECtHR considered that the finding of a violation was sufficient compensation.

In several cases, ECtHR also found a violation of article 3 (protection against torture, inhuman or degrading treatment) of the Convention. In the case Velev v. Bulgaria of 16 April 2013 (application No. 43531/08) ECtHR found a procedural violation of art. 3 because the Bulgarian authorities had failed to conduct an effective investigation when the applicant was assaulted by police officers during detention and interrogation on 21 through 24 March 2005. The investigation under the criminal proceedings related to Mr Velev’s claims was terminated in 2008 due to expired statute of limitations; in the subsequent civil action under the Liability of the State and the Municipalities for Damages Act (LSMDA), the court awarded him compensation, holding that the complainant had been abused by police officers. Analysing the investigation conducted by the Bulgarian authorities, ECtHR established a series of irregularities which hindered the adequate implementation of the proceedings. For example, despite the fact that violence was exercised in front of higher-ranked police officials, no investigation had been initiated. When the investigation did commence, it focused only on the bodily harm inflicted on the applicant, despite his claims that he had been abused to confess his guilt. Also, the Bulgarian investigative authorities failed to initiate actions to identify the police officers who had mistreated the applicant. ECtHR therefore held that the investigation cannot be considered effective in accordance with the provisions of art. 3 and awarded EUR 4,500 in non-pecuniary damages and EUR 3,100 in respect of fees and expenses.

In the case Dimitar Shopov v. Bulgaria of 16 April 2013 (application No. 17253/07) ECtHR held a procedural violation of art. 3 because the Bulgarian authorities had failed to conduct an effective investigation of an injury inflicted on the applicant during a fight, and because the case was investigated badly, resulting in its termination due to expired statute of limitations. In May 1991, the applicant was involved in a fight in his home village. During the fight, he was stabbed with a knife and sustained many other injuries. Despite
the fact that in the beginning of the investigation against the perpetrators the Bulgarian authorities invested reasonable efforts in gathering evidence and establishing the facts, long periods of inaction followed, resulting in the termination of the criminal proceedings in 2006 due to expired statute of limitations. The applicant was awarded EUR 3,000 in non-pecuniary damages and EUR 2,000 in respect of costs and expenses.

In the case Sabev v. Bulgaria of 28 May 2013 (application No. 27887/06) ECtHR held a violation of art. 3 and art. 13 due to the inhuman and degrading conditions in the prison where the applicant is serving a life sentence, and the lack of effective legal means of protection. Mr Sabev was sentenced to life without parole. His complaint is related to his detention at the Lovech Prison for almost nine years under a special regime which meant that he was continually kept in a locked cell under heightened supervision; for at least five years, he was kept in very strict isolation, without access to out-of-cell activities. Considering the fact that in the case Radkov (No. 2) v. Bulgaria ECtHR had already held a violation of art. 3 with regard to detention conditions in the life sentences ward of the Lovech Prison, the Court ruled that the severe isolation of the inmate, as well as the fact that he had to use a bucket for his physiological needs, constitute a violation of art. 3. Despite the fact that Mr Sabev won three lawsuits against the state for compensation for detention conditions, ECtHR held that the amounts awarded were unreasonably low, and that a lawsuit under art. 1. para 1 of LSMDA cannot be considered an effective domestic remedy when the disputed detention conditions are a direct consequence of the special regime applied to individuals with life sentences. The ECtHR therefore also held a violation of art. 13. The Court awarded EUR 6,000 in non-pecuniary damages and EUR 1,677.55 in respect to costs and expenses.

In the case Gutsanovi v. Bulgaria on 15 October 2013 (application No. 34529/10) ECtHR found a substantive violation of art. 3 due to the degrading treatment of Mr Gutsanov during his detention, as well as due to the stress and anxiety caused to his family; violations of art. 5.3 due to the unjustified duration of the detention and Mr Gutsanov’s right to appear before a judge; a violation of art. 5.5 due to the impossibility for the applicant to be compensated for the violations of art. 5.3; a violation of art. 6.2 due to the violation of the presumption of innocence by the minister of interior and by the court which had reviewed Mr Gutsanov’s measure of detention; a violation of art. 8.2 due to the lack of adequate judiciary control over the search of the applicant’s home; and a violation of art. 13 in conjunction with art. 3 and 8 due to the lack of adequate domestic remedy that could allow the applicants to defend their right not to be subjected to inhuman or degrading treatment and their right to respect for their home. The applicants are Borislav Gutsanov, an influential BSP politician, his wife and their minor daughters. At 6:30 a.m. on 31 March 2010, the police raided Gutsanovi’s home, arrested Mr Gutsanov and searched the premises. On the following day, the press quoted the minister of interior saying that Mr Gutsanov is one of the masterminds behind a criminal group that embezzled large amounts of public funds. On the day of his detention, Mr Gutsanov was accused of several crimes. When reviewing his measure of detention, the court ordered detention on remand as there was a risk that he could commit another crime. On 18 May 2010, almost two months after his arrest, the Varna Regional Court dismissed Mr Gutsanov’s motion to be released, partially on the grounds that the court “remains of the view that a criminal offence was committed and that the accused was involved”. Despite the fact that the Court of Appeals found that Mr Gutsanov had already resigned from his post as chairman of the Municipal Council and therefore there was no risk of him committing more crimes, it placed Mr Gutsanov under house arrest. Finally, after almost four months in detention, Mr Gutsanov was released under bail. By 26 April 2013, the criminal proceedings against Mr Gutsanov were still at
the preliminary investigation stage. According to ECtHR, at the time of the first applicant’s detention his family was subjected to psychological suffering which caused fear, anxiety and a feeling of helplessness and constituted degrading treatment under art. 3. Also, Mr Gutsanov was not brought promptly before a judge; this happened more than three days after his detention and the government did not provide an explanation for this delay. ECtHR therefore held a violation of art. 5.3. The Court also held that placing Mr Gutsanov under house arrest for more than two months, even though there was no reason for this, constitutes another violation of art. 5.3. The Court also held that the national legislative framework did not contain a methodology to ensure compensation for damages incurred as a result of excessive duration of detention or of delayed appearance before a judge, which is a violation of art. 5.5. ECtHR also ruled that the minister of interior’s statements made on the day after Mr Gutsanov’s detention, as well as the motives of the Varna Regional Court of 18 May 2010, constitute a violation of the presumption of Mr Gutsanov’s innocence and therefore are in violation of art. 6.2. The Court believes that in the absence of prior authorisation by a judge and of retrospective review of the measure in question, the procedure had not been attended by sufficient safeguards to prevent the risk of an abuse of power by the criminal-investigation authorities, which constitutes a violation of art. 8.2. In conclusion, the Court took into consideration the fact that inflicting psychological suffering did not constitute a criminal offence in domestic law, with the result that a possible criminal complaint by the applicants would have been bound to fail. The applicants had not had available to them any domestic remedy by which to assert their right not to be subjected to inhuman or degrading treatment or their right to respect for their home, due to which ECtHR held also a violation of art. 13 in conjunction with art. 3 and 8. The Court awarded the applicants EUR 40,000 in non-pecuniary damages and EUR 4,000 in respect of costs and expenses.
The problems with regard to guaranteeing the right to liberty and security of the person in Bulgaria, as established in a series of ECtHR judgements, remained completely unaddressed by the authorities in 2013. The Ministry of Justice created a working group to elaborate proposals for legislative changes in line with the standards of art. 12 of the UN Convention on the Rights of People with Disabilities. The group set ambitious goals, including reform of the legislation on legal capacity; however, the problems concerning the accommodation of persons with mental disabilities in social institutions remained outside its scope. A Ministry of Labour and Social Policy working group was active for a brief period. Its purpose was to come up with proposals for changes to the legislation on institutionalisation. Nevertheless, by the end of the year neither the legislation on legal capacity, nor the one on placement of persons with mental disabilities in institutions had been amended. Thus, the problems established by ECtHR in *Stanev v. Bulgaria* of January 2012 remained as acute as in previous years. People with chronic mental disabilities continued to be accommodated in social institutions arbitrarily and without judicial control. Nothing was done to reform the care for these people in order to make it less dependent on institutionalisation.

No legislative reforms were initiated to bring the legislation on the accommodation of children in conflict with the law at correctional boarding schools (CBS), social educational boarding schools (SBS) and crisis centres for children in line with the recommendations of the Committee on the Rights of the Child and with the ECtHR decision in the case *A. and Others v. Bulgaria* of November 2011. In 2013, BHC visited several CBS and SBS and found serious issues regarding arbitrary placement in both types of institutions. With the implementation of the delegated budgets in the Bulgarian educational system, the pedagogical councils of the CBS and SBS lost their motivation to release children early, as that would mean losing the state subsidy for them. BHC monitoring in these institutions found that cases of early releases are becoming rarer due to this. On the other hand, the applicable legislation does not allow subsequent judicial oversight of placement for the purposes of deciding on its continuous expediency. At the same time, BHC established several cases of severe breaches of the law by courts that had ordered the initial placement by defining placement duration exceeding the statutory three years. The placement in institutions for temporary accommodation of minors and juveniles continued to dramatically contradict the standards under art. 5.4 of the European Convention on Human Rights (ECHR) and the ECtHR judgement in the case *A. and Others v. Bulgaria*, as it does not allow any judicial review.

In 2013 BHC conducted monitoring of the crisis centres for children and published a special report. As part of the monitoring, BHC researchers visited all crisis centres in Bulgaria. In its judgement on *A. and Others v. Bulgaria* ECtHR accepted that these institutions are detention places. The BHC analyses the current legal framework on the accommodation in crisis centres, the profiling, the educational process, as well as the guarantees for the fundamental rights of the children placed in such centres. The monitoring found significant arbitrary placement, including placements and period extensions based only on the consideration that the child has nowhere else to go. The placement system foresees an initial administrative and a subsequent judicial placement. In both cases, it allows arbitrariness and inconsistency with the international standards that guarantee the right to personal freedom and security.

In the administrative placement, the Social Assistance directorates, which order the placement, often base their decision on “insufficient parental capacity”, without stating specific reasons. But even if such reasons are present, they do not always corre-

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6 See *Conditions in places of detention* below.
spond to the purposes stipulated by law. Some reasons are blatantly discriminatory, for example “intimate relations with a boy from the Roma neighbourhood”.

Judicial placement in all cases does not meet the requirement for issuing decisions within a “short period” under art. 5.4 of the Convention. Under the Child Protection Act (CPA), the Social Assistance directorates have to file a request for judicial placement within one month of issuing the administrative placement order; in line with art. 28, para 3 of CPA, the court has to review the request immediately and make a decision within one month. However, even these provisions, which are inconsistent with art. 5.4 of the Convention, are not observed in practice. BHC could not find a single case in which the requirement for immediate review was honoured. The deadlines in which the cases are reviewed vary between one and four months of the actual placement of the child, with the reviews most often scheduled between a month and a half and two months following placement. There are cases in which the court had not made a decision throughout the whole stay of the child at the crisis centre. This indicates that the situation with regard to guaranteeing the right to personal freedom and security of the children placed in crisis centres continues to be the same as that described in the case A. and Others v. Bulgaria, in which ECtHR held a violation of art. 5.1 of the Convention.

Placement of foreign nationals in institutions for temporary placement of foreigners prior to their expulsion posed a serious problem during the year. Despite the fact that the Foreigners Act was amended in June, under the stipulations of art. 44 the expulsion orders and the orders for the revocation of the right of permanent residence in the Republic of Bulgaria for national security reasons are subject to immediate execution. Should the actual reasons for the imposition of the specific compulsory administrative measure contain classified information, they are indicated in separate document elaborated by the respective officials under the provisions of the Protection of Classified Information Act. According to art. 46, the actual reasons for the imposition of the measure are not indicated when orders for the imposition of compulsory administrative measures related to national security are appealed, and the appeal does not stop the execution of the order. The legislation and the practice in appealing national security-related compulsory administrative measures still lack procedures and opportunities for review of the actual reasons, the risks of return, the pressing public need and the proportionality of the imposed measures, in order to protect the rights of the persons subjected to such measures against possible attempts on their life, torture, inhuman or degrading treatment, or the respect for their private and family life. In Bulgaria, these provisions are applied on a routine basis, rendering to a great extent the court appeals of the detention of foreigners for expulsion purposes meaningless.

In 2013, ECtHR found several violations of art. 5 of the ECHR in cases against Bulgaria. In the case Barborsi v. Bulgaria of 26 March 2013 (application No. 12811/07) ECtHR held a violation of art. 5.1 on account of Mr Barborski’s deprivation of liberty for more than two months after he had served his sentence. The applicant had been convicted twice to a total of three years and six months of imprisonment. When the two sentences were combined by court decision, a prosecutor issued an order for Mr Barborski’s release. However, the administration of the prison in which the applicant was serving his sentence refused to execute the order on the grounds of errors in the calculation of the time served, and notified the prosecutor’s office. More than two months later, and upon a request by the prosecutor’s office for a review of the court’s decision, Mr Barborski was released. Despite the fact that the period of more than two months during which the applicant was deprived of liberty was deducted from a subsequent sentence, ECtHR held that such post-factum redressing of the mistake does not alter the fact that detention should be

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justified throughout its duration. Given the fact that the unlawful detention occurred when the prison administration disregarded the court decision, ECtHR held that the excessive detention of more than two months had not been imposed by a “competent court” within the meaning of article 5.1(a). ECtHR held that in this case the finding of a violation constitutes sufficient just satisfaction.

In the case Asen Kostov v. Bulgaria of 26 March 2013 (application No. 48445/06) ECtHR held a violation of art. 5.1 on account of Mr Kostov’s deprivation of liberty for more than two months than the term set by the court. ECtHR also found a violation of art. 5.5 due to the fact that the applicant had no right to compensation for his unlawful detention. Mr Kostov was sentenced for a series of crimes committed between 1991 and 1998. On 10 May 2004, the court imposed an overall sentence of one year for two of his sentences; according to the authorities, this period had expired on 28 April 2004. Despite the court’s decisions, however, the prosecutor’s office refused to release the applicant on the grounds that a new overall sentence was to be imposed for several of his remaining sentences. Mr Kostov was finally released on 1 June 2004, when the decision of 10 May entered into force. Considering the fact that an overall sentence is imposed by a court and not by the prosecutor’s office, and rejecting the government’s argument that the procedural detention period would have in all cases been taken into consideration in the handing down of a new sentence, ECtHR held that detaining the applicant after the decision of 10 May was not justified under art. 5.1(b) of the Convention. Mr Kostov filed a compensation claim under LSMDA for damages incurred by his unlawful detention. His claim was rejected because of his increased sentence imposed by a decision of 2006 in which the longer detention period was taken into consideration. The applicant therefore had no chance to prove his claim that he had sustained damages as a result of the violation of his right under art. 5.1, which is why ECtHR also held a violation of art. 5.5 of the Convention. The Court awarded EUR 2,000 in non-pecuniary damages and EUR 1,500 in respect of expenses.

In the case Djalti v. Bulgaria of 12 March 2013 (application No. 31206/05) ECtHR held violations of art. 5.1 because the applicant had been detained at a centre for temporary detention of adults for over a year and three months, while waiting to be expelled from the country, and of art. 5.4, because the applicant had no opportunity to appeal the lawfulness of his detention within a short period and the court to which the appeal was filed had not been competent to order his immediate release. The applicant is an Algerian national who had entered the country illegally. A deportation order was issued in July 2004. Due to the fact that Mr Djalti had no travel documents or money for his return trip to his home country, he was detained for more than a year and three months at the centre for temporary accommodation of adults in Druzhba-2 in Sofia. ECtHR held a violation of art. 5.1 due to the fact that the Bulgarian authorities had not acted with the necessary diligence with regard to the order on the applicant’s expulsion. The Court also held that the court proceedings by which the applicant had appealed the lawfulness of his detention did not meet the requirements of art. 5.4 as the Bulgarian courts needed a total of 11 months and a half to review the case, and because the court responsible for the oversight on the detention had not been competent to order an immediate release; the latter occurred 17 days after the court’s decision, upon request by the detainee’s lawyer. The Court awarded EUR 3,500 for non-pecuniary damages and EUR 2,000 in respect of costs and expenses.

In the case Amie and Others v. Bulgaria of 12 February 2013 (application No. 58149/08) ECtHR held violations of art. 5.1 and art. 5.4 with regard to the first applicant’s detention at a temporary accommodation centre on the grounds of an expulsion order, and because he had no opportunity to contest the lawfulness of his detention. The Court also
held that the execution of the expulsion order would constitute a violation of art. 8. The applicants are Mr Amie, his wife and their three children. None of them had identification documents. In 2001, they were awarded refugee status, with the exception of the youngest child who acquired Bulgarian citizenship by virtue of being born in the country. In 2005, Mr Amie was detained after an expulsion order was issued on the grounds that he had been involved in terrorist activities and is therefore a threat to national security. ECtHR held a violation of art. 5.1 due to the fact that the grounds for his detention for more than a year and eight months, i.e. the expulsion proceedings, did not remain valid for the whole period of his detention due to the lack of a realistic prospect of his expulsion and the domestic authorities’ failure to conduct the proceedings with due diligence. Despite the fact that in the end the first applicant managed to contest the lawfulness of his detention, ECtHR held a violation of art. 5.4, because the procedure lasted almost one year and four months. Referring to its case law in other cases against Bulgaria, ECtHR held that even though Mr Amie has had the opportunity at any time to request his release under the Foreigners Act, such an act did not meet the requirements of the Convention. ECtHR also held that the first applicant, despite having the formal possibility of seeking judicial review of the order for his expulsion, did not enjoy the minimum degree of protection against arbitrariness on part of the authorities given the lack of in-depth judicial review of the grounds for his expulsion, the fact the charges against him were very general, and the fact that the final court decision on the expulsion had been classified. ECtHR therefore held that the execution of the expulsion order would constitute a violation of art. 8. The Court awarded EUR 3,500 in non-pecuniary damages and EUR 1,000 in respect of expenses.
Independence of the judiciary and fair trial

In 2013, the European Commission continued its monitoring of Bulgaria under the Cooperation and Verification Mechanism. The monitoring is focused on judicial reform. On 22 January 2014 the Commission published its report on the progress achieved by the country. It states that over the past year and half Bulgaria has taken some steps in the right direction with regard to judicial appointments and the overcoming of courts’ work overload. Still, the report considers the progress insufficient and insecure.

In the area of independence, accountability and integrity of the judiciary, the report recommends the creation of a set of objective standards for appraisals and promotions of magistrates, the introduction of a system to monitor and evaluate the application of those standards; more transparency in appointments; provision of guarantees for the integrity and transparency of the system of case allocation throughout the judiciary, including the introduction and systematic use of a system of random allocation; re-direct the work of the Inspectorate of the Supreme Judicial Council (SJC) to encourage integrity and judicial efficiency; establishment of a clear procedure on how the SJC can react publicly in cases of political interference in the judicial system.

In the area of judicial reform, the report recommends: an update of the strategy on judicial reform to include further measures to address the problem of uneven workload between courts and magistrates; development of annual progress reports by the SJC on reform measures; completion of work on the new Penal Code; guarantees for the involvement of NGOs and professional organisations in defining and monitoring reform strategies.

In the area of the efficiency of the judiciary system, the report recommends the introduction of clear procedures and penalties to ensure consistent disciplinary rulings; transparency in internal audits; measures for the effective implementation of court decisions; and achievement of real progress in e-justice.

The report from the monitoring of the European Commission states that over the past year and half Bulgaria has taken some steps in the right direction with regard to judicial appointments and the overcoming of courts’ work overload.

The report is especially critical of the widespread corruption in all fields of governance, including the judiciary, as well as of the close ties between organised crime and government.

Despite the election of a new SJC in September, it failed to achieve significant progress in addressing the main issues with regard to the management of the judiciary. The Union of Judges in Bulgaria (UJB) continued to be a constructive critic of the Council. UJB criticised on multiple occasions SJC’s inability to strongly defend the independence of the judiciary and of the individual judges. In early 2013, UJB and BHC expressed concern regarding the Ministry of Interior’s practice to name police operations for the apprehension of defendants released by court decisions after the respective judges.

In early January 2013, UJB sharply criticised the voting procedure for the election of a new prosecutor general. The fact that the rules adopted by the SJC could not guarantee the secrecy of the vote, the impossibility to vote on all three nominations at the same time, as well as the interference of the minister of interior in the selection (only one of the nominees was put to the vote) is a severe violation of art. 131 of the Constitution. UJB pointed out the significant undermining of court’s authority and the independence of individual judges caused by media attacks targeting the Zlatograd District Court and the Smolyan Regional Court in the middle of the election campaigns (April 2013), when blatant populism replaced journalism ethics. Attacks on judges’ private life, competence and integrity were allowed in a SKAT TV broadcast entitled Judges Abuse the Life and the Fate of a Bulgarian Child; in fact,
the case in question is still pending. Throughout the year the posting of judges to different courts continued to be used as a way of career advancement without competition. At the same time, it made the magistrates dependent and insecure. In several cases, NGOs criticised the opportunistic posting of judges to higher judicial instances; in July, UJB published a critical opinion on the SJC’s draft rules on posting, pointing out that they did not meet magistrates’ expectations and did nothing to address the main problematic issue.

The controversial appointments of magistrates continued through the year. They brought up questions about SJC’s ability to perform in-depth evaluations and control of magistrates’ ethics for the purposes of their appointment and promotion. The lack of a serious discussion on alleged dependencies had a demoralising effect on the magistrate community in which no clear criteria on the due ethical behaviour were established.

In late April, several media published a secretly recorded conversation of former prime minister Borisov, Sofia city prosecutor Kokinov and former minister of agriculture Naydenov in which the trio discusses magistrate appointments and denigrates prosecutor general Tsatsarov and other prosecutors. The pre-trial proceedings against Naydenov are also discussed. The participants in the conversation express their bewilderment of why he is being investigated and who the witnesses against him are. When the recording was made public by select media, apparently for election purposes, Kokinov resigned. While the SJC accepted his resignation, it did not initiate any actions consistent with the severity of the situation. The recorded evidence of blatant disregard of the rule of law was never investigated.

