ALTERNATIVE REPORT ON THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS IN BULGARIA (long version)

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BULGARIAN HELSINKI COMMITTEE
The Bulgarian Helsinki Committee was established on 14 July 1992 as an independent non-governmental organisation for the protection of human rights.

The objectives of the committee are to promote respect for the human rights of every individual, to stimulate legislative reform for bringing Bulgarian legislation in line with international human rights standards, to trigger public debate on human rights issues, to carry out advocacy for the protection of human rights, and to popularise and make widely available human rights instruments.

The backbone of the committee’s activities is systematic monitoring of the human rights situation in the country. These activities provide information on the state and dynamic of human rights in Bulgaria and supply the organisation’s legal defense program with cases of human rights violations for litigation before domestic and international courts. The committee reports on human rights violations with a special emphasis on the rights of ethnic and religious minorities, refugees and asylum-seekers, rights of the child, rights of persons with disabilities, protection from torture and ill-treatment, freedom of expression and association, problems of the criminal justice system.

The BHC offers free legal assistance to the victims of human rights abuses. The committee also works in the sphere of human rights education, organizes conferences, workshops, public actions and other forms of advocacy activities aiming at bringing the concept of human rights to the attention of the general public.

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INTRODUCTION

The Bulgarian Helsinki Committee submits its observations on legislative, judicial, administrative and practical developments related to the implementation of the International Covenant on Civil and Political Rights (the Covenant) for the period 2012-2018. The observations do not cover the entire period. They focus on the developments from the last several years. Thematically, they follow for the most part the List of issues prior to the submission of the fourth periodic report adopted by the Human Rights Committee (the Committee) at its 114th session (CCPR/C/BGR/QPR/4). In addition, they highlight developments that have not been included in the list of issues but fall within the Covenant’s substantive scope.

As a whole in the period under review and particularly over the past several years there have been some serious problems and negative developments in the implementation of the standards of the Covenant in Bulgaria. This may be attributed to a variety of factors, including the growing influence on the government by some ultranationalist parties; lack of a much-needed reform of the judiciary; worsening of the media climate and negative human rights developments at the international level. There have been some positive developments as well, mostly due to the attempts by the Bulgarian authorities to comply with concerns and recommendations by UN and Council of Europe human rights bodies, as well as with the EU law.

In the period under review Bulgaria had several governments. For most of the time, they were dominated by the centre-right political party Citizens for European Development of Bulgaria (GERB), which entered into several coalitions to obtain the necessary parliamentary majority. As a whole, the public perception of human rights in general and of the most serious human rights problems of Bulgaria gradually deteriorated. The mainstream media, whose dependence on the government increased, contributed to supressing the voice of the vulnerable groups and of the human rights NGOs.

1. NON-DISCRIMINATION AND HATE CRIMES AGAINST MEMBERS OF ETHNIC AND RELIGIOUS MINORITIES, INCLUDING MIGRANTS, REFUGEES AND ASYLUM SEEKERS

1.1 Hate crimes in the Bulgarian Criminal Code

The Bulgarian Criminal Code was amended in May 2011 to expand the scope of hate crimes. Still, it restricts the formulations only to a limited number of grounds – race, nationality, ethnic belonging and religion. Other protected grounds, such as sex, sexual orientation, disability, age or other grounds are not included.

Article 162 of the Criminal Code provides that “whoever through words, printing materials or other mass media, through electronic information systems or in other way propagates or incites to discrimination, hostility or hatred based on race, nationality or ethnic belonging, shall be punished
by deprivation of liberty between one and four years and with a fine between BGN 5,000 and 10,000 (EUR 2,500 and 5,000), as well as by public reprimand”. ¹

For **murder committed with hooligan, racist and xenophobic motives** the penalty shall be deprivation of liberty between 15 and 20 years, life imprisonment or life imprisonment without parole.²

For **infliction of bodily injury with hooligan, racist or xenophobic motives** the penalty shall be:

1. deprivation of liberty between three and 15 years for severe bodily injury;
2. deprivation of liberty between two and ten years for medium bodily injury:
3. deprivation of liberty for up to three years for light bodily injury consisting of health disorder and up to one year or probation when the victim suffered pain but without health disorder.³

Infliction of any type of bodily injury with racist or xenophobic motives is an aggravated crime punishable by longer terms of deprivation of liberty compared to the ordinary crimes of infliction of bodily injury. It also makes the infliction of light bodily injury with such motives a crime, which is prosecutable by a public prosecutor, unlike most other cases of infliction of light bodily injury, which is subject to private prosecution.⁴

It should be noted that a separate provision of the **Criminal Code** deals with violence in general terms specifically motivated by bias on several grounds: “Whoever uses violence against another or damages his/her property because of his/her race, nationality or ethничal origin, religion or political convictions, shall be punished by imprisonment of up to four years, a fine between BGN 5,000 and 10,000 (EUR 2,500–5,000) and public reprimand”.⁵ However, the general provision of the **Criminal Code** on damaging another person’s property provides for higher penalties – up to five years of imprisonment.⁶

The choice whether to apply one or both of the provisions in cases involving bias-motivated violence lies entirely within the discretion of the prosecution and the investigation authorities and the evidence gathered as there is no imperative legal provision to oblige them to take the specific motive into account.⁷

The **Criminal Code** contains a separate provision that deals in particular with threats intended to prevent individuals from practicing their religious beliefs: “A person who, by force or threat hinders citizens from freely practising their faith or from performing their religious rituals and services, which do not violate the laws of the country, the public order and morality, shall be punished by deprivation of liberty of up to one year. The same punishment shall also be imposed upon a person who in the same way compels another to take part in religious rituals and services”.⁸ However, the

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¹ Bulgaria, **Criminal Code** (Наказателен кодекс) (2.04.1968), Art. 162(1) (last amended 27.05.2011), available in Bulgarian at: [http://www.lex.bg/bg/laws/lidoc/1589654529](http://www.lex.bg/bg/laws/lidoc/1589654529).
² Ibid, Art. 116(1)(11) (last amended 27.05.2011).
³ Ibid, Art. 131(1)(12) (last amended 27.05.2011).
⁴ Ibid, Art. 161(1).
⁵ Ibid, Art. 162(2) (last amended 27.05.2011).
⁶ Ibid, Art. 216(1).
⁷ Bulgaria, **Criminal Procedure Code** (26.04.2006), Art. 219(3)(3).
⁸ Bulgaria, **Criminal Code** (02.04.1968), Art. 165(1) and (2).
general provision of the Criminal Code on coercion provides for higher penalties – up to six years of imprisonment.⁹

Article 164 was amended in 2015 to provide that “whoever propagates or incites to discrimination, violence or hatred on the ground of religion through words, printed materials or other mass media means, through electronic information systems or other way shall be punished with deprivation of liberty of up to four years or probation and with a fine between BGN 5,000 and 10,000 (EUR 2,500-5,000)”.¹⁰

As to the acts of vandalism against places of worship the Criminal Code provides that “whoever desecrates, destroys or damages a religious temple, devotional house, sanctuary or an adjacent building, their symbols or gravestones, shall be punished by imprisonment of up to three years or probation and a fine between BGN 3,000 and 10,000 (EUR 1,500 - 5,000)”.¹⁰ Again, the penalty is lower than the one provided for a simple/general case of property damage.

Therefore, while the 2011 supplements to Articles 116 (murder) and 131 (bodily injuries) of the Criminal Code oblige the investigation authorities and the courts to investigate and to take into account at the trial phase the racist and xenophobic motives of the perpetrators of crimes in certain cases, the latter are limited only to murder and causing bodily injury. In the case of other crimes, perpetrated with racist and xenophobic motives, e.g. arson or rape, no such obligation exists.

1.2. Role of the investigation authorities, prosecutors and judges in investigating hate crimes

Where the Criminal Code contains the respective provision, police officers, prosecutors and judges should take into account the racist or xenophobic motive as otherwise the case cannot be tried under the particular text, i.e. when deciding to prosecute, the investigation authorities and the prosecution should have already taken the racist motive into consideration as they need to qualify the act under the Criminal Code when presenting the perpetrator with the charges.¹¹ However, the law leaves it to the discretion of the investigation bodies/judges to a large extent whether a discriminatory motive should prompt a harsher sentence as there are no particular guidelines as to how such motives should be regarded and therefore the decision on that matter could be subjective. The law provides that “the court and the investigation bodies shall take their decisions by inner conviction, based on an objective, thorough and complete inspection of all circumstances of the case, under the guidance of the law”.¹²

1.3 Hate crimes - number of cases, tendencies

As a whole, in the period under review and particularly over the past three years (2014-2017) there has been a marked deterioration in the implementation of international standards related to addressing the climate of rising discriminatory and hate speech and crimes in Bulgaria. This is due to a combination of factors, the most prominent of which is the growing influence wielded by several ultranationalist political parties of a neo-totalitarian type. At present, there such parties united in

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⁹ Bulgaria, Criminal Code (02.04.1968), Art. 143(1).
¹⁰ Ibid, Art. 164(2).
the coalition “United Patriots” are formally a coalition partner of the current government. Other factors include the worsening of the media climate and the lack of reform of the judiciary and of the law enforcement institutions in general. The positive developments, which took place in the period under review, concerned for the most part transposition of the EU law related to the prosecution of public incitement to hatred, discrimination and violence on national, racial, ethnic and religious grounds. The enforcement of these provisions however remain a serious concern.

In 2016 the Bulgarian government submitted a report on the implementation of the obligations under the UN Convention of Elimination of All Forms of Racial Discrimination and the country’s review by the UN Committee on the Elimination of All Forms of Racial Discrimination took place in April 2017. For the purpose of the review the government presented figures about the number of cases initiated under the provisions regulating hate crimes of the Criminal Code during the period 2008-2014. The figures show that these provisions are very rarely applied – from 0 to a maximum of 16 times a year and that from 0 to 3 persons are sentenced for hate crimes a year. It has to be taken into consideration that these negligible instances of prosecution and conviction relate to those of them related to race, ethnicity and religion but not to other grounds such as sexual orientation, disability, age, gender identity, etc.

1.3.1 Incitement to discrimination, hostility or hatred based on race, nationality or ethnic belonging

Since the autumn of 2013, when the first increase in the number of asylum seekers was observed, several political parties and media contributed actively to the creation of a hostile and threatening environment for refugees and asylum seekers. In addition, as was the case during previous years, Roma and Muslims continued to be portrayed as anti-social and anti-national elements in the public speeches of party leaders. This was widespread on several cable TV channels, including SKAT TV, Alfa TV and Evrokom TV, as well as in some tabloid newspapers with wide circulation, such as Weekend, Retro, Telegraph, Monitor and Pensioneri. In 2013, the leaders of the Ataka party were particularly active in instigating hatred, discrimination and violence towards refugees. Through media owned by the party – the Ataka newspaper and the Alfa TV – party leaders 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”. In connection with this, BHC represented a group of individuals of Syrian origin residing in Bulgaria in a complaint before the Protection against Discrimination Commission (PADC) against the MP Magdalena Tasheva and the Ataka political party as the owner of the media. The Commission offered partial relief to only one of the applicants, but its decision was overturned by the Sofia Administrative Court thus leaving this virulent public incitement unpunished. In early November 2013, Angel Djambazki, one of the leaders of VMRO party and at present member of the European Parliament, at a rally in Sofia called on citizens to get organised and armed in order to “cleanse” the city of illegal migrants. The Djambazki appeal was followed by a series of assaults by hate groups on

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foreigners in Sofia. Upon a BHC signal to the Prosecutor General, the prosecutor’s office initiated pre-trial proceedings, but they were subsequently discontinued.

In advance of the October 2014 parliamentary elections, ultra-nationalist political parties used virulent anti-minority rhetoric in both their public speeches and in their platforms. This continued also after the elections. On 7 December 2014, the health minister Petar Moskov (of the Reformist Bloc coalition partner) made a statement about attacks against medical emergency teams in Roma neighbourhoods, which was widely publicised. The minister announced on Facebook his intention to have the medical emergency teams stop responding to emergency calls from Roma neighbourhoods. Minister Moskov’s racist threat spurred a storm of indignation among the Roma community and rights activists. Several organisations and individuals appealed to the prosecution, insisting that it hold the minister responsible for instigating racial hatred and discrimination. At the end of February 2015, the Sofia City Prosecutor’s Office refused to initiate criminal proceedings, accepting that Moskov’s actions did not constitute targeted and deliberate instigation of racial discrimination, violence or hatred based on race, nationality or ethnic origin.

Rights activists defending marginalised minority groups and migrants also became victims of hate speech in 2014. Such speech was especially widespread on the Internet and in social media. The main themes articulated by such speech are that the non-governmental organisations are working against the interests of Bulgaria (being labelled “anti-Bulgarian”); that they are “financed from abroad” and are therefore “foreign agents”. On 12 September 2014, as part of its election campaign, the Bulgarian National Union – New Democracy (BNS-ND), a small ultranationalist political party, and the Movement for the Protection of the Fatherland, a Facebook group, organised a protest rally in front of the BHC office under the motto “Let’s ban the BHC”. The rally was attended by some 50 individuals who shouted racist insults, threats to the life of the staff, called the neighbours in the residential building, which houses the BHC offices, to banish its staff from the offices and raised and disseminated posters with such calls. All this happened in front of police officers present at the rally. The prosecution was informed about the threats heard during the rally. It initiated an investigation against an “unknown perpetrator”, which was later stopped for allegedly failing to identify the perpetrators. This is despite the fact that BHC submitted video evidence and witness statements, which clearly identified several of the perpetrators and organisers of the protest.

2016 brought about a drastic deterioration in the situation with respect to public instigation to hatred, discrimination and violence towards ethnic and religious minorities, as well as towards human rights defenders and other organised anti-racist activists. In July 2016, the Open Society Institute published a survey on the experience of ordinary people with hate speech. The survey showed a sharp increase in public hate speech compared to 2014. Thus, the share of the respondents who said that they have heard hate speech in general increased by 11% compared to 2014. In 92% of the cases the hate speech was addressed towards Roma. At the same time hate speech towards

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14 For a short account of these assaults see: Bulgarian Helsinki Committee, Human Rights in Bulgaria in 2013 (2014).

15 The minister stated: “If someone chooses to live and act like an animal, they also receive the right to be treated as such. Even wild animals understand when you are trying to help them and wouldn’t attack you... As of tomorrow, [medical emergency] teams will enter locations where such incidents have occurred only if an agreement is reached with the local community’s “opinion leaders” to personalise the responsibility of the said population, or accompanied by police teams. When possible and as possible. I will issue a special order relieving the regional centres and the teams of the responsibility for these decisions.”
Muslims increased more than three times (from 11% to 38%), whereas hate speech towards the Turks increased by 19%. Since 2013 hate speech towards foreigners increased more than four times (from 5% to 21%). Several other organisations also reported sharp increases in public hate speech in 2016. In a statement made in October 2016, John Dalhuisen, Amnesty International’s Director for Europe, stated: “The Bulgarian authorities have not only failed to counter the climate of intolerance, but have actively engaged in inflammatory speech and at times openly encouraged violence.”

During 2016 numerous protests and demonstrations took place targeting mainly refugees or Roma, in which hate speech often overflowed into direct calls to violence. In May, a traffic accident between two drivers in the town of Radnevo ended with the physical assaults of passengers from one of the vehicles. It turned out that the attackers were of Roma origin. For several days protests by local citizens organised by hate groups took place in front of the local Roma neighbourhood known as ‘Cantona’. All its inhabitants escaped and were absent from the city for several days. The protesters shouted “Bulgaria for the Bulgarians!” and "Gypsies into soap!". A Facebook group called ”Truth for Radnevo” posted videos with Hitler and the members of the neo-Nazi network “Blood and Honour” actively participated in the protest. This public incitement to hatred and violence did not give the competent authorities sufficient ground for prosecutions.

The trend existing for years to allow, approve and even praise speech that instils hatred or incites people to violence against some of the most vulnerable groups in society, continued in Bulgaria in 2017. Hate speech settled permanently in public speaking through the media that often give an uncritical tribune to racist, xenophobic and homophobic views and to anti-minority activists. Rosita Elenova, CEM member, comments: “Hate speech has become a model, if you don’t speak in a similar style, you would not be invited to a studio, you are not “interesting.” Trampling on dignity, violation of the sacrosanct is the norm, discrimination – everyday occurrence.”

In October 2017, Valeri Simeonov, the leader of the ultranationalist party National Front for the Salvation of Bulgaria, currently Deputy Prime Minister and Chairman of the National Council for Cooperation on Ethnic and Integration Issues, was sentenced at first instance by the District Court – Burgas for his anti-Roma hate speech as Member of Parliament from the rostrum of the National

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16 The results of the survey are accessible at the Open Society Institute web site: http://osi.bg/?cy=10&lang=1&program=1&action=2&news_id=716.
19 In September, residents of the Ovcha Kupel district in Sofia organised a protest demanding the immediate closure of the refugee centre in the neighbourhood, and "immediate expulsion of illegal migrants". The event was organised by the VMRO, Ataka and the NFSB political parties. Protesters chanted "Aliens out!" and "I do not want you here!". Small groups of residents of the town of Harmanli repeatedly protested against the refugee reception centre in the city, organised mainly by VMRO and NFSB. In October, the extremely racist group "National Resistance" organised a protest march in Sofia against migrants and shouted racist slogans in front of the police.
21 The statement for which Simeonov was found in breach of ant-discrimination law was: “It is an indisputable fact that [for] a large part of the Gypsy ethnus ... theft and robbery have become a means of subsistence,
Assembly on 17 December 2014. The case was filed by Roma journalists Kremena Budonova and Ognyan Isaev, represented by the BHC Legal Defence Programme. Simeonov was sentenced to put an end to the violation, as well as to refrain in the future from further violations. However, in May 2018 the Burgas Regional Court overturned the decision and found that the intent of Simeonov was not to harass and insult the Roma community but to “present the serious social and lifestyle problems to which a part of the Roma ethnic group is exposed and to point at the reasons for this situation”.  

1.3.2 Incitement to discrimination, violence or hatred on the ground of religion

Throughout the period under review many mosques in Bulgaria were attacked and desecrated with insulting, including islamophobic, graffiti. With few exceptions, the police and the prosecution did not show much interest and activity in identifying the perpetrators and punishing them. 2014 saw the biggest anti-Muslim demonstrations over the past years in several cities of Bulgaria, with virulent anti-Muslim and racist hate speech and bias-motivated violence. For all incidents in 2014, only one person was convicted in 2015 for the broken windows of a mosque during a 14 February 2014 demonstration in Plovdiv. He was sentenced to 14 months of probation under Article 164(2) and Article 325(1) of the Criminal Code.

A strong boost to islamophobic hate speech was given in 2016 by the adoption of several regulations by different municipalities of Bulgaria prohibiting the veiling of Muslim women in public places. Parliament adopted a comprehensive law in September 2016, which restricts the wearing of clothing disguising or concealing the face in public. The draft was proposed by the extreme right Patriotic Front and its adoption was preceded by intense islamophobic hate speech by breaking the law – norm of behaviour, giving birth to children – profitable business at the expense of the State, child care – teaching the minors to beg, to prostitute, to steal and to push drugs.” “… Insolent, cocky and brutal humanoids, demanding the right to receive wages without working, demanding sickness benefits without being ill, child benefits for children who play with the pigs in the street, and maternity benefits for women with instincts of stray bitches?…” The court ruled that these words constituted harassment under the Protection against Discrimination Act, because they “lead to a violation of the dignity of the person and create a hostile, degrading, humiliating and insulting environment, and everyone with Roma ethnic belonging can be affected by them, whereby it is not necessary for the statement to refer to the entire Roma community so as to be perceived as violating the dignity of an individual representative of that community, who identifies himself/herself as such.”


23 Burgas Regional Court, Decision No. IV-40 of 18 May 2018, case No. 280/2018.

24 Dozens of such incidents were described in the annual reports of the Bulgarian Helsinki Committee, available on the organisation’s Internet site: www.bghelsinki.org.

25 E.g. on 19 November 2013, around 11:40 p.m., the mosque in Blagoevgrad was subjected to yet another criminal act. A man broke the window and tried to break the door. The imam happened to be inside and called the police who caught the perpetrator on the scene of the crime. At 8:00 a.m. the following day the police called the imam and told him that the perpetrator would stop by and pay for the damages. He had only been offered to sign a “warning protocol”. On 20 December 2013, around 11:30 p.m., there was yet another attack against the Blagoevgrad mosque. 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.

26 The official statistics, which BHC sought in 2016, mention only this sole indictment under Art. 164(2) and no other indictment for crimes against religions for the entire 2014, see: BHC, Human Rights in Bulgaria in 2015 (2016).
representatives of that political coalition. Other public figures also spoke in support of the draft law, including the Prosecutor General, the Deputy Prime Minister and the Minister of Education.

1.4 Impunity for hate speech

Public incitement to hatred, discrimination and violence in Bulgaria have become a particularly serious problem over the period 2012-2018. Most victims of such crimes include Roma, Muslims and migrants. This goes by and large unpunished.\(^\text{27}\) The statistics presented by the government show very low conviction rates. Importantly, there is no indication in how many cases the convicted persons belong to ethnic minorities, as Articles 162 and 164 of the *Criminal Code* have been vigorously enforced against persons belonging to such groups, but rarely against members of the majority and never against politicians who have been particularly virulent instigators.

In 2016, BHC sought information from the Council for Electronic Media (CEM), the body overseeing the work of the radio and the TV broadcasting operators in Bulgaria, on the number of sanctions imposed on them over the past five years for public incitement of hatred. Article 10(1)(6) of the *Radio and Television Act* prohibits broadcasts “inciting hatred on the grounds of race, sex, religion and nationality”. On 21 March 2017, CEM provided the requested information. It appears that since January 2012 it had sanctioned with fines only two TV operators: on 10 November 2015 it sanctioned Evrokom TV with BGN 3,000 (EUR 1,500) for inciting hatred against Roma in the program “PSYCHO-dispanser”,\(^\text{28}\) and on 15 December 2015 it sanctioned SKAT TV with BGN 3,000 (EUR 1,500) for inciting hatred against Roma in a report entitled “Bourgas – the city of Gypsy lawlessness and burqas?!”.\(^\text{29}\) In both cases the fines are at the minimal threshold envisaged by law and could hardly have and, given the subsequent behavior of both TV operators, did not have any dissuasive effect. No sanction was ever imposed on the Alfa TV of the Ataka party and not one sanction was imposed in 2016 when racist hate speech reached unprecedented proportions. Compared to the scale of the racist hate speech spread in the abovementioned, as well as in several other media, the CEM attitude can fairly be described as a complicity to the impunity, which public incitement to hatred, discrimination and violence enjoys in the Bulgarian media.

2. EQUALITY BETWEEN MEN AND WOMEN

2.1. Framework for gender equality and main problems

The *Equality between Men and Women Act* was adopted in April 2016.\(^\text{30}\) This is purely a framework regulation that governs the manner in which the executive authorities shall conduct state policy on gender equality. Article 2 of the *Equality between Men and Women Act* defines the principles that inform state policy in this field, namely:

- Equal opportunities for men and women in all areas of social, economic, and political life;
- Equal access for men and women to all resources in society;

\(^{27}\) ECtHR judgment in the case of *Karaahmed v. Bulgaria* (no. 30587/13, judgement of 24 February 2015) involving an Ataka mob attack on Sofia’s Banya Bashi mosque on 20 May 2011 deals with a typical example of the impunity, which perpetrators of hate speech and hate crimes enjoy.

\(^{28}\) “PSYCHO-dispanser” was a virulently racist program of the Evrokom TV in the period 2013-2016 targeting Roma, migrants and Muslims.

\(^{29}\) CEM, Decision No. RD-05-37 of 21 March 2017.