In late 2013, several non-governmental organisations opposed the SJC’s decision to continue the use by some courts of a compromised product, LawChoice, instead of replacing it with ASUD, a software solution of proven reliability. The preference for this product remained unclear.

As in the previous two years, in 2013 ECHR ruled against Bulgaria in a large number of cases involving the right to fair trial. In the case Pashov and Others v. Bulgaria on 5 February 2013 (application No. 20875/07) the Court held a violation of art. 6.1 and art. 1 of Protocol 1 of the Convention. The case involves the excessive duration of a lawsuit concerning unlawful injury by the police. The case was reviewed by the Sofia District Court and the Sofia City Court over a period of more than seven years, and the implementation of the decision awarding compensation to the complainants was delayed by at least six years. The case is related to police violence exercised during the night following the protests in front of the National Assembly on 10 January 1997. The applicants were chased to the residential building in which two of them lived by armed police officers who caused them head trauma and bruises on the backs and arms. The Court awarded each applicant EUR 2,000 in non-pecuniary damages and a total of EUR 800 in respect of expenses.

In the case Dimitar Krastev v. Bulgaria of 12 February 2013 (application No. 26524/04) the Court held a violation of art. 6.1 because Mr Krastev did not have available to him a procedure allowing him to obtain proper judicial review, entailing a public hearing, of the prosecutor’s decision to forfeit the items seized from the safe. The case refers to a former police official from Plovdiv who was found guilty of abuse of office and was handed down a suspended sentence, which was later replaced by a fine. Mr Krastev complained to the Court that in 1999, during the internal investigation against him, his office was searched and almost all items in his safe were seized and consequently forfeited by a prosecutor’s order. Krastev appealed the prosecutor’s order before the Military Court which reviewed it as part of a verification of the lawfulness of the prosecutor’s order on the termination of the criminal proceedings against Krastev. ECHR held that the judicial proceedings in which Krastev appealed the prosecutor’s order for the forfeiture of

The report is especially critical of the widespread corruption in all fields of governance, including the judiciary, as well as of the close ties between organised crime and government.

UJB criticised on multiple occasions SJC’s inability to strongly defend the independence of the judiciary and of the individual judges.
the items found in his safe did not meet the requirements of art. 6.1 of the Convention, as the Military Court reviewing the complaint had not held a public hearing even though it was obliged to hold one under Bulgarian law. The Court also held that since the proceedings in the Bulgarian court were not aimed at identifying the applicant’s civic rights, the applicant had no proper judicial review available to him. The Court awarded EUR 2,400 in non-pecuniary damages and EUR 1,000 in respect of expenses.

In the case **Fazliyski v. Bulgaria** of 16 April 2013 (application No. 40908/05) ECtHR held a violation of art. 6.1 because the applicant had not been allowed access to proper judicial review with regard to the psychological evaluation of his readiness to work with classified information within the Ministry of Interior, and because the decisions of the Bulgarian courts had not been announced in public hearings. Mr Fazliyski was dismissed from the Ministry of Interior on disciplinary grounds when he was found psychologically unfit performing his duties which included the collection and dissemination of classified information. Mr Fazliyski’s complaint against his dismissal was rejected on the grounds that the authorities had applied the correct procedure, and that according to the current legislation at that time the court was not competent to review the results from the applicant’s psychological evaluation. The decision was upheld and the applicant could not get copies of the two decisions because the cases had been classified. ECtHR held a violation of art. 6.1 on account of the Bulgarian courts’ refusal to review the applicant’s psychological evaluation, developed by the Institute of the Ministry of Interior, a body reporting directly to the minister of interior, and because the results from the evaluation were not communicated to Mr Fazliyski. ECtHR also held that since the case was classified from the onset, the decisions were not announced publicly and the applicant did not get access to them for 15 months. According to the Court, this also constitutes a violation of art. 6.1. The Court awarded EUR 1,500 in non-pecuniary damages.

In the case **Nikolova and Vandova v. Bulgaria** of 17 December 2013 (application No. 20688/04) ECtHR held a violation of art. 6.1 due to lack of any publicity in the judicial proceedings in the case of a dismissed police officer. The authorised lawyer was not allowed to access the case and the applicant had no access to the grounds for the decision for five years. The applicants are a former police officer, Ms Nikolova, and her lawyer, Ms Vandova. In 2001, Ms Nikolova was charged with bribery and obstruction of justice. In March 2003, she was sentenced to five years in prison, a BGN 3,000 (EUR 1,500) fine, and was barred from further employment at the Ministry of Interior. In June 2003, the sentence was quashed at the second instance due to procedural irregularities and the case was referred for additional investigation; in 2005, the proceedings were terminated. Meanwhile, the first applicant was dismissed on disciplinary grounds and appealed her dismissal before the Supreme Administrative Court (SAC), with the second applicant acting as her lawyer. Due to the presence of classified materials, SAC classified the case and Ms Vandova was refused access with the explanation that she needed to get permission from SANS, which she refused to do. In the end, in 2003 the court upheld Ms Nikolova’s dismissal. She was not granted access to the decisions until the five-year statute of limitations had expired. According to the Court, the total lack of publicity in the judicial proceedings was not proportional to the sought purpose. The Court held that the presence of classified documents in the case is not grounds for it to be completely classified, without assessing the necessity thereof or taking alternative measures and classifying only some documents. As to the publicity of the case, ECtHR held that there are technical means that provide for restricting the access to the specific part containing the classified information. The Court awarded EUR 2,400 in non-pecuniary damages and EUR 1,000 in respect of expenses.

In the case **Petko Petkov v. Bulgaria**
of 19 February 2013 (application No. 2834/06) ECtHR held a violation of art. 6.1 due to a procedural requirement to have Mr Petkov present an inventory of an inheritance. The requirement was imposed retroactively to a pending lawsuit in which the applicant was claiming a reserved share of his father’s inheritance which was inherited in its entirety by the brother of the deceased, the applicant’s uncle. Under the provisions of the Inheritance Act, anyone claiming a reserved share of an inheritance who is not a “heir-at-law” must provide an inventory of the inheritance. The term “heir-at-law” is not defined in the legislation and was subject to a 1964 interpretative decision of the Supreme Court of Cassation (SCC). Referring to this interpretation, the applicant had not provided the respective inventory of the inheritance. In the end, however, his claim was rejected on the grounds of a new interpretative decision of the SCC of 2005, under which he had to provide such an inventory. Mr Petkov could not do that because the term had expired. ECtHR held that the SCC had not paid any attention to the fact that the interpretative decision had been applied mechanically, regardless of the consequences for the applicant’s right to have his pending case reviewed in substance. ECtHR therefore concludes that the unforeseeability of the procedural requirement applied retroactively in the applicant’s pending case restricted his access to court to such an extent that the very essence of that right was impaired. The Court awarded EUR 1,000 in non-pecuniary damages and EUR 1,056 in respect of expenses.

In the case Galina Kostova v. Bulgaria of 12 November 2013 (application No. 36181/05) ECtHR did not find a violation with regard to the refusal of the national courts to examine whether it had been proportionate to strike her off the list of persons qualified to act as liquidators of insolvent companies. The applicant, Ms Kostova, is a lawyer and was included in the list of liquidators. The case refers to her elimination from this list in 2004, by order of the minister of justice, after she was appointed liquidator to an insolvent state-owned company. The company’s management did not approve of her appointment and made several attempts to have her replaced. One of the reasons stated in support of this was that she had failed to provide a list of the company’s creditors within the statutory deadline. When she appealed the order for her elimination from the list of liquidators, a three-member SAC panel reviewed in detail whether the applicant had committed the violation on which the minister’s order was based; however, it refused to rule on the proportionality of the sanction. The decision was upheld by a five-member panel. According to ECtHR, the minister’s order refers to the regulation of the profession “liquidator of an insolvent company” due to which the authorities were extremely sensitive to the requirements for high professional qualities and accu-

In the case Zhelev v. Bulgaria of 15 January 2013 (application No. 39143/06) ECtHR held a violation of art. 6.1 due to the excessive duration of the criminal proceedings, which lasted ten years and eight months.
racy expected of the persons exercising it, and the minister had oversight powers over the liquidators. Taking into consideration the fact that the minister had given the applicant an opportunity to present her version of the case and the respective documents, in order to make an objective decision, ECtHR held that the working legislation had provided the opportunity for even a single irregularity on behalf of the liquidator to result in his elimination from the list. The severity of the violation was irrespective and the legislation did not allow for a different sanction. ECtHR therefore held that in this case the judicial review exercised by SAC had been consistent with the requirements of art. 6.1.

Some ECtHR judgements under art. 6 of the Convention were related to trivial violations that have already been addressed in similar cases in the past. This is why they were reviewed by a three-member committee and not by a panel. In the case Zhelev v. Bulgaria of 15 January 2013 (application No. 39143/06) ECtHR held a violation of art. 6.1 due to the excessive duration of the criminal proceedings against the applicant on charges of bodily harm in a traffic accident. The proceedings lasted ten years and eight months and the case was reviewed at three instances. In the case Aleksandrovi v. Bulgaria of 22 January 2013 (application No. 42983/04) ECtHR held a violation of art. 6.1 due to the excessive duration of the criminal proceedings against the first applicant related to a charge of theft. The proceedings lasted ten years and four months at a single instance. In the case Nikolay Dimitrov v. Bulgaria (No. 2) of 8 January 2013 (application No. 30544/06) ECtHR held a violation of art. 6.1 due to the fact that after the applicant had been awarded compensation under LSMDA, he had to pay excessive court fees which amounted to almost 1/3 of the compensation awarded. In the case Bashikarova and Others v. Bulgaria of 5 February 2013 (application No. 53988/07) ECtHR held a violation of art. 13 with regard to the first two applicants due to the lack of effective remedy against the delay of a vindication claim filed against the applicants by a third person, a heir of the owner of the applicants’ apartment before its nationalization in 1946. ECtHR also held a violation of art. 6.1 with regard to the first two applicants due to the excessive duration of proceedings against the applicants, which lasted more than 14 years at three instances.
No measures were taken in 2013 with regard to the implementation of the ECtHR judgements in the case Yordanova and Others v. Bulgaria of April 2012. The Court had held a violation of art. 8 of the Convention with regard to an attempt at involuntary eviction of Roma in a Sofia neighbourhood. The Court had applied art. 46 of the Convention and had recommended amendments to the Municipal Property Act aimed at preventing evictions with the purpose of restoring possession of municipal and state land without a proportionality assessment of the measure. Despite the fact this act was amended during the year, the problem was not solved. Furthermore, in early August an involuntary eviction in a Roma neighbourhood in Plovdiv resulted in many people losing their only home.

The use of special surveillance means (SSM) to secretly spy on citizens’ communications was an issue that received special attention in 2013. In May several media disclosed information that the former minister of interior had arbitrarily used SIMs to spy on political opponents. This resulted in the initiation of an investigation against him, which had not concluded by year’s end. The accusations of arbitrary phone tapping became a considerable part of the government’s opponent’s election campaign, including that of the two main political parties, which in the end formed the new cabinet, BSP and MRF.

In a series of judgements against Bulgaria in the past several years, ECtHR held that the communications tapping system, as established by law and in practice, is inconsistent in some aspects with the requirements of lawfulness under art. 8 of the Convention. This holds especially true for cases, where phone tapping is used against persons who pose a threat to national security, in which case there are no adequate safeguards. Other deficiencies identified by the Court include the lack of adequate procedures for the verification of the contents and the protection of the confidentiality of the materials and their disposal; the lack of independent control over the materials, which are outside the scope of the phone tapping permission; and the lack of notification of the persons against whom special investigation techniques were used.

The Special Surveillance Means Act was amended in July and August 2013. The amendments restricted the cases in which SSM can be used and created a new body to apply them, the Technical Operations State Agency at the Council of Ministers. However, the possibility for the use of SSM by SANS, an institution which is not subject to much control by the democratic institutions and the rule of law and which during the years gained additional powers to investigate and detain people, remained. The amendments created a new SSM oversight body, the National Bureau for Oversight of Special Surveillance Means. Its statutory powers include access to information on the use of SSM by the respective bodies and structures; verification of the records kept by the bodies and structures with regard to their activities under the Act and the requests, permissions and instructions on the use and the application of SSM; the issuing of compulsory instructions on the improvement of the SSM usage and application regime, as well as on the storage and the disposal of the information collected. The National Bureau also has the power to develop activity log models for the bodies and structures and rules on the storage of requests, permissions and instructions on the use and the application of SSM. In consistency with art. 36g of the Act, the National Bureau notifies the citizens when SSM have been illicitly used against them. However, this provision explicitly excludes the notification of citizens – even when the use of SSM against them was illegal – when it endangers the achievement of the goals for which the use of SSM was permitted, when it creates a risk of revealing operative capacities or technical means, or when it creates a risk to the

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There are solid indications that not only the use of SSM in 2013 has not declined but on the contrary, it has increased. The law does not allow the citizens to request and receive information whether SSM have been used against them. This casts doubts on the consistency of the amendments with the requirements arising from ECtHR rulings against Bulgaria.

Despite the legislative amendments and the declarations of the BSP-MRF government that they will put an end to the scale and arbitrary use of SSM by the GERB government, there are solid indications that not only the use of SSM in 2013 has not declined but on the contrary, it has increased. Based on information provided by the Supreme Cassation Prosecutor’s Office on request by BHC, the number of SSM application requests filed in court between January and September 2013 was 3,555; the number of approved requests was 3,455 and the number of people against whom SSM were used was 3,367. This is a significant increase compared to 2012 when, according to the prosecutor’s office’s annual activity report, it had filed a total of 2,596 requests, of which 2,574 were approved, and the number of people against whom SIT were used was 1,609. On 24 January 2014, SANS refused to provide BHC with detailed information on its use of SSM on the grounds of the classified nature of the information, although only statistical data were requested. BHC appealed SANS’s refusal under the Access to Public Information Act.

No progress was achieved with regard to religious freedom in 2013. As in previous years, there were a series of violations against representatives of non-Orthodox religious denominations, including:

- vandalised houses of worship;
- discriminative representation of rituals and confessional identity in the media;
- refusal of the prosecution to initiate criminal proceedings for public instigation of religious hatred, discrimination and violence;
- refusal of the Council for Electronic Media to impose sanctions for manifestations of religious hatred and discrimination in the media;
- municipal councils’ practice to use local regulations to restrict the religious activities of certain minority religious communities.

The Muslim religion was subjected to various forms of restrictions of religious freedom. The lawsuit against the 13 imams, which began in 2011 at the Pazardzhik District Court, continued in 2013. It entered the final phase at the end of the year. The prosecutor’s office maintained the charges under articles 109, 108 and 164 of the Penal Code for involvement in the management of a group preaching an “antidemocratic ideology”. According to the prosecution, the antidemocratic ideology consists of preaching Salafite Islam, opposing the division of powers, liberalism, appeals to not vote in the elections, and opposition to gender equality. The indictment does not state that the preaching involves calls for violence. None of the witnesses questioned by the court during the year has confirmed the existence of such calls. In their pleas, the lawyers of the Muslim preachers pointed out that peacefully practiced religious convictions, as well as the specific ritual of a religion, cannot be subject to criminal law. By the end of the year the verdict was still pending.

As in previous years, Muslim places of worship and other assets owned by the religion were systematically vandalised in 2013. With few exceptions, the police and the prosecution did not show much interest and activity in identifying the perpetrators and punishing them.

- On 7 January 2013, during noon prayer, unknown persons threw stones at the windows of the Hadji Osman mosque in Dobrich. Three windows were broken and one worshiper sustained a leg injury. The district mufti’s office notified the police.
- On 11 January 2013, stones were once again thrown at the windows of the Hadji Osman mosque in Dobrich. The police was notified.
- On 22 January 2013, around 6.30 a.m., Muslims from Gotse Delchev found a pig’s head posted on the mosque’s entrance at 3 Zvancharska Street. Officials of the district mufti’s office in Gotse Delchev notified the police and sent a letter to the Gotse Delchev District Prosecutor’s Office. In the letter, the Gotse Delchev district mufti provided also information about the provocations by extreme right neo-totalitarian parties, such as VMRO and Ataka, which used a series of public events to instil religious hatred and create tension between the religious communities in the region. Together with a regional media, Top Press, they organised several rallies to protest against the Muslim community’s intention to build a new mosque in town. The prosecution did not do anything.
- On 5 January 2013, around 4.00 a.m., two youngsters aged 23 and 22 threw stones at the Dzhumaya Mosque in Plovdiv and broke three windows. Minutes after the incident, they were apprehended by employees of Municipal Security who notified the Fourth Precinct. The two men were detained for 24 hours.
- On 8 February 2013, the Azzie Mosque in Varna woke up with the inscriptions “Fear, Turks”, “Levski is alive”, “Bulgaria above all” and a cross painted on its walls. The inscriptions were noticed by the Muslims who notified the employees of the district mufti’s office and the mosque’s imam. The Varna First Police Precinct was also notified. The
law enforcement bodies visited the crime scene and initiated pre-trial proceedings against unknown perpetrators. The latter were never identified.

- On 7 March 2013, the facade of the Yali Mosque in Karlovo was painted with the inscription "Death to you, Turkish trash!" and a swastika. The local media covered the news. The police could not identify the perpetrator.

- In the night of 25 April 2013, the central mosque in Isperih was painted with anti-Muslim inscriptions. This happened for the first time in this region. The district mufti’s office and the Muslim trustees condemned the act and filed a complaint with the prosecutor’s office. The perpetrators were never identified.

- In the night of 6 September 2013, unknown persons painted the fence of the Azizie Mosque in Varna with inscriptions "OUT!!!", "14/88" and a swastika. The inscriptions were noticed by worshippers who notified the employees of the Varna district mufti’s office. They in turn notified Varna’s First Police Precinct and send them photos. Pre-trial proceedings were initiated but perpetrators were not identified.

- On 6 October 2013, there was an attack against the central Eski Mosque at 21 Otets Paisii Street in Kazanlak. The attackers broke several windows. Two weeks later, on 20 October 2013, there was an arson attempt. The incident was recorded by security cameras. The images show a youngster walking around the mosque during the night, carrying a fuel can. He then starts to pour its contents on the western walls and windows and sets them on fire. Two students from the universities in Varna and Sofia were arrested several days later. One of them confessed to the arson and the breaking of the windows in complicity with the other one. As of the end of the year, the perpetrators had not been convicted.

- On 19 December 2013, the Azizie Mosque in Varna was set on fire. The damages were substantial. The possible perpetrator was recorded by the security cameras. The recording shows him exiting the mosque a few minutes before the fire started. However, as of the end of the year, the perpetrator had not been identified.

- On 20 December 2013, around 11:30 p.m., there was yet another attack against the mosque in Blagoevgrad. The perpetrator threw stones at its windows which triggered the security system. Security staff caught the perpetrator and handed him over to the police. The police drafted a protocol and, after being detained for several hours, the perpetrator was released for unknown reasons. Once again the perpetrator claimed that he was drunk and did not remember anything, as well as that he will pay for the damages if released. Once again the police irresponsibly let him go.

- On 25 December 2013, the windows of the mosque in Kazanlak were once again broken. The perpetrators have not been identified.

- On 29 December 2013, the Sherif Halil Pasha mosque (a.k.a. Tombul mosque) in Shumen once again woke up with "DEATH TO YOU!" painted on its external front wall. The police drafted a protocol and conducted an investigation but the perpetrators were not identified. On 31 December the Municipality removed the inscriptions.

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17 The video is available at: http://news.ibox.bg/news/id_1108725442.
21 "Vandals spray-paint a mosque and a monument", Trud daily, 3.01.2014.
Apart from the Muslims, representatives of other minority religious communities also fell victim to discrimination and violence. The activities of Jehovah’s Witnesses’ followers were hindered in 2012, when municipal councillors from the NFSB party tabled a memo in which they asked the Burgas Municipal Council to ban the dissemination of religious brochures of this denomination. The justification of the nationalists was “threat to national security, health and morale” and other civic freedoms. This justification was upheld by the Municipal Council in February 2013 when it voted on the amendments of the Ordinance on Preserving the Public Order within the Municipality of Burgas. These provisions prohibit religious propaganda at citizens’ homes “without their express consent”, as well as religious rallying in the city’s streets by the dissemination of free materials: brochures, leaflets, books, etc. The fact that this ordinance, which clearly contradicts the Religions Act, was adopted by 37 councillors with no votes against is indicative. The Burgas regional governor contested by an order the ordinance at the Burgas Administrative Court. At the end of September, however, the new regional governor, appointed by the new cabinet, revoked the order and withdrew the complaint to the Burgas Administrative Court.22 The SKAT TV channel, as well as other local media, initiated a campaign to denigrate Jehovah’s Witnesses. The Council for Electronic Media did not react to these broadcasts. Jehovah’s Witnesses reported cases of physical and psychological abuse and libel in local media in Kyustendil, Sevlievo, Varna, Plovdiv, Veliko Tarnovo, Dobrich and Gabrovo.

Representatives of the Church of Jesus Christ of Latter-day Saints (the Mormons) also reported cases of violence, discrimination and abuse during the year. These include attacks by private individuals against property owned by the church: breaking windows, removing plaques, painting walls. Nationalist political parties, such as VMRO, NFSB and the new youth organization Fidelity.net, systematically use the public space to rally the citizens against the representatives of this church. People, who had filed complaints with the police, were told that there was no sufficient evidence of violations and that no proceedings will be initiated.

Freedom of expression and access to information

Freedom of expression

The downturn in freedom of expression in Bulgaria continued in 2013. The tangle of economic interests, political interests and media tightened so much that it almost suffocated freedom of expression. More than ever, the media were used for manipulation purposes. Lies are published on a daily basis with the purpose of bending someone or misleading the public, with total impunity. There were also no consequences for the everyday instigation of hatred and violence against ethnic and religious minorities, asylum seekers and people of different sexual orientation in media owned by political parties, such as Ataka-owned Alpha TV channel and the SKAT TV channel, owned by leading politicians from the National Front for the Salvation of Bulgaria. The very few spaces of media freedom were islands in an ocean of falsifications and propaganda. The media regulators watched inactively the downturn in media freedom over the year.

Apart from the non-existent distance between media, oligarchy and politicians, some of the other issues with regard to freedom of expression in Bulgaria over the past year include the still non-transparent media ownership and financing, the meddling of the owners in the editorial policy, various forms of pressure and severe self-censorship, non-compliance with the ethical rules of journalism, ineffective media self-regulation, disguising of paid articles as editorial content, on-going drop of quality and the funneling of European funds towards specific media.

In 2013, Bulgaria dropped 12 places in the Reporters without Borders’ Press Freedom Index, plummeting to the 100th place (its worst ranking ever) as the country with the least free media in the EU. In comparison, in 2006 the country ranked 35th. Bulgaria retained its position (77th out of 199 countries) in the annual ranking of US-based Freedom House, remaining in the group of countries with “partly free” media. “Journalists in Bulgaria continue to face the threat of physical violence, often in response to investigations that imperil powerful business interests or seek to expose organised crime”, states the Freedom House report.

In its first EU Anti-Corruption report the European Commission states that media ownership in Bulgaria is further concentrated in the hands of the same people, compromising editorial independence. According to the report, “media ownership and financing lack transparency, and paid-for coverage is not consistently identified as such. Print media, especially local outlets, depend on the public sector for advertising revenue. [...] An increase has been noted in media self-censorship due to corporate and political pressure”.

Bulgaria is at the bottom of the ranking compiled by Index on Censorship. According to its report, Bulgaria is among the EU countries with worst results with regard to democracy and media freedoms. The report also notes that Bulgaria, together with France and Ireland, cause concern due to evidence of police interference in the work of journalists and bloggers.

Media and Democracy in Central and Eastern Europe, a research project of the Department of Politics and International Relations of the University of Oxford and the Department of Media and Communications of the London School of Economics and Political Science, comes to the conclusion that politicised government, tan-

24 http://www.freedomhouse.org/report/nations-transit/2013/bulgaria#.Uw3bfkKSy-o
27 http://mde.politics.ox.ac.uk/index.php/home/2-news/179-new-fianl-project-reports-published
 Pressure has been exercised against half of the journalists (47%) working for Bulgarian media due to the content of their publications and broadcasts.

Two thirds of the interviewees have witnessed pressure being exercised by media owners, editors, advertisers, companies or individuals with political affiliations. More than 30% of the journalists who took part in the survey have been subjected to direct pressure by politicians, advertisers and representatives of various economic circles. With regard to the internal editorial pressure, 60% of the respondents point out that this is a frequent practice on behalf of their line editors or editors-in-chief, while 30% state that they resort to self-censorship on a regular basis.

A study conducted by Market Links for the Konrad Adenauer Foundation indicates that only 14% of the Bulgarians believe that independent journalism exists in the country; this percentage is two times lower among Sofia residents. In 2013 we became witnesses to various forms of pressure, intimidation and attacks against journalists. No progress was achieved with regard to the attacks from this and previous years.

In the evening on 16 September, bTV morning anchor Genka Shikerova’s car suddenly burst in flames while parked in front of her home in the Geo Milev neighbourhood. Shikerova told bTV that it was a case of arson. In an open letter to the Sofia Directorate of Internal Affairs (SDIA) BHC stated: “We insist that this obvious attempt at intimidating a journalist with the purpose of restricting her freedom of expression by launching the heavy mechanism of self-censorship be investigated quickly and professionally, so that the perpetrators and those who sent them be identified and detained. The lack of such severe repercussions both on the journalistic profession and on the society as a whole”. The Organization for Security and Cooperation in Europe (OSCE) also asked that the case be quickly investigated.

In the night of 23 July the police used inadmissible excessive force against the journalists. No progress was achieved with regard to the attacks from this and previous years.
In 2013, funds continued to be funnelled towards media supportive of the government, by means of advertising and media coverage contracts.

During the governmental protests, members of parliament took over the time of the public media in an attempt to disrupt the coverage of what was happening on the streets.37 “We are broadcasting directly for society to see that we are working”. This is how MP Anton Kutev (BSP) explained the regular direct broadcasting of parliamentary sessions by Bulgarian National Television and Bulgarian National Radio. The legislation allows the members of parliament to decide when to order direct broadcasts in the two public electronic media.

In April Hristo Hristov, a journalist and founder of desebg.com, announced a death threat against him and his family.38 As a result, public figures, rights activists and journalists appealed to the Directorate General on Combating Organized Crime (GDBOP), the Ministry of Interior (Mol) and the prosecution to do find the culprits.39 They had not been identified by year’s end.

In April the prosecutor’s office summoned for questioning Boris Mitov, a journalist for the Mediapool website. This happened just two hours after the publication of his article “The Bulgarian Watergate: and who will supervise the supervisors?”40 dedicated to the Mol phone tapping scandal. After several attempts to have Mitov identify his sources, the prosecutor threatened to initiate pre-trial proceedings against him with regard to information about the trial against Nikolay Tsonev, Tencho Popov and Petar Santirov used by Mitov in his article. The information had been declassified in 2010 by the Sofia City Court judge Ivan Koev. BHC called the direct and severe pressure exercised by the prosecution against Borisov Mitov a blatant attack on freedom of expression, including on society’s right to information.41 In the opinion of BHC, the prosecution’s attempt to coerce a journalist through abuse of power, manifested by the threat of initiating pre-trial proceedings against him, should be regarded as an open act of repression with the purpose of intimidating the media.

In September, a letter by the Corporate Commercial Bank (CCB)42 resulted in the dismissal of two journalists from Deutsche Welle’s Bulgarian editorial office, Ivan Bedrov and Emi Barouh. In

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36 http://www.bghelsinki.org/bg/novini/press/single/bhk-izkazvaniyata-na-mihail-mikov-sa-opas-
ni-za-svobodata-na-obshchestvoto/
37 http://www.mediapool.bg/deputatite-zavzeha-sifra-na-bnt-v-imidzhova-voina-s-protestirash-
tite-news208437.html
39 http://www.bghelsinki.org/bg/novini/press/single/priziv-za-razsledvane-na-zaplahite-sre-
shu-zhurnalista-hristo-hristovi-i-negovoto-semeistvo/
40 http://www.mediapool.bg/balgarskiyat-uotargeit-a-koi-ishi-proveruva-proveruva-vashit-
ya-news204856.html
41 http://www.bghelsinki.org/bg/novini/press/single/bhk-prokuratorata-instrument-za-pressled-
vane-na-presata/
42 http://www.mediapool.bg/tsvetan-vasilev-uspya-da-pritisne-doiche-vele-s-propagandata-izkova-
a-na-ot-medite-na-peeveksi-news211469.html
a letter to Deutsche Welle BHC stated that this sends an extremely alarming signal and that watching DW weekly succumb to pressure from CCB is a cause of concern. Journalists, human rights activists, professors in the field of media and law also sent a letter expressing their bewilderment at the dismissals. In response, Deutsche Welle’s Bulgarian editorial office issued a statement, pointing out that DW has completed its internal review of its Bulgarian publications on CCB and will be discussing ways of continuing its cooperation with Bedrov and Barouh. They also indicated that “despite CCB’s reaction, DW will continue to publish journalistic materials about the bank and the chair of its Supervisory Board”.

In December, the newspapers of Econo-media Ltd. (publisher of Capital, Capital Daily and Dnevnik), known for their critical stance on the government, the Capital Foundation (managed by Galia Prokopieva who on 1 January assumed the post of CEO at Econo-media Ltd.), one of the publishers, Ivo Prokopiev, and several companies within Alpha Finance Holding, in which Prokopiev holds the controlling stake, were subjected to a total of 11 tax audits. The prosecution is yet to respond officially whether it had ordered the audit, as well as on what grounds. The audits were allegedly ordered by the deputy city prosecutor, Roman Vasilev. Another government critic, SKAT TV, was also subjected to tax audits. SKAT representatives claimed that the audits were instigated by the Ataka party. In December the National Revenue Agency initiated an audit of BHC on request by the VMRO. Several non-governmental organisations expressed concern in this regard.

In 2013, funds continued to be funnelled towards media supportive of the government, by means of advertising and media coverage contracts. The European Commission pointed out in its EU Anti-Corruption Report that parliament is considering new legislation on media ownership transparency in response to the concern with regard to media concentration. The report states that “in 2013, the government vowed to streamline procedures for awarding publicity contracts financed by EU funds”. According to the report, statistics suggest such contracts may have been allocated to the detriment of media independence.

Human rights activists, including the Association of European Journalists – Bulgaria (AEJ), expressed concern with the idea that photographing or filming someone without their permission, including in public places, be criminalized in the new draft Penal Code. “The possibility that such a provision may be used to exercise pressure on journalists and photographers in their line of duty, the results of which are of public interest, is a cause of concern. The proposed text in the new Penal Code may also hinder the development of civic journalism”, says AEJ.

The crisis in investigative journalism continued in 2013. There was an obvious lack of topics related to social diversity. The strong presence of hate speech towards ethnic, religious and sexu-
In November the Council for Electronic Media (CEM) ruled inadmissible the isolated manifestations of hate speech in the electronic media covering the refugee issue. In its declaration, the regulatory body stated that “on the background of the quick, diverse and professional coverage of the topic to the benefit of the viewers and the listeners, there are isolated manifestations of hate speech and use of legally inadmissible and morally reproachable descriptions, such as “cannibals”, “ riff-raff”, “ lowlife primates”, etc.” It also added that “CEM understands that hate speech does not usually come from media representatives but from their interlocutors, most often politicians. However, responsibility is vested in the media by law, and its anchors and reporters must do what is necessary to protect the affected”.

On BHC initiative, non-governmental organisations and media professionals sent in November an open letter to the Bulgarian media with regard to the more frequent occurrences of publications and broadcasts in which racist and xenophobic attitudes were freely given the floor. “Giving the floor to people who instigate hate, discrimination and/or violence is a violation of the internationally accepted ethical rules of journalism, and more specifically, of two articles of the Bulgarian media’s Code of Ethics. The argument used by some media, that the freedom of expression is guaranteed to everyone and therefore must be provided to anyone, is not applicable in this context. Because while there is freedom of expression, there is no freedom of hate speech. The latter is a crime”, says the declaration. Anyone, a citizen, a journalist or an NGO, could join the signatories, and the declaration was signed by more than 560.

Access to information

In 2013, as in previous years, the right to access to information was subject to monitoring and advocacy by the domestic NGO, the Access to Information Programme. The cases worked on by the Access to Information Program (AIP) indicate that information under the Access to Public Information Act (APIA) is most often sought by citizens (207 cases), followed by journalists (103 cases) and non-governmental organisations (54 cases). In most cases, information seekers address central bodies of the executive power (135) and local government institutions (101); less often information is sought from bodies governed by public law (25), judicial bodies (27), independent governmental bodies (14), etc. AIP’s experience shows that the number of silent refusals remained high in 2013 (30). Most of the express refusals on substance relate to third party interests (21) and personal data (12). In 14 cases there was a referral to art. 13, para 2 of APIA, while in 4 cases the refusal was on the grounds of trade secret.

In 2013, AIP’s legal team prepared a total of 76 complaints in access to information cases. 70 court decisions and rulings on lawsuits filed with AIP support were held during the period. In 51 cases the court held in favour of the information seekers, and in 19 in favour of the administration.

Some of the more interesting issues reviewed in case law:

The meaning of “public information”

In a decision of 16 January 2013,

52 http://www.cem.bg/download.php?id=4908
55 APIA, art. 13(1) Access to business information shall be free.
56 (2) The access to business information may be restricted when the information:
1. is related to the operative preparation of bodies’ acts and has no meaning per se (views and recommendations developed by or for the body, opinions and consultations); 2. contains views and positions related to current or future negotiations conducted by the body or on its behalf, as well as data related to them, and has been developed by the administration of the respective body.
57 Decision No. 704/16 January 2013, SAC, Fifth Section, on administrative case No. 9351/2012.
SAC upheld a decision of the Sofia Region Administrative Court (SRAC) of June 2012 to repeal the refusal of the mayor of Elin Pelin to provide information on the approval procedure for the extension of the airstrip at the village of Lesnovo. The court pointed out in the grounds for its decision that the information requested referred to the development and approval of a detailed development plan, environmental impact assessment and other documents concerning the allocation of land and the construction of an airstrip. In other words, the construction would affect public life in the village of Lesnovo and the information sought would provide the residents, including the applicant, the opportunity to form an opinion on the activities of state and local government bodies.

The obliged entities

In a decision of 28 May 2013\textsuperscript{58} SAC upheld the first instance decision\textsuperscript{59} by which Toplofikatsiya Sofia EAD (the Sofia central heating provider) was deemed an obliged entity under APIA in its capacity of an organisation governed by public law. The court motivated its conclusion with the fact that the Municipality of Sofia owns is the sole shareholder of the company and exercises control over its management, as it appoints its management and oversight bodies.

In a decision of 24 October 2013\textsuperscript{60} SRAC repealed the refusal of the CEO of the Air Traffic Control State Enterprise to provide information on the business trips of company managers in 2012. The court stated in its arguments that the state enterprise is a legal entity with statutorily assigned state functions with regard to the provision of air navigation services in the civil airspace of the Republic of Bulgaria, and is therefore an entity obliged under APIA to provide information in its capacity of a body governed by public law.

Overriding public interest

In several API supported cases various courts held overriding public interest in providing access to information and repealed administration acts on this ground. In a decision of 19 February 2013\textsuperscript{61} SRAC repealed the refusal of the Ministry of Environment and Water (MOEW) to provide information about Technical Assistance for the Creation of an Integrated Waste Management System in the Yamibol Region, a project financed under the Environment 2007 – 2013 Operational Programme. The court noted in its arguments the existence of overriding public interest due to the fact that the information is related to the allocation and spending of EU and national budget funds.

In a decision of 1 March 2013\textsuperscript{62} SAC upheld the SRAC decision of June 2011 to repeal the refusal of the Ministry of Economy, Energy and Tourism to provide information on the Russian-Bulgarian cooperation in the field of energy and in the Belene Nuclear Power Station project. The magistrates pointed out the existence of overriding public interest in this case, as the information was sought with the purpose of increasing the transparency of the obliged entity’s activities.

Preparatory documents

In a decision of 29 January 2013\textsuperscript{63} SAC upheld the Haskovo Administrative Court decision to repeal the refusal of the Harmanli mayor to provide a copy of a report on the audit of the municipal administration conducted by the State Financial Inspection Agency (SFIA). The court pointed out that it supports completely the arguments of the first instance that the Municipality has failed to prove that the information requested is related to the operative preparation of bodies’ acts and has no meaning per se, nor that it contains views and positions related to current or future negotiations conducted by the body or on its behalf, as well as data related to them.

In a decision of 10 June 2013\textsuperscript{64} SRAC repealed the refusal of the Ministry of Regional Development and Public Works

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\textsuperscript{58} Decision No. 7228/28.05.2013, SAC, Fifth Section, on administrative case No. N°11081/2012, judge-rapporteur Marieta Nikolova.

\textsuperscript{59} Decision No. 2598/14.05.2012, SRAC, Second Section, Panel 38, on administrative case No. 7183/2011.

\textsuperscript{60} PDecision No. 6434/24.10.2013, SRAC, Second Section, Panel 34, on administrative case No. 4829/2013.

\textsuperscript{61} Decision No. 1151/19.02.2013, SRAC, Panel 25, on administrative case No. 3773/2012.

\textsuperscript{62} Decision No. 2932/01.03.2013, SAC, Fifth Section, on administrative case No. 11256/2011.

\textsuperscript{63} Decision No. 1364/25.01.2013, SAC, Fifth Section, on administrative case No. 3439/2012.
to provide information on OLAF’s final report on the possible irregularities in the implementation of Water’s Way, a project co-financed by ERDF under the 2007–2013 Romania-Bulgaria Cross-Border Cooperation Programme. The Ministry had motivated its refusal by claiming that the information was related to the operational preparation of bodies’ acts and does not have meaning per se. The court pointed out in its arguments that the refusal doesn’t identify the final acts that were formulated on the basis of the information, due to which the interested parties had no way of obtaining information on the contents of the report. The decision also states that the findings in the report cannot be changed by the body to which they are addressed. They have meaning per se and access to them must be provided.

Access to information: access to documents

In a decision of 17 April 2013 SAC upheld SRAC’s decision to repeal the refusal of the Ministry of Economy, Energy and Tourism to provide a copy of one of its opinions and of the associated documents. According to the opinion, the actions of nuclear physicist Georgi Kotev and of the Anna Politkovskaya Free Speech Association had cost Bulgaria’s budget BGN 2 million (EUR 1 million) spent on maintaining a positive image of Bulgarian nuclear energy production. The court noted that whether the applicant is requesting access to the specific physical carrier of the information or to a description of the information has no relevance to the obligation of providing it.

Silent refusals

The case law of repealing silent refusals under APIA remains exceptionally consistent. According to case law, APIA allows the obliged entities only one possibility to act upon receiving a valid access to information request: to come up with a motivated decision to allow or deny access to the information and to notify the applicant in writing.

In 2013 ECtHR ruled against Bulgaria in a case of violation of the freedom of expression. In the Cholakov v. Bulgaria of 1 October 2013 (application No. 20147/06) ECtHR held a violation of art. 10 on account of the applicant’s sentencing to ten days in detention for expressing his political opinion. In November 2007 the applicant was charged with minor hooliganism and sentenced to ten days’ detention for chaining himself to a metal pole while campaigning in support of a candidate running for mayor in Vratsa and for using a loudspeaker to say that that the officials then in power were corrupt. ECtHR concluded that the applicant was expressing his political opinion and in this respect was taking part in, and contributing to, a public political debate. In the Court’s opinion, despite being provocative, the applicant’s statements were not particularly shocking or calumnious. The Court held that the Vratsa Regional Court had not compared correctly the alleged severity of the applicant’s transgression and his right to freedom of expression, and therefore held a violation of art. 10.

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64 Decision No. 3858/10.06.2013, SRAC, Second Section, Panel 32, on administrative case No. 739/2013.
65 Decision No. 5374/17.04.2013, SAC, Fifth Section, on administrative case No. 7662/2012.
Prisons and prison dormitories

By 31 December 2013, there were a total of 8,834 inmates in Bulgarian prisons. Figure 1 below shows the number of inmates in prison and prison dormitories by 31 December, by year.

It is apparent that this number of inmates is a record low since 2000. There is a 659 drop compared to the previous year, considerably more than in 2012 compared to 2011 when the number was reduced by 392. Out of the total, 73 inmates are minors who have been convicted or whose conviction is pending.

The reduced number of inmates has resulted in a considerable alleviation of living conditions, albeit not in all prisons. For example, the number of inmates in the prisons in Lovech and Pazarzhik decreased significantly by the end of 2013. At the same time, in other prisons such as the one in Burgas, the trend was the opposite, i.e. the number of inmates increased despite the existing overpopulation. In Burgas, during different periods at the end of 2013 the main building alone was home to 950 to 1,000 inmates, which is almost three times its capacity of 371. This in turn forced prison authorities to resort more frequently to the use of three-tier bunk beds, and the living space per inmate in the common dormitories was reduced to less than 1 m², as noted by the European Committee for the Prevention of Torture (CPT) in the report on its May 2012 visit.

The new Enforcement of Sentences and Detention Under Remand Act (ESDRA) (2009) provided for normative acts containing standards on living space, heating, lighting and other living conditions indicators. At the time the executive declared that it would try to solve the issue of prison overpopulation by building a new prison and reconstructing the old ones. The 2010 Programme for the Improvement of the Conditions in Places of Detention set up a three-year deadline to achieve a minimum living space per inmate of 4 m². At the end of 2012, however, the act was amended...

“We can’t afford the luxury to pay for lawsuits and compensations and not see this. We need to change the physical conditions, but to do so, we need significant amounts of money”.

Fig. 1: Number of inmates by 31 December, by year (2000-2013)
Source: Directorate General Enforcement of Sentences

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By 31 December 2013, there were a total of 8,834 inmates in Bulgarian prisons.

to delay the implementation of the new standards until 1 January 2019, with the explanation that the economic conditions did not allow for the provision of the necessary living space. The continuous neglecting of state penitentiary policy, manifested in the blatant failure to implement the Strategy for the Development of Places of Detention (2009-2015) and the investment programme, will most probably result in delaying the implementation of the living space standards beyond early 2019.

The implementation of a programme for the improvement of prison conditions began in early 2013 with funding under the Norwegian Financial Mechanism. The approximately 7 million euro granted are used for rehabilitation and repair works in certain prisons. Most of the funds, some 5 million euro, are allocated for repair and construction works in two prison dormitories in the Burgas and Varna prisons; the conditions in these facilities were most often criticized by domestic and international human rights organisations. The work is expected to be completed within three years. Upon completion, some 600 inmates are expected to be transferred to these dormitories, resulting in reduced overpopulation in the two prisons.

By the end of 2013 representatives of the new government responsible for places of detention had not committed to findings and comments on the condition of Bulgarian prisons. The director general of DG Enforcement of Sentences, Chief Commissioner Mitko Dimitrov, was the only one to talk in December 2013 about the inherited problems and the opportunities to find solutions. In his opinion, Bulgaria would need 1 billion euro to build 10 new prisons that meet the European requirements. “We can’t afford the luxury to pay for lawsuits and compensations and not see this. We need to change the physical conditions, but to do so, we need significant amounts of money.”

In the spring of 2013 the deputy minister of justice in the caretaker government, Dimitar Bongalov, made the following statement in a TV7 video entitled Violence in Prison: “The Bulgarian society needs to decide whether we as taxpayers are going to pay compensations (including for cases at the Europe-
an Court of Human Rights), and I assure you that the amounts are not insignificant (for example, 12,000 Euro to an inmate serving a life-sentence because he had no access to sanitary facilities). We could build sanitary facilities for such an amount, but when we don’t have it in the budget, we have to pay it as compensation. I know that there are priorities but it’s about time...for so many years, for a century, we have not built a new prison”.68

While the opinions of the two penitentiary experts coincide, apart from the activities financed by the Norwegian Financial Mechanism there are no other significant initiatives for improving the general conditions in Bulgarian prisons.