\(^{30}\) *Gender Equality between Men and Women Act*. (promulg. SG., issue 33 from 26 April 2016).
- Equal treatment of men and women and prevention of gender-based discrimination and violence;
- Equal representation of men and women in all decision-making institutions;
- Overcoming gender-based stereotypes.

The government entities that play a key role in conducting state policies are the Council of Ministers, the National Council on Equality at the Council of Ministers, and the Ministry of Labour and Social Policy. It is also planned that all central and local units of the executive branch should assign officials who will play the role of coordinators on gender equality. The executive authorities in accordance with the National Strategy on Gender Equality, which was adopted by the Council of Ministers, enforce the policy on gender equality. The next step is to identify the areas where temporary incentives will be applied in order to achieve equal representation, equal opportunities, and gender equality in those areas where inequality has been established.

The Bulgarian Helsinki Committee pointed out at the time of the adoption of the *Equality between Men and Women Act* that it was strongly criticised by the ombudsman and human rights organisations even at the draft-bill stage because of its declaratory tone, the lack of substantive legal regulations, and its overall inability to achieve the stated goals.

In November 2016, while implementing the new law, the Council of Ministers adopted the new *National Strategy for Promoting Gender Equality 2016–2020*, as well as indicators for its implementation – foundational programme documents that determine key state policies and activities to achieve gender equality. There are five priority areas of focus: 1) increasing the participation of women in the labor market and achieving an equal degree of economic independence; 2) decreasing the gender pay gap; 3) promoting equal participation of men and women in decision making; 4) combating gender-based violence, and protecting and supporting victims of gender-based violence; 5) changing the existing gender stereotypes in various spheres of society.

However, the new national strategy fails to meet the highest standards because of the following shortcomings:

- **Lack of a baseline assessment about the state of gender equality** in Bulgaria prior to the new strategy, and a lack of an analysis of current achievements, as well as a description of the projected outcomes from the proposed policies (for example, a percentage indication of the projected decrease in the gender pay gap five years from now).
- Most of the activities directed towards the achievement of the strategic goals have been formulated in general and abstract terms (for example, “increasing the awareness of educational and professional training opportunities”). In fact, 1/3 of the strategic goals are

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31 Ibid, Art.8.  
32 Ibid, Art.5.  
33 Ibid, Art.15.  
about “increasing awareness” or “increasing understanding” and only one of the measures sets forth specific changes in the regulatory framework.

- The activities within the strategy fail to address specific vulnerable groups of women who are victims of multiple discrimination, such as women from ethnic and religious minorities, women seeking shelter, and female refugees, women with disabilities, female prostitutes; LGBTI women, girls.

At the same time, the gender wage gap is increasing at an alarming rate in Bulgaria. Data published by the National Statistical Institute (NSI) in 2016 showed that in 2015 the gender pay gap was 14.2% (in favor of men), which was the highest recorded difference since 2006, or since the NSI has been collecting this data. In 2016 the gap was reported to be 13.2%.³⁶

After the adoption of the Equality between Women and Men Act Bulgaria continued to lack comprehensive policy on gender equality. One of the few commitments of the government, explicitly formulated in the law – to adopt plans for implementation of the National Strategy for Equality between Women and Men – remained unfulfilled in 2017. That women are more capable than men to take care of the dependent members of the family and for the household remained among the most sustainable and harmful gender-based stereotypes in Bulgarian society. Immediate expression of its action can be seen in the statistics of the National Social Security Institute (NSSI), where a very serious gender inequality is observed with respect to the use of paid leave to care for dependent members of the family. For yet another successive year, the NSSI data indicate that in almost 100% of the cases it was women who remained at home to care for sick members of the family and for the small children, even when under the law leave can be used or transferred to be used to the man.³⁷

Bulgaria ranks last in the European Union in gender equality with respect to the “Time” indicator. That indicator measures the time that women and men devote to unpaid domestic work and care for children, sick and elderly people, as well as the time that they devote to themselves through participation in sports, cultural or other events. Thus, for example, the percentage of women involved daily with cooking or other domestic duties in Bulgaria e 72.9, whereas for men it is only 13. At the same time, the share of men who devote to entertainment at least one hour every other day is 60% higher compared to women. This results in lower remunerations (by 15.4%) and pensions (by 35%), as well as higher risk of poverty and social exclusion for women in Bulgaria compared to men.

One of the few positive initiatives of Bulgaria in this sphere is that the Programme for the Presidency of the Council of the European Union notes that efforts will be directed towards adoption of the proposed new Directive on the balance between professional and personal life of parents and care

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³⁶ National Statistical Institute (2017). Gender Pay Gap (dynamic order). Available online at: http://www.nsi.bg/bg/content/3976%3F-%D0%B0%D0%B7%D0%BB%D0%B8%D1%87%D0%B8%D0%BD-%D0%B2-%D0%B7%D0%BF%D0%BB%D0%B0%D1%89%D0%B0%D0%BD%D0%B5%D1%82%D0%BE-%D0%BF%D0%BE-%D0%BF%D0%BE-%D0%BB.

A principal objective of that Directive is to increase the use by men of leave for family reasons and flexible work schemes. The social expectation that women are the main caretakers of children and sick family members has not changed over the years. The disproportional distribution of responsibilities between parents is obvious from the NSI statistical data.

In contrast to the strategic promises of the state to guarantee gender equality, the changes in the Labour Code in December 2016 demonstrated that Bulgarian lawmakers once again reproduced the stereotype of the gender-biased role of women to raise children. The amendments and supplementation to Article 163 of the Labour Code attempted to equalize the regulatory procedures for leaves of absence of adoptive parents following an adoption and for leaves of absence of biological parents after pregnancy and delivery, by automatically equating the status of the adoptive woman with that of a mother and, respectively, the adoptive man with that of a father. This means that, according to Art. 163, Para. 3 of the Labour Code, the beneficiary of the right to a leave of absence for adoption and the corollary benefits is only the adoptive woman.

2.2. Case-law of international and national bodies connected with women’s rights in Bulgaria

In 2017, the European Committee of Social Rights admitted for consideration two complaints against Bulgaria, both addressing important problems connected with women’s rights. The first complaint was filed on behalf of the University Women of Europe, an international non-governmental organization. The applicant claims that the standards of the European Social Charter (the Charter), connected with the right to work, the right to equal remuneration, the right to equal opportunities and equal treatment in exercising the right to work, without discrimination on the grounds of gender, as well as the total ban of discrimination in exercising the rights under the Charter, have not been fulfilled with respect to women in Bulgaria. In this connection, the University Women of Europe points out that irrespective of the international commitments and the national legislation, the unequal remuneration between the genders is a fact in Bulgaria, whereby women receive lower remunerations. The applicant also claims ineffectiveness of the national bodies authorised to fight against discrimination at work. The complaint also states that in comparison with men, women in the private sector in Bulgaria occupy an unproportionally low number of leading

positions, whereby the national legislation does not impose a requirement for balanced representation of men and women in the composition of the managing bodies of the companies.

The second complaint was filed by the European Roma Rights Centre, an international non-governmental organisation, in cooperation with the Bulgarian Helsinki Committee. The applicant adduces in it arguments that violation of the provisions of the Charter, guaranteeing their right to protection of health, the right to social and medical assistance and the right to non-discrimination, is admitted with respect to women of Roma origin in Bulgaria, these violations being manifested in the sphere of the access to sexual and reproductive health services. More specifically, it is claimed that Roma women in Bulgaria are victims of segregation in maternity wards, where they are admitted in places with poorer material conditions, subjected to racist insults, and in some cases – of physical violence as well.

In December 2017, the European Court of Human Rights communicated to the Bulgarian government the case of Fartunova and Kolenichev v. Bulgaria, which concerns another important aspect of gender equality in Bulgaria. The two applicants in the case are a man and a woman who are living together as a couple and have two children of their own. They complained of violated right to personal and family life, in connection with the existing legislation under which the child’s family name may be formed only from the father’s family name or patronymic, without a possibility to be formed from the mother’s names, irrespective of the will of the parents. The applicant Fartunova also claims that she was victim of discrimination because of the less favourable treatment of unmarried women like her, introduced by law, expressed in the impossibility for the family names of women to pass as family names of their children, whereas for men in an identical situation that option is guaranteed.

The case-law of the Protection against Discrimination Commission (PADC) for 2017 on cases of gender discrimination, including in the form of sexual harassment, is strongly restricted. During that year, the PADC ruled on the substance of three complaints of gender discrimination and on one case of sexual harassment, whereby violation of the Protection against Discrimination Act was found in one of the cases. The case in which the PADC found discrimination concerns a pregnant woman who became victim of discrimination when exercising her right to work. The less favourable treatment of her was objectified in the following actions. After the applicant informed her employer that she was in an advanced stage of in vitro procedure, he terminated the contract for additional health insurance, concluded in her name. When at a later stage the applicant informed that she was pregnant, the employer started periodically to require from her information on whether the pregnancy continued being a fact. The employer company was found guilty of the discrimination and was fined BGN 1,250 (EUR 625).

On another case completed in 2017, PADC found that the quotas introduced for girls and boys to be admitted in high school did not violate the ban on gender discrimination. With the judgement on that


case it was stated that the quota principle in the admission of male and female candidates for secondary schools “can be qualified as a ‘necessary measure’ in the sphere of education and training with a view to securing balanced participation of women and men under Article 7, Paragraph 1, item 12 [of the Protection against Discrimination Act] and hence does not constitute discrimination.”

3. PROTECTION OF RIGHTS OF LESBIAN, GAY, BISEXUAL AND TRANSGENDER PERSONS

Lesbians, gay men, bisexuals, transgender, and intersex people face social and legal challenges and discrimination that heterosexual and cisgender people do not encounter. In the period under review there has been no progress whatsoever in guaranteeing the rights of these groups and the discrimination they are subjected. The most serious problems they face is the access of their communities to education about sexual and reproductive health, legal recognition of single-sex marriages, a lack of a simple and free administrative procedure for changing one’s official gender following the “single window” service model, as well as a change in medical standards relating to conditions and anomalies in the development of sexual organs. The main challenges to progress were a lack of expert and public debate and deep-rooted prejudices on the above-mentioned issues, a lack of recognition of these issues in terms of public policy, a lack of resources and strategic planning on the part of the NGOs working with these communities, a lack of a distinct public presence, as well as the fact that an overwhelming part of LGBTI persons continued to conceal their identity from others.

3.1 Equality and non-discrimination

Bulgarian legislation continues to treat LGBTI people more unfavorably than both heterosexuals and people belonging to other minority groups. Article 6 of the Constitution of the Republic of Bulgaria proclaims equality before the law on the grounds of a comprehensive list of characteristics: race, nationality, ethnicity, gender, origin, religion, education, beliefs, political affiliations, personal, social or property status. Characteristics such as sexual orientation, gender identity or gender expression are missing from this list.46

Same-sex consensual sexual acts were decriminalised in Bulgaria with the adoption of the current Criminal Code in 1968.47 However, the provisions of the law continue to divide criminal sexual offenses into ordinary (undefined) and acts performed “with a person of the same sex” (Article 155, Paragraph 4; Article 157 of the Criminal Code). Examples of non-discriminatory attitude can be seen in the provisions of Articles 149 and 150 of the Criminal Code on the crime of fornication in its two forms: with a person below the age of 14 years and with a person above the age of 14. The

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47 Cf. the Criminal Code of 1951, Article 176: “Sexual intercourse or sexual gratification between persons of the same sex shall be punished with imprisonment for up to 3 years.”
genders of the perpetrator and of the victim of the crime are immaterial here: they may be either of different or of the same sex.\textsuperscript{48}

The minimum age above which consent to sexual activity is a factor in determining the criminal character of the act was equalized in 1986 with an amendment to Art. 157, Para. 2 of the CC.\textsuperscript{49} Prior to that a criminal act constituted the perpetration of “homosexual activities” not only with minors, but also with adolescents. The equalization was repealed in 1997 when “homosexual activities” with persons under the age of 16 became criminalized,\textsuperscript{50} whereas for sexual acts with persons of a different sex the minimum age above which consent mattered remained the completion of 14 years of age.\textsuperscript{51} However, it was reestablished again in 2002 and currently the age remains the same – 14 years regardless of whether or not the sexual act is between two persons of the same or of a different sex.\textsuperscript{52}

Criminal legislation continues to affirm the view that interprets rape as a vaginal penetration by a man against a woman. In some cases it is treated differently from other forms of sexual coercion. All other forms of sexual coercion, including forced oral or anal penetration, regardless of whether or not the penetration was with a penis, another body part, or an object, are qualified as “molestation”.\textsuperscript{53} When the victim is an adult, forced penile-vaginal penetration is punishable by imprisonment for 2-8 years (Art. 152, Para. 1 of the CC). The same punishment is applied to coercive penile-anal penetration (sexual intercourse) when both the perpetrator and the victims are males, but this falls under a different clause (Art. 157, Para. 1 of the CC). However, the punishment is different if the perpetrator and the victim are both females and if the forced penetration did not involve a penis, but a different body part or an object. Furthermore, the Bulgarian criminal law doctrine does not recognize the possibility that rape could be used as a specific form of assault that victimizes the group that the victim associates with, rather than an act for the purpose of satisfying a sexual desire. These are cases when a person is raped because of their protected characteristics: for example, because of their sexual orientation, gender identity or gender expression, or as a sign of intolerance to or humiliation of the victim because of their religion, race, ethnicity, or origin. The treatment of rape in Bulgarian criminal law as coercive penile-vaginal penetration that is different from molestation can be traced back to the Crimes Act of 1896 and is not unique to Bulgaria. However, in many other countries this crime has long been considered as gender neutral, whereas in Bulgaria this doctrine remains conservative.

Sexual orientation is a protected characteristic according to the Protection Against Discrimination Act (PADA), Art. 4, para. 1. However, gender identity or gender expression are not included among the characteristics listed in Art. 4 of the PADA. According to Section 1, item 17 of the supplementary provisions to the law, the characteristic “gender” also includes “changes in gender”. This text transposed Directive 2006/54/EU from the European Parliament and of the Council into the Bulgarian national legislation on July 5, 2006. However, defining the term “changes in gender” leaves

\textsuperscript{48} Supreme Court (1981), Judgement No. 77 of 18 February 1981 on criminal case No. 26/1981, 1st Criminal Panel.
\textsuperscript{49} State Gazette (1986), issue 89 from 18.11.1986.
\textsuperscript{50} State Gazette (1997), issue 62 from 05.08.1997.
\textsuperscript{51} Criminal Code, Art. 151.
\textsuperscript{52} State Gazette (2002), issue 92 from 27.09.2002.
\textsuperscript{53} Supreme Cassation Court (2010). Decision #122 from 25.03.2010 on criminal case No 772/2009.
room for interpretation by which this text could be understood to imply protection for postoperative transsexual people only. This means that pre-operative transsexual people, transgender people in general, as well as people who are not able to identify as being within the sexual binary male/female (genderqueer), may be left outside of the protection of the law.

In March 2016 the European Union Agency for Fundamental Human Rights (FRA) published a report on the results from interviews with over 1,000 persons conducted in 19 member states, including Bulgaria. The subject of the interviews was how the laws and policies that are focused on the equality of LGBTI people could be effectively applied in practice in order to have a positive effect on people’s lives. The participants in the study were experts from state and local administrations, law enforcement officials, professionals in the area of education, and health specialists. Some of FRA’s findings showed that: officials who are responsible for enforcing laws and policies are often biased against LGBTI people; educational texts lack objective information on sexual orientation and gender identity; many health experts still treat homosexuality as a kind of psychopathology; the LGBTI community is often invisible and this prevents many higher officials from being informed about their problems and needs. The respondents expressed a need for a systematic increase in the scope, training, and awareness on the rights and needs of LGBTI people.54

In March 2017 the European Union Agency for Fundamental Rights (FRA) published a document on the situation of LGBTI refugees in the EU.55 The document stresses that the current procedures and institutions responsible for providing international protection in the EU Member States in many cases are not fit to respond adequately to the specific situation of the persons with LGBTI identity, persecuted in their states of origin. Omissions are noted in the European legal framework, lack of official statistics concerning the number of requests for international protection based on these characteristics, mass lack of specialised standards for conducting interviews with persons from these communities when they apply for status, stereotyped notions and attitudes to LGBTI people of the interviewers, lack of specialised accommodation with a view to preventing cases of harassment and ill treatment, lack of adequate health services for transgender persons, etc.

3.2 Personal and family life

Bulgarian legislation continues to fail to acknowledge any form of same-sex unions. Both the Constitution (Art. 46, Para. 1) and the Family Code (Art. 5) define marriage as a voluntary union between a man and a woman. Most of the political parties represented in Parliament do not hold any opinion on this issue or on LGBTI equality issues as a whole. One exception are the ultranationalist parties in Parliament who are consistently against legalizing any form of same-sex relationships. In June 2018 Kornelia Ninova, chairperson of the Bulgarian Socialist Party, the largest oppositional

party, stated in a letter to the organisers of the Sofia Pride-2018 that she opposed same-sex marriages, although she added that this is her personal position.⁵-six

There is no non-marital form in the legislation that regulates de facto unions in Bulgaria – so-called de facto cohabitation – which, in other jurisdictions, is referred to as “civil partnership”, “registered partnership”, “civil cohabitation”, etc. Same-sex couples who live in de facto cohabitation in permanent family unions do not enjoy any of the over 50 legal regulations concerning the rights, duties, and responsibilities or limitations for those who have entered into marriage. Some of these regulations concern visitation rights, parenting rights, joint property ownership, certain types of leaves of absence, bereavement allowance, state benefits, compensation for the death of a spouse, protection from domestic violence, tax benefits. Unlike unmarried different-sex couples, same-sex couples cannot enter into any form of legally recognized union, which puts them in a position of inequality. The lack of any forms of legalization of same-sex unions through marriage or otherwise is a violation of the right to private and family life.

Adoption by a second person sharing the same sex as a parent of a child is not legal under any form. The artificial fertilisation procedure (IVF) is available only to women who fall under the definition of single mothers.

The Protection against Domestic Violence Act establishes the rights of victims of domestic violence, the measures for their protection, and the procedures for the enforcement of these measures. This law protects people who are in kinship relationships, who are or have been in a marital relationship, or in de facto marital cohabitation (Art. 2, Para. 1). In theory, this regulation should also guarantee protection to same-sex couples in de facto cohabitation, but in reality this is not the case because judicial decisions do not recognize same-sex couples as living in a lawful relationship.⁵-seven

Under the law, only single persons (women or men), as well as married couples, may adopt. Two persons who have not concluded marriage may not adopt the same child. Thus, in theory, only one of the two partners in a same-sex couple could adopt a child, and although the two persons are


⁵-seven SRC (2014). Ruling No. 26 of 7 October 2014 on civil case No. 53154/2014, 3rd Civil Division, 83rd Panel. Also in 2017 a Bulgarian female couple who married abroad filed a case against the Sofia City Municipality –Lozenets district on the grounds of the Municipality’s refusal to register their marriage as current marital status in the personal registration card of each of the two women. The motive for the Municipality’s refusal was the same gender of the two persons. Under the Bulgarian law only municipal offices keep data on marriages concluded abroad and only they certify that circumstance by issuing the respective document or certificate to citizens and institutions. Thus the consequences of the non-registration are that each of the two women is deprived of inheritance rights, tax benefits, matrimonial shared property, right to child adoption by the two women jointly, as well as the right of one of the women to adopt a biological child of the other. The case is currently pending before the Sofia Administrative Court. At the end of 2017, the same couple received a refusal from the Centre for Assisted Reproduction for financing an in vitro procedure, because in the application form the one of them who is applying for the procedure has mentioned that she is married and has mentioned the names of her wife. The grounds for the refusal of financing by the Centre are that two women cannot create progeny in a natural way. That argument evokes dismay in view of the circumstance that heterosexual couples seeking financing for the in vitro fertilisation procedure do that because they are unable to create progeny in a natural way.
formally de facto parents of the child, although they contribute to the child’s care and have an emotional link to it, the second parent, who may not be a legitimate parent, has no rights over the child, and, conversely, the child has no rights over him/her, e.g., inheritance rights. The situation is the same if one of the two persons is the biological parent of the child – the other person may not adopt the biological child of his/her partner.

3.3. Hate speech and hate crimes against LGBTI

Spreading or inciting discrimination, violence, or hate; resorting to violence; the destruction of property; or forming, leading, or participating in an organization, group, or mob with the goal of perpetrating the above-mentioned acts on the grounds of sexual orientation, gender identity, or gender expression of the victims are not criminalized in the existing Criminal Code, although all of these acts are considered criminal when motivated by race, nationality, ethnicity, religious or political beliefs (see above). Unlike racist or xenophobic motives, homophobic and transphobic motives are not recognized as specific subjective elements of an offense that require harsher punishments. There is also a lack of judicial decisions that recognize acts motivated by these subjective elements as an aggravating factor in the commissioning of criminal offences. As a result, offences committed with these motives are treated as common offences. Hate speech directed at sexual orientation can be prosecuted under the administrative or civil legal procedures of the Protection Against Discrimination Act.

3.4 Legal recognition of gender

The legislative procedure for changing one’s legal gender (the gender specified on legal documents) serves transgender and intersex persons. Bulgarian legislation recognizes the right of a person to change their legal gender (Art. 9, para.1 of the Bulgarian Personal Documents Act). However, there is no official legislative procedure for this process. The law specifically prohibits changing one’s legal gender through administrative procedures.58 A person can change their gender by submitting an application form at their district court upon which the justices initiate an ad hoc proceeding. Each particular court decides on the required documents and on the scope of the decision, provided it is in favor of the applicant. This is the reason for the existing contradictory court decisions that are detrimental to citizens.59 The same reason is behind the contradictory practice requiring one to change one’s physical gender before one’s legal gender.60 This results in regular denials by the courts of applications for changing one’s gender, which is an infringement on the right to privacy of those concerned, usually transgender or intersex persons. The current situation can be changed with the introduction of a clear and streamlined procedure for changing one’s legal gender on personal identification documents; preferably this procedure will be executed via administrative routes, following the “single window” service model. This procedure must by all means relieve the applicant

58 Civil Registration Act, Art. 76, para 4.
from the requirement to surgically change their physical gender, because this requirement makes the change of legal gender procedure available only to transsexual people and leaves transgender people outside of its scope; in addition, most transsexual people who plan a sex reassignment surgery begin their transition by changing their appearance first, which creates a discrepancy between their gender and the gender marked on their personal identification documents.

There are no medical standards that regulate sex assignment surgeries, and current medical standards do not incorporate the issues of intersex people. This includes safeguards that preclude the performance of early childhood genital cosmetic surgeries, irrespective of the consent of a parent or a guardian. The standards in this area should guarantee that no person’s genitalia shall be surgically and irreversibly altered before that person has come of the age when they can make a conscious and informed choice of whether or not they want that change.

In 2017 the Supreme Court of Cassation gave two judgements concerning the recognition of the gender of transsexual persons. On the first of the two cases the court ruled that transsexual persons cannot be compelled to undergo surgery for modification of their body against their will as a prerequisite for a change in the gender written in their birth certificate, because the admissibility of such an intervention, without judgement for gender reassignment, is debatable in view of the provision under Article 128 of the Criminal Code. At the same time, however, the Supreme Court of Cassation ruled that the persons who asked the court to change their gender need to establish before the court their serious and irrevocable decision for a future change in their corporeal sex in accordance with their mental one, the requirement for this being at least start of hormonal therapy for sex change. The latter is in conflict with the position of the World Professional Association for Transgender Health (WPATH), which indicates that medical and other barriers before the recognition of the gender of transgender persons may damage their physical or mental health. On the second of the two cases the Supreme Court of Cassation upheld its earlier ruling and ruled that for admission of the gender reassignment in the birth certificate of a person, existence of a state of transsexuality is sufficient in the first place, which is ascertained by means of complex medical expertise (medical criterion), and, second, stating before the court of the person’s serious and steadfast decision to change the mental and social gender role performed by him/her.