The reduction in the number of inmates in 2013 was coupled with a reduction of the number of the defendants and the accused in prisons, an indicator of faster work on penal cases in the pre-trial and trial phase. Fig. 2 above shows the number of defendants and accused in prisons over the past ten years.

One of the problems faced by the Bulgarian prison system arises from the lack of closed-type dormitories. In consistency with art. 60, para 1 of ESDRA, they are used to accommodate the same categories of inmates that are accommodated in main prison buildings. Realizing that the existence of more such dormitories would reduce prison overpopulation, the administration initiated efforts to build or transform buildings into such dormitories. As a result, a closed-type dormitory was opened at the Pleven prison in 2012, with similar facilities scheduled to become operational at the prisons in Varna and Burgas upon the completion of the works. Figure 3 above shows the number of inmates accommodated in open and closed-type dormitories over the past five years.

The increase for the third consecutive year of the number of inmates in closed-type dormitories proves the necessity of having more such dormitories built within the Bulgarian prison system. Most of the inmates are serving multiple sentences, many of them for multiple small property offences. For these inmates, theft is a way of life and there are no working programmes that could positively affect these inmates, pull them out of the crime circle and re-integrate them in society. In such cases isolating them in prison in order to protect society has rather the function of placement in a social institution, while the correctional function remains in the background.

With regard to information that the cases of violence between inmates and of use of force and restraint by the guards in several prisons, in April 2013 the deputy minister of justice, Dimitar Bongalov, found lack of active work in the DG Enforcement of Sentences reports and in the 2013 work plan. As a result, and in line with the CPT recommendations for zero tolerance towards the abuse of inmates, he recommended the development of a strategy on the prevention of inter-prisoner violence, the introduction of a special registry for the use of force in order to ease on-going oversight, as well as the provision to the competent authorities of a list of all cases of use of force in places of detention. By the end of the year, this registry had not been created.

After receiving information about the beating of a group of inmates, in October 2013 BHC researchers visited the Sofia Central Prison and talked to the victims - eleven inmates from the convicted foreigners’ group. The incident occurred when one of the foreigners failed to comply when a prison guard ordered them to step out of the cell for roll call. According to them, they did not understand the order. The evidence found by BHC’s verification proved beyond any doubt that force and restraint had been used against the inmates: some of them had bruises. Even if the use of force was lawful, it was definitely disproportionate. In terms of the use of restraint, the specific situation does not correspond to any of the hypotheses under art. 114 of ESDRA that allow

68http://tv7.bg/%D0%96%D0%B5%D0%B3%D0%B0/%D0%92%D0%B8%D0%B4%D0%B5%D0%BE/%D0%9D%D0%B0%D1%81%D0%B8%D0%B8%D0%B5-%D0%B2-%D0%B7%D0%B0%D1%82%D0%BE%D1%80%D0%B8%D1%82%D0%B5-_l.67_i.9724265.html#.UueaRvuxXGg, aired on 28 April 2013.
The increase for the third consecutive year of the number of inmates in closed-type dormitories proves the necessity of having more such dormitories built within the Bulgarian prison system.

Prison disciplinary practices have been subject to criticism on multiple occasions due to their arbitrariness and the lack of judicial oversight on imposed punishments. With the exception of solitary confinement, all other statutory punishments are imposed only by the administration, without independent oversight.

The medical services in places of detention continue to be separated from the national healthcare system in terms of facility standards, administration, scope of the medical check-ups, reporting, prophylactics and prevention. The growing number of inmate complaints with regard to the low quality of medical services is proof of this. The main issues arise from the insufficient staff and the lack of funds for the provision of the necessary volume of medical services. The administration’s efforts to prevent drugs from being smuggled in prison have not put an end to this practice, which results in the proliferation of HIV and hepatitis behind bars. The system faces another problem due to the lack of independent external oversight on sanitary and hygienic conditions, which give rise to many inmate complaints.

As in 2012, foreign nationals serving sentences in the Sofia prison continued their protests. If in 2012 they protested against disrespectful treatment, bad living conditions and the lack of clear rules on regime changes and release on parole, 13 citizens of Algiers, Rwanda, Syria and other countries went on a hunger strike in April 2013 to protest their sentencing to imprisonment for illegal border crossing. They asked that their sentences be reviewed with the argument that instead of receiving refugee status, they are sent to prison. They were sentenced to imprisonment because they already had suspended sentences for illegal entry in Bulgaria.

The minister of justice Zinaida Zlatanova signed in March 2013 an agreement with the Union of Prison Staff in Bulgaria. According to the agreement, prison staff salaries are to be raised by 5%. The union’s chairperson said that the agreement was the result of four years of waiting, and this is the first Ministry of Justice team that paid attention to staff demands and accepted them.

**Investigation detention centres**

Remand is the most severe measure of restraint and is sometimes used to cover procedural duress against defendants who are not cooperating with the authorities in the pre-trial phase. In this respect, the practices in imposing this measure need to be reconsidered, so as to provide guarantees that some defendants will not be kept as hostages. The extremely severe conditions at the investigation detention centres encourage the use of this measure as a means of pressure on defendants and to reduce their chances of preparing for a competitive trial. The permission regime for the defendant’s meetings with representatives of human rights, religious and other organisations and communities, as stipulated by art. 253 of ESDRA, is another barrier to independent oversight aimed at preventing arbitrariness in the pre-trial and the trial phase of the penal process.

By 31 December 2013, only 746 individuals were detained at investigation detention centres; of them, only 15 were minors. Figure 5 below shows the number of defendants in investigation detention centres by year.

The reduction in the number of defendants by one quarter over the previous year corresponds to the drop in the number of inmates in prisons. On the background of the inherited problems of the detention centres and the lack of any significant changes, this reduction has a positive effect on detention conditions as a whole. The activities funded under the Norwegian Financial Mechanism covered a small portion of the investigation detention centres: construction of a new detention centre and probation facility on the plot of a former military facility in Shumen, as well as re-
pairs in several detention centres. However, these cannot improve the quality of the stay at the facilities.

Forty-two detention centres remained functional in 2013, including one in each of the 28 regional cities. As in previous years, the detention centres in border communities (Svilengrad, Petrich and Slivnitsa) were more crowded than elsewhere. In early 2013 ESDRA was amended to avoid overpopulation at some detention centres by introducing the possibility to place detainees in detention centres in closer proximity to the pre-trial or trial area. The living and the hygienic conditions at the detention centres have been discussed on many occasions and include the lack of adequate windows and daylight, lack of ventilation, cells located below ground level (in Gabrovo, Slivnitsa, Petrich and Pazardzhik), lengthy stay in extremely small cells (Vratsa, Sliven, etc.). Furthermore, some 80% of the detention centres lack sanitary facilities in the cells and the detainees have to bang on the doors in order to be escorted to the lavatories. Outdoor walking facilities are available at 16 detention centres only. Some of the remaining detention centres have large indoor rooms for physical activities, while 18 detention centres have no outdoor walking facilities and the detainees remain in their cells for months.

**Correctional and educational facilities for minor and juvenile offenders (CBS and SBS) and institutions for temporary accommodation of minors and juveniles**

In 2013, four SBS and three CBS functioned in Bulgaria. Placement in one of these institutions is the most severe measure imposed on children in conflict with law but the measure is often imposed for social or preventive reasons. While ten or fifteen years ago there were more than 30 SBS and CBS, their number has been reduced to the current seven, and the number of children in them has dropped tenfold. The reduction is due to the clarification of the placement procedure under the Combating the Anti-Social Behaviour of Minors and Juveniles Act, and to the overall decrease in the number of children in Bulgaria. The 2004 amendments concerned the compulsory court review of the imposed correctional measures. The amendments restricted to some extent the arbitrariness of placement; nevertheless, children placed in such facilities...
for social reasons are still mingled with children placed for anti-social acts. Theft is the main reason behind placements, followed by running away from home or from a specialized institution, vagrancy, aggressive behaviour, hooliganism, begging, property damages, etc.

Over the year BHC researchers visited the following children’s institutions: SBS Angel Uzunov in the town of Rakitovo; SBS Hristo Botev in the town of Podem; St. Cyril and St. Methodius in the village of Kereka; and the CBS in the town of Straldzha. CBS Hristo Botev in the village of Dragodanovo was visited in January 2014. The visits found numerous violations involving physical violence, psychological and sexual abuse. The findings include also cases of violence on behalf of staff, as well as among the children in the boarding schools, which are known to the staff. Boarding school staff has used violence against children, in the form of direct and indirect physical and psychological abuse, as punishment for running away or breaking the established rules of the institution.

Examples of psychological abuse, degrading treatment and discrimination include: impossibility to express a personal opinion – unquestioned obedience is required and fear of consequences is instilled; restriction of contacts with the outer world – visits, phone calls, group events outside the institution (excursions and walks), deprivation of vacation; elimination of the possibility to file a complaint – complaints torn in front of the children and inaction when complaints are received; treatment of children as ‘unreliable’ or their separation according to ethnic origin; obvious special treatment of certain students who are granted some privileges – inclusion in excursions and walks, better living conditions, turning a blind eye when they violate the internal rules and demonstration of personal attitude by means of gifts; lack of stimuli for good behaviour, school excellence and personal talent; punishments imposed publicly – children degraded in front of the others; violation of the right to privacy of correspondence – letters are read and packages opened before giving them to the children, phone calls are made in the presence of a staff person who presses the children to keep conversations short and limits the line; daily acts of verbal aggression – insults and shouts, often on a racial basis. In some cases boarding school staff have forced children to steal and then have manipulated and abused them to prevent them divulging the names of the instigators.

The children are often punished without being told why, without discussing with them the consequences of their behaviour or the reasons behind it. The punishments involve some kind of labour, usually cleaning of premises (rooms, hallways, bathrooms, lavatories) or maintenance of the areas around the buildings (cleaning courtyards, maintaining orchards, throwing out heavy metal garbage containers). The duration of the punishment varies from one-off to several months. Children are also punished by physical exercise (push-ups, squats, course runs). In some cases children have been deprived of food.

The researchers found multiple instances of physical abuse of the children by boarding school staff. There were also cases of exceptional cruelty and gang beating by staff members. Children have been locked in premises used as solitary cells, where they are physically assaulted (with batons, sticks and other items). There are also numerous examples of everyday physical abuse (pulling ears, slaps, hits, kicks). Boarding school principals, teaching advisers, teachers, nurses, guards, custodians, as well as police officers, have been involved in physical abuse. Acts of physical abuse occur both inside and outside the boarding schools.

The children were also victims of indirect psychological and physical abuse, when other children were forced to abuse them. Staff thus avoids direct responsibility for the acts of violence and the potential consequences. Children have psychologically and physically abused other children as punishment for violations.

The existence of psychological, physical and sexual abuse between the children
at the boarding schools was also found. The violence and the abuse between the children in the institutions are uncontrollable. The stronger children prevail. Theft, threats, blackmailing, manipulation, insults and hits are part of their way of communication. There are also several cases of sexual abuse among the children. The sexual contacts between children, including between minors and juveniles, are a fact. No measures are taken to reduce and eliminate violence, despite the numerous complaints and the fact that in most cases boarding school staff are aware of what is happening.

At SBS Hristo Botev in the town of Pogradec children with serious health problems were kept at the boarding school for a long period without adequate medical care and systematic monitoring; as a result, their condition worsened progressively. Children were often present and had to provide improvised assistance to classmates having epileptic seizures. Most boarding schools have no medical personnel, children are forced into treating themselves; in the best case, medications are dispensed by unqualified staff. Many students need dental intervention, which is not provided. Children with minor mental disorders, diagnosed or not, have nervous breakdowns and manifest aggression. The aggression may involve damages to boarding school facilities, self-inflicted injuries, including suicide attempts, conflicts and clashes with classmates and staff. At the same time, there is no adequate professional intervention. At CBS Hristo Botev in the village of Dragodanovo pregnant girls are subjected to physical and psychological abuse by other children, or are witnessing such abuse on a daily basis.

The leisure time of SBS and CBS students is totally neglected. The lack of structured organised leisure-time activities, the monotony, the inaction and passiveness in the everyday life of these children gives rise to a sense of deadlock, depression, escapes, self-injury, conflicts and suicide attempts.

All SBS and CBS are located in small communities. Their remoteness from large cities hinders children’s social adaptation, the provision of quality medical services, the hiring of trained teaching staff, etc. This reflects in the teaching process, making it impossible to keep it on a comparable level to that in other general education schools. The placement in SBS and CBS is a correctional measure of extremely low functionality and effect on children’s behaviour. In fact, the very stay in these institutions often encourages deviant behaviour. Realizing the need of changes, the government adopted in 2012 an action plan on the implementation of the State Policy Concept in the Field of Juvenile Justice adopted a year earlier. More specifically, it was found that teaching at SBS and CBS is pro forma. An assumption was made that the introduction of an express prohibition of the placement of children under 14 years in CBS and SBS and the elimination of the possibility to impose sanctions for statutory violations would result in further reducing the number of placements by at least 40%. The freed resources could be used for the development of new services, but not in the buildings of the old institutions. Once services preventing risk behaviour are in place, the CBS could be closed. As to the SBS, under the Concept the placement in these institutions is a measure of last resort that can be imposed for a minimal duration after an individual needs-assessment. It points out that SBS have a place in the juvenile justice system as an alternative to the juvenile detention facilities. Specific actions are planned under projects targeting the closure of the SBS and the reform of the CBS.69 At this time, however, no real actions have been initiated towards the creation of a juvenile justice system and the related reform of the correctional educational institutions in the country.

Major violations: lack of respect of centres’ profiles and arbitrary placement; lengthy, often illegal stays resulting in lasting institutionalisation and educational deficit of children.

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A total of five institutions for temporary accommodation of minors and juveniles (ITAMJ) function as part of the Bulgarian Ministry of Interior: in Sofia, Plovdiv, Varna, Burgas and Gorna Oryahovitsa. They accommodate children who have committed anti-social acts, children without domicile, vagrant or beggar children, or children who have run away from compulsory education or involuntary treatment facilities. The placement cannot exceed 15 days and is ordered by a prosecutor. In exceptional cases, the stay may be extended to up to two months. The above-mentioned State Policy Concept in the Field of Juvenile Justice includes a proposal to have the ITAMJ transformed into crisis centres for children with risk behaviour, based on specific criteria and under judicial supervision. Although the police consider the placement of children in ITAMJ a protective measure, in essence it often has penal purposes. The normative rules on the placement in these institutions contradict the Child Protection Act, which stipulates that the placement of children in a specialised institution, such as ITAMJ, is ordered by a court. It also contradicts the international standards due to the impossibility to appeal the placement and the lack of procedures for legal counsel at the time of detention, during the stay or after the measure is imposed. Yet another violation arises from the fact that the children are deprived of education and cannot attend school during their stay at ITAMJ. At the end of 2011, in the decision on the case A. and Others v. Bulgaria, the ECtHR held that the placement of one of the applicants, an underage Bulgarian national in ITAMJ constitutes a violation of art. 5.4 of the Convention, as the Bulgarian legislation does not allow access to court to dispute the lawfulness of the placement. Nevertheless, the authorities have so far not taken the necessary steps to change the rules for placement of children in these types of institutions.

Crisis centres for children

14 crisis centres for separate accommodation of children victims of trafficking and violence operated in the country in 2013. While their number remained unchanged in comparison to the previous year, their capacity was increased from 128 beds in 2012 to 145 in 2013. BHC monitoring of the crisis centres in 201370 brought up the following major violations: lack of respect of centres’ profiles and arbitrary placement; lengthy, often illegal stays resulting in lasting institutionalisation and educational deficit of children. Contrary to the expectations, the Methodology on the Delivery of the Crisis Centre Social Service, adopted in 2012 by the State Agency for Child Protection (SACP) and the Social Assistance Agency (SAA), did not bring a change of the status quo and remained an advisory, which is not respected by the institutions in their decision-making process. This is why the methodological recommendation that placements be restricted to three months and extended to the statutory maximum of six months only in pressing cases is not observed. No measures were taken to change the placement procedure. In reality, court-ordered placement occurs within two or even three months of the date of the actual administrative placement (called temporary placement). In most cases the court does not recognise the time spent in a crisis centre prior to the date of the court decision, thus increasing the duration of the actual stay to eight or nine months, which is a blatant violation of the law. This is not only unacceptable from a legal point of view, but also has a proven negative effect on the children because even though the Regulation on the Implementation of the Social Assistance Act defines the crisis centres as a “social service”, placement in them has all the features of deprivation of liberty. In the case A. and Others v. Bulgaria the ECtHR held that the placement in a children’s crisis centre “equals deprivation of liberty under article 5 § 1 of the Convention” as it is a “closed institution” where the residents are subject to “a restrictive regime under constant surveillance” and can be absent “only with express permission” and under the condition of being accompanied by a social worker. In case of absence with-
out permission, the police are sent to search for the children and return them in the centre.

In individual cases children were placed in a crisis centre without a court order and for the maximum duration possible (6 months). In the above-mentioned case, the ECtHR expressly held that the placement in a crisis centre without court order is a flagrant violation of minors’ and juveniles’ right to liberty and security. Irregularities that constitute violations of children’s rights are allowed by the courts as well. For example, art. 15, para 8 of the Child Protection Act stipulates: “The child shall have the right to legal assistance and complaint in all proceedings affecting his rights or interests”. BHC could not find a single placement, in which legal assistance had been offered. Sometimes even children at the age of 10 were not summoned to court during the review of their placement, despite the fact that the law expressly mandates that they be heard. Furthermore, these children are not even told that a hearing has been scheduled or held, or what the result was.

The crisis centre specialisation stipulated by the methodological guidelines did not materialize in 2013. The only example of a purely specialised centre was the crisis centre set up in Plovdiv at the end of 2012 for children of deviant behaviour and children in conflict with the law. However, its special profile is disregarded by the placing bodies. According to the methodology, “a crisis centre is a set of services for children and individuals who are victims of trafficking or of another form of exploitation, to help them deal with a crisis situation and overcome the consequences of trafficking, violence or exploitation”. In other words, a crisis centre is a place where specialised assistance is provided. In reality, however, a child does not need to be in a crisis situation in order to be placed in a crisis centre because there is no such statutory requirement. This completely undermines the purpose of the crisis centres. Presented as a “social service providing for everyday needs”, the crisis centre is used to fill in all gaps in the childcare system. In the past five years the service began to resemble a place for homeless children. Children began to be placed in crisis centres not only for social reasons, but also for purely family reasons such as friction in the family, inability of a parent to deal with problematic child behaviour or even conflict due to disapproval of a sexual partner by a parent. Crisis centres are sometimes used to place children with serious health problems who need medical care, although they have no medical staff. At any point in time, a crisis centre may be inhabited by children who were victims of violence and violent children, small children and juveniles, which allows for conflicts and abuse of vulnerable children.

The Social Assistance Directorates are unable to cover all children at risk and work with them, due to which many potential users of the crisis centre service cannot make use of it. The fact that some children are kept at crisis centres just because there is nowhere else to put them is yet another indication of the deficiencies in the social assistance for children and the lack of sufficient alternatives. Where will the children be sent after the expiration of their stay at the crisis centre is a question that often remains unanswered throughout the stay, with the decision being made at the last possible moment.
Protection against discrimination

2013 put to a serious test the protection of minorities against racial violence and discrimination. No progress was made with regard to the protection of the rights of other vulnerable groups too.

Public xenophobic speech

Anti-Semitic hate speech was used in a TV7 broadcast when rap singer Misho Shamara, in the capacity of informal leader of government supporters, called former minister of finance Simeon Dyankov “the most incompetent Jewish piece of trash”. Neither the anchors, nor later the authorities condemned in any way the hate speech, which made the American Jewish Committee to make a special statement expressing its concern with the “emergence of anti-Semitism on the Bulgarian political scene”. The Council on Electronic Media published a short and general declaration calling (without a specific reference to the case) the journalistic guild to decisively condemn statements that can be qualified as hate speech.71

Using xenophobic speech amidst the refugee crisis in the fall of 2013, the Ataka party contributed actively to the creation of a hostile and threatening environment for the ethnic minorities in Bulgaria, including refugees and asylum seekers. Through media owned by the party – the Ataka newspaper and the Ataka TV station – party members presented the Syrian refugees as a threat to national security, calling them “cannibals”, “mass killers”, “Islamic fundamentalists running from justice” and “lying to the authorities”, “disgusting lowlife primates running from Syrian justice” who “have begun to steal, to assault” in Bulgaria and will begin “to rape and cut off heads”.72 In connection with this, BHC is representing a group of individuals of Syrian origin residing in Bulgaria in a complaint before the quality body against the MP Magdalena Tasheva and the Ataka political party as the owner of the media.73 Party leader Volen Siderov insisted in many public appearances and rallies that all illegal immigrants be immediately expelled, that the Bulgarian-Turkish border is closed and that no “alien” is allowed on Bulgarian soil which “needs to be preserved for the Bulgarians”.74 These manifestations remained unpunished.

In early November the leader of another neo-totalitarian party, VMRO, at a rally in Sofia called on the citizens to get organised and armed and to “cleanse” the city of illegal immigrants. Upon a BHC alert to the prosecutor general,75 the prosecutor’s office initiated pre-trial proceedings but no charges were pressed by the end of the year.

On 5 November 2013 the Council on Electronic Media (CEM) published a declaration voicing concern with the “isolated manifestations of hate speech” in “the media [...] on the background of the quick, diversified and professional information” presented to the viewers and the listeners on the topic of the refugees in Bulgaria. CEM pointed out that hate speech is unacceptable and that it will take necessary action in line with its competences in all such cases.76

Also in the beginning of November 2013, BHC alerted the prosecution to a banner with a xenophobic threatening message set up by soccer fans during the Levski

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72 See Alpha TV, In the Eye of the Storm, with TV host Magdalena Tasheva: http://goo.gl/D2Kfim.
74 Ataka threatening with civil war over refugees, VMRO to protect the Bulgarians “as it sees fit”, 3 November 2013: http://www.mediapool.bg/ataka-zapatlasha-s-grazhdanska-voina-zaradi-bezhantsite-vmro-da-za-zashhtiti-balgarite-kakto-nameri-za-dobre-news213097.html
In December 2013 BHC send an alert against the television anchor Albena Vuleva and Evrokom National Cable Television Ltd. in connection with two broadcasts of the TV show “PSYCHO Dispensary” aired on Evrokom TV on 25 October and 1 November 2013. In them Albena Vuleva makes insulting and degrading qualifications and stereotypes all foreigners in Bulgaria, originating from the Middle East and Africa, and well as Roma and Islam-professing individuals living in the country. She instils feelings of fear, repulsion and animosity to these three groups.78

Racially motivated violence

The creation of “citizen patrols” by nationalist parties and movements in mid-November set a dangerous precedent. According to the leader of the National Unity Party, Boyan Rasate, these were “initiated on the basis of legitimate self-defence” with the purpose of identifying and notifying about suspicious individuals by looking for irregularities in Sofia’s downtown areas where immigrants, refugees and other problematic, in the opinion of the patrol organisers, individuals gather.79 It was not until 25 October that the Interior Ministry and SANS announced in a joint statement to the media and the prosecutor’s office that the formation of the so-called “citizen patrols” has in no way been coordinated with the police and law enforcement bodies, and that they “will not allow individuals to enforce order on the streets of Sofia or the open manifestation of such behaviour”.80

The xenophobic rhetoric with regard to the Syrian refugee wave caused a series of violent attacks against people of darker skin colour. Several cases of racially-motivated or xenophobic violence occurred in Sofia starting in November 2013. The violence was reportedly spurred by an Algerian immigrant who on 2 November 2013 attacked and wounded a 20-year-old shop assistant at her workplace. The cases of violence that were reported in the media include:

- A young man and a child of Roma origin were attacked in broad daylight close to the National Palace of Culture in downtown Sofia. According to the media, the attack was perpetrated by skinheads. The assault stopped upon the intervention of a group of several passing-by mothers with children, who were later chased by the skinheads.81
- A young Nigerian was attacked while riding a bus in Sofia;82
- A 17-year-old Syrian boy was attacked and stabbed in the vicinity of a refugee centre;83
- A woman from Cameroon was attacked in broad daylight at a bus stop;84
- A black youngster, a Bulgarian of African origin, was assaulted and punched by three men on a tram;85
- A young ethnic Turk was bashed with iron clubs and chains in downtown Sofia (leaving him in a life-threatening condition) by five

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77 See for example: http://www.dnevnik.bg/sport/2013/11/04/2174678_levski_e_zaplashen_ot_pone_25_hil_lv_globa_zaradi/
78 See case file no. 453/2013 of the Commission for Protection from Discrimination, 5-member extended panel.
79 "Boyan Rassate: We got permission from the Sofia Directorate of the Interior to organize citizen patrols": www.24chasa.bg/Article.asp?ArticleId=2445484.
83 "17-Year-Old Syrian attacked in front of the Voenna Rampa camp": http://www.dnevnik.bg/bulgaria/2013/11/04/2175231_17-godishen_siriec_e_napadnat_s_noj_pred_lagera_vuv/
84 "Attacked Cameroononian woman was waiting for her permanent residence permit": http://www.dnevnik.bg/bulgaria/2013/11/08/2178061_napadnata_kamerunka_e_ochakvata_dokumen-ti_za/.
85 "18-year-old boy assaulted in downtown Sofia": http://goo.gl/48dMGT
men; shortly before this, the men had tried to enter a hostel accommodating asylum seekers, but the residents repelled the attack.\(^{86}\)

- A Mali teenager was assaulted severely;\(^{87}\)
- An Iraqi citizen was beaten by three men;\(^{88}\)
- Two Syrians and a Lebanese Palestinian were assaulted by a large group of men armed with cold steel.\(^{89}\)

**Discrimination against minority community organisations in Bulgaria**

Over the year, organisations of the Macedonians and the Pomaks were subjected to discrimination and repression by police and judicial authorities, which violated their fundamental human rights. Despite the recommendations of several Council of Europe bodies, the official state institutions continue to deny the identity of the Macedonians and the Pomaks. The new foreign minister Kristian Vigenin said in June that there is no Macedonian minority in Bulgaria.\(^{90}\)

In April the Sofia Court of Appeals once again refused to register a Macedonian organisation, the Macedonian Club for Ethnic Tolerance. The court pointed out in its arguments that “a Macedonian ethnic minority does not exist in Bulgaria”, and that the promotion of such a minority “is targeted against the unity of the nation, which is inadmissible under art. 44, para 2 of the Constitution”.\(^{91}\)

In August SANS agents summoned for questioning members of the Pomak European Institute, a Pomak organisation. A total of five individuals were questioned on 12 and 13 August with regard to a report on the discrimination against the Pomaks, which the organisation had developed and sent to the European Commission, as well as with regard to a book published by the Institute’s chairman, Efrem Mollov. The questioned individuals claim that the agents chastised them for drafting a report that was damaging to the national interests. They were not told in what capacity they were being summoned, just that this was not an interrogation, but a “conversation”.\(^{92}\) Such actions are based on art. 20, para of the SANS Act.\(^{93}\) The occasion was a signal by a reader of the *Duma* daily, the official publication of the ruling Bulgarian Socialist Party, who happens to be former head of the Paediatrics and Medical Genetics Department of the Plovdiv University of Medicine. The media reported that upon reading an article in this newspaper, he notified the prosecutor’s office about the “anti-Bulgarian provocations and anti-state activities” of the Pomak Institute.\(^{94}\) The Plovdiv shop of the Institute’s chairman, Efrem Mollov, was broken into in December. He claimed that this was an act of intimidation.\(^{95}\)

**Case law of the Commission for Protection against Discrimination (CPD) with regard to the protected ground of race/ethnic origin**

In 2013 the Court of Justice of the European Union ruled on case No. C-394/11, initiated by a request for preliminary ruling by CPD. In September CPD submitted a request for interpre-

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86 "Shop assistant battered, assailants took him for a refugee": available at: http://monitor.bg/bin/marticle?id=407297
88 "Three batter an Iraqi at the Stamboliyski Mall": http://offnews.bg/news/?id=407297
90 "Three batter an Iraqi at the Stamboliyski Mall": http://offnews.bg/news/?id=407297
91 "Vigenin: No Macedonian minority in Bulgaria", *Presa* daily, 4 June 2013, 7:13 p.m., available at: http://pressdaily.bg/publication/16427-%D0%92%D0%B8%D0%B3%D0%B8%D0%BD-%D0%BE-%D0%BC%D0%B3%D0%B8-%D0%B0-%D1%81%D0%B2%D1%86%D0%B8%D0%B1-%D0%B8%D0%B9-%D0%BD-%D0%B8-%D0%BE-%D0%B2%D0%B6-%D1%81%D0%B2%D0%BE-%D0%B3%D0%BD-%D0%B8-%D0%B1-%D0%B2-%D0%B8-%D0%BE-394/11, initiated by a request for preliminary ruling by CPD. In September CPD submitted a request for interpret-
of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and of other EU directives with regard to the practice of CEZ Razpredele nie Balgaria AD (one of the electrical distribution companies) to place electricity meters in some Roma neighbourhoods at a height of 7 meters instead of the standard 1.6 meters. In a decision of 31 January 2013 the Court of Justice held that it does not have jurisdiction to rule on the request for a preliminary hearing submitted by CPD since the Commission is not a “jurisdiction” under article 267 of TFEU because its decisions are similar in substance to an administrative decision and do not have a judicial nature.

CPD 2013 case law with regard to race/ethnic origin was marked by caution. The cases in which CPD ruled in favour of the applicants under “ethnic origin” grounds include: a case of harassment and instigation of discrimination where poor relations between neighbours resulted in the posting of abusive posters in the neighbourhood appealing to “Please, help us kick the Gypsies out of the Pavlovo neighbourhood”, an internet media fined by CPD for allowing abuse due to its failure to remove racist comments to an article it had published. CPD held that by naming the file containing the 2012-2020 Bulgarian National Strategy on Roma Integration “13NationalStrategyIntegrateMangali” (derogatory word for Roma) and “uploading it like this on the official website of the Office of the President, had committed a violation of the grounds of “ethnic origin”.

Over the year CPD reviewed a self-refereral report drafted by commissioner Lalo Kamenov with regard to an article in a sports newspaper entitled “The new-comers in CSKA: an Italian, a Swede and two niggers”. On the one hand, the Commission found that “the epithet “niggers” does lead to a more degrading, unequal treatment [of black football players] compared to the epithets used for the remaining new players; on the other hand, however, it held that “it is not the word “niggers” that is discriminatory per se, but the title in its entirety and in relation to the article which treats individuals of white and black skin colour differently”. The Commission ruled that the newspaper had committed direct discrimination on the basis of the “race” (skin colour) protected class, recommended to the newspaper management to adopt internal rules to prevent unequal treatment, accompanied by respective sanctions, but did not impose a fine. CPD may be criticized for its approach to the case, as this is a case of harassment of people of black skin colour who were being called “niggers”, an insulting word when applied to a person even without context.

In another case, CPD did not find the word “Gypsies” insulting. It was established beyond any doubt that at a meeting on 2012 budget cuts the chair of the Kavarna Municipal Council made a statement (which has not been quoted in full in the case decision): “...neither the honourable, I wouldn’t say Roma, I would directly say Gypsies, and if someone wants to sue me, let them sue me...”. This statement offended the applicants and the witnesses questioned in the case who were working on minority issues in the municipality and testified that for them the word “Roma” defines the ethnic group while the word “Gypsies” is insulting. CPD rejected the complaint despite the insult and the creation of an insulting environment, accepting that in the context in which it was used, the word “Gypsies” was a synonym of “Roma”. CPD ruled that “preference should be given to the freedom of expression insofar as the presence of hostile speech in the statement reviewed above was not proven”.

In another case, CPD established beyond doubt that in a court hearing of a pri-
In another case, CPD did not find the word “Gypsies” insulting. CPD 2013 case law with regard to race/ethnic origin was marked by caution.

Religion

CPD case law in 2013 remained timid with regard to yet another controversial protected ground, religion. CPD failed to protect the right of a 15-year-old girl to wear a headscarf at school as a manifestation of her religious affiliation. The applicants pointed out that they were Muslims by conviction, and so was their daughter. This is why in June 2011 the girl decided to wear a headscarf “as the Muslim religion stipulates the Muslim woman should”. This is how she appeared on her first school day in the 8th grade. However, on 17 October 2011 the girl was temporarily suspended from attending classes due to a violation of school regulations, according to which “students have no right to manifest ethnic, spiritual or religious affiliation by means of their clothes”. The Commission pointed out that “for education to be secular, students must first and foremost be placed in a religiously neutral environment; such an environment cannot be created if students appear dressed in line with their religious beliefs”. The Commission therefore found the girl’s suspension from class to be justified. It also held that theoretically the applicant had the opportunity to be educated at private schools in consistency with her beliefs. Thus, by making the principle of secular education absolute, CPD demonstrated a total lack of understanding of the discrimination against Muslim girls and women. In reality, the applicant is deprived of education at an age at which education is compulsory. By ruling that it is necessary to create “a religiously neutral environment”, CPD denied the need to create an environment of ethnic tolerance at school age.

In November CPD found that the Muslim Sunni Hanafi school in the Republic of Bulgaria had been discriminated because the Sofia Municipal Council has failed for years to review its applications for the allocation of a plot (municipal private property) and to issue a permission for the construction of a Muslim prayer house for the followers of Islam in Sofia. The Commission found the existence of “positive unconditional decisions of the Sofia Municipal Council granting such permissions to the Bulgarian Orthodox Church”. CPD held that “although based on neutral rules, the actions [of the mayor of Sofia] result in unequal treatment, which places the religious institution in a less favourable position due to the fact that the Sofia Municipal Council has not reviewed the issue. While there is no formal refusal, seemingly lawful instructions are used to cover an actual refusal based on expediency”. The Commission thus established indirect discrimination, while in fact this is a case of hidden direct discrimination.

CPD took a firmer stance with regard to protection of religious communities in connection with proselytism. The case is related to a public letter sent by the Municipality of Burgas, containing information about cases of immoral proselytism conducted by representatives of certain cults in the municipality. However, the information presented “the established cases in a general manner, making them look like a regular practice of the respective religious institutions and attributing them to each of their members”. CPD therefore found that the defendant, the Municipality of Burgas, guilty of harassment against certain religious institutions and instructed the mayor “to provide training to municipal management and experts with regard to the current legislation regulating the activities of registered denominations, as well as with regard to the rights and the obligations of their members, including the distinction between an individual re-

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103 Decision no. 221 of 18 September 2013 on case file no. 155/2011.
105 Decision no. 292 of 22 November 2013 on case file no. 336/2012.
106 Decision no. 268 of 1 November 2013 on case file no. 18/2012.
ligious follower and the religious group as a whole.”

**Discrimination against people with disabilities**

Bulgaria has still not ratified the *Option-
al Protocol to the UN Convention on
the Rights of Persons with Disabilities*, adopted on 8 December 2008, and the
government has not initiated any legis-
lative measures to guarantee the rights
under the Convention.

In October people with impaired vision
organised a symbolic protest in Sofia
against the inaccessible architectural
environment: the generally inaccessible
and dangerous streets and sidewalks
and the fact that only 10% of all traffic
lights are equipped with sound warn-
ings lead to tragic incidents with people
with impaired vision.\(^\text{107}\)

In its case law, CPD took a decisive
rights-protection stance when protect-
ing the right of people with disabilities
to equal treatment. Over the year CPD
ruled on two independent complaints
against the point system established in the *Ordinance on the Provision of the
Assistant for an Independent Life Social
Service* (by 19 July 2011).\(^\text{108}\) People
with officially established 100% incap-
acity are excluded from the service, while people with significantly lower
incapacity are included. This is due to
the fact that the point system gives a
significant advantage to applicants who
are already participating in some kind
of social activity. The plaintiffs pointed
out that the system thus puts at a dis-
advantage those applicants who due
to their severe health condition cannot
work and study. CPD held that “candi-
date users (as people in a disadvan-
taged position) are not differentiated
on the basis of the type of disability,
but mostly on the basis of their proven
social activity (participation in work or
study educational activities). The specif-
ic nature of the services determines the
lawfulness [of the ordinance] but does
not justify the lack of rational measures
with regard to the individuals who need
support for their basic needs”. While
CPD applied the indirect discrimination
test, it failed to recognise such discrim-
ination. The Commission held, on one
hand, that the plaintiff had not been
discriminated against and, on the oth-
er hand, that the Municipality of Sofia
must provide other equal social services
targeted exceptionally at people with severe disabilities who cannot take an
active part in public life.

CPD confirmed its positive case law of
previous years with regard to protection
of the rights of people with disabilities
in healthcare. In July CPD ruled that
in certain cases the state psychiatric
hospitals are objectively incapable of
meeting the established medical stan-
dards because the necessary financial
resources have not been provided.\(^\text{109}\)
The Commission found that the minis-
ter of healthcare, in his capacity of body
implementing the state healthcare poli-
cy, has committed direct discrimination
on the grounds of disability by failing
to take all possible and necessary mea-
sures to provide individuals in need of
treatment at state psychiatric hospitals
access to the highest achievable stan-
dard of healthcare. CPD instructed the
Ministry of Healthcare not only to pro-
vide the state psychiatric hospitals with
the necessary financial resources, but
to also initiate the necessary actions to
create a single official registry of people
with mental disabilities, as required by
art. 147a of the Health Act. In July in a
complaint by the mother of a child with
multiple disabilities, CPD found that by
not including in the lists under art. 35a
of the *Integration of People with Disabil-
ities Act* (IPDA) of all aids, equipment
and medical products needed by the
children with children’s cerebral palsy,
and by setting limits on supplying the
items, the minister of labour and social
policy has committed discrimination on
the grounds of disability under art. 2 of
the Act by refusing to provide reason-
able accommodation.\(^\text{110}\) With regard to
the same file, CPD also held that the
minister had committed discrimination
against people of disabilities due to the
impossibility for them to mail or submit

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108 See Decision no. 174 of 9 July 2013 on case file no. 83/2012 and Decision no. 53 of 14 March 2013 on case file no. № 27/2012.
109 Decision no. 152 of 1 July 2013 on case file no. 100/2012.
110 Decision no. 138 of 13 July 2013 on case file no. 42/2012.
Bulgaria has still not ratified the Optional Protocol to the UN Convention on the Rights of Persons with Disabilities, adopted on 8 December 2008.

Decision no. 134 of 11 June 2013 on case file no. 274/2011.
Decision no. 32 of 4 March 2013 on case file no. 207/2008.
Decision no. 198 of 9 September 2013 on case file no. 271/2012.
Decision no. 93 of 17 April 2013 on case file No. 204/2010 and Decision no. 284 of 18 November 2013 on case file No. 277/2012.
Decision no. 302 of 27 November 2013 on case file no. 279/2012.
Decision no. 286 of 20 November 2013 on case file no. 280/2012.
Decision no. 313 of 6 December 2013 on case file no. 278/2012.
Decision no. 83 of 1 April 2013 on case file no. 362/2011.
lishments and schools do not provide accessible education and effective protection to children with diabetes at such institutions and to all other children due to the existing requirement on the minimum number of students enrolled at the schools as a prerequisite for having a medical specialist assigned to the school.\textsuperscript{119} A November 2013 CPD decision in connection with discrimination of a child with special needs is baffling.\textsuperscript{120} It establishes beyond any doubt that a school principal had not allowed a child with special educational needs to continue his education in the first grade, with the explanation that “there is no other child with special educational needs and it is impossible to get a resource teacher”. Instead of holding direct discrimination on the grounds of disability, CPD ruled that the plaintiff (the child’s mother) had not presented any evidence that the defending party had committed discrimination on the grounds of disability.

In the beginning of the year CPD announced its decision on a case of self-referral initiated on a report submitted by CPD member Anelie Chobanova to review whether the minister of physical education and sports had discriminated against Bulgarian athletes taking part in the 2012 London Olympics.\textsuperscript{121} At the time CPD initiated its proceedings, the minister of physical education and sports had issued an order for the adoption of instructions for 2012 according to which a prize-winning athlete in an individual sport at the London Summer Olympics would be awarded BGN 200,000 (EUR 100,000) for a gold medal, BGN 170,000 (EUR 85,000) for a silver medal and BGN 140,000 (EUR 70,000) for a bronze medal, while the awards for the London Summer Paralympics were BGN 30,000 (EUR 15,000), BGN 20,000 (EUR 10,000) and BGN 16,000 (EUR 8,000), respectively. After the initiation of CPD proceedings, the latter were increased significantly, to BGN 150,000 (EUR 75,000) for a gold medal, BGN 120,000 (EUR 60,000) for silver and BGN 90,000 (EUR 45,000) for bronze. To rule that the difference between these monetary awards does not constitute worse treatment of athletes with disabilities, CPD wrongly excludes the grounds of disability in the cases where discrimination could be justified. CPD pointed out that “the comparison of the different directives, as well as the established European and international case law, indicate that they do not allow direct discrimination to be justified by the pursuit of a legitimate purpose and proportionality of means when it is based on intrinsic individual characteristics, such as race, ethnic origin, and gender, but allows direct discrimination to be justified with regard to characteristics acquired by the individuals throughout their life. Unlike direct discrimination, there is always a possibility to justify indirect discrimination regardless of the protected grounds. In this case, the grounds of disability stands outside race, ethnic origin and gender, and therefore potential direct discrimination could be justified, i.e. it would not constitute discrimination if it pursues a legitimate purpose, and the means of achieving it are proportional, systematic and coordinated and allow for its achievement, even if the case falls under the exceptions stipulated in art. 7 of the Protection against Discrimination Act”. Thus, instead of fighting established social stereotypes, CPD itself becomes their bearer by accepting that people with disabilities, and their sports achievements, respectively, are less attractive and deserve less attention than people without disabilities and the sports they practice.

\textbf{Gender discrimination. Sexual harassment}

In January the Commission held that an employer had directly discriminated on the grounds of gender female workers employed as “electrical substation operators”\textsuperscript{122} CPD ruled unequal treatment because the employer had only dismissed female workers, employing later on less qualified male workers in their place.

\begin{itemize}
  \item Decision no. 237 of 3 October 2013 on case file no. 336/2011.
  \item Decision no. 279 of 14 November 2013 on case file No. 124/2012.
  \item Decision no. 10 of 15 January 2013 on case file no. 103/2012.
  \item Decision no. 1 of 14 January 2013 on case file no. 218/2011.
\end{itemize}
In one case CPD ruled sexual harassment against a female tram driver from her male superior, manifested in intrusive presence, verbal and physical advances, which offended the plaintiff’s honour and dignity and created a hostile, derogatory and threatening environment at her workplace. CPD imposed a fine to the employer, too, as the specially formed committee had failed to act on the complaints filed by female workers.123

Age discrimination

CPD accepted unconditionally the position of the Council on Electronic Media (CEM) as evidence that the commercial for the Samsung Star 3 cell-phone aired in the electronic media did not constitute discrimination against elderly people.124 The commercial shows three women, visibly in their 60s, sitting at a table facing the camera. Looking baffled, one of them is handling a cell-phone with a sensor display. The CPD referral quotes lines from the commercial that make the elderly women look stupid, inadequate with respect to modern reality and unable to fully take part in it: “…It’s a radio, girl. And a telephone. Samsung Star, but for the young ones”. The plaintiffs considered the content of the commercial insulting, guying and ironic to elderly people. CPD generally accepted the CEM position, which had verified the TV commercial for the Samsung Star 3 cell-phone and had not established any violation of the Radio and Television Act. According to CEM, the plot was entirely subjected to dramatical convention and the actions and dialogues should not be understood literally. The Commission accepted this verification as evidence in support of rejecting the referral as unsubstantiated.