### 3.5 Freedom of assembly and association and freedom of expression of LGBTI

Overall, the LGBTI community in Bulgaria enjoys a large degree of freedom of assembly and association and freedom of expression. There were three active non-governmental organisations with a focus on the LGBTI community that operated in the period under review whose activities were public: Bilitis Resource Center Foundation, GLAS Foundation, and the Action Association.

The Sofia Pride parades take place on a regular basis since 2008 and gather around 2 000 – 3 000 participants. The event is carried out under the banner of mobilising the heterosexual and cisgender.

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63 SCC (2017) Judgement No. 16 of 30 May 2017 on civil case No. 2316/2016, Civil Division, 4th Panel
friends and allies of the LGBTI community. It however enjoys a modest institutional support. So far only Bulgarian MEPs, municipal councilors and representatives of diplomatic missions have expressed support. It has never been supported by the mayor of Sofia or by any member of the government. In the past, representatives of Sofia Municipality tried on several occasions to move it away from the center of the city. Every year it attracts counter-demonstrators but no serious clashes have occurred so far. The Bulgarian Orthodox Church condemns the Pride on a regular basis and on several occasions appealed to the authorities to prohibit it. It called it “a shameful demonstration of the Sodomite sin”.  

3.6 Visibility in the media

The visibility of the LGBTI community is low. The main reason for media attention continues to be the Sofia Pride. The main focus of discussion is still whether or not LGBTI people in Bulgaria are at all subjected to discrimination, which detracts from paying closer attention to the specific issues encountered by that community. The major media outlets started to cover the Sofia Pride parade in a more neutral manner, although they still fail to clearly articulate the objectives of the event. Media continued to place human rights advocates in circumstances of debate where their opponents were aggressive representatives of extreme nationalist and extremist right-wing formal and informal groups.

The representation of LGBTI people in cinematic and television productions, including foreign ones, remained poor and stereotypical. Although the major media channels regularly select weekly movie themes for features that had been recognized by the American Academy of Motion Picture Arts and Sciences (the Oscars), these weekly TV schedules failed to feature recently acclaimed movies that centered on LGBTI issues. Instead, in the days surrounding the Sofia Pride, some media showed lesser known LGBTI-related films and characters, mainly from the comedic genre, that portrayed these communities in a stereotypical and derisive manner.

4. PROTECTION of the rights of persons with disabilities

4.1. Employment of persons with disabilities

The data available from EU Statistics on Income and Living Conditions (SILC) indicate that while the disability employment rate in Bulgaria appears only moderately lower, compared to the EU average, the gap between disabled and non-disabled persons is very wide. The same is true for unemployment and the rate of economic activity is also low. Disabled people in Bulgaria have significantly lowered chances to enter the labour market and to find work (and these data do not include people living in institutions who may be very far from the labour market). The wide disability employment gap in Bulgaria is a significant policy challenge that needs to be addressed.

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64 “Statement of the Holy Synod of the Bulgarian Orthodox Church on the occasion of the gay pride in Sofia on 26.06.2010”, available in Bulgarian at: http://bg-patriarshia.bg/index.php?file=gay_parade_26_06.xml.
Table 1: Employment rate data, by age group

<table>
<thead>
<tr>
<th>Age Group</th>
<th>EU (disabled)</th>
<th>EU average (non-disabled)</th>
<th>National (disabled)</th>
<th>National (non-disabled)</th>
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<tbody>
<tr>
<td>Age 16-24*</td>
<td>24.7</td>
<td>30.1</td>
<td>12.9</td>
<td>24.1</td>
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<tr>
<td>Age 25-34</td>
<td>55.8</td>
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<tr>
<td>Age 35-44</td>
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<td>54.6</td>
<td>82.2</td>
</tr>
<tr>
<td>Age 45-54</td>
<td>56.6</td>
<td>83.9</td>
<td>52.1</td>
<td>82.9</td>
</tr>
<tr>
<td>Age 55-64</td>
<td>33.5</td>
<td>60.0</td>
<td>27.5</td>
<td>58.7</td>
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</tbody>
</table>

Source: EUSILC UDB 2015 – version of October 2017

Table 2: Trends in unemployment by gender and disability (aged 20-64)

<table>
<thead>
<tr>
<th>Year</th>
<th>Disabled women</th>
<th>Disabled men</th>
<th>Non-disabled women</th>
<th>Non-disabled men</th>
<th>EU average (all)</th>
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</thead>
<tbody>
<tr>
<td>2008</td>
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<td>23.4</td>
<td>15.9</td>
<td>13.1</td>
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<td>27.9</td>
<td>16.0</td>
<td>15.5</td>
<td>10.9</td>
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<td>2011</td>
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<td>15.5</td>
<td>18.7</td>
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<td>20.0</td>
<td>12.2</td>
</tr>
<tr>
<td>2013</td>
<td>25.8</td>
<td>26.3</td>
<td>17.4</td>
<td>20.4</td>
<td>12.9</td>
</tr>
<tr>
<td>2014</td>
<td>28.3</td>
<td>39.9</td>
<td>16.8</td>
<td>18.9</td>
<td>12.6</td>
</tr>
<tr>
<td>2015</td>
<td>27.2</td>
<td>30.4</td>
<td>16.5</td>
<td>18.2</td>
<td>12.1</td>
</tr>
</tbody>
</table>

Source: EUSILC UDB 2015 – version of October 2017
According to the 2017 National Employment Action Plan all “registered unemployed persons with reduced working capacity” as of 30 September 2016 were 14,742 (out of the total 255,466 registered unemployed persons). Unemployed persons with permanent disabilities (over 50 % reduced capacity to work) in 2016 decreased with 1,021 compared to the same period in 2015. The average monthly number of these persons in 2016 was 15,909, and their share among all unemployed persons was 5.5%. Among them, in terms of professions the highest share is of those who do not have any qualification - 39.8%. In terms of educational level the biggest share is of those who have finished high school vocational education – 47%, followed by those who have primary and lower level of education - 31%.65

The Government’s efforts do not seem to be directed at ensuring suitable conditions for employment of disabled persons during the period 2016-2018. It only reports the average of 1,800 persons involved in a national program for subsidized employment when disabled persons are concerned. During the period January-November 2016 the number of persons with permanent disabilities involved in subsidized employment were 1,227 under the National Program for Employment of Persons with Permanent Disabilities and the allocated funding was BGN 8.8 million (approx. EUR 4.4 million).66 According to the Ministry of Social Policy the expected number of persons with permanent disabilities (and persons who have passed treatment to overcome drug addiction) who were to be employed in subsidised employment in 2017 for 24 months under the programme was 1,889 and the allocated funding for this was BGN 8.7 million (EUR 4.4 million).67 The expected number of persons with permanent disabilities (and persons who have passed treatment to overcome drug addiction) who are/would be employed in subsidised employment in 2018 for 24 months under the programme is slightly increased compared to 2017 and is 1,990. The allocated funding for this is around BGN 9.3 million (approx. EUR 4.65 million).68

As reported by the Ministry of Labour and Social Policy people with disabilities are least influenced by the Employment Promotion Act measures compared to other disadvantaged groups. The shares of the disadvantaged groups supported by the measures of the Employment Promotion Act on the labour market in 2016 are as follows: long-term unemployed – 26.5%, young people up to 29 years – 43.4%, persons over the age of 50 – 27.9%, young people up to 24 – 19.1% and people with disabilities – 5.9%.69

The challenge underlined by the 2017 Employment Action Plan is that the low employment rate is due to inaccessible environments, working conditions and the duration of the working time.70

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69 Ministry of Labour and Social Policy, Fiche for Programs, Projects and Measures funded by the State budget, Annex 3 at the 2018 National Employment Action Plan.
Action Plan states that in 2017 the active employment policy would be directed to several disadvantaged groups including unemployed persons with permanent disabilities without qualification. However, the government does not plan any measures related to ensuring accessibility, providing for flexible working arrangements and targeted vocational training and employment for persons with disabilities. Instead it maintains the status quo of granting disability status on the basis of diagnosis and pension status based on the latter.

The Employment Agency reports that in 2017 the share of the unemployed persons with disabilities among all unemployed over the age of 50 is 61.8%. Over half of them have high school education – 58.8%, the majority being with vocational qualification. Regarding their professions 39.8% unemployed persons with disabilities do not have professional qualification, 36.4% are workers and 23.8% are specialists. The Agency also underlines that in 2017 the transition period from unemployment to employment for persons with disabilities was shortened. However, the agency does not present any concrete number of persons with disabilities to whom employment was provided under the state subsidized programmes according to the Employment Promotion Act (EPA). When reporting, it groups them with other unemployed disadvantaged groups of persons and the total number under Art. 51, Para 1 and 2 of the EPA for 2017 is 1,084. Apart from that in its 2017 report the Agency does not further mention persons with disabilities.

The 2018 National Employment Action Plan again, as in previous years, mentions the persons with disabilities as a priority target group for active employment measures in the labour market among other disadvantaged groups. Without any concrete numbers they are mentioned in the Projects “Horizons 3”, “We can too”, “Active inclusion” as a target group for support and inclusion in the labour market. The only concrete numbers regarding persons with disabilities are identified in the earmarked measures under the Employment Promotion Act. The plan envisages during 2018 under Art. 36, Para 2 of the EPA 22 persons below the age of 29 to be employed for up to 9 months, under Art.42, para.3 of the EPA - 200 persons (including young people who left institutions) to be employed for up to 1 year, under Art.43a - 300 persons to be provided supported employment, under Art. 51, Para 2 of the EPA - 445 persons out of whom 150 newly employed for 3 up to 12 months and under Art. 52 of the EPA – 134, out of whom 100 newly employed for up to 6 months.

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75 For each job opening at which unemployed persons with permanent disabilities, referred by the Employment Agency, are hired full or part-time the employer receives funding for the salary, all social and health security contributions (including for paid vacation) for the period while these employees are hired but not more than 12 months.
76 Employment Promotion Act, Art.36, para.2 - For each job opening at which an unemployed person up to 29 years of age with permanent disabilities as well as young person from specialized institutions or user of community-based residential social services who finished their education and is referred by the Employment Agency, is hired, the employer receives funding for the salary, all social and health security contributions (including for paid vacation) for the period while these employees are hired but not more than 18 months. The employer receives the funding if he/she ensures employment of unemployed persons, referred by the Employment Agency, for an additional period equal to the period of subsidized employment.
77 Employment Promotion Act, Art 51, para 2 - For each job opening at which an unemployed person with permanent disabilities, referred by the Employment Department, is employed the employer receives funding for the salary and the social and health security contributions (without the paid vacation) for the period while
It its reply from May 2018 to the UNCRPD’s list of issues the Bulgarian government enlists the following employment measures:

“In terms of projects to provide an accessible working environment, the Agency for People with Disabilities (APD) has so far financed 12 contracts worth a total of BGN 401,150 (approx. EUR 200,000) including BGN 281,378 accounted for and BGN 119,772 transferred to budget-financed and municipal enterprises. One of the specific objectives of the Operational Programme Human Resources Development is to tackle unemployment among vulnerable groups in the labour market — unemployed and inactive persons removed at a distance from the labour market, including long-term unemployed, persons with low levels of education, persons over 54, and persons with disabilities.”

A number of employment-related operations placed special focus on the integration of persons with disabilities into the labour market, according to the Government. Part of the target group of Operation New Workplace, which has a budget of BGN 125 million (EUR 62.5 million), are unemployed or inactive persons with disabilities who could be employed in suitably adapted and equipped workplaces as a way of boosting employment. Another operation, seeking to encourage social entrepreneurship, promises support to social enterprises, specialised enterprises and cooperatives in the employment and occupational adaptation of persons with disabilities. “Within the framework of the regular session in May 2018 of the OPHRD Monitoring Committee, new components were launched as part of ongoing employment agency projects “Training and employment of young persons” and “Trainings and employment”. The aim is to provide opportunities for employment and for the acquisition of skills and knowledge to enable inactive and unemployed persons with permanent disabilities to overcome the difficulties of joining the labour market and economic life. Some 1,200 individuals are expected to join the new components of the two projects.”

The approach to employment of disabled people continues to support employers failing to assist disabled people in their efforts to get and sustain a job – appropriate transport means, technical aids or personal assistance, not to mention the lack of accessible environment, which restricts their mobility in general. The results are limited to ‘subsidised employment’ for the duration of the grant scheme under the Human Resource Development Operational Programme. The major weakness of these schemes rests with their design, which provides for minimum monthly wage plus social security contributions paid by the Operational Programme to the employers hiring registered unemployed people with disability status ignoring individual needs of the disabled job applicants.

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78 Employment Promotion Act, Art.52 - For each job opening at which unemployed persons with permanent disabilities, referred by the Employment Agency, are hired full or part-time the employer receives funding for the salary, all social and health security contributions (including for paid vacation) for the period while these employees are hired but not more than 12 months. The employer receives the funding if he/she ensures employment of unemployed persons, referred by the Employment Agency, for an additional period equal to the period of subsidized employment.


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Special enterprises and protected workshops (263 in number as of August 2018\textsuperscript{80}) continue to prevail the employment of people with disability status. In addition to the special treatment they enjoyed so far – tax relieves, rebates on social security contributions for rehabilitation of disabled workers, Government subsidies and State aid – amendments to the Public Procurement Act were made allowing for some tenders to be announced for special enterprises only.\textsuperscript{81}

Surprisingly, the 2018 Action plan of the Agency for Persons with Disabilities does not contain any concrete numbers of beneficiaries and funding.\textsuperscript{82} Neither there is a publicly available report for the implemented activities in 2017, but just a table stating that: 33 new workplaces had been opened for starting own business by persons with disabilities, 63 workplaces has been opened and adapted for persons with disabilities, 14 special enterprises were equipped with new technologies and for 660 persons with disabilities working in special enterprises the work environment was improved.\textsuperscript{83}

The national data on employment of disabled people continue to reflect administrative disability status, which is granted on the basis of diagnosis causing ‘reduced capacity to work’. The old fashioned way of placing disabled people into “retirement due to disability” is still in place (making them beneficiaries of disability pensions regardless of the age and excluded from the unemployment statistics). The number of pensioners receiving social disability pension (having over 70 % disability and no work service) as of end of 2017 was 50,428 and the social disability pensions in total are 435,764 (received by persons who also have another type of pension or a job).\textsuperscript{84} Those who receive disability pension and have had work service are 455,566 as of end of 2017. The number of disability pensioners in work age in 2016 was 273,095.\textsuperscript{85} No such data had been identified in 2017; neither is data available about employment levels among this group of persons with disabilities.

The 2016-2017 developments in the field of pensions were focused on planning and establishing a new assessment procedure\textsuperscript{86} of persons with disabilities provoked rather by suspicion of misuse of disability status related to pensions than by political will and effort to comply with the UNCRPD approach. People with complex support needs, i.e. disabled people due to barriers in the environment, as defined by the UN CRPD, though fully capable to work, are left out of the labour force and have no opportunities for employment due to the lack of individual employment related

\textsuperscript{80} Register of special enterprises, Agency for People with Disabilities, available at: \url{http://ahu.misp.government.bg/portal/se/}.
\textsuperscript{81} Specialised enterprises are regulated by Art. 28 of Integration of Persons with Disabilities Act. They are legal entities – in most if the cases private – registered under the Trade Act or the Law on Cooperatives, which report 30% of their employed staff to have disability status and have registration with the Agency for Persons with Disabilities. \url{http://lex.bg/bg/laws/ldoc/2135491478}.
\textsuperscript{82} Agency for Persons with Disabilities, 2018 Action Plan, \url{file:///C:/Users/User/Downloads/201801251414.pdf}.
\textsuperscript{83} Agency for Persons with Disabilities, 2017 Report on implementation of the target actions for 2017, \url{http://ahu.misp.government.bg/home/}.
\textsuperscript{84} National Social Security Institute, 2017 Pension Yearbook, \url{http://www.nssi.bg/images/bg/about/statisticsandanalysis/statistics/pensii/STATB42017.pdf}.
\textsuperscript{86} \url{https://www.mlsp.government.bg/ckfinder/userfiles/files/dokumenti/drugi/nasoki-ekspertiza-obst-obsajdane.pdf}. 


Disabled persons with 50% or more reduced working capacity who have some work service are entitled to a disability pension (the size of which is based on the social security contributions during the work service) regardless of age (Social Security Code, Art.72). People with a disability status due to more than 50% reduced capacity to work who are granted disability pension and acquire retirement status are excluded from the labour force, respectively from the unemployment statistics. Those with severe impairments (over 90% reduced capacity to work) do not even bother to register with the Employment Agency Offices. Thus a large portion of disabled people – as disability pensioners – remain unaccounted for as unemployed. In many cases their disability status (over 90% reduced work capacity) does not allow employment at all.\footnote{Several court rulings have dealt with the “no right to work” ruling, which medical panels include in the final document granting disability status. It has been established by the Court that such statement is in violation of human rights.} In addition, disabled people in institutional care, who receive pensions due to impairment – regardless of their age – are not considered at all in the labour force statistics.

4.2. Education of children with disabilities

The Bulgarian education system continues to maintain special schools, special classes within mainstream schools and individual education programmes (home teaching) for children with special educational needs. There is very limited body of research on inclusive education through accommodation of the needs of disabled children in mainstream schools. The Centre for Inclusive Education reveals the flaws in the education system, showing the failure to qualify teachers properly, to provide teaching aids, to work with the entire school, etc. In 2016 the centre researched the challenges of inclusive education on local level after the new Preschool and School Education Act entered into force. Its main findings are that the medical model of assessment of disability is still prevailing, the lack of clarity about state funding of the new centres for personal development and the lack of teaching professionals especially in small towns are hindering the process of full inclusion of children with disabilities.\footnote{Centre for Inclusive Education, Research, 2015 - \url{http://priobshti.se/category/izsledvaniya} (last visited October 2017), Research in Inclusive Education and Municipalities, 2016, available at: \url{http://priobshti.se/sites/priobshti.se/files/uploads/docs/04_doklad_priob_obrazovanie_obshtini.pdf} (last visited 21 October 2017).}

Regarding education of children with hearing disabilities the Bulgarian government reported to the UNCRPD in May 2018 that existing regulations allow the use of sign language in kindergartens and schools as a communication aid, but there is still no linguistic model or methodology to educate children/students with impaired hearing in its use. In line with the strategic objective to introduce sign language, which is embedded in the 2015–2020 Action Plan for the implementation of the CRPD, the foundation Deaf Unlimited Bulgaria carried out a public contract entitled Nationwide Research into the Bulgarian Sign Language. The study provides a basis for granting official recognition to the Bulgarian sign language, for the wide acceptance of conventional signs, the expansion of its grammatical structure and the development of methodological tools for its teaching and use in
various spheres and activities. Meanwhile, according to the government, a working group set up by the public advisory body, which is part of the parliamentary committee on interaction with NGOs and dealing with citizens’ complaints, has been tasked with the drafting of a bill on the Bulgarian sign language.

Both the Ordinance on Inclusive Education and the Ordinance on Evaluating Student Performance require that Braille be used in teaching to visually impaired students, both in mainstream and in the special schools for visually impaired students. Visually impaired students are also provided with materials in Braille for the purposes of their national external assessment and when sitting for their matriculation exams.

The Ministry of Education and Science (MES) is implementing the project “Support for Equal Access and Personal Development” under the procedure “Providing conditions and resources for the creation and development of a supportive environment in the kindergartens and schools which provide inclusive education, Phase One” under Operational Programme “Science and Education for Smart Growth”.  

In 2015 the new Preschool and School Education Act was passed and entered into force on 1 August 2016 (Para 60 of the Final Provisions). The trend of enrolling children with special needs predominantly in mainstream schools and gradually reducing the number of these children in special schools is steady. As there is not any publicly available statistical data about the number of students with disabilities in special and mainstream schools for school year 2017/2018, data from the planned budget standards of the Ministry of Education was reviewed. According to it, some **2,722 children study in centres for special educational support** (former special schools for children with intellectual disabilities) currently and the annual allowance per child for education in them is BGN 4,565 (EUR 2,341). The same budget estimates show that around **14,000 students with disabilities use resource support while studying in mainstream schools**. In 2018 the methodology of collecting statistical data obviously changed due to the new Preschool and School Education Act and special schools for children with intellectual disabilities were excluded from the data pool - only those for children with hearing and sight impairments are mentioned. This is how no actual statistical data is available for education of children with intellectual and multiple disabilities both in mainstream and special schools. **No data is publicly available about the students with disabilities enrolled in mainstream schools, including in vocational training high schools.** The lack of data makes it

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90 The following activities have been implemented as part of the project: : “Introduction of the pilot model for early assessment of the educational needs of preschool children and for the prevention and early intervention in their learning disabilities”; “Providing conditions and resources to upgrade and develop a supportive environment in kindergartens and schools for the implementation of inclusive education”; “Development and validation of the functional model to support the process of inclusive education through participation and use of the capacity of special schools for students with sensory impairments and mental retardation”; “Introduction of sign language in order to improve access to information and communication for early-childhood and school students with hearing impairments”; and “Implementing the new model of organisation and functioning of schools for mentally challenged children”.


impossible to assess the impact of the new (2016) legislative provisions on students and young people with disabilities.

The Ministry of Education only reports that in 2017 it has built the total of: 7 ramps, 15 accessible toilets, 2 lifts and 11 platforms for children with disabilities, the total of 2,626 professionals (teachers, speech therapists, psychologists, rehabilitators, etc.) supported 17,817 children with disabilities in kindergartens and schools. Another 933 professionals from the Regional Centres for Teaching Support provided also support for inclusive education to 7,500 children with disabilities.

The National Network for Children (umbrella NGO) reports in 2018 that the progress in inclusive education is that “a new Ordinance on inclusive education has been adopted to help the processes of full coverage of inclusion policies and improvement of the educational environment” but that there is still not good understanding of the inclusive education philosophy, its implementation in practice in all schools, as well as sustainable financing.” The Network states that in practice, their experts assess with a very low mark the progress in the inclusive education field “due to the partially secured conditions for the implementation of the legislative initiatives launched in 2016. Sustainable and timely funding and provision with specialists, methodologies, tools and practices has not been yet secured despite the presence of legal requirements.”

In July 2017 the minister of social policy, the minister of education and the chairperson of the Social Assistance Agency gathered to discuss the mechanism for cooperation in prevention of early school leaving. Multidisciplinary approach with participation of social workers in children-at-risk cases was introduced in September. Exchange between the information databases of the Ministry of Education and Ministry of Social Policy related to children at risk of leaving school was expected to be used as a tool for tracking the children. As of August 2018 no data about the impact of this approach on children with disabilities has been published.

The National Network for Children states that the weaknesses in prevention of early drop outs so far are the still unclear effect of its implementation, the short deadlines and the lack of good organisation of the interinstitutional teams by coverage, the unequal involvement of different professionals and the incomplete source database of children subject to compulsory education.

4.3 Poverty and social inclusion

The two key policy challenges in Bulgaria are the high risk of poverty and the high risk of exclusion (including the risk of institutionalisation). The data available from SILC indicate that disabled people

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in Bulgaria face the highest overall risk of poverty or social exclusion in the EU (an estimated 63.7% AROPE in 2015). Eurostat also confirms that ‘more than half of those with an activity limitation in Bulgaria (57 %) are also severely materially deprived’. The at-risk-of-poverty rate after social transfers was 29% (again the highest in the EU).\textsuperscript{101} The most recent SILC data shows that disabled materially deprived in Bulgaria are three times more than EU average. These risks are persistent and present a major policy challenge for Bulgaria. Moreover, the data do not include persons living in institutions, who may be particularly at risk. This situation can be explained by the combination of barriers to labour market access and inadequate social protection, as well as exclusion from education and training.