Over the year CPD reviewed an alarmingly high number of complaints by employees and workers who were forced into early retirement by their employers when they had acquired or exercised their right to retirement (see art. 245, para 1, item 13 of the Ministry of Interior Act, in conjunction with art. 69 of the Social Security Code; art. 328, para 1, item 10 in its previous version, and item 10a of the Labour Code; art. 106, para 1, item 5 Civil Servant Act, etc.). Instead of exercising its powers as an equality body, CPD adhered to court case law and rejected the majority of these complaints. One of the Commission’s arguments was that the age grounds is not present because the termination of service occurred due to acquired right of retirement under the conditions stipulated in art. 69, para 2 of the Social Security Code, which in turn stipulates that the acquisition of this right does not depend on a person’s age, but only on the statutorily required duration of paid retirement contributions.125 In other cases CPD held that there were legal reasons for unequal treatment, such as, for example, a selection, which found that the laid-off worker/employee filing the complaint had performed less satisfactory compared to his co-workers.126 However, CPD did not manage to venture beyond seeking a justification for the discrimination committed and to see the discriminatory nature of these provisions per se. It failed to correctly research and conclude that rules introducing a forced early retirement opportunity when a certain number of years of professional experience is reached, regardless of age, constitute direct discrimination of elderly employees who could be affected by the implementation of this seemingly neutral to the protected ground provision (for an example of CPD’s reverse logic, see its June decision127).

In only one case, lamentably incidental, the equality body reversed its own negative case law on this issue. The Commission quoted decisions of the Court of Justice of the European Union (CJEU),128 according to which every provision in a regulation or collective bargaining agreement that introduces an independent ground for unilateral termination of labour or service by the

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123 Decision no. 172 of 9 July 2013 on case file no. 111/2011.
124 Decision no. 177 of 11 July 2013 on case file no. 304/2012.
126 Decision no. 118 of 5 June 2013 on case file no. 358/2011.
127 Decision no. 114 of 4 June 2013 on case file no. 76/2011.
128 CJEU decisions in the cases Palacios de la Villa (C-411/05), Age Concern (C-388/07), European Commission v. Hungary (C-288/12), etc.
employer when the worker or the employee has reached retirement age and/or has acquired right to retirement for age and duration of retirement contribution payments, constitutes unequal treatment on the grounds of age. According to the quoted CJEU decisions, for this form of unequal treatment (that is, the rule that allows the employer to terminate the employment when the worker has reached retirement age or has acquired retirement rights) to not constitute age discrimination, it has to be objectively justified by the pursuit of a legitimate purpose and the measures taken (that is, the respective rules laid down in the ordinance) should be proportional to the purpose.

CPD required and analysed statistical data and concluded that the defending party, i.e. the employer, had neither pointed out that the action and the implementation of art. 245, para 1, item 13 of the Ministry of Interior Act pursue a legitimate purpose nor had focused its argumentation on some hypothetical proportionality of the respective measure and the pursued purpose. CPD held that this is sufficient by itself to have the rule stipulated in art. 245, para 1, item 13 of the Ministry of Interior Act deemed a form of indirect age discrimination, since this rule has a disproportional effect on the different age groups of MoI employees and indirectly places the MoI employees aged 45+ in a more disadvantaged position than their co-workers who are aged below 45, including everyone who is under 41. Insofar as behaviour based on a discriminatory legal provision also constitutes discrimination,129 the orders of the minister of interior on the termination of plaintiffs’ employment should be regarded as acts of age discrimination. Thus, with the decision130 the Commission held that by dismissing an employee when he comes to a specific age, the minister of interior had committed indirect age discrimination against the plaintiff; it instructed the minister “to elaborate and submit for review by the Council of Ministers a bill amending the provision under art. 245, para 1, item 13 of the Ministry of Interior Act, so that the legislator interprets it only as a subjective right of the employee and not as an opportunity for the employer to unilaterally terminate the employment of an individual meeting the conditions under art. 69, para 2 of the Social Security Code”.

In similar cases at the end of the year, however, CPD once again referred to SAC case law and refused to admit the discriminatory nature of this provision131 holding that these provisions suggest exercise of powers on behalf of the administrative body/the employer within its operative independence, which allows for a potestative right to terminate employment/contracts. In its decision on file No. 274/2011 CPD reviewed a complaint with regard to a Council of Ministers recommendation to the heads of administrative bodies to initiate actions towards the termination of the employment and service contracts with the employees of the respective administrations who had acquired and exercised rights to retirement on the grounds of retirement contributions and age/right to retirement, and when the conditions stipulated in art. 68 of the Social Security Code are in place. The Council of Ministers’ arguments for this measure include the growing number of employees who had acquired retirement rights, but have preserved their jobs within the executive bodies, as well as the fact that there are “administrative bodies with a very high percentage of employees who have acquired retirement rights”. The Commission did not conduct a quality and in-depth analysis of the measure and held that its purpose was related to the employment and labour market policy, which is proportional (although it remains unclear why).

Significant age-related cases, in which CPD held in favour of the plaintiffs, include the one concerning the ban imposed by the University of Sofia on the accommodation at student boarding-houses of full-time, doctoral and

129 See Decision no. 2894 of 5 March 2009, SAC, five-member panel, on administrative case no. 15682/2008, and Decision no. 12014 of 18 October 2010, SAC, five-member panel.
130 Decision no. 185 of 23 July 2013 on case file No. 303/2011.
131 Decision no. 269 of 1 November 2013 on case file No. 130/2011.
CPD also took a stance on the right to education of children with disabilities.

Family status discrimination

The extremely unconvincing arguments with which CPD rejected a discrimination complaint of the Parents’ Association under art. 164, para 1 of the Labour Code. This Labour Code provision is related to the additional leave to raise a child aged up to 2 years and states that the female worker or employee has the right to such leave “to raise the first, second and third child until they have reached the age of two, and six months for every subsequent child”. While studying whether there is lawful indirect discrimination, CPD held that at a first glance one might come to the conclusion that workers and employees with four or more children are at a disadvantage; however, the “provision in art. 164, para 1 of the Labour Code does not restrict birth; on the contrary, it encourages it by providing an additional incentive to childless workers and employees, and to those with one or two children, to have a child. This incentive is manifested in providing these workers and employees with the opportunity to take longer paid leave than workers and employees who are raising a fourth or subsequent child”. According to CPD, in this respect the measure was pursuing a legitimate purpose related to demographic policy, and was proportional because the three-child demographic model could result in a positive growth of the population. Similarly, in November CPD held that the amount of the one-off assistance paid for the birth of a child under the Family Assistance Act, and namely BGN 250 (EUR 125) for a first child, BGN 600 (EUR 300) for a second child and BGN 200 (EUR 100) for a third and for every subsequent child, is not discriminatory to third and subsequent children and their mothers; this time, however, the Commission justified its decision with the incentives for the two-child model. CPD ruled that by focusing on the second child the legislator had intended to guarantee the simple demographic reproduction of the population and to overcome the prevailing one-child family model, in line with the adopted National Strategy for Demographic Development of the Republic of Bulgaria (as updated in 2012). In other words, CPD told the plaintiffs that the state has the right to discriminate families with many children instead of helping them because the demographic policy is targeted at providing incentives for the birth of a second child, maybe to some extent for the birth of a fourth, but no more. According to CPD, giving birth to more children contradicts the targeted two-child Bulgarian family model, which is the only one that corresponds to the goal of incentivising childbirth in our country, and this goal cannot be achieved by giving birth to more children.

Application of burden of proof statutes

In many cases reviewed by CPD the Commission demonstrated an ever improving handling of the burden of proof statutes. In several cases it reversed it successfully and held the existence of discrimination as the defending party could not prove the existence of a lawful reason (i.e., a reason unrelated to the plaintiff’s protected class) behind the unequal treatment. Since the defending party cannot refute the claims of a person with disability that there is a causation between the protected class and the unequal treatment he was subjected to by proving that the selection was based on objective criteria and that this selection has resulted in retaining the employees who indeed are better qualified and are working better, CPD held that the defending party had committed direct discrimination on the grounds of disability by eliminating a post occupied by a person with disability.

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133 Decision no. 208 of 12 September 2013 on case file No. 207/2012.
134 Decision no. 217 of 18 September 2013 on case file No. 228/2012.
135 Decision no. 278 of 14 November 2013 on case file no. 58/2011.
2013 marked a significant retreat with regard to the standards on guaranteeing the right to asylum enshrined in art. 27, para 2 and 3 of the Bulgarian Constitution. During the first half of the year the specialised administration, the State Refugee Agency (SRA) of the Council of Ministers, almost completely neglected the existing problems in the field of asylum and international protection. The legal assistance during protection awarding proceedings financed by the European Refugee Fund was assigned completely to a non-profit entity in a manner that caused serious doubt of conflict of interest and links to high-ranking MoI employees. As a result, the representation of the people seeking protection in the administrative phase was formalistic and did not protect their rights and legitimate interests. Social assistance and admission conditions were also provided at the minimum level possible, or even below it. Despite the efforts of the non-governmental organisations working with refugees and of the representative office of the UN High Commissioner for Refugees (UNHCR) to convince the government and SRA in the need for an urgent improvement of the accommodation capacity with regard to the expected increase in the number of new arrivals seeking protection due to the civil war in Syria and the withdrawal of the international forces from Afghanistan, the national institutions completely neglected this need and failed to take any measures to expand the existing and create new refugee centres.

The number of people entering the country at seek asylum and protection began to grow steadily in mid-August. 7,144 protection applications were registered in Bulgaria between 1 January and 31 December 2013. Most of these (4,516 or 63% of all protection applications) were filed by Syrian refugees, followed by persons without citizenship (561 or 7.8%) and people from Afghanistan (310 or 4.3%). In this context the reception capacity of the State Refugee Agency, long criticised as extremely insufficient, turned to be absolutely inadequate and below the critical minimum. In less than 25 days, by mid-September, the two existing SRA registration and reception centres in Sofia and in the village of Banya, near Nova Zagora, and the transit centre in the village of Pastrogor, near Svilengrad, were overcrowded and overloaded to an extent that caused SRA’s complete institutional collapse. The refugee administration began to place 8 to 15 asylum seekers in rooms that could accommodate between 2 and 4. In early September, when all possibilities for accommodation at the existing SRA centres were exhausted, the newly-arriving refugees were “accommodated” in the hallways. The lack of any capacity for reception and accommodation at SRA, resulting in having newly-arriving refugees and asylum seekers being accommodated at the 24-hour detention facilities of the Directorate-General of Border Police (DGBP), more specifically at those operated by the Elhovo Regional Border Police Directorate; however, their capacity was also exhausted within several days. Consequently, and despite the submitted protection applications, DGBP began to refer the asylum seekers to the specialised centres for accommodation of foreigners (SCAF) of the MoI’s Migration Directorate in Sofia’s Busmantsi neighbourhood and in the town of Lyubimets. Thus, people seeking asylum and protection, including unaccompanied children, pregnant women, families, elderly people, sick and wounded, were placed in administrative detention facilities for illegal migrants and deprived of their liberty. On 8 October 2013 the Migration Directorate opened urgently a new detention centre for 300 people in the town of Elhovo, which it called “a distribution centre”. The capacity of this SCAF was also exhausted immediately. Thus, in about a month between mid-September and the end of October, a significant number of refugees seeking asylum spent between a few days and several weeks in the court-

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137 Capacity: 860.
138 Capacity: 70.
139 Capacity: 300.
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To address the lack of accommodation capacity, by the end of September SRA began to urgently create new accommodation facilities. The first of these so-called “temporary accommodation centres” was opened on 18 September 2013 in a deserted and dilapidated former reformatory boarding school in Sofia’s Vrazhdebna neighbourhood, and can accommodate 420 asylum seekers. A few weeks later, another “temporary accommodation centre” for 700 people was opened in a similar dilapidated building in an abandoned wood processing school in Sofia’s Voenna Rampa neighbourhood. The condition of the buildings, as well as the living conditions in the two centres, or rather the lack thereof, were so critical and unacceptable that in essence constituted inhuman and degrading treatment.141

The conditions in the next “temporary accommodation centre”, opened on 13 October 2013 in the former barracks in the town of Harmanli and designed to accommodate 1,450 refugees, turned to be even worse. The asylum seekers were kept closed in the camp and were accommodated in tents and trailers without food, water, electricity, heating and sewage. The sanitary and epidemic risks were extremely high. The only exception was the fourth “temporary accommodation centre”, a 350-person facility opened on 21 October 2013 in the village of Kovachevtsi, near Pernik. The buildings and the living conditions there were adequate and met the basic requirements. In the meantime, the mayor of Nedelino proposed to provide his own house and the town school to be used for accommodation of asylum seekers for free, but the state failed to act on his proposal. By the end of 2013, no staff and administrative personnel were assigned to the newly-opened SRA “temporary accommodation centres”, with the exception of the centre commandants and the police security personnel. Food, medical services and social assistance were not provided by SRA, and the registration, issuance of documents and proceedings of reviewing and evaluating asylum and protection applications wither did not materialise or occurred with great delays, many being immediately postponed until the spring of 2014.

In October 2013 the European Asylum Support Office (EASO) adopted an operating plan to provide logistical support to Bulgaria in overcoming the serious deficiencies and gaps in the national refugee system. In the end of November, in response to a request by the Bulgarian government, the UN High Commissioner for Refugees Antonio Guterres visited the country; UNHCR urgently provided almost 1 million dollars to Bulgaria for direct assistance, care and food for asylum seeking refugees. This was an official recognition at institutional level of Bulgaria’s failure to create an adequate national system for providing asylum and protection to people who need them.

At the onset of the refugee influx in Bulgaria several media, notably the Ataka-owned Alpha TV channel, initiated a loud campaign to instigate hatred, discrimination and violence against what they deemed unwanted “aliens”. The public instigation of hatred, discrimination and violence against asylum seekers led to a series of incidents in Sofia, in which both foreign citizens and representatives of Bulgarian national minorities were assaulted, threatened and insulted on purely racist grounds.142

The following specific issues in the field of asylum and international protection were identified in 2013:

Asylum seekers’ access to territory was subjected to severe and growing

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142 For more details, see Protection from discrimination.
restrictions in 2013. Over the year, 3,519 refugees declared to the DGBP\textsuperscript{143} bodies at the country’s borders that they need protection; of these, 2,943 were adults (2,098 men, 845 women), 473 were accompanied children (268 boys and 205 girls) and 103 were unaccompanied children, all of them boys aged 12 to 18. For another consecutive year DGBP had difficulties in providing immediate and adequate translation for the purpose of registering the protection applications of these people, mostly due to lack of translation posts in the Border Police and the outsourcing of translations, which was a considerable obstacle that increased the cost of the registration procedure. Furthermore, as a measure against the influx of new asylum seekers in early November 2013, the Ministry of Interior seconded 1,400 police officers from all over the country and deployed them along the land border with Turkey to prevent illegal immigration. This resulted immediately in a dramatic reduction of the number of people applying for protection at the border: from several hundred per week between August and October 2013 to 138 in December 2013.\textsuperscript{144} Such a sharp decline in protection application over such a short period could only be explained by a wide application of repulsion and refoulement practices, in violation of the principle of non-refoulement under art. 33, para 1 of the 1951 Convention relating to the Status of Refugees. The government announced that the wide scale measures for the physical protection of the borders were aimed only at preventing illegal immigration and not at asylum seeking refugees. At the same time, however, the government propagated the idea that asylum and protection applications should be filed only at the respective border crossing checkpoints (BCCP), a requirement that does not exist in any national or international legislative provision on refugees. An indicative fact is that only 375 refugees\textsuperscript{145} were registered at BCCPs in 2013; given the significantly larger number of refugees registered at land borders outside BCCPs, this is a clear indication that the asylum seekers are in fact denied access to territory through BCCPs but are generally repulsed and refouled. This conclusion is indirectly confirmed by asylum seekers in Bulgaria who inform of unsuccessful attempts of their families, located in Turkey, to file a protection application and enter the country through a BCCP. This practice is an extremely severe violation of Bulgaria’s international obligations with regard to the provision of access to territory, procedure and protection to persons who need them.

The principle of not imposing penalties enshrined in art. 31 of the 1951 Convention relating to the Status of Refugees was massively violated by the prosecution and the penal courts in the regions adjacent to the Bulgarian-Turkish border. BHC established such practices for the first time in 2010. It was not until May 2012, however, that the prosecution provided the results from its internal verification of this issue and admitted the necessity of creating a working group for the development of instructions on the correct implementation of art. 279, para 5 of the Penal Code, which introduces a non-penalty rule similar to that of art. 31 of the Convention. By the beginning of September 2013, there was no development with regard to this issue. On the contrary, the prosecutor’s offices in the court districts in whose jurisdiction the Bulgarian-Turkish border falls gradually increased the number of penal proceedings for illegal entry under art. 279, para 1 against individuals who had filed a protection application, in an evident violation of art. 5 of the same provision. The prosecution and the courts could thus report a larger number of cases completed with verdicts or sentences, as the crime under art. 279, para 1 and the following of the Penal Code is easy to prove from a formal point of view. As a result, the share of refugees convicted for illegal entry in violation of art. 31 of the Convention and art. 279, para 5 of the Penal Code reached 48% of all registered cases in the first half of 2013 alone. In some cases it was found that the conviction occurred with the complicity of the court-appointed lawyers who had agreed to settle cases in exchange of

\textsuperscript{144} DGBP, Readmission Section, contact point in the Three-lateral Group, 14 January 2014.

\textsuperscript{145} See below.
Such a sharp decline in protection application over such a short period could only be explained by a wide application of repulsion and refoulement practices.

Asylum seekers’ access to territory was subjected to severe and growing restrictions in 2013.

The above situation deteriorated sharply in the beginning of September 2013 after the dramatic increase in the number of persons seeking protection and entering Bulgaria through its land borders. In response to the greater media interest the prosecutor general announced publicly\textsuperscript{146} that he is seconding prosecutors to the prosecutor’s offices in Svilengrad, Yambol and Elhovo with the task to help initiate and conduct penal proceedings against asylum seekers. The massive and public reaction of human rights organisations and of the associations of judges and prosecutors made the prosecutor general change his position towards strict observation of the principle of not imposing penalties, in line with the Bulgarian and international legislation. A seminar was held on 18 October 2013, on the initiative of the Union of Judges and the National Association of the Prosecutors, at which the representative associations of the magistrates, together with representatives of the courts and the prosecutor’s offices in Svilengrad, Elhovo, Malko Tarnovo and Haskovo discussed the application of art. 31 of the 1951 Convention relating to the Status of Refugees and art. 279, para 5 of the Penal Code, and the need of finding evidence within the penal procedure with regard to the application of the rule of not imposing penalties on persons who had entered Bulgaria illegally with the purpose of seeking asylum and protection. The guild’s recommendations in this respect had an immediate positive effect in practice; as a consequence, the number of protection seekers convicted of illegal entry dropped sharply in the following months (11 in November and 14 in December 2013).

Asylum seekers’ access to procedures from the places for administrative detention of illegal immigrants was also significantly restricted and hindered in 2013. As a result of the developments in the autumn of 2013 described above, the majority of the newly arrived asylum seekers had the opportunity to officially file their applications not earlier than the time of their transfer from the border to the administrative detention facilities (SCAF) operated by the Migration Directorate in Busmantsi and Lyubimets and, since the beginning of October, to the SCAF in Elhovo. Asylum was sought by a total of 5,464 individuals (of which 5,291 adults and families with children and 173 unaccompanied children). 5,353 or 98% of the applications were filed at SCAF by people who had been transferred there directly from the border. Between September and December 2013 the average duration of the detention at SCAF of persons seeking protection prior to releasing them and granting them access to refugee procedures increased from 36 days (January 2013) to 47 days; the average duration of the detention of protection seekers at SCAF thus increased to 45 for the whole year. Despite the positive amendments of the national legislation,\textsuperscript{147} in reality the legal assistance was not accessible and was not provided to the individuals detained at SCAF, including protection seekers. This was mainly due to the fact that the National Legal Assistance Bureau had not planned any funds for this category of people in its annual budget. Furthermore, SRA’s institutional failure resulted in significantly delayed release of protection seeking refugees from SCAF and their accommodation in refugee centres, thus creating conditions for extended detention, which in some cases exceeded four to six months.

Looking for means of speeding their release from SCAF, the protection seekers began submitting declarations giving up their statutory rights to accommodation and social assistance during the refugee procedures\textsuperscript{148} and declared false addresses, the so-called ‘external addresses’. As of 31 December 2013, 5,022 protection seekers or 92% of all detained individuals who had submitted refugee applications had been released from SCAF, while 442 protection seekers (8%) remained in detention.

\textsuperscript{146} http://www.dnevnik.bg/bulgaria/2013/09/09/2137176_prokuraturata_reshi_da_otchita_aktivnost_s dela/

\textsuperscript{147} Art. 22, para 1, items 8 and 9 of the Legal Assistance Act.

\textsuperscript{148} Art. 29, para 1, item 2 of the Asylum and Refugees Act.
The national legislation was amended in March 2013\textsuperscript{149} with the introduction of the explicit prohibition of involuntary accommodation (detention) of unaccompanied foreign children in SCAF, and the introduction of a three-month maximum duration of the detention of foreign children accompanied by their parents. The ban covers a fortiori also the refugee children seeking protection. This legislative amendment was a significant step forward in the legal standards governing the detention, even though by the end of 2013 there was no change in detention practices and both unaccompanied and accompanied children continued to be detained in violation of the statutory provisions and deadlines.