The income of disabled people in Bulgaria is primarily formed by (1) disability pension; (2) disability allowances, and in a minority of cases (3) salary from employment. Most disabled people are not in employment, which leaves them with income from a disability pension and disability allowances, both at very low levels.\textsuperscript{102}

Every person with more than 50% reduced capacity to work (based on his/her diagnosis) is entitled to have a disability pension. As of December 2017 the total of 455,566 people with disabilities have been receiving disability pensions for ‘general health condition’, 50,428 people with disabilities have been receiving only social disability pensions and 7,903 persons with disabilities have been receiving disability pensions for work accident.\textsuperscript{103} The National Social Security Institute (NSSI) report of December for 2017 revealed that social disability pensions have been paid to 420,596 people (plus their other pensions or salaries). The average monthly amount of the disability pension for “general health condition” in 2018 was BGN 248 (approx. EUR 124) and the average amount of social disability pension was BGN 173 (EUR 86).\textsuperscript{104}

The majority (51.7%) of the persons with disabilities who receive disability pensions are assessed as having 71 to 90 % reduced capacity to work and another 27.5 % of them are assessed with over 90 % reduced capacity to work – thus around 80 % of the disability pensioners seem to have level of disability preventing them from employment.\textsuperscript{105} The number of disability pensioners in work age in 2016 was 273,095.\textsuperscript{106} No data is available about employment levels among this group of persons with disabilities. People who have job-related income are still eligible for their disability pension. Both are provided at very low level, which is the reason why households of disabled people suffer material deprivation almost twice as much as those of non-disabled people, being exposed much more to a risk of poverty and social exclusion; the latter can be further explained by the lack of accessibility – of built environment, transport, public services, etc. Disabled people with over 90% reduced capacity to

\textsuperscript{102} See the 2015 ANED country report on social protection: http://www.disability-europe.net/theme/social-protection?country=bulgaria.
\textsuperscript{104} National Social Security Institute, 2017 Pension Yearbook, p. 19.
work who need assistance in their daily activities are entitled to a personal aid supplement to the pension regardless of their individual needs, which currently amounts to BGN 90 (€45) per person.\(^{107}\)

In January 2018 the **minimum guaranteed income was raised from BGN 65 to 75 (EUR 33 to 38).**\(^{108}\) It serves as a basis on which the integration allowances for persons with disabilities are calculated. In this way they had been slightly raised. The monthly allowances are **fixed amounts,**\(^{109}\) although the law pretends that they are individually tailored to the needs of the person that are taken into account while the social assessment is done by local assessment commissions. Apart from that the law, in fact, divides the people with permanent disabilities in three main groups depending on the level of their disability and the reduced working (for children - social adaptation) capacity.\(^{110}\)

In 2016 the **total of 524,459 (out of whom 21,574 children) persons with disabilities were supported with integration allowances** at the total amount of BGN 139,5 million (EUR 69,75 million).\(^{111}\) The average number of persons who were paid allowances for technical aids and medical appliances was 10,101 persons and the total of BGN 50,6 million (EUR 25,3 million) was spent on this in 2016.\(^{112}\) In 2017, the integration allowances support was provided to a monthly average of 500,016 persons, of whom 10,705 were children with disabilities. A monthly average of 10,705 children with permanent disabilities have received a monthly allowance in 2017. The paid monthly allowances for social integration amounted to BGN 131,574,548 (approx. EUR 66 mln). Special allowances were provided to 3 persons with disabilities for the purposes of vehicle adaptation. No allowances for house adaptation were granted.\(^{113}\)

Since January 2017 the **monthly allowances for children with permanent disabilities** up to the age of 18 (in case they study in high school – up to the age of 20), irrespective of the income, have been **increased.** If the children with permanent disabilities are raised in their biological (or adoptive families) and live permanently in Bulgaria the monthly amounts are: for children with permanent disabilities with 90 and over 90 % disability – BGN 930 (EUR 477); for children with permanent disabilities with 70 to 90 % disability – BGN 450 (EUR 231); for children with permanent disabilities

\(^{107}\) Art. 103 of the **Social Security Code** determines the size of the personal aid supplements at the level of 75% of the social pension for old age.

\(^{108}\) Council of Ministers, Decree 305, 19 December 2017, http://dv.parliament.bg/DVWeb/showMaterialDV.jsp;jsessionid=02E96FB1DB52FFE30E3955B64A3C5168?idMat=121033

\(^{109}\) **Regulations for Implementation of Integration of Persons with Disabilities Act, Art.24-31.**

\(^{110}\) The persons with 50 and over 50 % disability have the right to monthly allowance for education/training and rent and if they have mobility problem – to transport. The persons with 70 and over 70 % have the right to monthly allowance for transport, education/training, food and medicines and if they have sight/hearing problem – to accessible information. The persons with 90 and over 90 % disability have the right to monthly allowance for transport, information and telecommunication services, education/training, rent, food and medicines, recreation (if an assistant joins the persons with disability the amount is up to EUR 200/year) and for persons with sight/hearing disabilities – accessible information.

\(^{111}\) **Social Assistance Agency, 2016 Annual Report, p.40.** According to this report monthly allowances for transport were paid to 523,999 persons; for information and telecommunication services – to 87,229 persons; for education/training – to 381 persons; for food and medicines- to 408,555 persons; for accessible information – to 127,985; for recreation – to 6,740 persons; for rent of municipal house - to 999 persons; for adaptation of flat/house – to one person; for adaptation of a vehicle – to 3 persons.

\(^{112}\) **Social Assistance Agency, 2016 Annual Report, p.40.**

\(^{113}\) **Social Assistance Agency, 2017 Annual Report, p.33.**
with 50 and 70 % disability - BGN 350 (EUR 179).\textsuperscript{114} The monthly allowances for children with permanent disabilities raised by families of relatives or foster families as a protection measure under the \textit{Child Protection Act} (Art. 26) are: for children with permanent disabilities with 90 and over 90 % disability – BGN 490 (EUR 251); for children with permanent disabilities with 70 to 90 % disability – BGN 420 (EUR 215); for children with permanent disabilities with 50 and 70 % disability - BGN 350 (EUR 179).\textsuperscript{115} These monthly allowances in 2017 reach a monthly average of 26,266 children (with 174 more than in 2016). The full amount paid for them was BGN 161,500,024 (approx. EUR 80,7 mln).\textsuperscript{116}

According to the \textit{2017 Annual Report} of the Social Assistance Agency, as of 31 December 2017 there were \textbf{612 available community-based social services for children with a total capacity of 13,624 persons}. Among those the \textbf{community-based services for children with disabilities} are:

- 128 Family-type Accommodation Centres (FTAC) for children/young people with disabilities with a total capacity of 1,730 persons;
- FTAC for children with disabilities for 9 persons;
- 8 FTACs for children/young people in need of constant medical care with a total capacity of 64 persons;
- 74 day-care centres for children and/or young people with disabilities with a total capacity of 2,015 persons;
- 6 day-care centres for children and young people with disabilities for weekly care with a total capacity of 133 persons;
- 11 day-care centres for children and adults with disabilities with a total capacity of 477 persons;
- 17 transitional homes for children with a total capacity of 138 persons;
- 49 centres for Social Rehabilitation and integration for children with a total capacity of 1,703 persons.\textsuperscript{117}

\textbf{4.4 Institutions for persons with mental disabilities}

At the background of some developments in the field of community-based services the \textbf{situation in institutions for persons with mental disabilities} remained the same. In May 2018, the Council of Europe’s \textbf{Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)} published the report\textsuperscript{118} on its seventh periodic visit to Bulgaria, which took place from 25 September to 6 October 2017. The delegation carried out visits to institutions for persons with psychiatric disorders in Tvarditsa and Radovets and institutions for persons with learning disabilities in Batoshevo, Kachulka and Tvarditsa. The CPT heard numerous complaints of physical

\textsuperscript{114} Parliament, 2017 State Budget Act, Art.61, para.12, available in Bulgarian at: http://dv.parliament.bg/DVWeb/showMaterialDV.jsp?sessionId=2CFE10E98AE786CA63DF5ECB1CEAE8BD7idMaterial=109996.

\textsuperscript{115} Parliament, 2017 State Budget Act, Art.61, para.13.


\textsuperscript{117} Social Assistance Agency, 2017 \textit{Annual Report}, p.18.

\textsuperscript{118} Council of Europe, Committee for the Prevention of Torture. \textit{Bulgaria: Anti-torture committee says conditions in social care institutions could be described as inhuman and degrading; the situation in penitentiary establishments generally improved}, 4 May 2018, Available at: https://www.coe.int/en/web/cpt/-/bulgaria-anti-torture-committee-says-conditions-in-social-care-institutions-could-be-described-as-inhuman-and-degrading-the-situation-in-penitentiary-.
and verbal abuse. It states that it was visible that in all institutions had undergone differing degrees of renovation and refurbishment. However, most of the accommodation was still scruffy, bare, austere and lacking personalisation and privacy, especially for the less able residents. **The CPT identified one unit for the most disabled residents that could be described as inhuman and degrading.** Residents were found lying on their beds, completely covered in flies, with the floor flooded with urine and littered with faeces. After the visit, the Bulgarian authorities informed the CPT that two new sanitary facilities had been constructed in the establishment, new bedding was ordered, and measures were being taken to ensure compliance with sanitary standards.

Despite recourse to seclusion in social care homes being forbidden by Bulgarian law, the CPT’s delegation found that three seriously mentally disabled residents of Kachulka Home, who were deemed especially dangerous, were placed by staff alone in reinforced locked rooms for days on end. In Radovets Home, staff acknowledged that one resident, deemed to be especially unpredictable, was sometimes placed in a makeshift seclusion room under a set of outdoor stairs for hours on end. Finally, the number of nurses and orderlies available to provide care, comfort and supervision to residents in all the social care establishments visited was inadequate and sometimes woefully low. **The CPT concludes that it “cannot escape the sober conclusion that residents in the social care establishments visited had de facto been abandoned by the State, which had manifestly totally failed to provide those vulnerable persons with the human contact, comfort, care and assistance they required, as well as the dignity they deserved. It is equally regrettable that staff (and the management) of these establishments had been left to struggle from day to day with totally insufficient human resources, without adequate funding and without any attention or support from the Bulgarian authorities.”**

At the end of November 2017, the [UN Committee against Torture (CAT)](https://www.ohchr.org/EN/HRBodies/CAT/Pages/Default.aspx?symbolno=CAT%2fC%2fBGR%2fCO%2f6&Lang=en) examined the sixth periodic report of Bulgaria, which the country owed under the Convention against Torture, ratified in 1986. On 30 November, CAT adopted its final observations and recommendations, which were published several days later. The Committee addressed in them a number of serious criticisms of Bulgaria on almost all issued covered by the Convention. With respect to the institutions for persons with mental disorders, according to the Committee, **physical and chemical immobilisation is practiced by prescribing high doses of medicines. The Committee was shocked by the absence of any progress in the investigations of 238 deaths in the homes for children with intellectual disabilities, which were found as a result of the joint inspection by the Public Prosecutors’ Office and BHC in 2010-2011.** It required of the Bulgarian government to renew these investigations and to report to the Committee about the result until 6 December 2018. In its observations and recommendations CAT expressed particular concern about the deteriorated independent human rights monitoring of the health care, social and educational institutions in which people are placed coercively. These are psychiatric hospitals, special schools for children with antisocial behaviour and social homes for persons with mental disorders. **During the last five years, the responsible ministries systematically refused access of NGOs to these institutions.**

Poverty and social exclusion of disabled people are of **structural and systemic nature**, i.e. regardless of the public funds allocated for disabled people, they remain poor and excluded because public policies and legislation do not deliver inclusive solutions in any major area of life. This is the major

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119 The final observations and recommendations of the UN Committee against Torture aspx?symbolno=CAT%2fC%2fBGR%2fCO%2f6&Lang=en.
reason for disabled people or their families to apply for institutional placements and to be admitted into residential care settings at a time when deinstitutionalisation is stated as a priority of the Government. Thus, social exclusion is sustained with the obvious poverty as a result of it, while huge amounts of public funds – both from national and EU sources – are spent.

By the end of 2016, all institutions for children with intellectual disabilities had been closed down. However, 10 of them turned into institutions for adults as the children who were placed in them turned 18. In 2014-2016 the Bulgarian Helsinki Committee’s monitored 40 institutions and 81 residential community-based services (FTAC) for persons with psychosocial and intellectual disabilities where 3,993 persons were living showed that 2,794 (2,447 of whom live in institutions) were placed under plenary guardianship, 230 – under partial guardianship and the rest were not placed under guardianship. Placement in FTACs is also carried out by other persons, not the person with disability, and his/her wish often is not explored. Guardians of the majority of the people placed under guardianship are staff members. The monitoring of 40 institutions for persons with psychosocial and intellectual disabilities revealed that application of medication for the reasons of discipline and physical seclusion and restraint are still a practice. Caged spaces, without any furniture, poor hygiene and access to sanitary facilities, arbitrary placement in them by orderlies or nurses for uncertain periods, prescription of medicines on the phone are some of the other inhuman and degrading practices the researchers described. In several cases they found that persons with psychosocial problems placed in institutions caused a serious physical injury to a guard in an escape attempt and murder of another resident (in search for a cigarette). The residents have also severe self-destructive behavior. The material conditions and the attitude of the staff in some of these institutions continue to amount themselves to inhuman and degrading treatment.

The monitoring report of the Bulgarian Helsinki Committee contains numerous examples of physical and psychological abuse and risk of abuse in remaining institutions for adults with psycho-social and intellectual disabilities and more worrying - in the new community-based centres for children and adults with disabilities which were supposed to be the better alternative of institutions. Remote locations, lack of sufficient and qualified staff, lack of training, lack of activities for the residents, lack of medical, educational and day care services were pointed out as main reasons for the everyday abuse in these services.

The available alternatives to placement in institutions are personal assistance services provided at home, day care provided in day care centres as well as placement in residential accommodation centres in the community (although some of them are just part of existing or “closed” institutions). As of 31 December 2016 the Social Assistance Agency reported that there were: 73 day care centres for children and youth with disabilities with the total capacity of 1,981 places, 5 day care centres for children and youth for weekly care with the total capacity of 113 places and only 13 day care centres for children and adults with disabilities with the total capacity of 531 places – so children and adults

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121 Bulgarian Helsinki Committee, Unhappening Deinstitutionalization of Persons with Mental Disabilities, monitoring report, 2016.

with disabilities who used day care were 2,625. The number of children and adults with disabilities placed in residential community-based services is approximately 4,131 persons. The adults with psychosocial/intellectual disabilities who currently live in institutions are approximately 4,000. The persons with disabilities and persons over the age of 65 who receive personal assistance in their homes are around 17,000 and those in need who applied for personal assistants are around 40,000. Persons with disabilities who receive disability pensions are over 500,000 and those who receive disability allowances are around 500,000, according to official data. It is obvious that the available community-based services as personal assistance, day care and residential placement are not sufficient to respond to the demand. Moreover, none of these services is tailored to the needs and wishes of the persons with disabilities to whom it is provided and independent research in their quality is not performed.

In January 2016 amendments of the Social Assistance Act have been introduced to provide that placement in institutions shall be done only after all other options of community-based services have been exhausted and that children, persons with permanent disabilities and persons under plenary guardianship may be placed in institutions for a period no longer than 3 years. Yet the court might extend the term if the children cannot be reintegrated in their families, adopted, placed in families of relatives and close friends, foster family or residential community-based service and the adults cannot be cared for in family environment or residential community-based service. Therefore, although some legislative effort has been done to reduce institutionalization of adults, the practice would not change as long as sufficient real alternatives do not exist.

4.5 Deinstitutionalisation of children with disabilities

In 2017, the positive tendency of closing down institutions for children continued: five institutions for children deprived of parental care (ICDPC) and two institutions for medical and social care for children (IMSCC) were closed. On 1 October 2017, 36 specialised institutions functioned in the country, with 979 children placed in them: 16 IMSCC with 565 children aged 0 to 7 years and 20 ICDPC with 414 children and young people aged below 18 years placed in them. On 31 December 2017, 3,325 children and young people used residential social services in the community (282 FTAC with occupancy of 3,116 children, 18 crisis centres with 113 children and 17 transient housing facilities with 96 users). By 31 December 2017, the number of children in foster care increased ten times: from 221 in 2010 to 2,320. During the same period there was also a six-fold increase of the number of FTACs (small group homes): from 48 in 2010 to 282, of which: 145 – for children and 123 

125 Ibid.
127 Social Assistance Act, Art.16, para.2.
128 Social Assistance Act, Art.16, para.3.
129 Social Assistance Act, Art.16, para.4.
young people without disabilities, 129 – for children and young people with disabilities, and 8 – for children and young people who need permanent medical care.\textsuperscript{130}

In 2017, too, the biggest blank space in the deinstitutionalisation in Bulgaria was the big number of children in formal care and of children facing the risk of being abandoned. According to UNICEF data, every year in Bulgaria about 3,800 children continue to be separated from their families, one out of three of them being below the age of 3 years. \textbf{The State remained far from the planned 30\% reduction before 2020 of the number of children benefiting from formal care outside their biological families, as was envisaged back in the Action Plan for 2010.}\textsuperscript{131}

According to data of Social Assistance Agency and Ministry of Healthcare, the new placements in children’s institutions for 2017 were 424, of them: 88 children in institutions for children deprived of parental care and 336 babies and children in institutions for medico-social care for children (aged 0 to 3). In 2017 the accommodation of children without disabilities below the age of 3 years in institutions and resident services was to be discontinued. The plans were to discontinue totally by 2019 also the accommodation of children with disabilities below the age of 3 years in institutions. It was also envisaged to take all children out of institutions for medico-social care for children and to close these institutions down by 2019. These are just three of the main activities in the \textit{Updated Plan for Deinstitutionalisation (2016-2020)} under the measure aimed at stopping the accommodation of children below the age of 3 years in resident services and closing down of the institutions for medical and social care for children. \textbf{In 2017 the implementation of these activities was either postponed, or did not take place.} In 2017, too, admissions in institutions for medico-social care for children continued, including healthy children below the age of 3 years. In 2017, the closing down of the existing institutions for medico-social care for children was postponed by one year – for 2020. \textbf{According to data from the Ministry of Health, in 2017 there was not even one opened alternative \textit{MoH service for children}. MoH is in a procedure to apply for financing under the Regions in Growth Operational Programme (2014-2020), with the aim of further deinstitutionalisation of the care for children aged 0 to 3 years. Building of 28 new centres for specialised health care and social care for children aged 0 to 3 years is planned, of which: 20 new centres for children with disabilities who need permanent medical care and 8 new centres for children with high-risk behaviour and need of special health care, at a total value of BGN 14 mln (EUR 7 mln).}\textsuperscript{132}

\subsection*{4.6 Deinstitutionalisation of adults}

The long-awaited \textbf{Action Plan for the 2018-2021 period on the implementation of the National Strategy for Long-term Care} was published in November 2017 for public discussion, and was adopted in January 2018.\textsuperscript{133} It identified as its most serious focus \textit{“the urgent securing of good quality living conditions to the persons with mental disorders and developmental disabilities, who are placed at this moment in specialised institutions with not good conditions and not good quality of care.”} In a

\begin{thebibliography}{9}
\bibitem{131} Bulgarian Helsinki Committee, \textit{2017 Annual Report}, p.140.
\bibitem{132} Bulgarian Helsinki Committee, \textit{2017 Annual Report}, p.141.
\end{thebibliography}
broader perspective it attempts to address with measures having a real effect “the insufficient diversity of support services in the community and the insufficient providing of home services,” as well as “the capacity and the functioning of the actual system for long-term care, including the interaction of its health care and social components.” The principal objectives of the plan until 2021 are:

1. Improvement of the quality of life and of the opportunities for social inclusion of the people with disabilities and the elderly by securing a network of services and support measures in the community and at home;
2. Prevention of the institutionalisation of people with disabilities and elderly people, and building an accepting and supportive attitude in society;
3. Restricting the network of specialised institutions and the access to them, taking people with disabilities out of the specialised institutions and closing down 10 specialised institutions for persons with disabilities with the least acceptable living conditions;
4. Creating a regulatory framework for developing social services and integrated health care and social services.\textsuperscript{134}

Some of the key problems, according to the plan, are: the large number of people placed or wishing to be placed in specialised institutions, the insufficient number of services corresponding in a complex manner to the needs of these target groups and their uneven distribution on the territory of the country. The plan indicates that about 11,000 elderly people and people with disabilities live in 161 specialised institutions, with 3,600 persons on the waiting list for them, 2,200 of whom are persons with mental disorders, intellectual disabilities and dementia. There are nearly 900 persons waiting for accommodation in resident services in the community, of whom more than 750 are with mental disorders, intellectual disabilities and dementia. The data on the number and type of the social services lead to the following conclusions:

- Prevalence of institutional services over community support;
- The services in the community do not comprise life support activities of integrated healthcare and social character and mobile support in domestic environment;
- Almost total absence of services for people with different forms of dementia;
- The network of services is the smallest for three groups of users: persons with mental disorders, persons with dementia and old people;
- In spite of the not very small financing for the providing of social services, including with EU financing, the capacity of the services provided is insufficient for satisfying the constantly growing needs.\textsuperscript{135}

With respect to the persons with mental disorders the plan found that the persons with schizophrenic diseases, kept under observation, are 25,849 and that between 10% and 15% of that group (2,500 –3,000 persons) need support in the community; 1,000 of them are placed in institutions for long-terms care, and about 230 spend long time in the state psychiatric hospitals. On 31 October 2017, 1,028 persons lived in the 13 institutions for persons with mental disorders, 906 waited for accommodation in institutions, and the 30 family-type accommodation centres (FTAC) in


\textsuperscript{135} Action Plan for the 2018-2021 period on the implementation of the National Strategy for Long-term Care, p.7.
the country have 410 places and the 34 protected houses – 321 places.\textsuperscript{136} The Agency for Social Assistance (ASA) identifies the persons with mental disorders as a risk target group due to: lack of developed network of social services in the community for them, lack of integrated health care and social services for continued support and rehabilitation for the chronically ill; negative public attitudes to people with mental disorders that place them in social isolation; the enormous number of property frauds and abuse of these people. For this reason, the plan is accelerated \textbf{opening of services in the community for psychosocial rehabilitation, which are to comprise both resident services and support in the person’s immediate environment.} The services should be provided by multidisciplinary teams trained in contemporary methods of psycho-social rehabilitation and should be supported by measures for social inclusion of the people with mental disorders, above all in the sphere of education and employment.

According to the plan, the persons with \textbf{intellectual disabilities} under observation are 28,293. Approximately up to 2% in that group are entirely dependent on care (with severe and profound intellectual disabilities), i.e., about 400 persons. They also need specialised medical care, which should be provided in good coordination with the specialists from outpatient care. The highest number of social services in the community was opened for them in the last years, including of resident type. Therefore, the number people wishing to be accommodated in specialised institutions, FTAC and protected houses diminished, though it is still high. On 31 May 2017, the waiting list for accommodation of persons with developmental disabilities numbered 355. On 31 October 2017, there were 2,083 inmates in the 27 institutions for people with intellectual disabilities, with 223 waiting for accommodation in an institution, there are 324 places in the 26 FTAC for them and 811 places in the 96 protected houses.\textsuperscript{137} New social and integrated health care and social services in the community are planned for them, aimed at creating a supportive environment both for them and for their families. The services should secure developing of the potential of the persons with intellectual disabilities for independent life and possibilities for their social inclusion by building work and social skills and by securing employment conditions.

The Plan estimates that the persons with \textbf{dementia} who are under observation are 2,408, but in view of the fact that above the age of 60 years the percentage of dementias increased from 1% to 30% in the higher age categories, the needs of services for them will grow. The waiting list for accommodation in institutions and in resident services is quite long: 468 persons on 31 May 2017, and on 31 October 2017 – 369 are waiting for accommodation only in institutions, and 825 were placed in the 14 institutions for dementia patients.\textsuperscript{138} A pilot model for support and care in the community for persons with dementia is expected to be launched in the 2018-2021 period. Developing care and support presupposes broadening of the circle of trained specialists: physicians and other medical specialists, psychologists, social workers, etc.

According to the plan, over 180 persons are waiting for accommodation in institutions for adults with \textbf{physical disabilities and sensory impairment}. Most of these institutions do not have an environment adapted to the users, or possibilities for medical, social and professional rehabilitation and adequate

\textsuperscript{136} Reply by Roumyana Petkova, ASA Executive Director of 27 November 2017, to a request by the BHC on the \textit{Access to Public Information Act} (APIA).

\textsuperscript{137} Reply by Roumyana Petkova, ASA Executive Director of 27 November 2017, to a request by BHC on APIA.

\textsuperscript{138} Reply by Roumyana Petkova, ASA Executive Director of 27 November 2017, to a request by BHC on APIA.
health care. The prevention of institutionalisation of persons with physical disabilities requires access to medical and functional diagnostics, kinesiotherapy, physical therapy, speech therapy, ergotherapy, psychotherapy, etc., as well as to secure possibilities for treatment, visits and rehabilitation in the person’s home. For the deinstitutionalisation of the persons placed in these institutions there are plans to build residential services in the community, adapted to their needs and securing conditions for rehabilitation, including raising their educational and professional-qualification level, broadening the employment opportunities, labour-therapeutic activities, participation in different public events, etc. For the people with physical disabilities, who can remain in their domestic environment, the plan envisages different forms of day care and care by the hour, providing services to compensate their deficiencies in connection with their educational needs, raising their personality potential, rehabilitation in domestic conditions, creating of social contacts, organising their free time and mastering new skills, engaging in activities aimed at securing labour employment, including protected employment in the form of labour therapy. For the persons with severe physical disabilities, who need prolonged or permanent rehabilitation and health care, integrated health care and social services will be provided.

The plan groups four types of measures for:

1. Securing support in domestic environment and in the community to persons with disabilities and to elderly people dependent on care by means of:
   - Legislative regulation of the procedure for providing and financing a personal assistant, social assistant, home assistant and the possibilities for providing them by all kinds of providers (municipalities and private providers);
   - Supported employment for persons with mental disorders and intellectual disabilities, and development of social enterprises;
   - Providing hourly mobile integrated health care and social services to persons with disabilities and elderly people who need care in all 28 administrative regions in the country, developing and applying methods for providing patronage care and standards for the quality of the service, training and supervision of the providers of patronage care;
   - Creating day care centres for support to persons with disabilities and their families, and centres for social rehabilitation and integration for persons with mental disorders and for persons with developmental disabilities (which also offer labour therapy and labour mentoring), updating of the methodologies and training of the staff.

2. Securing high quality social services in the community for persons placed in institutions with poor living conditions/care and gradual closing down of institutions by means of:
   - Creating family-type accommodation centres for people with disabilities and old people; staff training; development of a methodology for intensive support for old people incapable of caring for themselves, placed in residential social services in the community; implementation of own programmes of NGOs for support and social inclusion of persons with mental disorders and intellectual disabilities in institutions;
   - Closing down of institutions for persons with mental disorders and intellectual disabilities, which do not cover the minimum requirement for quality of life, as well as support to persons to use other suitable services by means of:
• **Drafting specialised criteria and methodology for evaluating** the state of persons with mental disorders and of persons with intellectual disabilities;

• **Creating and preparation/training of teams** for: individual evaluation of the needs of support; study of the wishes of the persons placed in institutions that are about to be closed; consulting; evaluation of the specific medical needs; evaluation of the need of intensive support by specialised staff; evaluation using the methodology for evaluating a person’s state; evaluation of their social circle and possibilities for re-integration in domestic environment; drafting individual plans for support of the persons placed in institutions that are about to be closed; individual assessments and assessments of the social circle/possibility for re-integration of the persons in domestic environment; individual social work to prepare the persons to be taken out of institutions and the measures for the actual transfer; securing the inclusion of the persons who are about to be taken out of the institutions, evaluation and drafting of the plans in compliance with Articles 16 and 16a of the Social Assistance Act, follow-up evaluation – not earlier than three months and not later than six months after the transfer to the new service, and accordingly updating of the plan and referral to other, more suitable services in the community in accordance with the new evaluation;

• Drafting of a plan for closing down of the specialised institution;

• Securing supervision of the teams involved in the assessments and the drafting of the plans and of the staff in the specialised institutions until their final closing down.\(^{139}\)

• **Evaluation of the needs of all persons placed in specialised institutions** with a view to planning the second stage of the process of deinstitutionalisation of the care for persons with disabilities by means of:

  • Creating and preparation/training of teams;
  • Conducting individual assessments also of the assessments of the social circle and of the possibility for re-integration of the persons in domestic environment;
  • Drafting proposals for suitable services and proposals for the measures for taking persons out of the institutions;
  • Securing supervision of the teams involved with the assessments and drafting of the proposals.

3. **Raising effectiveness of the system for long-term care**: improving the capacity of the persons working in the social services system by means of:

  • Developing new standards for financing and quality of the social services;
  • Developing standards for financing and quality of integrated health care and social services;
  • Developing new models of services;
  • Evaluating the needs of social services at national level and developing a map of the needs of social services;
  • Drafting a map of the social services at national level;
  • Drafting a Law on the Social Services and of secondary legislation for its enforcement;
  • Drafting an Ordinance on integrated health care and social services;

\(^{139}\) The specialised institutions for persons with mental disorders and intellectual disabilities with the poorest living conditions, which are to be closed down until 31 December 2021, will be proposed by the Agency for Social Assistance on the basis of preliminary monitoring and evaluation.
• Regulation of the status of social workers and introduction of mechanisms for development and motivation of the persons working in the social services system;
• Developing standards for social work: on quality, effectiveness and work load (for the social services sector);
• Developing and applying programmes for training, qualification and supervision of the staff of the social services for adults.

4. Building the necessary infrastructure for providing social and integrated health care and social services to persons with disabilities and elderly people dependent on care
Financing under OPRD 2014-2020 will be used to build, repair and equip six day care centres for supporting persons with dementia and their families, and 68 FTACs for people with mental disabilities and old people in the 2018-2020 period amounting to BGN 41,373,980 (EUR 20,600,000). Up to BGN 14 million (EUR 7 million) have been planned so as to finance the providing of the new services in these centres with a total number of users 1,260 within one year. BGN 4 million (EUR 2 million) have been planned for the 2018-2020 period to develop methodological materials/methodologies, teaching packages, etc., trainings and supervision, evaluation of the needs of the persons, communication strategy and measures for raising the capacity of the system.

Similar to the already approved Procedure for Supporting Persons with Disabilities, ten new day care centres will be created for persons with disabilities and their families, including with severe multiple disabilities, with a total number of users: 300 persons with disabilities receiving daily and hourly care, and 600 persons (persons with disabilities, parents and other relatives of these persons, who provide care to them), receiving consultations and other similar services during the 2018-2020 period. The funding for this action is estimated at BGN 10 million (EUR 5 million).

Ten new centres for social rehabilitation and integration will be created for persons with mental disorders and for persons with intellectual disabilities, with a capacity of up to 40 places, and their expenses will be covered for one year. BGN 7 million (EUR 3.5 million) have been planned for the 2018-2020 period for repairs, refurbishing and equipment of the existing buildings with a view to providing services in the new centres suited to the needs of the target groups, and training of the specialists and supervision.

BGN 3 million (EUR 1.5 million) have been planned for creating social enterprises in which no less than 150 persons will work: young people with mental disorders and intellectual disabilities, living in FTAC and adult persons with mental disorders and intellectual disabilities, living in residential community-based social services for the 2018-2020 period. The duration of every project should be no less than 12 months.

The anticipated results of the implementation of the plan are:
• Provision of quality care and support in new community services for a minimum of 750 persons with mental disorders and intellectual disabilities, removed from the specialised institutions;
• Provision of new services for daily, hourly and resident care and support for more than 2,000 persons with disabilities and elderly people, dependent on care;
- Provision of care through social services in domestic environment for more than 17,000 persons with disabilities and elderly people, dependent on care;
- Provision of patronage care to more than 17,000 persons with disabilities and elderly people, dependent on care;
- Closing of 10 specialised institutions for persons with mental disorders and intellectual disabilities;
- Drafting of new legislation regulating the social and health-social services;
- Higher capacity of the staff and specialists in the system for long-term care.

A working group within the Ministry of Social Policy was set up in May 2018 to involve disability and human rights NGOs in the process of evaluation of the concrete proposals from municipalities of development of services under this plan. As of August 2018 a few municipalities had submitted their proposals.

5. VIOLENCE AGAINST WOMEN, INCLUDING DOMESTIC VIOLENCE

Developments in the sphere of violence against women and domestic violence in Bulgaria have been dramatic, especially since the end of 2017. On 21 April 2016 Bulgaria signed the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). Signing the Convention was considered an important political act, which demonstrates the state’s commitment to guarantee the highest standards of prevention and protection to eliminate violence against women, including domestic violence, sexual abuse, stalking, genital mutilation, forced marriage, forced abortion, forced sterilisation, etc. Pursuant to Article 5(4) of the Constitution, all international agreements ratified under the constitutional procedure, published and enforced thereof, become part of the national legislative order and take precedence over existing domestic legislation that contradicts them. On 27 July 2018 however the Constitutional Court ruled that the Istanbul Convention contradicts the Constitution thus effectively blocking its ratification.

5.1. Protection against domestic violence and gender-based violence

Following the signature of the Istanbul Convention, in June 2016 the Ministry of Justice set up a new interdepartmental working group with the mandate to prepare Bulgaria’s accession to that treaty. Based on an analysis of the Bulgarian criminal legislation relevant to its standards, which was prepared by an international expert, a working group proposed draft amendments to the Criminal Code and the Protection against Domestic Violence Act. Some of the key amendments concern: the definition of ‘domestic violence’; introducing a definition for ‘psychological violence’; criminalising the preaching or the incitement to discrimination, hatred and violence based on ‘sex’, ‘gender’ or ‘sexual orientation’ as well as criminalising any act of violence based on the ‘sex’, ‘gender’ or ‘sexual orientation’ of the victim; introducing new qualified judicial chambers hearing cases about crimes committed in the context of domestic violence or based on the sex of the victim; criminalising
stalking. The members of the working group, however, remained divided on key aspects of reforming the existing Section VIII ‘Debauchery’ in Chapter Two of the *Criminal Code*. The changes proposed by the BHC included rephrasing the title of Section VIII ‘Debauchery’ to ‘Sexual crimes’ and introducing a text explicitly stating that rape should be defined as any form of engagement in non-consensual vaginal, anal or oral penetration of a sexual nature of the body of another person regardless of their gender with any bodily part or object. These changes were not approved by the academic community.

Following the resignation of the government in November 2016, the working group dissolved at a stage where the necessary legal amendments were not yet finalised. In 2017 Bulgaria failed to implement any institutional, organisational or legislative measures aimed at combating violence against women. The government proved to lack interest in the issue to such an extent that it even failed to adopt its mandatory programme of measures for prevention and protection against domestic violence. Since 2012, on the grounds of Article 6, Paragraph 5 of the *Protection against Domestic Violence Act*, such strategic documents have been adopted every year, although their effect has remained unclear for lack of comprehensive vision, mediocrity of most measures envisaged and lack of financial resources. Paradoxically, in the beginning of January 2018 the Council of Ministers adopted a programme for prevention and protection against domestic violence, which was to be effective with respect to the already gone 2017 as well.\(^{140}\)

For lack of official statistics and centralised analysis of data connected with domestic and gender-based violence, the real dimensions and specificities of the problem remained hidden. However, a study conducted in 2017 by the European Institute for Gender Equality of the European Union (EIGE) revealed very alarming attitudes and tendencies in Bulgarian society in this respect.\(^{141}\) On the basis of data accumulated by Eurostat and the EU Agency for Fundamental Rights, EIGE produced an index of the violence against women, in which *Bulgaria has the poorest performance among the EU member states and ranks 28th*. The Index consists of three main indicators: *distribution*, *seriousness* and reporting of the cases of violence. Bulgaria occupies the last position in the European Union not only with respect to the general evaluation of the indicators, but also as autonomous scoring on two of the three indicators, namely: seriousness and reporting of the cases of violence. In other words, women in Bulgaria fall victims of the most serious forms of violence, but signal least frequently about it.

Continuing its 2015 initiative, the BHC again made an attempt to supply part of the missing information about the violence against women by outlining the scope and the principal characteristics of the most severe criminal offences against the personality of women: murders. However, they should not be examined isolated from the other forms of discrimination and violence against women, but only as the tip of the pyramid, with the unequal power relations between women and men and the stereotypes connected with the social role of the gender – at the base of the pyramid. According to the data from the study conducted by BHC on the case law for murders, in 2017 there were 29 sentences in cases of premeditated murders, attempted murders and death


caused by negligence as a result of deliberate injury inflicted upon women aged above 14 years.\textsuperscript{142} All judicial acts ended with conviction. The defendants in 27 of the cases (93%) were men. Out of these 27 cases 19 are for deliberate murders, 6 – for attempted murders, which remained unfinished due to circumstances not dependent on the perpetrator and 2 – for death caused by negligence as a result of deliberately inflicted injury. In 25 of the cases (93%) the victim and the perpetrator knew each other prior to the crime. In 12 of the cases (44.4%) the murders/attempted murders were committed by the victim’s current or former partner; in seven cases (26%) – by the victim’s son; in six cases (22.2%) – by another relative or acquaintance of the victim and in only two cases (7.4%) – by a stranger. In 11 of the judicial acts studied (39%) there is information that the defendant had exercised physical violence against the victim in the past as well, whereby five of the physically ill-treated women had officially signalled the law enforcement bodies and had sought protection from the aggressor. Death followed for eight of the eleven women about whom there is evidence in the cases that physical violence had been exercised against them in the past.

The data from the study indicate that the \textit{murders of women by their former or current partners cannot be defined as consequence of isolated, incidentally occurring cases of domestic violence}. In nine of the twelve cases of murder/attempted murder committed by the victim’s current or former partner, the judicial acts refer to previous systematic domestic physical or psychological violence, including in the form of controlling behaviour on the part of the defendant. In a number of cases, the perpetrator’s jealousy of the victim or of her successful or unsuccessful attempts to put an end to their relationship is cited as the motive for the committed crime. It is impressive to note also the inclination of the court to present the victim’s behaviour as provoking the perpetrator’s jealousy, and as a consequence that jealousy led to the act of the murder/attempted murder. Other causes of serious dismay comprise also the established practice of the courts of justice to assess as extenuating – and not aggravating – circumstances, facts like the existence of marriage or long cohabitation between the victim and the perpetrator, the existence of shared children, care for the victim by the perpetrator.

\textbf{5.2. Other issues related to providing protection from domestic violence}

In 2016, the main structural disadvantage of the \textit{Protection against Domestic Violence Act} – the \textit{absence of a cassation instance for proceedings} under this law – continued to generate contradictions and, consequently, unpredictability in terms of court practice. Substantive rulings by district courts do not reach the Supreme Court of Cassation, which deprives the latter of the possibility to consolidate and unify court practice so as to optimise its accuracy. Consequently, the practice is contestable and inefficient in dealing with issues of substance.

\textsuperscript{142} The data presented have been taken from the case law concerning murders of all district courts in Bulgaria for 2017. With the aim of collecting the data, requests for access to information were filed under the Access to Public Information Act to the 27 district courts in the country and to the Sofia City Court, which examine under the law cases of deliberate murders as first instance. The requests were for information on the numbers of the cases for deliberate murders, in which judgements were pronounced in 2017. Until 10 February 2018, such information was received from 25 district courts. After examining the judgements, which are accessible – as a rule – on the Internet, those in which the victims are women were identified and analysed. The absence of the information from the remaining three courts was compensated by examining the entire case law for 2017 of the district courts in question.
A serious issue is the tendency for courts to interpret as domestic violence only instances of physical violence — in contradiction to the Protection against Domestic Violence Act. As a further contradictory aspect of the practice, many courts fail to recognise inaction as a form of violence. Whether persons under plenary (full) or partial guardianship may be held liable in domestic violence proceedings has become another contested issue. When courts consider such perpetrators not liable, the victim is left without access to legal protection. The requirement to provide detailed description of the violence in the request for protection has further added to the negative trends. Moreover, courts continue to insist on formalities with respect to evidence: for example, despite establishing an act of violence, the court would often refuse to grant the request if no evidence confirms the date it was committed. Courts disregard the continued/systemic character of committed violence by limiting their ruling to the month up to the filing of the request and terminating proceedings on prior acts of violence committed beyond the period of one month indicated by the law. Most judges disregard instances of violence, which follow the filing of the request. Thus, the protective measures are not commensurate with the scope of violence and risk endured by the victim. Furthermore, courts have ignored the ruling by the Supreme Court of Cassation clarifying that in cases of recurring violence and if the violence is ongoing, the request is valid regardless of whether it indicates particular dates and acts of violence.

Courts often refuse to issue a second protection order before the expiration of the preceding one disregarding the possibility that the violence may escalate and later require a more severe legal measure. When they have ordered the perpetrator to refrain from violence — a measure of indefinite duration — upon a new act of violence courts refuse to grant stronger protection as the term of the preceding one has not expired. Moreover, according to the courts, once issued, a protection order is not subject to modification. This prevents the victim’s access to adequate protection if the acts of violence escalate over time. Another contested issue addresses the situation where the request is initially filed with an authority other than the competent one (e.g. the police/other body, an NGO) to settle whether it is thus considered submitted within the deadline. Although the Supreme Court of Cassation has already ruled on a private appeal observing that under such circumstances the request is within the deadline, the courts refuse to take this into consideration and continue terminating proceedings. They have a restrictive approach toward the measure establishing a “prohibition for the perpetrator to approach the victim” when the perpetrator and the victim share the same house. The courts consider such prohibition void and fail to recognise the need to protect the victim from being contacted by the perpetrator at the victim’s working place, recreation spots, public spaces, etc.

Another issue is the omission, in contradiction with the law, by courts to fine the perpetrator. In the rare cases where they do impose fines, those are usually of the minimum amount due to the lack of evidence revealing the perpetrator’s financial situation in accordance with which the fine should be determined. Next, the courts allow a counter petition for the protection of the alleged perpetrator to be filed by the latter under the same proceedings regardless of whether the set one-

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143 Bulgaria, Protection against Domestic Violence Act (PDVA), Art. 2(1): “Domestic violence shall denote any act of physical, sexual, mental, emotional or economic violence, as well as attempts of such violence, coercive restriction of personal life, personal liberty and personal rights committed against individuals, who are related, who are or have been in a family relationship or in de-facto conjugal co-habitation”.

144 Ibid, Art. 10(1): “The petition shall be submitted within one month of the act of domestic violence”.
month term has expired. Furthermore, the declaration\textsuperscript{145} attached to the perpetrator’s petition is deemed to cancel the presumptive force of the declaration by the victim, which deprives the latter of a key legal instrument to overcome evidential difficulties. In the case of a child witness in domestic violence, under which circumstance the Protection against Domestic Violence Act treats the child as a victim of the said violence, the practice as to whether the child should be heard in the proceedings is inconsistent. In contradiction to an interpretative decision by the Supreme Court of Cassation ruling that the proceeding under the Protection against Domestic Violence Act is judicially administered, but does not constitute a judicial proceeding,\textsuperscript{146} courts often approach it as the latter, which creates the misconception of their decisions as judgements. In many cases, the courts will encourage the parties under the Protection against Domestic Violence Act to seek mediation which, if undertaken, may increase the risk for the victims. Court orders’ enforcement is inefficient as a result of incompetence, poor grasp of the problematic, lacking sensitivity, and overall inaction by police bodies and the prosecutor’s office.\textsuperscript{147} The prosecutors fail to charge perpetrators who violate the court orders (which constitutes a crime). Practically inapplicable are the two preventive measures provided by the law “obliging the perpetrator of violence to attend specialised programmes” and “directing the victims to rehabilitation programs”. In reality, there exists no genuine protection from domestic violence.

5.3. Developments in the end of 2017 and 2018 and the Constitutional Court decision on the constitutionality of the Istanbul Convention

The end of 2017 marked the beginning of one of the most destructive and irrational debates on human rights, which has ever taken place in Bulgarian society. The pretext was Bulgaria’s commitment to the Istanbul Convention. The government made a motion in that regard. This mobilized different types of opposition – nationalists, anti-Europeans, homophobes, religious activists and persons with conservative family values. Many of the opponents of the ratification turned their backs entirely to the subject matter of this international treaty, introduced themes that are entirely alien to it and used the latter for their own political and ideological purposes. They decided that the convention is likely to introduce the “third sex” into the Bulgarian legislation, to legalize same-sex marriages and to introduce concepts (such as “gender”) that are entirely alien to the Bulgarian law and culture. This went hand in hand with open incitement of discrimination against women, homophobia, transphobia and hatred of the values underpinning Bulgaria’s membership in international organisations at European and global levels. Many political leaders, who otherwise competed to introduce measures to cope with crime – from home thefts to high level corruption – turned their backs to the systematic criminal infringements against the women in

\textsuperscript{145} Bulgaria, Protection against Domestic Violence Act, Art. 9(3): “A declaration by the petitioner regarding the act of violence committed shall be attached to the petition under Article 8, item 1”.

\textsuperscript{146} Assembly of Civil and Commercial College of the Supreme Court of Cassation (2013), Interpretative Decision No. 6/2012 from 06/11/2013 ruled under Interpretative Case No. 6/2012, item 22: “In view of the characteristics of the proceeding ordering protection measures against domestic violence, it follows that the former is not a judicial proceeding. It combines judicial protection by means of judicial administration and ordered administrative measures”.

\textsuperscript{147} Bulgaria, Protection against Domestic Violence Act, Art. 21(3): “In the event of failure to enforce the court order the police body, which has established the violation, shall detain the perpetrator and advise forthwith the services of the prosecutor’s office”. 
Bulgaria. The proponents of the ratification were some NGOs receiving international funding for human rights and gender equality and some, although not all the politicians of the ruling GERB party. Strong opponents of the ratification among the political parties included the United Patriots from the government coalition, as well as the Bulgarian Socialist Party, the major oppositional force.

The beginning of 2018 saw a fierce exchange of opinions between the proponents and the opponents of the Istanbul Convention. Several public marches and demonstrations were organised by the opponents shouting homophobic, transphobic and anti-European slogans. All major religious communities, except for the Israelite Denomination, issued public statements opposing the ratification. Most media were biased in covering the debate, inviting speakers that were for the most part opponents to the ratification and lacked any competence to discuss its real subject matter. The ruling GERB party found itself in a rather embarrassing situation and decided to resolve it by applying to the Constitutional Court with a request to assess the Istanbul Convention’s constitutionality.