The standards of the status awarding proceedings also worsened significantly in 2013, mostly as a result of the impossibility to organise the due procedural actions in consistency with the growing number of newly arriving protection seekers. According to the official statistics,\textsuperscript{150} a total of 9,325 individuals have filed asylum and protection applications in Bulgaria; only 7,144 protection seekers, however, have been officially registered by 31 December 2013. The remaining 2,181 protection seekers have not been granted access to procedures, registration and status evaluation. This is mainly due to the inadequate reception capacity of the State Refugee Agency whose activities were almost completely paralyzed from the end of August until the beginning of December. The access to procedures from the detention places (SCAF) was significantly hindered and delayed, resulting in protection seekers’ renouncing rights\textsuperscript{151} to accommodation and social assistance in order to speed up their release from the SCAF (the practice of declaring the so-called “external addresses”). Their declarations were accepted and administered by SRA in violation of the law,\textsuperscript{152} because it stipulates that such renouncement is possible only at the stage of the general proceedings. According to the official statistics\textsuperscript{153}, by 31 December 2013 there were 4,567 protection seekers living at external addresses outside the refugee centres at their expense. Since they have renounced their rights, they have no right to social assistance in the amount of BGN 65 (EUR 32) per month. Having run out of money, many of them become homeless in a matter of weeks. The situation in the newly opened SRA centres remained critical until the end of the year. The government was incapable of providing even for the basic needs of the protection seekers, such as food, medical and social assistance. Registration was an exception, not a rule; the issuance of identity papers was blocked. All this and the lack of a functioning national protection system forced 2,619 protection seekers to try and leave Bulgaria in 2013.\textsuperscript{154}

The situation of the unaccompanied children remained especially worrisome. For the 20th consecutive year since the establishment of the refugee institution, their procedures were held without the appointment of guardians or trustees. The presence in the refugee proceedings of the social workers appointed under the Child Protection Act\textsuperscript{155} was purely formalistic and did not provide the necessary assistance and protection of the legal interests of unaccompanied children, in contradiction with the statutory obligation to protect the child’s best interests.

The 2013 status awarding rate in Bulgaria was 34\%, that is, 2,462 individuals were granted some form of international protection within the country. Of them, 183 were granted refugee status and 2,279 (32\%) were granted subsidiary protection in the form of humanitarian status due to civil war or wide-scale human rights violations in their countries of origin. 354 applications (4.9\%) were rejected, 657 (9.7\%) refugee procedures were suspended, and 824 (11.5\%) were terminated because the individuals had left the country. Thus,

\textsuperscript{149}Foreigners in the Republic of Bulgaria Act, art. 44, para 9.

\textsuperscript{150}Seventh coordination meeting, 16 January 2014; see, also: http://www.aref.government.bg/docs/Refugees_15%2001%202014.doc

\textsuperscript{151}Art. 29, para 1, item 2 of the Asylum and Refugees Act.

\textsuperscript{152}Art. 29, para 1, item 6 of the Asylum and Refugees Act.

\textsuperscript{153}See above.

\textsuperscript{154}DGBP, Readmission Section, contact point in the Three-lateral Group, 14 January 2014.

\textsuperscript{155}Art. 15, para 7 of the Child Protection Act.
59.5% of all applications were evaluated, while 39.5% of the proceedings remained unresolved. It should be noted that protection was awarded mostly to refugees from Syria (1,944 individuals or 85% of all protection applications: refugee status awarded in 149 cases, humanitarian status awarded in 1,795 cases). The protection seekers from all other countries of origin were in most cases refused protection in Bulgaria.

The legislation in the field of asylum experienced some positive developments in 2013. During the year, the continuous efforts of the human rights community finally resulted in tangible progress and legislative amendments to the Legal Assistance Act, and more specifically art. 22, para 8 thereof, by which protection seeking refugees were identified as a separate and special category of individuals who have right to legal assistance during the status awarding proceedings, both at the administrative and at the judicial stage. Also in 2013, the statute of tolerance was introduced with regard to refugees for whom an expulsion order had been issued, whereas the measure cannot be implemented as a result of judicial ban on the grounds of the right to life under art. 2 or to freedom from torture, inhuman and degrading treatment under art. 3 of the European Convention on Human Rights.

Together with these positive developments, however, on 19 November 2013 the government submitted to the National Assembly a draft amending and supplementing the Asylum and Refugees Act, conceived, drafted and submitted by the Ministry of Interior (MoI). Together with the provisions elaborated by the State Refugee Agency with regard to the transposition of the Qualification Directive, Mol proposed amendments and supplements, which in essence introduced a common detention regime for all categories of protection seeking individuals, regardless of their individual characteristics, vulnerability, age, health, special needs or other applicable circumstances, and regardless of the stage of their proceedings under the Asylum and Refugees Act. As a rule, all individuals seeking protection are generally and unconditionally detained at closed centres, and placement in open centres is based on exception (argument pertaining to art. 45c, para 2 of the draft). The rule enshrined in art. 8, para 1 of Directive 2013/32/EU that the member states cannot detain an individual only because he had applied for international protection, is thus completely reversed. In essence, this approach is almost an identical copy of the involuntary administrative measures imposed on irregular immigrants prior to having them expelled from the country. The draft assigns the State Refugee Agency security and police functions, which contradict the main purpose of this institution: to hold, in consistency with the Republic of Bulgaria’s international obligations, procedures awarding asylum and protection to people who need them and in protection of their basic human rights and freedoms.

Art. 45e of the draft is a cause of serious contradiction and concern. It stipulates that protection seeking minors and juveniles can be detained at closed centres, although there is a condition that this is a measure of last resort, which is imposed when found that lighter measures cannot be effectively applied. Depriving children of freedom of movement and detaining them at closed centres is a violation of the basic child protection standards set in art. 10, para 3 of the Child Protection Act and art. 37b of the Convention on the Rights of the Child. It may have an extremely detrimental effect in children’s normal physical, mental, moral and social development, especially bearing in mind

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156 State Refugee Agency, statistical information as of 10 January 2014.
159 http://www.parliament.bg/bg/bills/ID/14681/
160 Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.
161 Section I, Chapter V of the Foreigners in the Republic of Bulgaria Act.
that while detained the children will be deprived of the access to education, which is guaranteed to them under art. 26, para 1 of the Asylum and Refugees Act. The proposed amendments also allow protection seeking unaccompanied children to be detained and placed in closed centres (art. 45e, para 3). This is completely unacceptable as it creates a less favourable legal standard than the one established in art. 44, para 9 of the Foreigners in the Republic of Bulgaria Act with regard to the irregular immigrants who are unaccompanied children, whose detention is expressly and unconditionally prohibited by law. There is no legal or factual justification and excuse of such less favourable treatment of unaccompanied children seeking international protection, who are by definition subject to more favourable measures and treatment standards than irregular immigrants.

The courts’ case law in 2013 established a positive standard with regard to the treatment of detained individuals seeking protection. In a series of lawsuits the court found the refugee administration guilty of inaction with regard to its obligation to timely release the persons who had filed protection applications from SCAF, thus denying them the right to liberty and access to protection awarding procedures.

During the year ECtHR ruled against Bulgaria in two cases, in which it held a violation of the freedom of movement. In Milen Kostov v. Bulgaria of 3 September 2013 (application No. 40026/07) the Court held a violation of art. 2 of Protocol No. 4 and art. 13 in conjunction with art. 2 of Protocol No. 4 because the applicant was banned from travel after being handed down an effective sentence. The applicant, a Bulgarian and Greek citizen domiciled in Germany, was banned from travelling because he had been sentenced and not yet rehabilitated. ECtHR held that in imposing the travel ban the Bulgarian authorities had not considered Mr Kostov’s individual situation and the proportionality of the measure. At the same time the Bulgarian courts had decided that they had no powers to review the manner, in which the police authorities had exercised their powers in imposing a travel ban. According to ECtHR, this approach is too rigid and automated and, therefore, inconsistent with the requirements of art. 2 of Protocol No. 4. Due to the lack of effective domestic means of protection, ECtHR also held a violation of art. 13 in conjunction with art. 2 of Protocol No. 4. The Court awarded EUR 2,000 in non-pecuniary damages and EUR 1,146.65 in respect of expenses. In the case Nasko Georgiev v. Bulgaria of 3 December 2013 (application No. 25451/07) an ECtHR committee of three judges held a violation of art. 2 of Protocol No. 4 and art. 13 in conjunction with art. 2 of Protocol No. 4 because the applicant had been banned from travelling upon being handed down an effective sentence. The Court awarded EUR 1,000 in non-pecuniary damages and EUR 1,000 in respect of expenses.

The survey results for Bulgaria indicate that 28% of the women in Bulgaria had been victims of physical and/or sexual violence by their partners or other persons since they were 15 years old.
The courts’ case law in 2013 established a positive standard with regard to the treatment of detained individuals seeking protection. On 5 March 2014 the EU Fundamental Rights Agency (FRA) published the results of its survey of violence against women across the 28 EU member states. The survey is based on interviews of 42,000 women aged between 18 and 74. The survey results for Bulgaria indicate that 28% of the women in Bulgaria had been victims of physical and/or sexual violence by their partners or other persons since they were 15 years old. Analysing the data on Bulgaria by comparing the percentage of women affected by violence, which is similar to the European average, and the relatively low percentage of the interviewees who report knowledge of cases of violence against other women among their family and friends, the Fundamental Rights Agency indicates two possible conclusions. Either the violence in Bulgaria is very low or domestic violence against women in the country is regarded as a personal issue, which is not shared with family and friends, and therefore is not reported to the police and other institutions. Another conclusion of the survey is that more than over half of all interviewed women (56%) are not aware of the existence of the specialised institutions and services for the protection of women victims of violence, specifically indicated in the survey with regard to Bulgaria. By Decision No. 438 of 25 July 2013, the government initiated measures to comply with the Concluding observations of the UN Committee on the Elimination of Discrimination against Women (CEDAW) of July 2012 one year after their publication. The decision endorsed an implementation plan which is to be completed by April 2016.

Protection against domestic violence

In the field of the protection against domestic violence, the plan contains a series of important guidelines on action in the areas targeted by Committee’s observations, including:

- Signature and ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), but not before July 2015 when a public discussion on its adoption is scheduled. This unjustifiably long deadline will rank Bulgaria among the last Council of Europe member states that will join the Convention, given the fact that even now Bulgaria is among the few countries that have not signed it;

- Provision of compulsory training of judges, lawyers and law enforcement bodies on protection against domestic violence and conduction of joint trainings with the National Institute of Justice, the Supreme Lawyers’ Council, the National Council for Self-Regulation and other institutions, on stereotypes and discrimination practices;

166 Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, signatures and ratifications: http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=2108&CM=1&DF=6&CL=ENG
• Creation of a national mechanism for compliance with Committee opinions and a national mechanism to compensate victims of Convention violations;
• Provision of a 24/7 national hotline for victims of domestic violence;
• Amending the Protection against Domestic Violence Act (PADVA) and eliminating by April 2014 the one-month deadline for the filing of protection applications (another unjustifiably long deadline given the low complexity of the task) and guaranteeing the strict application by the judiciary of art. 13, para 3 of PADVA, in order to shift the burden of proof in favour of the victim.

The action plan also envisages the establishment of an interdepartmental working group to be assigned the formulation by April 2014 of the legislative amendments necessary to bring the draft Penal Code and the current Penal Proceedings Code in line with the recommendations of the Committee on the Criminalization of Domestic Violence and Marital Rape, to remove the persecution of domestic violence from the domain of private law, etc. In the current Penal Code,167 and in the new draft Penal Code tabled in the National Assembly on 31 January 2014,168 the premeditated light, medium and (in some cases) severe bodily harm inflicted on a “parent, child, marital partner, brother or sister” is only prosecuted in case of a direct complaint filed by the victim in court within six months of the date on which the violence has occurred169, and not by the prosecutor’s office under the common procedure. This results in actual impunity for the perpetrators of domestic and other violence against women and contradicts directly the special vulnerability of the victim of such a crime committed by a very close person. The code needs to be changed in a way that would stipulate that all types of premeditated bodily harm shall be prosecuted under the common and not the private law. A recommendation to Bulgaria in this respect has been issued not only by the Committee on the Elimination of Discrimination against Women in 2012,170 but also by the UN Committee against Torture in 2008.171 At this time, no special provisions criminalising domestic violence and marital rape in line with the recommendations of the Committee172 have been envisioned in either the existing or the new draft Penal Code. Furthermore, in the draft new Penal Code the state disregards the special vulnerability of the minors, the elderly and the sick people whose life or health is endangered, and abdicates from its responsibility to prosecute under the common law these crimes when the victims of abuse or the people who had not been granted assistance have been “in especially close relations” with the person who could have provided, or was obligated to provide, such assistance.173 The only thing that, as a consequence of the implementation of the plan, was eliminated from the new draft Penal Code, but still remains in art. 158 of the current Penal Code, is the possibility that the perpetrator of certain sexual crimes not be punished or that the penalty imposed not be executed when the perpetrator and the victim marry after the crime is committed. These circumstances include also sexual assault of minors by use of force or threat, as well as by use of helpless condition of the victim; all types of involuntary penetration, other than vaginal and including anal and oral, are regarded as sexual assault. Other recommendations with regard to the support to the victims of domestic violence in Bulgaria...
The code needs to be changed in a way that would stipulate that all types of premeditated bodily harm shall be prosecuted under the common and not the private law.

Rights of childbearing women

In its 2012 Concluding observations on Bulgaria, the Committee on the Elimination of Discrimination against Women expressed also concern with the fact that the women are placed in an unfriendly environment with regard to healthcare, that healthcare suppliers are insufficiently aware of women’s specific health needs, and that there is no effective mechanism of filing complaints against acts of discrimination and abuse. The Committee insisted that the state initiate measures to deal with these issues. In response, the action plan on ensuring compliance with the recommendations envisions to provide conditions for better awareness of healthcare institutions of women’s specific healthcare needs, to adopt a patient rights and obligations code, and to create an effective complaints mechanism that would support the women in lawsuits for compensation for healthcare-related discrimination or abuse.

At the same time, however, institutionalised practices of abuse, coercion and violence at Bulgarian maternity wards continue, and the right of the woman to give birth in circumstances chosen by her, and in a single room, to be accompanied by someone close to her, is not guaranteed by law and in practice. A campaign of the Rodilnitsa Association at the end of 2013 used stories of victim women to show that childbearing women are often subjected to rough, insulting, degrading or violent treatment by medical personnel at Bulgarian hospitals, and that women are being pressed to accept undesired medical procedures and interventions, in contradiction to the Health Act.

At the same time, women who have chosen to give birth at home or those who have accidentally given birth at home, are placed in a threatening and hostile environment if they need to visit a medical institution after birth, for example to register the new born in the civic registries. In some cases, the police appears at the place of birth, the mother is threatened by the social services and is subjected to unwanted media attacks. The father stumbles upon practical obstacles in exercising his right to 15 days of parental leave, which by law is granted of the date the child is discharged from hospital.

Gender equality

The Action Plan on the Compliance with the Concluding observations Addressed to Bulgaria by the UN Committee on the Elimination of Discrimination against Women includes also the adoption of a gender equality act that would provide for even more effective implementation of the gender equality policy whose draft is expected by April 2014 (there are no indications that this deadline will be observed). An even longer deadline, until December 2014, is envisioned by the 2014 National Action Plan on Encouraging Equality between Women and Men. At the same time, however, Bulgarian legislation contains many examples of gender discrimination established by law. Such is Ordinance No. 7 on the harmful and heavy work banned to be performed by women (promulg. SG, No. 58 of 6 July 1993) which prohibits women to work as divers, to

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177 Ordinance No. 32 of 30.12.2008 on the adoption of the Obstetrics and Gynaecology medical standard, chapter XXIV, item 3.
178 "Is violence acceptable? Or rather, how much longer will violence be acceptable?". For more information, see the Rodilnitsa Association’s Facebook page and http://www.purvite7.bg/articles/view/4739/dopustimo_li_e_nasilieto_i_potocna_shto_e_dopustimo_nasilieto. html?rc=56 179 Health Act, art. 87 – 91 and Additional Provisions, § 1, item 15.
179 Health Act, art. 87 – 91 and Additional Provisions, § 1, item 15.
operate chainsaws, to drive backhoes, harvesters, etc. under the pretext that these activities endanger women’s reproductive health. Another example of discriminating attitude may be found in the provisions of the Civic Registration Act (CRA) regarding children’s names. These provisions hinder the woman being an equal partner in the family and having the same position in society as the man. For example, art. 14 of CRA stipulates that the child’s surname may only be formed by the surname/paternal name of the father, a practice found to be discriminatory by the European Court of Human Rights in Strasbourg.\textsuperscript{180} At the same time, in 2013 the Commission for Protection against Discrimination did not establish discrimination in the CRA provisions stipulating that Bulgarian citizens have a “paternal” name (and not a “middle name” or “paternal and/or maternal name”, as indicated by the applicant).\textsuperscript{181} The applicant felt that this degraded “the mothers, the single mothers and the children of unknown fathers and gave the mothers a secondary role in defining the middle name and the surname of their own children”.\textsuperscript{182} The Commission justified its decision with irrational motives, namely that the name of the father as a second (paternal) name has been accepted in the legislation as part of the naming tradition, which in combination with the specifics of the majority of the Bulgarian male and female names would result in more frequent subsequent changes of names due to lack of unison, should a “maternal name” be introduced. CPD justified the legislative unequal treatment also by the “biological differences between the two sexes [due to which] the bond between child and father is built in a different way than the formation of the emotional relation between mother and child, which has a physiological foundation even before birth”. Consequently, “using the name of the father when naming a person helps manifest the relation between father and child and thus helps establish and develop the emotional relation between them”. In this way the Commission, together with the other state bodies, failed to meet Bulgarian women’s legitimate expectations of equality in society.

\textsuperscript{180} See for example Cusan and Fazzo v. Italy (application no. 77/07).
\textsuperscript{181} Decision no. 324 of 20.12.2013 on case file no. 244/2012.
\textsuperscript{182} For example, see art. 15 of CRA, which stipulates that the name of a child for whom only the mother is known shall be formed by the mother’s first name, but it is still called “paternal name”. 

The prevention of abandonment and the creation of accompanying services establishing a supporting environment for the children and their families remained the weakest link of child care reform.
Deinstitutionalisation

The closures of children’s homes increased in 2013. The prevention of abandonment and the creation of accompanying services establishing a supporting environment for the children and their families remained the weakest link of childcare reform. At the start of the deinstitutionalisation in 2010, there were 137 children’s homes with 5,695 children residing in them. At the end of 2013, there were 106 children’s homes with 4,317 institutionalised children. In 2013, 14 homes for children deprived of parental care (HCDPC) and two homes for medical and social care for children (HMSCC, for children aged 0 to 3 years) were closed down. In comparison, five HCDPC were closed in 2012. Upon the initiation of the five projects of the Action Plan on the Implementation of the Vision for the Deinstitutionalisation of the Children’s Homes, a total of 147 new social services for children and families were created between June 2010 and October 2013.

The deinstitutionalisation of children’s homes in Bulgaria began in earnest with the preparation and the removal of children with disabilities from the institutions. The reasoning was that they were most vulnerable and needed urgent measures to change their life. The first project under the Action Plan, Childhood for Everyone, started in June 2010 and was targeted at almost 1,800 children aged over 3 years and young people with disabilities placed in 24 homes for children with mental disabilities (HCMD) and 32 HMSCC. From the beginning of 2012 until mid-2013, 59 children have left the homes for children with disabilities, 1,772 have left the homes for children aged 0 to 3 years, and 977 were removed from homes for children deprived of parental care.

Despite the progress of the deinstitutionalization, problems still remain:

The whole process was delayed by roughly a year due to the different speed of building the new services. The creation of accompanying services, day centres and social rehabilitation and integration centres, is significantly behind schedule.

It is expected that by the end of 2014 the existing homes for children with disabilities will be closed and new 149 resident services will be established – family-type accommodation centres (FTAC, small group homes for up to 12 children) – as well as 37 day centres for children with disabilities and 34 new social rehabilitation and integration centres. The situation at the end of 2013: although 950 children were placed in family-type accommodation centres, four times more children were being raised in institutions. The construction of new day centres and social rehabilitation and integration centres, services that create a supporting environment, is significantly behind schedule. The children at risk and their families are far from receiving adequate state support for development. The state is still financing the two parallel systems, the institutions and the community alternatives. The Ministry of Labour and Social Policy declared in 2013 that it will prepare a new financial mechanism, but there are still neither standards nor a real application of the “money follows the child” principle.

183 Letter to BHC, ref. no. 9102/2296 of 21 December 2013 from the Social Assistance Agency to the Ministry of Labour and Social Policy.

184 It is not clear whether the official statistics accounts for the young people who have reached the age of 18 but are still living in childcare homes. According to the State Child Protection Agency, in HCMD alone there are 530 young people out of a total population of 1,182: 1,140 in 25 homes for children with mental disabilities (618 children and 522 young people) and 42 in one home for children with physical disabilities (38 children and 8 young people).

185 Letter to BHC, ref. no. 9102/2296 of 21 December 2013 from the Social Assistance Agency to the Ministry of Labour and Social Policy.

186 Information provided on a BHC request for access to public information no. 05-00-9/18.12.2013.
“Hollow” alternatives and risk of re-institutionalisation

The creation of “hollow” new services is one of the grave problems in the deinstitutionalisation process. Since 2010 BHC has been observing a worrisome practice: new resident services and even service sets (family accommodation centres, protected homes) are established in the buildings and the courtyards of children’s institutions, mostly in small communities. Such practices are often a form of hidden institutionalisation and a prerequisite to provide care without quality. Sometimes this results in re-institutionalisation, especially in case of severe medical conditions. BHC found a very indicative example in Burgas. The director of the HMSCC in Burgas informed that one of the children who on 11 September 2013 had been removed from the home and placed in a small group home in Karnobat, was returned to the HMSCC in Burgas on 27 September 2013 in a severe medical condition. According to the director, Dr. Pepa Ralcheva: “In the papers assessing his condition for the purposes of the deinstitutionalisation project, this child had been ranked as 1, meaning that he is dependent on medical care and is currently not suitable for removal. Nevertheless, in the assessment table under the Childhood for Everyone project the code was changed and the child was removed. But for only ... 6 days. Following the re-institutionalisation, the child was urgently placed in the children’s ward of the Burgas hospital in an extremely bad condition and with a risk to his life”.