In a striking 8 to 4 decision of 27 July 2018 the Constitutional Court found that the text of the Istanbul Convention contradicts the Constitution. The Constitutional Court states that “the Convention is inherently contradictory, and this contradiction creates double layer. Thus, the content of some of its provisions goes beyond the stated objectives of the Convention and its name”. The Constitutional Court further argues that when the Convention “introduces the expression "gender identity", it stems from the assumption that the social dimension of gender is independent from the biological one. Distancing from the concept of "sex" as a biological characteristic - a man / woman, diverts the Convention from the stated goals of protecting women from all forms of violence. The internal contradiction of the Convention becomes clear when we compare the goals declared in Article 1 and its title, with the definition of "gender" in the Convention […] This duality of the concept apparatus, of the meaning of the concepts used in practice, does not lead to the achievement of equality between sexes but deletes the differences between them, thus stripping the principle of equality of its meaning”. The ambiguities and internal contradictions of the Istanbul Convention thus contradicts the principle of legal certainty inbuilt in Article 4, §1 of the Constitution, which provides that Bulgaria is a state ruled by law.148

The Constitutional Court decision is perhaps the worst in the court’s history since its establishment. It shows poor understanding of the object and purpose of the Istanbul Convention, failure to grasp the meaning of some basic concepts relating to the global fight against gender-based violence and deep-rooted biases and stereotypes on the part of the Constitutional Court judges. It effectively blocks the prospects of ratifying the convention by Bulgaria in the foreseeable future. Moreover, it prevents giving of practical meaning and even the legal usage of some basic concepts underlying the policies for combating gender-based violence, such as “gender”, “gender identity”, and “gender-based violence”. The latter became dirty words in both the official and the common parlance in Bulgaria.

6. PROHIBITION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, TREATMENT OF PERSONS DEPRIVED OF THEIR LIBERTY AND CONDITIONS OF DETENTION

6.1 Definition of torture
The current Bulgarian Criminal Code does not criminalise torture in accordance with the definition in Article 1 of the UN Convention against Torture. Currently, all crimes except war crimes and crimes against humanity are covered by statutes of limitation. The limitation periods differ according to the type and gravity of the offense. On 21 December 2013, the Ministry of Justice published a draft of a new Criminal Code, which had been elaborated by two working groups in the course of two years. The Ministry unilaterally substituted many provisions of this draft with others contradicting international standards and the recommendations of international bodies, such as UN Committees, the Council of Europe and the European Court of Human Rights. Article 5(3) of the draft represents an attempt to provide for universal jurisdiction of torture, but the attempt is unsuccessful. The definition does not comply with Article 1 of the Convention and the crime definition is located in the chapter for crimes against humanity.

Article 589 of the draft attempts to formulate a definition of torture. Paragraph 1 defines it as an act of any person without any requirement that he/she acts in an official capacity. Paragraph 2 of the draft introduces a qualified crime of torture perpetrated by a public official. Both torture perpetrated by a private person and by a public official is defined as crimes against humanity. This approach was criticized by experts for its failure to comply with the definition in the Convention against Torture. In 2014 the Ministry of Justice abandoned the draft. No such attempts were made since then to introduce a crime of torture in the Criminal Code despite recommendations of the Committee against Torture from December 2017.

6.2 Ill-treatment by police officers

6.2.1 Unlawful use of force and firearms at the time of arrest and during police detention

6.2.1.1 Research about unlawful use of force by the police

The CPT report from its 2014 visit states that, “the delegation received many allegations of deliberate physical ill-treatment of persons detained by the police (including juveniles and women), both at the time of apprehension and during questioning, consisting of slaps, punches, kicks and truncheon blows. In some isolated cases, it heard allegations of ill-treatment of such a severity that it would amount to torture, such as truncheon blows on the soles of the feet, blows with truncheons inflicted to a person attached with handcuffs to hooks fixed to a door frame (and thus immobilised

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149 CPT, Report to the Bulgarian Government on the visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 24 March to 3 April 2014, published on 29 January 2015, available at: https://rm.coe.int/16806940c4.
in a hyperextended position) and the infliction of electric shocks using an electrical discharge weapon. In several cases, the delegation found medical evidence supporting the allegations of ill-treatment. Despite the existence of legal regulations for the recording of injuries found on persons admitted to IDFs (investigation detention facilities), it remained the case that injuries were almost never mentioned, and any description of injuries was extremely cursory. Further, medical examinations of newly-arrived detainees at the IDFs were still, as a rule, conducted in the presence of non-medical staff. There has also been no improvement in the practical implementation of safeguards against police ill-treatment. Persons in police custody are rarely put in a position to notify promptly their next-of-kin of their detention. It was also still very rare for them to benefit from the presence and the services of a lawyer during the initial period of 24 hours of police custody. Access to a doctor in emergency situations did not seem to pose a problem but there seemed to be no uniform procedure or practice for non-urgent medical care. In addition, the CPT expresses serious misgivings about the practice whereby persons detained in Sofia, were taken to the Ministry of Interior Hospital, prior to their transfer to an IDF, in order to be seen by a doctor and to be provided with a certificate confirming that they were “fit for placement” in an investigation detention facility”.

In the report on the 2010 visit, the CPT invited the Bulgarian authorities to introduce a uniform nationwide system for the compilation of statistical information on complaints and disciplinary and criminal proceedings and sanctions against police officers related to ill-treatment. Unfortunately, such a nationwide uniform system had still not been put in place, as a result of which the statistical data provided to the delegation during the 2014 visit (by the Ministry of Interior and the Supreme Cassation Prosecutor’s Office) was not entirely compatible and therefore failed to enable the CPT to obtain a clear picture of the situation in the country.150

The CPT also states in its ad hoc visit report in 2015 that the vast majority of the Committee’s long-standing recommendations, some of them dating back to the very first periodic visit to Bulgaria in 1995, remained unimplemented. These included recommendations on ill-treatment (both in the police and prison context). The Committee again concluded that men and women (including juveniles) in the custody of the police continue to run a significant risk of being ill-treated, both at the time of apprehension and during subsequent questioning.151 In the course of its 84th plenary meeting in July 2014, the CPT decided to set in motion the procedure provided for in Article 10(2) of the Convention.152 In its public statement the CPT expressed concern about the lack of decisive action in implementation of legislation and as regards the treatment of persons detained by law enforcement agencies, it recommended resolute action “to ensure the practical and meaningful operation of fundamental safeguards against ill-treatment (including the notification of custody, access to a lawyer, access to a doctor, and information on rights)”.

150 Ibid, p. 17.
151 It added that, “very little progress, if any, has been made as regards guaranteeing the practical implementation of the legal safeguards against police ill-treatment. The vast majority of persons interviewed by the delegation stated that they had not received information about their rights after being detained by the police, had not been able to notify a third party of their custody and had not benefited from the presence and the services of a lawyer from the very outset of their deprivation of liberty. Furthermore, the delegation received a number of allegations that medical examination of persons in police custody was limited to a few general questions; no physical inspection took place, the injuries were usually not recorded and the examination itself was often performed in the presence of police officers, with detainees usually being handcuffed”.
152 Ibid, p. 4.
153 CPT, Public Statement concerning Bulgaria, 26 March 2015, https://rm.coe.int/16806940ef
It its 2017 visit to Bulgaria, the CPT concludes that, in some respects, the findings of the 2017 visit suggest that there might have been a slight improvement since the previous visit to Bulgaria in 2015, especially as regards the severity of alleged ill-treatment. That said, the delegation still received many allegations of physical ill-treatment from persons (including juveniles) who were or had recently been detained by the police. The Committee regrets the absence of any real progress in the application of safeguards against ill-treatment – namely the right to notify one’s detention to a third party, the right of access to a lawyer and to a doctor, and the right to be informed of the above-mentioned rights. Furthermore, the CPT notes that, despite the adoption of new detailed instructions on medical examinations and notification to the prosecutor, there has been no real progress as regards the role played by healthcare staff (and, in particular, medical doctors) in the prevention of ill-treatment.\footnote{154 CPT, Report from the visit in Bulgaria in October 2017, available at: https://rm.coe.int/16807c4b75.}

Since 2002, BHC has conducted surveys among newly-arrived prisoners in four prisons of Bulgaria to inquire about the conditions of pre-trial detention, police brutality and access to justice. The survey is not representative of the prison system as a whole, but gives a fair impression of the trends over the past several years. Among the questions asked are some related to the use of force by police during arrest and inside the police station. During the period from December 2017 until January 2018 a BHC team conducted a survey among detainees from the prisons in Stara Zagora, Vratsa, Lovech and Pazardjik, whose pre-trial proceedings had started after 1 January 2016. Similar surveys in the same prisons among similar groups of detainees were conducted by BHC in earlier years as well. Table 3 below presents the results of these surveys for the different years.

\textit{Table 3: Use of force by police officers since 2010 (% of respondents reporting use of force against them)}

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

The results show a slight increase in 2017 compared to 2014 in the share of persons reporting ill-treatment during their detention and a slight decrease of those who report that inside the police precinct. However, it should be pointed out that in 2017 there was a slight decline in the share of persons reporting that they had been detained in police precincts on account of the higher share among the convicted persons of perpetrators of crimes connected with driving motor vehicles, very few of whom were kept in custody at all prior to their final conviction. Therefore, on the whole, the above results reveal a persisting alarmingly high level of excessive use of force by police officers. It comprises both relatively severe forms like torture, and lighter beatings that do not leave permanent traces on the body of the victims. According to the data presented in the table, \textit{well over 1/3 of detainees who were subsequently sentenced to effective imprisonment were ill-treated either at the time of arrest or afterwards, or in both cases.} Some cases involve inflicting severe pain with the purpose of coercing information or for punishment, i.e. torture.\footnote{155 Bulgarian Helsinki Committee, \textit{Human Rights in Bulgaria in 2014} (2015), p. 6.}
Between November 2016 and February 2017 BHC conducted a large survey among 1,357 convicted prisoners in all prisons of Bulgaria. It was a repetition of a similar survey, which the organisation conducted in May-June 2015 among 1,691 convicted prisoners. One of the main objectives of both surveys was to establish the scale of the use of physical force by police officers against inmates at the time of arrest and during the subsequent detention. According to the 2016-2017 survey findings, every third person (34%) surveyed reported being physically ill-treated either upon police arrest or in police custody (the survey from 2015 estimated this share at 32.8%).\(^{156}\) Those claiming use of physical force inside police custody were more (24%) than those who reported violence upon arrest (19.4%). These shares are bigger compared to the 2015 survey, in the first case – by 2%, and in the second – by 4%.\(^{157}\) The number of inmates claiming physical ill-treatment at investigation detention facilities is significantly lower - 6.2% of those who have been detained at such facilities (however, this share is higher by 2% compared to 2015).\(^{158}\) In general, the 2016-2017 survey does not reveal any positive dynamics in the trends and even estimated a slight increase of the use of unlawful physical force.

The share of Roma (28.3%) who reported being victims of physical violence by the police in the 2016-2017 survey is twice as high as that of the Bulgarians (14.5%). The survey’s findings suggest also that juveniles are particularly vulnerable to police brutality – 66.6% of all juveniles interviewed report being physically abused during police custody.\(^{159}\) The share of Roma who reported being victims of physical violence in 2015 was by some 10% higher than that of Bulgarians and by some 11% higher than that of Turks.\(^{160}\)

The 2016-2017 survey established a clear correlation between the access to legal assistance during pre-trial proceedings and the use of force by police officers. Those respondents who did not have a lawyer from the outset of the pre-trial proceedings or did not have a lawyer throughout the entire period report being victims of physical ill-treatment by the police at the time of the arrest and inside the police twice as often as those who did have a lawyer from the outset of the criminal proceedings.\(^{161}\) In 2015 34% of those interviewed reported that their access to legal assistance had been restricted or completely absent during the pre-trial proceedings. Of these, 6.1% claimed that they had not had a lawyer all the time. Respondents who did not have a lawyer and were subjected to physical violence were by 13.3% more than those who were subjected to physical violence but did have a lawyer.\(^{162}\)

### 6.2.1.2. Ordinance about Use of Force and Auxiliary Means by Officers of the Ministry of Interior (2015)

In April 2016, the BHC sent an information request about the unlawful use of force and firearms in police stations to the Ministry of Interior. According to the reply from June 2016, the Ministry did not keep information of the unlawful use of force and auxiliary means in police stations under the newly-adopted Ordinance and this information can be provided only by the regional police departments. The request was sent to inquire how the new Ordinance 8121z-1130 of 14 September 2015 about the


\(^{157}\) Ibid, p. 10.

\(^{158}\) Ibid, p. 10.


Order of Use of Force and Auxiliary Means by the Officers of Ministry of Interior\textsuperscript{163} was implemented during the period 14 September 2015 - 15 May 2016. Article 5 of the Ordinance provides that \textit{in each case of use of physical force and auxiliary means} the officer who used them is obliged to report in writing on: his own name and position; place, date and time of this use; reason and circumstances; intensity of the use; identity of persons against whom it was used; measures taken against these persons; visible evidence of the use. Article 1 of the Ordinance provides that the use of force and auxiliary means are allowed under Article 85, paras. 1 and 2 of the Ministry of Interior Act. The presumption therefore was that the Ministry of Interior would check the registration of all cases of use of force and auxiliary means in their data base of written reports and would reply about the unlawful ones. However, the Ministry replied that it does not collect such information. The Regional Departments, to which the Ministry of Interior forwarded the BHC request, supplied information only about cases in which they received signals/complaints and not about the registration of all cases of unlawful use of force and auxiliary means under the newly-adopted Ordinance.

In its letter from 28 April 2016, the Ministry of Interior replied that in 2015 organisation for exam checks of the theoretic knowledge of police officers (for their personal protection and tactical training) was created and by these exams the level of knowledge of the legislation including for detention and use of force, arms, auxiliary means was checked also. In everyday work legislation related to detention is being reminded to the officers; each case of use of force and auxiliary means is reported; each case of unlawful use of force and auxiliary means is thoroughly investigated and persons found guilty are punished.\textsuperscript{164}

According to the Concluding Provisions of the Ordinance, para. 3, “the Ministry of Interior Academy and the Management of Property and Social Activities Department at the Ministry of Interior should elaborate \textit{methodological guidelines} on the use of different types of techniques for use of physical force and auxiliary means, technical characteristics, safety rules in use and storage of these means within three months after the enforcement of the Ordinance”. Asked about the guidelines that had to be elaborated by the end of 2015, the Ministry of Interior replied that as of June 2016 the guidelines were still in process of elaboration.\textsuperscript{165}

According to para. 5 of the Concluding Provisions of the Ordinance, the Ministry of Interior Academy and the Human Resources Department organise \textit{trainings on the use of force and auxiliary means by police officers}. The Ministry of Interior reported that during the researched period 90 police officers were trained in personal protection. Introduction training, including on the use of force and auxiliary means, was performed in three cities with 754 officers, and a training in professional skills, again including the use of force and auxiliary means, for 265 officers was organised. Another training for work in multiethnic environment was performed by the MoI Academy for 210 officers, who trained another 2,480 officers at their respective workplace.\textsuperscript{166}

\textsuperscript{163} Bulgaria, Ministry of Interior, \textit{Ordinance 8121z-1130 of 14 September 2015 about the order of use of force and auxiliary means by the officers of Ministry of Interior} (НАРЕДБА № 8121z-1130 от 14 септември 2015 г. за реда за употреба на физическа сила и помощни средства от органите на Министерството на вътрешните работи), available in Bulgarian at: http://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=97494.


\textsuperscript{165} Bulgaria, Ministry of Interior, Letter 812100-14339/9 June 2016.

\textsuperscript{166} \textit{Ibid.}
The Ministry of Interior elaborated a form for NGOs for the purposes of conducting monitoring in police stations, but as of June 2016 no such agreements with NGOs had been signed.\textsuperscript{167}

\textbf{6.2.1.3. Legal requirements and practice in provision of legal assistance}

The right of access to a lawyer is a fundamental right under the \textit{Constitution} of the Republic of Bulgaria; this right can be exercised immediately \textit{upon arrest or at the time of presenting a criminal charge to a person}.\textsuperscript{168} However, Bulgarian domestic law and jurisprudence define the 24-hour police detention measure of an individual suspected of having committed an offence as an administrative measure regulated by administrative law that falls outside the scope of the national criminal proceedings \textit{sensu stricto}. Since suspects detained by the police do not have formal standing in criminal proceedings, their access to a lawyer and right to legal aid are not guaranteed in the same way as in the case of the accused. In police detention the legal assistance should be provided only upon request of the detainee. Vulnerable groups, such as children or persons with mental disabilities for whom there is mandatory defence in criminal proceedings, are not protected before the presentation of the formal charges.

The access to a lawyer \textbf{when the person is formally charged and becomes accused} aims at providing legal defence in initiated criminal proceedings. At this stage, in some cases listed in the \textit{Criminal Procedure Code} legal defence is mandatory\textsuperscript{169} and in these cases the investigation authorities and judges appoint attorneys-at-law to provide it. In two other cases legal defence is mandatory unless the accused person waives his/her right to a lawyer – when the accused person does not understand Bulgarian language and when the accused persons have contradictory interests and one of them has a lawyer.

During the 24-hour administrative police detention, the right of access to a lawyer is triggered after the detained person specifically requests legal services. The police officer on duty is obliged to \textbf{immediately contact by phone the detainee’s lawyer of choice or a public defender} (if the detainee does not have a personal/private lawyer), with information about the detainee’s personal data and state, as well as about the reasons for their arrest.\textsuperscript{170} The detainee has the right to choose a public defender from a list of lawyers on call (selected from the National Legal Aid Registry), which should be available in the police department and displayed at a location that is accessible to detainees.\textsuperscript{171} However, the \textit{Legal Aid Act} does not guarantee that the detainee will receive the services of the public defender of his/her choice (“whenever possible, the Bar Association shall appoint the attorney

\begin{itemize}
\item\textsuperscript{167} Ibid.
\item\textsuperscript{168} Bulgaria, \textit{Constitution of the Republic of Bulgaria}, Art. 30(4), available in Bulgarian at:
\texttt{http://www.lex.bg/laws/idoc/521957377}.
\item\textsuperscript{169} Legal defence is mandatory in the following cases: when the accused persons are adolescents (14 to 18 years of age); the accused persons have physical or mental disabilities that prevent them from legally defending themselves; the persons are accused of an offence that is punishable by deprivation of liberty for a minimum of ten years or an offence punishable with a more serious penalty; when the case is decided in the absence of the accused person; when the accused person cannot afford to pay for the attorney’s services, but wants to have an attorney and this is required in the interests of justice, \textit{Criminal Procedure Code}, Art.94, para.1.
\item\textsuperscript{171} Bulgaria, \textit{Legal Aid Act}, Art. 28(2).
\end{itemize}
requested by the person receiving the legal assistance”). In any case, such appointments of public defenders are very rare.

During the 24-hour administrative police detention even when the detained person asks for access to defence counsel, that does not oblige the police authorities to secure him one, and not to conduct an “exploratory talk” with him/her. Nor are they obliged by law to inform the accused that he/she may refuse to answer questions. That became clear from the ECtHR judgment on the case of Dimitar Mitev v. Bulgaria of 8 March 2018, in which the applicant, detained on suspicion of having committed a crime, asked for an attorney, but was given no access to one. He was not warned that he may refuse to answer questions and was questioned. He confessed of a serious crime. His confession could not become a basis for conviction but he was nevertheless convicted on the grounds of witness evidence of operatives. The Court found violation of Article 6.3c of the Convention due to the fact that the applicant was not assisted by an attorney when he made the confession, although he asked for one.

Bulgarian legislation does not provide for any effective monitoring mechanisms to oversee the quality of public defender services, which is a very vaguely marked obligation of the local bar associations. Standards for quality, assessment and control over ex officio legal aid were adopted only in 2014. According to these, public defenders should consult the clients about their rights, should discuss with them their strategy for legal protection, should get acquainted with their case file, shall not be allowed to receive any compensation from their beneficiaries and should provide services to the highest possible standards. The assessment of their work by the National Legal Aid Bureau for the purpose of allocation of payment is done based on the type of the case, the legal and factual complexity of the case, the number of lawyer’s interventions (complaints, appeals, etc.), the outcome of the case and the contribution of the lawyer to it. However, legal defence services are currently not subject to any quality assessment.

As part of a research on police detention, in 2015 the Bulgarian Helsinki Committee interviewed a number of practicing lawyers. All of them were of the shared opinion that, in general, detainees have access to legal aid if and only after they are charged with a criminal offense. Before that, legal aid is not available in practice.

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172 Ibid, Art. 25(5).
175 Judging by the data presented in the 2015 Report on the Activity of the National Legal Aid Bureau, p. 7 (available in Bulgarian at: http://www.nbpp.government.bg/images/Otcheten_doklad_2015_final.pdf) concerning disciplinary proceedings against public defenders, it can be concluded that the quality of their services is very good since only 22 lawyers (out of a total of 5,272 registered lawyers) were removed from the Legal Aid Registry due to imposed disciplinary action, six of which were incurred due to violations of the Legal Aid Act.
176 Bulgarian Helsinki Committee, The Normative and Practical Obstacles to Effective Prosecution of Ill-Treatment by Official Persons (2017), available in English at: http://www.bghelsinki.org/media/uploads/2016police_en.pdf. According to the research, the likelihood that a detainee may be assigned a lawyer is greater if the arrest takes place during the day, if the detainee requests a lawyer and if that request is duly recorded in the detainee’s documentation. The reality is that detained suspects are not always informed about their right to legal assistance and/or the request forms they fill in are not always correctly completed (in some cases police officers try to avoid additional paperwork by instructing
In its report from the 2014 visit to Bulgaria, the Committee for the Prevention of Torture (CPT) states: “The delegation found that it was still very rare (and even exceptional) for detained persons to benefit from the presence and the services of a lawyer at the very outset of their deprivation of liberty by the police and in general during the initial period of 24 hours of police custody; moreover, some persons alleged that they had only been in a position to meet their lawyer during the first court hearing (when the issue of possible imposition of a preventive measure was being considered)”. The CPT also reveals (after consultation of relevant registers and case files) that, even when the (usually ex officio) lawyer was requested by the police to come, this almost invariably happened at the very end of the 24-hour period of custody, thus generally after the detained person had already been interviewed and after his/her confession or statement had been drafted by the police. The impression was, therefore, that the lawyer’s presence was of a purely formal nature, aimed at ensuring that the detention protocol is “duly” filled in and contains the lawyer’s signature. Furthermore, the CPT delegation received several complaints according to which the police had actively discouraged persons in their custody from exercising their right to have a lawyer present and assisting them, by either stating that they “did not need a lawyer” at this stage of the procedure or by claiming that the lawyer (in particular, when the person requested that his/her own lawyer be contacted) “could not be reached” or “was not willing” to come to the police establishment. The CPT delegation again heard many allegations according to which, even in those rare cases when the detained persons did meet their lawyers while in police custody, such meetings systematically took place in the presence of police officers.

Unfortunately, in 2015, 2016 and 2017 the Ministry of Interior did not change this negative practice and did not take any measures to ensure the practical implementation of the right to a lawyer.

In its 2016-2017 survey among 1,357 convicted prisoners the Bulgarian Helsinki Committee inquired also into the legal assistance of the prisoners during their pre-trial proceedings. The survey posed two major questions relating to access to a lawyer during the criminal proceedings (in a broad sense, i.e. including also the 24-hour “administrative” police detention). It also aimed to establish the dependence between the use of force by the police, access to legal assistance, ethnic origin, age and severity of the charges.

According to the survey, 71.9%, or over two-thirds of those interviewed, reported they did not have a lawyer (retained or appointed) from the very outset of the criminal proceedings or did not have a detainee to mark “No” in those fields pertaining to legal assistance, to medical assistance and to notification of a third party about the person’s detention. Another issue that came to light was that detainees may be held for up to a few hours without any specific charges solely based on the reasoning that “certain information exists to believe the person may have committed an offence”, which may never get disclosed to the detained person. Police officers may never even record detentions of this type and the detained person may subsequently be released without having any proof of the detention. Furthermore, in the event that the arrest is carried out during the night, and especially if the arrest takes place in a small town, it is very likely that the detainee will not be provided with a lawyer (even if one was requested and reasonable efforts were made to fulfil the request) due to a shortage of lawyers on call or due to a reluctance on the part of the lawyers to respond to such requests, which is further aggravated by the lack of consequences for lawyers if they refuse to cooperate. The lawyers interviewed as part of this research were also under the impression that detainees are likely to be questioned as witnesses at first, in the absence of an attorney.