In the process of monitoring several HMSCC in 2013 BHC identified evaluations of ‘risky’ transfers to small group homes (meaning groups of 5 to 7 bedridden children, often suffering from accompanying hypostatic pneumonia, with multiple severe mental and physical disabilities, such as contractures of joints, muscle hypertrophy, severe hydrocephalus and many congenital malformations). The children were referred to small group homes without an alignment between the new social service and 24-hour specialised medical assistance and oversight by a nearby medical institution. Such high-risky transfers were found at the HMSCC in Kardzhali and Burgas.

It is recommended that the development of the network of new local services and the training of staff be accelerated, while at the same time some HMSCC are transformed in specialised medical institutions for children with severe disabilities. At least five HMSCC, including the ones in Stara Zagora, Burgas, Varna and Pleven, have the necessary resources and can be reformed into specialised medical institutions for children with disabilities in need of aftercare and long treatment, as well as of early intervention and palliative care. According to the State Child Protection Agency (SCPA), the prevailing share of the children currently in HCDCP and HMSCC are with disabilities. The data show that the relative share of the children with disabilities is distributed as follows: in HCMD – 100%, in HMSCC – 56%, and in HCDCP – 26%.

Escalation of child abandonment by single underage mothers and by families of poor parents with many children

BHC monitoring of 20 HMSCC in 2013 revealed that most of the children who left HMSCC in 2013 were placed in a family environment, in some cases in their own biological families. During the last three years, however, a sustainable reciprocal negative trend was also established: an influx of children from poor families at the entrance of the HMSCC. SCPA statistics indicate that the prevailing share of newly-arriving children come from large families of unemployed parents, or are children of single underage mothers of Roma origin. The lack of activities to prevent abandonment and early intervention, as well as the great poverty supplemented by a severe health condition, are the decisive factors behind the institutionalisation of such children.

The conclusion is that the point of entry to the homes for children aged 0 to 3 years remains wide open. According to SCPA, the number of children aged

As in 2012, abandonment prevention and support to parents of special needs children continued to be the weakest link of the reform of the homes for children aged 0 to 3 years.
under 1 was 769 in 2012 (578 healthy and 191 with disabilities) and 539 by September 2013 (418 healthy and 121 with disabilities). According to directors of the social assistance directorates (local bodies of the Social Assistance Agency), the abandonment in HMSCC of children by underage Roma mothers is escalating. In the Roma neighbourhood in the town of Nikolaev, near Stara Zagora, in November and December 2013 alone, the social workers initiated 12 new cases of monitoring of children at risk of abandonment, all of them children of single underage mothers. According to the Social Assistance Directorate in Gurkovo, 8 children from the Roma neighbourhood in Nikolaev have already been placed in an institution in 2013 alone. Information provided to BHC by HMSCC directors in the region (HMSCC in Stara Zagora and Buzovgrad) indicates that the Roma neighbourhood in Nikolaev is a “sustainable generator” of children abandoned at HMSCC. Three children from Nikolaev have entered the HMSCC in Stara Zagora in the past three years. A total of 16 children aged one month to a year and a half were placed in the HMSCC in Buzovgrad between 2010 and 2013. The medical documents show that all children have severe health problems (congenital anomalies), which in most cases worsen due to neglect and miserable living conditions in their families, which are unable to meet their children’s specific needs without a supporting environment. More than 70% of the children who have entered HCD-CP in 2013 also come from biological families. HCMR entry data for 2013 indicate that some 80% of the children have come from another institution (35 children). The newly admitted children coming from biological families were 9.

The HMSCC metamorphosis

The Ministry of Health’s Direction: Family project (October 2011 – August 2014) is the only state project aimed mainly at providing support to children at risk and their families. It is based on the presumption that the deinstitutionalisation is a means and not an end, and that the family, being the best environment for a child, should receive development support. The achievements so far indicate that the number of children at the eight pilot HMSCC (in Gabrovo, Montana, Pazardzhik, Pernik, Plovdiv, Ruse, Sofia and Targovishte) has been reduced fourfold, from 342 at the beginning of the project to 90 children with disabilities in these homes by 31 December 2013, of whom 36 aged up to 3 years. As a special short-term protection measure, these children are to be placed in a specialised resident service for children with disabilities at small group homes.

However, no HMSCC were closed by the end of 2013. The HMSCC in Kyustendil, which was closed on paper, is to be closed in 2014. The Ministry of Health is also planning to close the eight pilot HMSCC. New services are also planned: seven family advice centres, three foster care centres, five early intervention centres, three mental health centres, eight day care centres, two ‘mother and baby’ units, eight mother and child health centres and nine family accommodation centres. The conclusion is that if there is any progress in HCDPC reform, it was achieved in the eight pilot HMSCC. New services are also planned: seven family advice centres, three foster care centres, five early intervention centres, three mental health centres, eight day care centres, two ‘mother and baby’ units, eight mother and child health centres and nine family accommodation centres. The conclusion is that if there is any progress in HCDPC reform, it was achieved in the eight pilot institutions. 20 of the existing 29 HCDPC in the country have not shown progress in closing the entry and transforming the institution. The Ministry of Health statistics shows new arrivals even at the eight pilot institutions: a total of 288

187 Profiles of children admitted at the HMSCC in Buzovgrad in 2013: ‘A girl aged 2 years and 4 months, admitted on 23 June 2013, comes from family environment. The father is 84 years old and keeps the child tied during the day. The mother is underage, of Roma origin, left for Greece abandoning the child. Signal received that the child was in very bad health’.

188 According to SCPA, 515 children from biological families entered the HCDPC in 2012. The next largest group, with a share of some 20% or 130 children, have come from specialised institutions. The HCDPC admission data for 2013 indicate that approximately 80% or 36 of the newly arrived children have come from another specialised institution. The newly arrived children coming from biological families were 9.

189 Information on BHC request for public information, ref. no. 05-00-9/18.12.2013 of SCPA.

190 Information on BHC request for public information, ref. no. 05-00-16/17.01.2014 of the Ministry of Health.

191 Information on BHC request for access to public information, ref. no 05-00-16/17.01.2014 of the Ministry of Health.
children from 1 December 2012 until 30 November 2013. The increasing number of admissions straight from the maternity wards is a cause of concern. According to Ministry of Health data, almost 40% of the children admitted to HCDPC in 2013, or 106 children, have come directly from the maternity wards.

As in 2012, abandonment prevention and support to parents of special needs children continued to be the weakest link of the reform of the homes for children aged 0 to 3 years. Although the amendments in the Healthcare Act (art. 125a of 2009) and the Medical Institutions Act (art. 69, para 2, item 10 of 2010) oblige maternity wards to notify municipal social services about risk of abandonment and to interact with them, no common early intervention standards are applied. HCDPC directors say that medical specialists at maternity wards are still convincing mothers of new-born babies with disabilities to abandon them. Furthermore, parents claim that they “diagnose” without the necessary genetic tests.

There are also deficiencies with regard to the quality of childcare inside the HMSCC. Some of the main conclusions of the independent experts who took part in the BHC monitoring of HMSCC in 2013 include:

The level of healthcare at HMSCC for children aged 0 to 3 years in inconsistent and varies significantly depending on the host community. Many children with disabilities (cerebral palsy, Down syndrome) who remain in HMSCC above the age of 3 show significant developmental delays due to poor physical and social rehabilitation carried out by unqualified staff. (Boyana Petkova, MD, paediatrician)

Most of the children with disabilities were placed in a home since they were infants. The conditions of their musculoskeletal system, the existing joint contractures and muscle hypertrophy indicate that not enough has been done for these children. Bedridden children are not provided breathing rehabilitation, a proven means of prophylactics for hypostatic pneumonia which is the No. 1 cause of child mortality in the homes. (Tsvetelina Milanova, physiotherapist)

There are children with stereotypical motions. The staff has no understanding of the significance of this behaviour and of correct treatment and prevention. Despite the existence of individual care plans, they are developed stereotypically. Most HMSCC have functioning day centres but the children from the institution are not always integrated in them, like for example, HMSCC Ivan Rilski in Sofia. (Margarita Stankova, MD, Assoc. Prof., psychiatrist)

In terms of logopaedic diagnostics and prevention, the diagnostics is currently covering children above the age of 3, which in reality compromises its preventive function in the early age of 0 to 3 years. (Svetlana Kartunova, logopedian)

**Family environment: foster care, reintegration and adoption**

**Foster care**

In 2013, there were 1,847 foster families taking care of 1,796 children. The data shows that the number of foster families has increased fivefold in comparison to the 391 in 2011. The introduction of professional foster care as an employment opportunity and the I Have a Family, Too project, implemented by the Social Assistance Agency in 83 municipalities since 2011, were the decisive factors behind the progress. The analysis of the information collected in by BHC during its 2013 monitoring of 17 foster families and adoptive parents, and the cases of reintegration in different communities discussed with Child Protection Departments, clearly indicate that most foster families have provided the necessary conditions to care for the children and raise them.

Foster care is asserting itself as successful temporary substitute mainly for smaller children, while children aged 7 through 18 tend to be reintegrated in their biological families or to be raised.

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192 Letter to BHC, ref. no. 9102/2296 of 21 December 2013 from the Social Assistance Agency to the Ministry of Labour and Social Policy.

193 Excerpts from foster parent interviews in Kostandovo: “...We give more care to them than to our own”, “All the love is for them”.

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Reintegration at any cost
The 2013 BHC monitoring in 20 HMSCC showed that the "expansion" of the HMSCC exit is not a smooth process. There were cases of deinstitutionalisation replicating institutionalisation. HMSCC and HCDCP directors share information about cases of re-institutionalisation (see the section above) as a result of reintegrating "at any cost", sending children with severe health problems back to their biological families, often a single mother or a large family of poor and unemployed parents. Without financial means, skills and development support by the state (healthcare, accompanying services, employment, training), the return of the children to their families often ends with their return to a home.

Adoption
No progress was marked with regard to the adoption procedures in 2013. 739 children were adopted nationally in 2012, of whom 48 with disabilities. 600 children were nationally adopted by 31 October 2013, of whom 27 with disabilities. According to SCPA, 340 children were adopted internationally in 2012. The older children and those with more severe health conditions are practically excluded from the adoption process. Children with severe health conditions are adopted internationally, in the US, Italy, Norway and Sweden. Out of the 567 children from HCMD (the institutions accommodating the children with the most severe disabilities) included in the adoption registers, only 12 have been adopted, all of them diagnosed with severe disabilities and adopted abroad. No child from HCMD had been adopted in Bulgaria since 2010.

The impression is that there is no progress in the support to the adoption process and that the state is not exercising sufficient oversight. Alerted by BHC, the Social Assistance Agency of the Ministry of Labour and Social Policy inspected the adoption process at the Stara Zagora Regional Social Assistance Directorate. Again alerted by BHC in 2013, the Ministry of Labour and Social Policy revised the practices with regard to the compliance with child registration and adoption procedures for full adoption. A Methodical Instruction on Coordination in Conducting National and International Adoption Procedures was developed in June 2013 and signed by the Ministry of Labour and Social Policy, the Ministry of Justice, the State Child Protection Agency and the Social Assistance Agency.

Profile of a re-institutionalised child as described by the director of the HMSCC in Burgas: "A girl aged 1 year and 1 month old, admitted on 26 October 2010, comes from the maternity ward of the hospital in Kazanlak. As a result of neglect and insufficient care on behalf of the mother, between her birth and her placement in HMSCC, the child was hospitalised at the maternity ward 11 times with severe viral infections and bacterial intestinal infections. Every time the child arrived at the hospital in a deteriorated and severe general condition due to lack of care and bad hygiene. The mother has another six children who are being raised in the same conditions. The child was admitted underweight and in unsatisfactory neural and mental development. Reintegrated in the family of the mother and the father on 8 May 2012."

Letter to BHC, ref. no. 92-920 of 11 February 2013 from the Social Assistance Agency to the Ministry of Labour and Social Policy.

Information on BHC request for access to public information, ref. no. 05-00-9/18.12.2013 of SCPA.

With regard to adoptions of children with severe medical conditions being delayed for eight years.

Letter to BHC, ref. no. 92-920 of 11 February 2013 from the Social Assistance Agency to the Ministry of Labour and Social Policy.
The lesbian, gay, bisexual, transgender and intersex people (LGBTI) in Bulgaria continue to face great social and legal challenges and discrimination which are not experienced by the heterosexual and cissexual people.\(^{199}\)

**Equality and non-discrimination**

In 2013 the LGBTI people in Bulgaria continued to be treated less favourably by the legislation in comparison to the people not belonging to these groups, as well as in comparison to other minority groups.

Consensual same-sex acts, when not performed in public, are decriminalized in the current Penal Code (PC) of 1968. However, the law still contains aggravated circumstances, which divide the criminal sexual acts into regular (undefined) and performed “with a person of the same sex” (art. 155, para 4; art. 157, para 1, 3 and 4).

In December 2013 the Ministry of Justice presented the draft for a new Penal Code.\(^{200}\) Articles 166 through 169 of the draft reproduce the vicious and for a new discriminatory separation of criminal sexual abuse with a person “of the same sex”, and criminal statute titles even contain the definition “homosexual act”. However, the aggravated circumstances of rape under art. 164 (paras 2, 3 and 4) are absent with regard to the “homosexual act”. Thus, in the case of a group “homosexual act” involving violence inflicted by two or more persons, the maximum sentence under art. 166 is eight years of imprisonment, while in the case of a “regular” (heterosexual) rape the maximum sentence is 15 years. The difference is even greater with regard to rape that has caused great bodily harm. The draft reproduces the doctrine of the current Penal Code, according to which the penalty for the rape of an underage person of the same sex is significantly lower than the penalty for the same crime when the raped person is of the opposite sex. Art. 164 of the draft is a continuation of the archaic understanding that only a woman can be raped. Such an approach is unjustified and deprives of protection the victims of such assaults. Furthermore, the approach does not recognise the possibility of someone being raped on the basis of protected grounds, for example, a man or woman being raped because of their sexual orientation, gender identity or gender expression, or because of their religion, etc.

Sexual orientation is a protected characteristic under the Protection against Discrimination Act (PADA, art. 4, para 1). Gender identity and gender expression, however, are not included among the grounds under art. 4 of PADA. In November 2013, with regard to the transposition of Directive 2006/54/EU of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), the interdepartmental working group formulated and submitted to Parliament the Act Amending and Supplementing the Protection against Discrimination Act, whereas a new item 17 is created in § 1 of the additional provisions - item 17: “With regard to art. 4, para 1, sex shall include also the cases of sex change”. However, the draft does not provide a definition of sex change, leaving room for interpretation that this text only protects post-operative transsexual people. By the end of 2013 parliament had not reviewed the draft.

On 20 September 2013, one day before the annual march for equality of the LGBTI people, the Sofia Pride, the Ataka party tabled a draft amending and supplementing the Penal Code. Its art. 155c stipulates: “Anyone manifesting publicly their or

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\(^{199}\) Cissexual or cisgender – a term denoting all people who are not transgender or transsexual.

In 2013 the LGBTI people in Bulgaria continued to be treated less favourably by the legislation. Art. 164 of the draft is a continuation of the archaic understanding that only a woman can be raped.

Personal and family life

Bulgarian legislation still does not recognize any form of same-sex family. Both the Constitution (art. 46, para 1) and the Family Code of the Republic of Bulgaria (art. 5) define marriage as a voluntary union between a man and a woman. The political parties have no position on this, active public debate is nonexistent. There are no legal provisions on cohabitation. There are more than 50 legal provisions regulating different rights, obligations, responsibilities or restrictions for married couples, of which same-sex cohabiting couples are de facto deprived. Unlike non-marital couples of different sex, same-sex couples do not have the opportunity to enter into any legally recognized union, which puts them in an unequal position. No form of adoption by a second person of a sex identical to that of the parent of a child has been legalised.

Hate crime and hate speech

The current Penal Code does not contain penal measures for hate crime or hate speech based on sexual orientation, gender identity or gender expression. These characteristics are not considered aggravating circumstances in the penal process. Hate speech based on sexual orientation may be punished under the administrative or the civil law proceedings under PADA. Over the year the people of different sexual orientation were subject to daily instigation of hate and discrimination which were by no means penalized by law enforcement bodies.

Freedom of peaceful assembly and of association and freedom of expression

In 2013, there were at least three non-governmental organisations whose activities were centered on the LGBTI community: the Bilitis Resource Centre Foundation; the Deystvie Association; and the LGBT Plovdiv Association. Small events were organised in Sofia, Plovdiv and Stara Zagora on 17 May, on the occasion of the International Day against Homophobia and Transphobia (IDAHO). The Sofia Pride scheduled for 22 June was cancelled and then postponed by three months upon manipulation and pressure by the Municipality of Sofia and representatives of the Ministry of Interior against the organisers who used the ‘participants’ security’ argument in the context of the peaceful anti-government protests at the time. In disagreement with the decision to postpone the pride, BHC left its organisational committee. BHC felt that in fact this constitutes a restriction of the right to association and peaceful assembly by the Municipality and the Sofia Directorate of Internal Affairs whose obligation is to ensure the safety of the participants in the parade and who cannot use insecurity as an argument of not having it held. The fact that the Municipality insisted on the cancellation of the peaceful Sofia Pride, but not of the aggressive counter-marches planned for the same day was scandalous. The Pride took place on 21 September with the participation of some 600 people. The art festival and the film festival that accompany the Sofia Pride were held in June, as initially planned.

On the initial date of the Sofia Pride, 22 June, LGBT activists taking part in massive protest against Plamen Oresharski’s government were attacked by football fans. Among the latter was Elena Vatashka, Bulgarian Football


Union’s coordinator for the interaction with fans, chairperson of the Bulgarian Football Fans Association and former wannabe member of parliament from the ultranationalist VMRO party. The police initially appealed to the activists to leave the protest, then passively refused to intervene.²⁰³

Two anti-pride events were held in June and September in Sofia, accompanied by a march in support of the traditional family in Burgas organised by protestant churches and defined by its organisers as a counteraction to the Sofia Pride.²⁰⁴ The collection of signatures against the pride was also organised.²⁰⁵ On 14 June ultra-radical fans of the Botev Football Club verbally attacked and physically damaged property during a movie projection organised by LGBT Plovdiv.²⁰⁶

The 9th LGBT Art Fest took place from 3 to 5 December in Sofia. The festival’s theme was Take Off the Mask and the event was organised by the Bilitis Resource Centre in partnership with the Red House, LGBT Plovdiv and the Bulgarian Helsinki Committee who presented Amnesty International’s Write for Rights initiative. The agenda included exhibitions of LGBT authors, interactive performances, a workshop and movie projections.²⁰⁷

Access to justice

The proceedings against father Evgeni Yanakiev from Sliven’s St. Dimitar Church was finally terminated in 2013. In an interview for the Standart daily in the summer of 2012 the priest publicly appealed that “everyone who considers themselves Christian and Bulgarian oppose the planned gay parade in any way possible”, indicating that throwing stones against the participants in the parade was “a feasible option”. LGBT activists Radoslav Stoyanov and Dobromir Dobrev then alerted the prosecutor’s office. Pre-trial proceedings were initiated but were terminated in 2013. When Stoyanov protested the prosecutor’s termination order, it was upheld first by the Sofia Area Court and then finally by the Sofia City Court on 28 November. According to the prosecutor and the judges, Stoyanov had not suffered damages under art. 74 of the Penal Proceedings Code in his capacity as a non-heterosexual citizen and LGBT activist.²⁰⁸

The trial for the 2008 homophobic murder of Mihail Stoyanov began at the same time.²⁰⁹ BHC monitored the start of the trial. The third indictment formulated by the new overseeing prosecutor did not reflect the statements made by the defendants during their questioning that they had attacked Mihail Stoyanov because they were “cleansing the park of gays”. The presumed sexual orientation of the victim was not discussed as a potential murder motive during the court sessions monitored by BHC.

The Supreme Administrative Court (SAC) ruled in December as last instance against film director Andrey Slabakov. Appearing in Nova Television’s Na Inat show in 2011, Slabakov said that “[...] the proliferation of AIDS is not only due to the drug addicts, as we know, in some countries it is allowed one to be a drug addict, but the cigarettes are very harmful... Besides, not to mention that

²⁰⁷ “Celebrities support the 9th edition of the LGBT ART FEST, Take Off the Mask”, available at: http://www.bilitis.org/lgbt-fest
²⁰⁸ Decision No. 3708 of 2013 on case No. 5247/2013 of the Sofia City Court.
²⁰⁹ “Five years later, the trial for student Mihail Stoyanov’s murder begins”, 24 Chassa daily, 18 October 2013, available at: http://www.24chasa.bg/Article.asp?ArticleId=2378325
they are massively disseminating AIDS, because not all gays are homosexual, some are bisexual. This doesn’t work in society’s interest.” This prompted LGBT activists Stoyanov and Dobrev to file a complaint with CPD, but the Commission did not find the statement discriminatory. In its December 2013 decision, however, SAC ruled finally that it constitutes discrimination on the grounds of sexual orientation.

Institutions, organisations and human rights activists

The interaction between the institutions and the LGBT community and its non-governmental organisations and advocates remained weak and formalistic in 2013. This year, too, no political party or institutional representatives supported openly and publicly the Sofia Pride, nor attended the parade or the accompanying cultural events. The event was supported by 16 embassies and foreign members of the European Parliament.

The American College in Sofia once again held its annual Day of Silence, dedicated to abuse in school. The event was organised by the Embrace School Club with the support of school management and the involvement of an activist from the Deystvie Association. With regard to the event, Ataka MP Pavel Shopov addressed during the regular parliamentary control session on 29 November several questions to the minister of education pertaining to the activities of the Action organisation. According to him, the Ministry of Education should not allow “such events” that scandalise the public morale and morality and that the “Action is part of ‘certain forces’ which are ‘working to ruin our country in cultural and spiritual terms’.” In response to the member of parliament, minister Anelia Klisarova thanked him for the question and for the “alarm” it posed. In her statement Klisarova implicitly agreed with Shopov’s position, saying that National Assembly discussions have influence on all schools with regard to “what events, what seminars, on what topics they should be organised”.

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