177 CPT, Report to the Bulgarian Government on the visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 24 March to 3 April 2014, published on 29 January 2015, para. 26, p. 22, available at: https://rm.coe.int/16806940c4.  

lawyer in the criminal proceedings at all. Seventy-nine percent of the interviewees who stated that they were accused of crimes punishable with deprivation of liberty of ten years, did not benefit from legal defence from the very outset of the criminal proceedings. Fifty-six percent of the respondents declared that they had been detained during the whole duration of the criminal proceedings, whereas this percentage among Roma respondents was even higher – around 60%.

In the period October-November 2016, BHC interviewed 23 convicted prisoners and three accused persons on their experiences as suspects deprived of liberty, focusing on the implementation of the right to receive written information about defence rights. All respondents declared that their first interrogation by the police was conducted without the presence of a lawyer and without receiving information on their right to remain silent prior to questioning.

6.2.2 Right to information about procedural rights of suspected and accused persons

A significant but rarely discussed right of suspected and accused persons in Bulgaria is the right to information about their procedural rights. Initial detention by the police is known to be among the most critical situations of persons suspected or accused of having committed a crime. Very often, this is the first time detainees are informed about the accusation against them and are about to be interrogated, while their legal defence has not yet been organised. The initial detention period is also characterised by a high risk of psychological and physical ill-treatment of the detained individuals. Domestic and international human rights observers have consistently expressed concerns that this risk is particularly high with respect to suspects in police custody in Bulgaria. Normally, suspects and accused persons who are detained are entitled to procedural rights, but these rights could only be effective if detainees are aware of them. Yet, as a result of conflict of interest, it could be hardly accepted that authorities, which initiate the investigations and order detention could serve as the single and most reliable source of information about the rights of detainees.

To strengthen protection against unlawful or arbitrary detention, to safeguard the fairness of the proceedings and to allow for an effective exercise of the rights of the defence, Directive 2012/13/EU imposed an obligation on EU Member States to provide accessible information about applicable procedural rights in criminal proceedings by means of a written Letter of Rights to all suspects and accused persons, which are arrested or detained. However, five years after the notification of Directive 2012/13/EU, the overall assessment of the state of implementation of this obligation in Bulgaria is rather negative and discloses serious deficiencies in both domestic legislation and practice on the provision of accessible Letters of Rights.

The 2016-2017 BHC research aimed to clarify the personal scope of application of Article 4 of Directive 2012/13/EU with regard to criminal proceedings in Bulgaria; to assess the level of harmonisation between domestic legislation and practice, on the one side, and the EU requirements.

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179 Interviews were carried out as part of Accessible Letters of Rights in Europe EU co-funded project. The number of interviews conducted with convicted inmates per prison and the dates of the interviews are as follows: Bobov Dol prison – nine interviews on 7 November 2016; Parazdzhik prison – nine interviews on 9 November 2016; Plovdiv prison – five interviews on 16 November 2016; interviews with accused persons were conducted in the investigation detention facility in Haskovo on 24 October 2016.

on the provision of written information to suspects and accused persons that are arrested or detained, on the other, as well as to analyse whether the existing Letters of Rights meet the requirements of accessibility and non-technicality.

One of the key findings of the research is that the deficiencies in the Bulgarian domestic legal framework and jurisprudence stem from the fact that the national law defines police detention of a person suspected of having committed an offence as administrative in nature, regulated by administrative law, falling outside the scope of the national criminal proceedings sensu stricto. Since suspects detained by the police do not have formal standing under Bulgarian criminal law, they are excluded from the scope of protection of Directive 2012/13/EU, including with regard to the provision of information about their rights in criminal proceedings. The same applies to persons, suspected of having committed a criminal offence and arrested or detained by authorities under the Military Police Act, the Customs Act, the Combating Terrorism Act and the State Agency National Security Act.

Suspects

- Suspects, arrested and detained by the police receive information about some, but not all of the rights listed in Article 4 of the Directive. However, the same rights are provided to any detainee, regardless of the ground for detention; its prime aim is to serve as a safeguard against torture and ill-treatment and it makes no reference to procedural rights in criminal proceedings. The most essential right, excluded from the scope of information provided is the right of suspected persons to remain silent. Suspects, detained by the police receive a Letter of Rights, which contains information on their rights as detainees only (right to inform a third person about the detention, right to medical examination, right to access to a lawyer, etc.). In 2016, the number of suspects detained by the police, who did not receive information about their rights in criminal proceedings was 48,588.

Accused persons

- Persons formally accused of having committed a crime (whether detained or not) are informed in writing about their rights in criminal proceedings, which information covers the scope of Article 3 of Directive 2012/2013/EU (right to access to a lawyer, right to legal aid, right to interpretation and translation, etc.). In case of arrest or detention, accused persons receive some additional written information on their rights. However, it only partially covers the rights, listed in Article 4 of Directive 2012/13/EU, specific to the situation of deprivation of liberty. There is no unified document, provided to formally accused persons, which could be regarded as a Letter of Rights.

In practice: “Do not waste your money on lawyers, we will put you in prison anyway”

- Written information about rights is not always provided from the outset of the deprivation of liberty by the police or the other administrative authorities, competent to arrest and detain, whereas persons, who are not formally detained, but are obliged to remain at the police station for a “conversation”, do not receive a Letter of Rights as a rule.
• Letter of Rights available at the police detention premises contains legal references without further elaboration on the rights that are referred to. Notably, the Letter of Rights is designed in a way that primarily accommodates a waiver of rights. Written information about rights, available to detained persons, who are formally accused, is a mere repetition of legal provisions, without containing instructions for the practical realisation of the rights.
• Since police detention is regarded as taking place outside criminal proceedings, the trial court does not examine violations of the right of the detained suspect to receive written information about the applicable procedural rights. It also does not evaluate the manner in which waivers of defence rights are established.
• The research documented various practices for discouraging the understanding and the realisation of the rights, contained in the Letter of Rights by police officers, including by manipulation, threats and ill-treatment.
• Both domestic and international monitoring bodies continue to report severe violations of human rights, including death, torture and ill-treatment, occurring on arrest and during police detention.

6.3 Investigations of cases of ill-treatment by police officers

6.3.1 Impunity
In 2015, the Bulgarian Helsinki Committee carried out a research on the number and outcomes of the police ill-treatment cases during the period 2000-2015.¹⁸¹ As in 2015 still no nationwide system for the compilation of statistical information had been out in place, information about these complaints/disciplinary/criminal proceedings was requested from the courts and the Ministry of Interior. According to the courts that replied to the special request (42 total out of 144 polled), there were 212 cases of ill-treatment for the period 2000-2015 (the military court replies referred to the period 2000-2008, while the civilian court replies referred to the period 2009-2015). At the same time, according to the Ministry of Interior, there were 1,146 complaints (for the period 2000-2015) and cases (both criminal and disciplinary) initiated, out of which 475 were for unlawful detention, 483 for bodily injury, and 188 for forced interrogation.¹⁸²

According to the courts that replied,¹⁸³ at least 172 of the 212 cases concerned “light bodily injury” and the outcome was that 101 fines were imposed and 28 police officers were sentenced to conditional imprisonment (suspended sentence “deprivation of liberty”), probably for moderate or severe bodily injury and unlawful detention (the replies do not specify this).

According to the Ministry of Interior, 138 criminal proceedings against police officers were initiated, of which 40 were for “light bodily injury” and four - for ill-treatment during interrogation (Article 143 of Criminal Code); 93 pre-trial criminal proceedings were terminated and one was stopped. As

¹⁸³ 42 courts that replied (out of 144 polled) to the information request (four of those 42 are military courts - three still operating and one closed - responded for the period 2000-2009 and 38 are civil courts and responded for the period 2009-2015).
a result of the criminal proceedings, according to the Ministry of Interior 48 officers were sanctioned with fines and 11 - with suspended sentences “deprivation of liberty”.

According to the Ministry of Interior out of all 1,146 complaints, 97 complaints against unlawful detention were found unreasoned, 158 complaints against bodily injury were found unreasoned and 45 complaints against forced interrogation were found unreasoned (300 altogether). Out of the other 846 internal investigations carried out by the directors of police departments the sanctions imposed on police officers were: three officers were reprimanded, 18 received a written warning, 75 were sanctioned with written warnings for dismissal, seven were prohibited from applying for a job promotion and 18 were dismissed (121 altogether). The Ministry of Interior did not provide information about the other 725 cases.

The success rate of prosecutions could not be estimated based on the replies provided by the courts and the Ministry. They report that investigations were opened for each complaint. Therefore, this would mean 1,146 (Ministry of Interior) and 212 (by the courts). According to the Ministry of Interior, a total of 180 police officers were sanctioned during the period 2000-2015 (the researchers received information about at least 121 police officers who had received disciplinary sanctions, and 59 officers sentenced in criminal proceedings). Meanwhile, information from 42 courts revealed that a total of 129 police officers were sentenced in criminal proceedings (101 police officers were sentenced with fines and 28 with suspended terms of deprivation of liberty).

6.3.2 Practice on prosecution by the complainant

In reality, very often the police ill-treatment cases were initiated because the victim decided to do so and he/she stayed on in the role of a private complainant; the majority of cases identified in the research concern light bodily injury and these cases are only possible to be prosecuted upon a complaint by a private complainant. Data gathered by the courts in Bulgaria showed a difference in the success rate of those cases that were prosecuted by public prosecutors as opposed to those prosecuted by private prosecutors: namely, the majority of the cases initiated against policemen for ill-treatment were for light injury (around 170). However, there is no data whether the victims were constituted as such in the proceedings.

The success of the cases for light injuries is disputable as the majority of them resulted in a fine of BGN 500 up to 1,200 (EUR 250 to 600) (data was received for 101 fines out of 212 cases, of which at least 172 were for bodily injury). A fine is an administrative sanction applied when the crime is too light to be criminally prosecuted. On the other hand, the other sentences that were probably applied for a moderate/severe injury amount to suspended imprisonment for 1,5 to three years. There were 28 such sentences according to the data provided by courts (out of 144 asked 42 replied as of 18 of December 2015) and 11 according to the data provided by the Ministry of Interior.

The first finding of the BHC research is that the Ministry of Interior and the courts work with different information/statistics, as the statistics of the MoI report significantly lower numbers of initiated criminal proceedings. This poses the problem of the outcome of the disciplinary proceedings

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185 Ibid.
based on the outcome of the criminal proceeding. The second conclusion is that the criminal proceedings end with low punishments – fines and suspended terms of deprivation of liberty. The third conclusion is that effective mechanism for protection of the victims of police violence is lacking, as the statistics is lacking, the success rate of the cases is low and the punishments are light.\textsuperscript{186}

Ill treatment by the police is not punished, as a rule. In February 2018, the website Dnevnik presented information on the disciplinary measures undertaken by the MoI on cases of unlawful arrest or use of force by police officials during the period from the beginning of 2017 until mid-2018. That information was obtained under the Access to Public Information Act. According to it, most of the disciplinary proceedings started following complaints by citizens. Only three police officers received disciplinary punishment: dismissal for unlawful arrest or use of force outside the cases permitted by law. Disciplinary sanctions were imposed in several remaining cases: censure, reprimand and promotion prohibition. Criminal proceedings against the perpetrators have not been reported in any of the cases.\textsuperscript{187}

6.4 European Court of Human Rights cases about police brutality and lack of investigation

In the period under review the European Court of Human Rights (ECtHR) established a number of violations of Article 2 and Article 3 of the European Convention on Human Rights (ECHR) due to police ill-treatment of persons arrested or detained for having committed criminal offenses. These cases involve excessive use of force and firearms, torture and other forms of ill-treatment, as well as lack of prompt and effective investigations. At present the group of 36 cases Velikova v. Bulgaria involving police torture/ill-treatment is under the enhanced procedure for review of their execution by the Committee of Ministers of the Council of Europe. Some of these cases are pending for execution since 2000.\textsuperscript{188}

6.5 Prison conditions

On 27 January 2015, the European Court of Human Rights delivered a pilot judgement in the case of Neshkov and Others v. Bulgaria.\textsuperscript{189} The pilot procedure referred to the living conditions at several Bulgarian prisons. The applicants, five inmates serving their sentences in different prisons, claimed that the combination of overcrowding, bad hygiene and inadequate access to medical care had turned their detention into inhuman and degrading treatment in violation of Article 3 of the European Convention on Human Rights. The Court agreed with them and held that such a violation had indeed taken place in all prisons in which the applicants were serving their sentences. In

\textsuperscript{186} Bulgarian Helsinki Committee, The Normative and Practical Obstacles to Effective Prosecution of Ill-Treatment by Official Persons (2017), pp. 10-11.

\textsuperscript{187} “MoI fired three police officers for unlawful arrest and use of force for a year” Dnevnik, 8 February 2018, accessible at: https://www.dnevnik.bg/bulgaria/2018/02/08/3125912_mvr_e_uvolnilo_trima_policai_za_nezakonen_arest_i/

\textsuperscript{188} See the case descriptions and the status of execution of these cases at: https://hudoc.exec.coe.int/eng#{%22EXECIdentifier%22:%22004-3593%22}

\textsuperscript{189} ECtHR, Neshkov and Others v. Bulgaria, Nos. 36925/10, 21487/12, 72893/12, 73196/12, 77718/12 and 9717/13, judgment of 27 January 2015.
addition, the Court held that the applicants did not have an effective domestic remedy under Article 13 of the Convention, as the existing mechanism under the State and the Municipalities Responsibility for Damages Act allows inmates to only receive compensation for damages but only if they have managed to prove that the actions of the competent authorities were unlawful under national legislation. Therefore, when reviewing the cases, the domestic courts refuse to evaluate the conditions of detention in line with international standards, which prohibit inhuman and degrading treatment. The Court also noted that the Bulgarian legislation lacks an effective prevention mechanism that would allow inmates to request transfer to conditions, which are not inhuman and degrading. Initiating the pilot procedure, the ECtHR observed that since 2004 it had found a breach of Article 3 of the Convention on account of poor conditions in detention facilities in 25 cases, and that some 40 complaints against Bulgaria with a similar subject were still pending. With regard to the violation of Article 3, the Court abstained from specifying measures and timeframes that Bulgaria should adopt to make the situation at the detention facilities consistent with the Convention’s standards. It declared that this could happen either by an overhaul of the existing prisons or by the construction of new ones. With regard to the violation of Article 13, however, it specified a deadline: 18 months from the entry of the judgement in force, within which Bulgaria should initiate legislative changes to introduce an effective prevention and compensation remedy against inhuman and degrading conditions of detention. BHC took part in the proceedings on this pilot case by submitting a third-party submission and providing legal assistance to one of the applicants.

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

In the summer of 2016, BHC visited the prisons in the cities of Burgas, Varna, Lovech, Sofia, Stara Zagora and Pleven, as well as the prison dormitories in the towns of Troyan and Cherna Gora – all related to Neshkov and Others v. Bulgaria. The main focus of the observations was to establish what actions had been taken to document and investigate incidents of violence between inmates and of violence committed against inmates by prison staff; to document the physical living conditions (living area, access to food and water, hygiene and sanitation) and access to medical services; to monitor the conditions of the solitary confinement cells where inmates serve out their punishments. The researchers reviewed documentation, observed the various quarters in the prison facilities, and carried out interviews with the administrative staff, as well as with inmates. Below are the summaries of the main findings of the monitoring. Very detailed information is available in the Information from the Bulgarian Helsinki Committee about the measures taken by the Ministry of Justice under Neshkov case implementation, submitted to the Council of Europe and the Committee for the Prevention of Torture in September 2016.  

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6.5.1. Action taken to register and investigate acts of ill-treatment among fellow inmates and ill-treatment of inmates by prison staff

In 2016, the Bulgarian Ministry of Justice, on behalf of the Bulgarian Government, notified the Committee of Ministers of the Council of Europe that the Deputy Minister of Justice had issued an ordinance requiring that all prison facilities should introduce registers to document the use of force and auxiliary means, as well as registers to document injuries suffered by inmates. In January 2017 this requirement was included in the Rules and Regulations of the Execution of Punishments and Detention on Remand Act.

According to the Ministry, a register for documenting injuries suffered by inmates had been introduced in all prison facilities along with a register for documenting the use of force and auxiliary means. Among other things, the Ordinance requires that by the 5th day of each month at the latest all prison wardens should submit a detailed report to the Director of the Execution of Punishments Department (EPD) at the Ministry of Justice containing information about all the cases of ill-treatment recorded the previous month. The information contained in these reports shall be analysed by the Director of the Execution of Punishments Department every three months and the summarised data shall be submitted to the Deputy Minister of Justice. In the period 13 October 2015 – 13 January 2016 the Ministry of Justice received information about 22 incidents of use of force and auxiliary means by prison officers in response to inmate-on-inmate assaults or to inmate assaults on prison staff. During the same period, the reviewed registers for traumatic injuries suffered by inmates contain records of 34 incidents, 24 of which were incidents of inmate-on-inmate assault and 10 were incidents of self-inflicted injuries. All of these incidents have been reported to the regional prosecutors’ offices.

The findings from the monitoring carried out by BHC in six prisons and two prison dormitories differed from the information provided by the Ministry.

6.5.2. Registers for traumatic injuries suffered by inmates

Registers for injuries suffered by inmates do exist in seven out of the eight prison facilities that were visited by the BHC researchers. However, the monitoring revealed a lack of coherence in the format of these registers from place to place, as well as a failure to adhere to a strict procedure on part of the medical personnel when entering data into the registers. Reviews of the registers showed a number of deviations from the correct protocol: not all medical staff utilize a body chart for visual representation of the inmates’ injuries; the medical examination is not carried out in confidence between the physician and the patient; the physicians’ conclusions are usually too brief and non-informative, and physicians fail to denote whether or not there is a discrepancy between their findings and the patient’s description about the origin of the injury; it is only in rare cases that patients are informed of the physician’s findings. In addition, there was no record of whether or not inmates are officially informed of or have access to the ordinance that regulates the procedure for recording traumatic injuries by medical staff in prison.

The incidents of trauma received by inmates as a result of the use of force and auxiliary means by prison staff are not always marked in the designated register and in the rare occasion when they do get recorded into the register, they often lack details about the incident.
The data on the traumatic injuries suffered by inmates, as well as on the use of force and auxiliary means that was provided by the Ministry of Justice is markedly different from the data collected as a result of the BHC monitoring: there is a stark discrepancy between these figures, especially considering the fact that the BHC research only covered a partial period and these figures were collected from only six prisons and two prison dormitories. The total number of documented instances of ill-treatment and traumatic injuries in the eight institutions visited by the researchers was 218 (or 261, depending on the interpretation of the data from the Sofia prison); the data provided by the prison administration indicates that in 18 of these instances the perpetrators were prison staff who used force and auxiliary means.

Another problematic step in the procedure for documenting injuries suffered by inmates is the access of injured inmates to independent medical examination, because this type of examination requires that the patient pay a fee, which most inmates find unaffordable. Not a single one of the eight institutions visited by the BHC researchers were able to provide records showing that the prison medical staff had ever notified the prosecutor’s office of any of the instances of violence perpetrated by prison staff.

Also, there was no evidence that prison wardens had ever met with the director of the Execution of Punishments Department to specifically discuss the issue of violence committed against inmates by prison staff; moreover, the prison staff interviewed at most of the prisons was not familiar with the details of the case Neshkov and Others v. Bulgaria.

The prisons in Burgas and Sofia show a reduction in the number of instances of violence perpetrated by prison staff as a result of replacing the prison wardens of these two institutions. However, in the Varna prison, the change of prison management has not yielded a noticeable decrease in the instances of staff violence judging by the number of documented cases.

6.5.3. Personal and legal correspondence

The right to confidentiality of the personal correspondence of inmates is observed in all prison establishments that were visited by the BHC researchers. The staff everywhere seems to follow the policy, which requires that the prison staff only check the contents of the envelope for illegal items, but refrain from reading the letters themselves. However, one area that is still lagging is that not all staff observes the rule that inmates may personally open/seal their letters. At one of the prisons a concerning issue is that currently incoming mail from institutions, which is addressed to inmates does not get delivered to the inmates themselves, but goes directly to the prison warden, instead, which means that not only do the prison staff become aware of the contents of those letters, but also that the inmates themselves do not get a chance to read their own incoming mail from the institutions they are corresponding with. Instead, they get verbally informed of the content of the letter, but are not allowed to read it themselves nor are they given a copy of it.

6.5.4. Physical conditions

BHC observations reveal that despite improvements overcrowding of some prisons is a serious problem, which is additionally aggravated by the fact that in some cases there are discrepancies between the official data and the actual situation. In half of the visited establishments the beds and bedding are in poor condition and the cells lack adequate natural lighting. In terms of sanitation the issues are mostly related to pests and the number and design of toilet fixtures: many of the
establishments are infested with pests and vermin, and in some places the cells are either not equipped with toilet fixtures at all (which necessitates the use of buckets for physiological needs during the night) or the bathroom stalls are separated with partial walls only. Personal hygiene items are insufficient, the showers do not always have a constant supply of running warm water and the shower stalls are not equipped with privacy walls (and in some places the shower area is used by 40-50 prisoners at once).

The biggest issue found in the isolation cells in most of the establishments is that they are inadequately lit and there is not enough ventilation; in addition, prisoners placed in isolation cells often have no access to running water that is suitable for drinking at all times. The duration of the punishment may exceed 14 days and a large number of the interviewed inmates expressed scepticism about the efficacy of the process of appealing the punishment, which explains their reluctance to exercise their right to appeal.

6.5.5. Access to food and water in prison facilities
Although in most of the visited establishments the kitchen and cafeteria areas had recently been renovated, there still exist prison facilities where the physical state of these premises ranges from poor to very poor. Although the meal plans allow for the daily caloric value of the meals to be between 2,512 and 2,860 kcal a day, it was not clear from the responses provided by the staff whether or not the inmates receive enough protein in their diet.

In five of the establishments (Lovech, Pleven, Sofia, Stara Zagora and Troyan) there is running cold water in all cells. In Burgas, Varna and Cherna Gora the inmates are allowed access to the sinks located in the lavatory area, and the rest of the time for drinking water they have to resort to the water stored in plastic bottles in their cells. The plumbing in Sofia is old and the inmates complained about developing kidney problems after continuous use of the sink water (they have the option of purchasing table water at the prison commissary). Another issue in the Sofia prison is that the cold water comes out in a very small stream on the upper floors, whereas the hot water stream comes out much stronger.

6.5.6. Health care services
At most of the eight visited prison facilities the interviewed inmates expressed their dissatisfaction with the level of medical services, mostly due to the inadequate access to medical care. The medical personnel, in turn, also expressed their dissatisfaction with the difficult working conditions. There are vacancies in the medical personnel in all of the visited establishments, and, according to the interviewed medical staff members, this is not only due to the poor physical conditions and the challenging nature of their work at these establishments, but also due to the unequal legal status of the doctors working on staff at prison institutions.

6.6 Legislative amendments to prevent torture, inhuman and degrading treatment
In 2016, the working group set up to propose amendments to the Execution of Punishments and Detention on Remand Act finalised its activities. Parliament adopted the draft act during its second reading at the end of January 2017. The amendments address key aspects such as: living conditions, detention regime, prisoners’ rights, and appealing administrative decisions issued by prison
administration. In a special, additional section, the draft act stipulated mechanisms for protection against torture, inhuman or degrading treatment or punishment. The adoption of the legislative act effected changes to the Criminal Code in its sections on determining the initial regime of serving punishments and conditional early release from prison (parole). The Criminal Procedure Code has also been amended with respect to its provisions concerning conditional early release from prison. Article 3, paragraph 2, of the Execution of Punishments and Detention on Remand Act determines the detention conditions, which constitute inhuman or degrading treatment or punishment towards individuals serving a sentence, as well as those detained on remand. According to this provision, “as violation of paragraph 1 shall be deemed [...] deprivation of sufficient living floor space, food, clothing, heating, lighting, ventilation, medical services, conditions for exercise, continued incommunicado segregation, ungrounded use of auxiliary means as well as other such acts, omissions or circumstances, which diminish human dignity or arouse a feeling of fear, vulnerability or inferiority”.

Furthermore, the new amendments introduce a minimum standard for personal living space in sleeping premises at all prisons and detention centres in Bulgaria set at 4 sq. m. per prisoner or detainee. They also limit the circumstances, in which a strict regime should be imposed as the initial regime of detention. Instead, courts will be able to assign the general regime to those convicted for serious crimes that are not considered a threat to society. The term following which a strict regime may be replaced has been shortened to one year for all inmates including the cases of life imprisonment without parole. Prison governors are granted considerable discretion to move prisoners to achieve balanced distribution in view of the existing capacity. Another important amendment provides for the possibility to appeal decisions issued by the bodies responsible for the execution of punishments before the competent administrative court by place of detention, a measure which is expected to strengthen independent control on places of detention by the court and the prosecutor’s office.

The amendments and supplements of the Execution of Punishments and Detention on Remand Act affecting individuals detained on remand or deprived of their liberty can function as preventive as well as retroactive protective mechanisms.

Despite deferral until 1 May 2017 according to Article 276(1), by means of direct access to court “every person deprived of liberty or detained on remand may request: 1. termination of any action or inaction by bodies responsible for the execution of punishments or by officials should these constitute violation of the prohibition under Article 3”. Article 284(1), provides for a protective measure that shall be applied retroactively: victims may claim compensation for damage inflicted by bodies responsible for the execution of punishments resulting from violation of Article 3 of the Execution of Punishments and Detention on Remand Act. Nevertheless, the amendments and supplements to the Execution of Punishments and Detention on Remand Act have failed to modify the permission regime under Article 253 regarding visitations to the accused or the defendant by representatives of human rights or religious organisation, or other organisations or communities, which can be interpreted as a serious obstacle to independent monitoring in view of preventing wrongful conduct in pre-trial and court stage in criminal proceedings.

The amendments and supplements to the Criminal Procedure Code introduce more favourable provisions for conditional early release (parole). Unlike preceding legislation, the amended act allows those deprived of freedom to launch a request for conditional early release upon serving half
the sentence or, in cases of dangerous recidivism, two thirds of the sentence. Moreover, the request may be initiated multiple times, i.e. once each six months. During the court proceedings, the convict is entitled to legal assistance, including an assigned public defender. Finally, the *Criminal Procedure Code* amendments expressly stipulate that non-implementation of incentives, non-participation in programmes or activities where such have not been made available to the convict, or the unserved term of the sentence, shall not be used as the sole grounds for refusal to grant conditional early release.

**On 7 February 2017, the law amending and supplementing the Execution of Punishments and Detention on Remand Act (EPDRA) came into force.**

After the amendments, every request by a prisoner must be sent to the court and the prison director is obliged to enclose with it the file and written materials needed for the examination of the case. That amendment to the law increased considerably the work of the administration to prepare the case documentation, and the prison director was obliged to participate as a party in the early release cases. **Observations on the new procedure demonstrated that in striving to reduce the number of requests, in some of the prisons the administration tried to persuade the detainees not to file requests to the court with the argument that a negative reference would be prepared for them.** The other way in which the administrations reduced the cases was by simply delaying the sending of the requests to the court. According to attorneys of detainees, in certain cases the delays were for up to two months.

Currently 12 prisons (prison buildings) are functioning in the country, 6 prison hostels of closed type, 18 prisons hostels of open type and two correctional homes for minors. According to data of the Directorate General on Execution of Punishments (DG EP), the average number of detainees in 2017 was 7,100, among them 210 women. **A reduction of that number is observed for the third successive year, which has a good effect on the general material conditions.** In addition to the convicted persons, persons without effective sentences – accused and defendants – are also accommodated in some groups in the prisons. Their number in the last years also diminished, but in 2017 it did not change substantially compared to 2016.

Unlike previous years, during 2017 there was a **tangible increase in the number of detainees in the hostels of open type, while in the hostels of closed type their number remained unchanged.** The increased number of convicted individuals in the hostels of open type was due to the broader possibility of imposing punishments that can be served under a general regime. The substitution of the regime with the next, lighter one is possible after serving one quarter, but no less than six months of the punishment imposed, if the prisoner has good behaviour and shows improvement. In the last two years after the amendments to the *Criminal Code*, the courts started imposing effective punishments for driving under the influence of alcohol or narcotic substances, or without a driving license. This resulted in a sharp rise of the share of that category of convicted persons compared to preceding years, most of whom served their sentences in hostels of open type. The filling of the capacity of these hostels highlighted the need of building new ones or of increasing the capacity of existing hostels.

**In the autumn of 2017, the BHC published a study of the most severe punishment in Bulgaria: life imprisonment without parole.** According to DG EP data, on 31 December 2017 a total of 187 persons served life sentences in the prisons, 61 of which without parole, with the number of that category of
persons constantly increasing. The key emphasis in the study was that life imprisonment without parole in Bulgaria is in blatant contradiction with European standards and the ECtHR rulings, and that it must be removed from the Criminal Code. Although the total number of detainees decreased in the last year, the number of persons engaged in labour activities increased from 2,694 in 2016 to 3,405 on 31 December 2017, 1,538 of whom doing voluntary unpaid work. However, the number of detainees enrolled in school education diminished: on 15 September 2017 it was 1,255 – unlike the previous year when the students numbered 1,431. The possible reason for the fewer students is that the courts tend to impose shorter sentences: three or six months of imprisonment, which prevents the inclusion of such convicted persons in the educational process and renders meaningless the work on their correction and rehabilitation.

The medical services in the prisons are the reason for the growing number of complaints by detainees, connected with the quality and scope of medical care. The data of a survey conducted for 2017 among 156 detainees in four prisons (in Stara Zagora, Vratsa, Lovech and Pazardjik) showed that 63% of them were not satisfied with the medical care. The shortage of medical staff and of finances for securing treatment and prophylaxis is among the principal problems of the medical services in the prisons, their activities continued to be isolated from the national health care system as a standard, administration, accountability and volume of the medical examinations.

Reconstructions and repairs in the prisons continued in compliance with the pilot judgement in the case of Neshkov and Others v. Bulgaria. In February 2017, the repaired wings of the prisons in the towns of Varna and Sliven were opened. All cells in the two prisons were equipped with sanitary facilities and new window frames and casings. In March 2017, the Debelt hostel of closed type at the prison in the town of Burgas was opened, which started the process of gradual transfer of detainees into the hostel. This eased conditions in the most overcrowded prison in the system and allowed to start major refurbishing of the prison wings, which was not completed by the end of 2017. Although sanitary facilities were already installed in all buildings with prisons cells, the principal buildings of several prisons, notably those in Sofia and Pazardjik, are in extremely poor condition and need to be refurbished. Financing was secured for the prison in Pazardjik and the necessary repairs started in the beginning of 2018. In 2017 a hostel of open type was opened at the prison in Belene, which was extremely necessary because that was the only prison where no hostels were built. Several of the hostels of open and closed type (Ceramic Factory, Hebros, Cherna Gora and Kremikovtsi) remained outside the plans for repairs and were also in urgent need of refurbishing. Information provided in the Report of Bulgaria to the Committee of Ministers of the Council of Europe on the compliance with the pilot ruling in the case of Neshkov and Others v. Bulgaria notes that a total of 11 hostels of open and closed type in the country lack sanitary facilities in every cell and the inmates use shared toilets.\footnote{Communication from Bulgaria concerning the Kehayov group of cases and the case of Neshkov and Others against Bulgaria (Applications No. 41035/98, 36925/10), Committee of Ministers, Council of Europe, 04/01/2017}

In August 2017 the Ministry of Justice announced that under the so-called “Norwegian Financial Mechanism” Bulgaria would receive EUR 25 mln. for improvement of the conditions in the prisons. There are also plans to build a pilot prison with a study centre on the territory of the hostel in
Kremikovtsi, as well as to create transitional wards for adaptation of the prisoners who are about to be released, which will be at the hostels in Plovdiv, Bobov Dol and Burgas.  

The amendments to the law of February 2017 and the introduction of compensatory means of protection also resulted in increased number of new court cases against DG EP under the State and Municipalities Responsibility for Damages Act (SMRDA), filed by detainees. In 2016 their number was 255, on 55 of them judgements against DG EP were pronounced, in 2017 their number reached 420, and the judgements against DG EP were 103.

### 7. TRAFFICKING IN HUMAN BEINGS – TENDENCIES AND COMBATING, COMPENSATION AND REHABILITATION

#### 7.1. Numbers of identified victims/initiated criminal proceedings/sentenced persons

According to data provided by the Group of Experts on Action against Trafficking in Human Beings of the Council of Europe (GRETA), in the period between 2013 to 2015 Bulgaria remained mostly a country of origin for trafficking of victims to other EU Member States (primarily to Germany, Greece, the Netherlands, Austria, Cyprus, Poland, Italy, and the Czech Republic). There was also a rising trend in internal trafficking. The GRETA report stated that Bulgarian citizens were trafficked mostly for sexual exploitation (77%) and also for labour exploitation (12%) mostly in the sectors of construction, agriculture and manufacture of goods. The number of women and girls victims of trafficking was substantially higher than the number of men and underage boys. The GRETA report presented the following breakdown of human trafficking victims in Bulgaria over the period from 2013 to 2015 by gender and age:

<table>
<thead>
<tr>
<th>Year</th>
<th>Total number of victims</th>
<th>Females</th>
<th>Males</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Adults</td>
<td>Minors</td>
</tr>
<tr>
<td>2013</td>
<td>538</td>
<td>427</td>
<td>48</td>
</tr>
<tr>
<td>2014</td>
<td>490</td>
<td>433</td>
<td>29</td>
</tr>
<tr>
<td>2015</td>
<td>383</td>
<td>353</td>
<td>28</td>
</tr>
</tbody>
</table>

Coping with the refugee crisis was another serious challenge for Bulgaria. Most asylum seekers, women and girls, in particular, are vulnerable to human trafficking. The number of vulnerable unaccompanied minors is also on the rise.

The annual reports of Bulgaria’s Supreme Prosecutor’s Office of Cassation (SPOC), made available to the National Commission for Combating Trafficking in Human Beings, contained similar data. The

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number of criminal proceedings for human trafficking overseen by SPOC in the period was 540 in 2013, 495 in 2014, and 409 in 2015. The number of newly-initiated pre-trial proceedings in 2013 was 111, 92 in 2014, and 85 in 2015.\textsuperscript{193}

The 2016 and 2017 annual reports of the National Commission for Combating Trafficking in Human Beings present the information below.

Trafficking for sexual exploitation remained the primary form of human trafficking over the reporting period. The number of victims trafficked for sexual exploitation and involved in criminal proceedings was 428 in 2013, 399 in 2014, 316 in 2015, 329 in 2016 and 323 in 2017. Most of the victims were women and girls, but there were also isolated cases of men and boys victims of the same crime (17 in 2013, two in 2014, and four in 2015, 1 in 2016 and none in 2017). The number of cases of trafficking for labour exploitation was the second largest and is increasing – 44 in 2013, 16 in 2014, 22 in 2015, 31 in 2016 and 67 in 2017. According to official data, the most common victims of that crime were men and boys. Data shows that the number of women and girls trafficked for labour exploitation over the entire reporting period was considerably lower (11 in 2013, three in 2014, three in 2015, 8 in 2016 and 16 in 2017). It is important to note also that according to organisations working directly with victims of human trafficking and identifying such victims informally, the number of sex trafficking victims and the number of trafficking victims exploited for labour are equal. The next most common form is trafficking of women for the purpose of baby selling (the identified victims were 80 in 2016 and 97 in 2017). The number of criminal proceedings overseen by the prosecution was zero in 2013, 17 in 2014, and 17 in 2015. The number of victims kidnapped, trafficked, and held in slavery or servitude was 11 in 2013, 11 in 2014, two in 2015, 5 in 2016 and 17 in 2017. The least number of pre-trial criminal proceedings were conducted for human trafficking for the removal of organs and body fluids – a total of five proceedings were supervised by the prosecution over the entire reporting period.

According to data provided by the Supreme Prosecutor’s Office, the public prosecutors finalised 87 cases and 28 indictments were filed in court whereby 51 defendants were brought to justice to be tried in 2016. As at the end of 2016, the number of final convictions was 29. A total of 26 punishments were imposed and four defendants were being imposed more than one punishment.\textsuperscript{194} As of September 2017, the total of 40 persons had been sentenced – 12 with effective deprivation of liberty, 29 with suspended deprivation of liberty, 22 with fines.\textsuperscript{195}

The total number of human trafficking victims involved in pre-trial criminal proceedings over the period from 1 January to 30 June 2016 was 250 – 220 women, 11 girls between 14 and 18 years of age, three girls under 14 years of age, 26 men, one boy at the age 14 to 18 and three boys below 14 years of age.

\textsuperscript{193} National Commission for Combating Trafficking in Human Beings, 2016 Annual Report, pp. 7-8, available in English at: http://antitraffic.government.bg/en/%D0%BD%D0%B0%D1%86%D0%B8%D0%BE%D0%BD%D0%B0%D0%BB%D0%B5%D0%BD-%D0%B4%D0%BE%D0%BA%D0%BB%D0%B0%D0%B4-2016/.

\textsuperscript{194} National Commission for Combating Trafficking in Human Beings, 2016 Annual Report, pp. 7-8.

According to data by the SPOC, a total of 67 pre-trial criminal proceedings were initiated over the period from 1 January to 30 September 2016. Below is the data breakdown by the form of trafficking: 47 pre-trial proceedings for human trafficking for the purpose of sexual exploitation; 12 pre-trial proceedings for human trafficking for the purpose of forced labour; eight pre-trial proceedings under Article 182b(2) against pregnant women on charges of child-selling before delivery and 2 pre-trial proceedings under Article 182b(1) of the Criminal Code (child-selling). The total number of victims involved in pre-trial criminal proceedings for human trafficking that were completed over the period from 1 January to 30 September 2016 was 329. In 2017 the prosecutors initiated 59 new pre-trial criminal proceedings and supervised 285 such proceedings initiated in previous years.

7.2. Shelters for victims of trafficking and crisis centres – protection or deprivation of liberty?

According to the Combating Trafficking in Human Beings Act, victims of trafficking are placed in shelters for temporary placement for a period of 10 days when they declare themselves as victims and at their request, under the conditions and order established by the regulations. The period of stay might be extended to 30 days upon the proposal of the local commissions, investigation authorities or the court when a victim expresses a wish to stay. Victims of trafficking who express the wish to cooperate with investigation authorities are entitled to special protection status for the period of the criminal proceedings, which includes permission for long-term stay in the country for foreign citizens, and extension of the period of stay in the shelters. After identification of the victims, the investigation authorities are obliged to inform them immediately about the possibility to receive special protection if they declare their consent to cooperate with the investigation of the crime within 30 days. If proposed by the State Agency for Child Protection, this period may be extended to two months when the victim is a child. The prosecutor is obliged to issue a decision on whether special protection status is to be provided to the victim within three days after he/she receives the application. If the prosecutor refuses to grant such status, the decision may be appealed before a higher prosecutor within three days and the latter should decide immediately. Permission for long-term stay of non-EU nationals is issued by the Ministry of Interior authorities under the rules of the Foreigners in the Republic of Bulgaria Act, on the basis of the prosecutor’s decision. Persons granted such permission are entitled to the rights of permanent residence holders, but with one exception – they are not allowed to leave Bulgaria and re-enter without a visa while the period of residence granted has not expired. Permission is not issued to persons who do not have identity documents and refuse to cooperate with procedures to establish their identity. The period of stay in the shelters should be as long as the prosecutor’s decision determines, and not longer than the duration of the criminal proceedings.

196 Ibid, pp. 7-8.
198 Bulgaria, Combating Trafficking in Human Beings Act (20.05.2003), Art. 9(2).
199 Ibid, Art. 25.
200 Ibid, Art. 26(1).
201 Ibid, Art. 26(2).
202 Ibid, Art. 27.
203 Bulgaria, Combating Trafficking in Human Beings Act, Art. 28.
Pursuant to Article 10 of the *Combating Trafficking in Human Beings Act*, shelters for temporary placement should be to ensure **decent accommodation** and conditions for maintaining personal hygiene, they should provide the victims with **food and medicines**, should ensure **urgent medical and psychological support**, and help **children connect with their families** as well as specialised authorities and organisations. The staff in the shelters consists of social workers, medical staff, teachers, psychologists, and lawyers.

Article 11 of the same act stipulates that the **centres for protection and support at the local commission for combating trafficking** are obliged to ensure specialised psychological and medical care.

According to the regulations for shelters,\(^\text{204}\) medical care for the victims in the shelters is provided by healthcare establishments determined by the national or local commissions, with which contracts are signed for performance of these activities. Each victim should be medically examined. Regulation 26 of 14 June 2007 issued by the Ministry of Health provides for the rules and procedures for provision of **medical services to women who do not have health insurance** (which is the case of the most of the trafficked women).\(^\text{205}\) Women and children are entitled to medical examinations, pregnant women - to tests to assess the risk of genetically transmitted diseases, and children and pregnant women who do not have health insurance - to tests for genetic diseases when there are relevant medical indications for such diseases. All new-born babies are entitled to screening for phenylketonuria and hypothyroidism. Health insured women have the right to choose freely the hospitals where they can obtain professional obstetrics help free of charge.

According to the 2016 report of the National Commission for Combating Trafficking in Human Beings “as at the end of 2016, there were five functioning services for victims of trafficking in human beings controlled and administered by the National Commission for Combating Trafficking in Human Beings (NCCTHB). **This was the highest number of services designed solely for VHTs as a target group since the enactment of the Combating Trafficking in Human Beings Act in 2003**”. As at the end of 2016, the said services were provided and run by non-governmental organisations – SOS Families at Risk Foundation and Demetra Association.\(^\text{206}\) There are **three residential care facilities (shelters) and two centres providing consultancy services** in the regions of Varna and Burgas. The overall capacity of the above facilities is **14 persons**. In 2016, a total of **15 women** were provided with care and support at the residential care facilities in the region of Varna and a total of **six women** received care at the facilities in the region of Burgas. One of the female victims was provided with support for subsequent reintegration.\(^\text{207}\) In 2017 three new services for victims of trafficking were opened in Sofia – a shelter, a crisis centre for children and a centre for temporary placement of adults - with the total capacity of 20 places. In this way the total capacity of the services in the country reached


\(^{207}\) *Ibid*, p. 18.
34 – 24 for adults and 10 for children. During 2017 the total of 22 victims have been provided services in the available centres and shelters.\textsuperscript{208}

The Commission also adds that “in addition to these services, there exist the much-needed crisis centres. Some centres are for children only, while others are mixed-use facilities for both children and adult victims of violence and human trafficking. The crisis centres are run primarily by NGOs on a delegated budget from the Government and receive usually some co-financing under additional projects and programmes”. As at mid-2016, there was a total of 22 crisis centres operating across the country, 14 of those providing services tailored to children victims of violence and/or human trafficking and their capacity was 145 victims. The remaining eight crisis centres are designed to meet the needs of adult victims of violence and/or trafficking and have the capacity to accommodate a total of 66 persons.\textsuperscript{209}

Children and adults victims of trafficking have been placed in crisis centres for over 10 years as shelters did not exist. The victims are placed in crisis centres instead by orders of the local Social Assistance Department for periods of up to six months. This is so because the crisis centres are considered a residential social service under the Social Assistance Act and its regulations, and not under the Regulations for Shelters for Temporary Placement and Centres for Protection and Support of Victims of Trafficking. There is no correspondence between these regulations in terms of activities, duration of the stay and due protection of the children/adults.

There is only one provision regarding crisis centres in the Regulations for Implementation of the Social Assistance Act, which simply defined the crisis centres as places that provide a complex of social, health, and educational services for individuals who are victims of violence, trafficking or other forms of exploitation for a period of up to 6 months. The provision explaining the purpose of the crisis centres was expanded later on to add that these services are delivered “by provision of individual support, meeting everyday needs, legal counselling or socio-psychological support, whenever needed urgent intervention, including through mobile teams for crisis intervention”.\textsuperscript{210} The crisis centres are subordinated to the municipalities, on whose territory they are located in terms of selection and appointment of the staff. The activities in the centres are funded by the state through the municipality and should be supervised and controlled by the Social Assistance Agency at the Ministry of Social Policy.

In practice, the crisis centres do not provide either special protection for children in regard to investigation or access to education, BHC monitoring from 2013 and 2016 revealed. Created as short-term social services, crisis centres are not prepared to function as providers of education or childcare.\textsuperscript{211} They do not have the capacity to provide for effective opportunities for everyday

\textsuperscript{208} NCCTHB, 2017 Annual Report, p. 18, available in Bulgarian at: http://antitraffic.government.bg/en/%D0%BD%D0%B0%D1%86%D0%B8%D0%BE%D0%BD%D0%B0%D0%BB%D0%B5%D0%BD-%D0%B4%D0%BE%D0%BA%D0%BB%D0%B0%D0%B4-2017/

\textsuperscript{209} Ibid, p. 18.

\textsuperscript{210} Regulations for Implementation of the Social Assistance Act, Additional provisions, Art. 25 (last amended on 11.11.2016).

individual and group activities. Crisis centres do not have the capacity to provide adequate health care for children in need. Due to lack of personnel, in some cases, children are hospitalised without an adult companion. About a third of the children in crisis centres do not attend school.²¹² Crisis centres do not provide specific psychological or psychotherapeutic programmes, vocational training or legal assistance, and in cases where the victim’s family is involved in trafficking, there are no alternatives for placement after their release from the centres.

The lack of crisis centre specialization and/or failure to observe it where there is such, prevents the actual separation of child victims from children who are in conflict with the law. In March 2012, the State Agency for Child Protection and the Social Assistance Agency adopted a Methodology Handbook for the provision of the “crisis centre” social service (Methodology Handbook),²¹³ which was an attempt to establish the requirements for setting up and operating crisis centres and defining their specialisation for:

- child victims of domestic violence;
- child victims of trafficking in human beings;
- children with deviant behaviour, children involved in begging and children in conflict with the law.

Despite the good practices described in it, the Methodology Handbook cannot be implemented in practice. In the few cases where centre specialisation has actually been undertaken, the Social Assistance Departments (SAD), the judges and the district courts have no obligation to observe this specialisation and, as a result, children of the aforementioned three categories are still being placed in the same institutions.²¹⁴

There is no fast court proceeding to long-term placement of children in crisis centers, the new 2016 BHC report revealed.²¹⁵ Children can be placed in crisis centres for up to six months, which is too long and perverts the role of a service designed for specialized protection. Centers that should guarantee specialized support for children at risk are being transformed into conventional institutions. Under the Bulgarian law, the hearing and the court decision take place within a month after the administrative placement by Social Assistance Departments, which, compared to other countries, is a very long time frame. Yet, the analyzed data shows that the institutions do not meet even this deadline. Court decisions take months. The survey found delays in issuing court decisions in 79 cases (27% of all the cases). In practice, the actual court decision is announced two or even three months after the child has been placed as an emergency in crisis center, and still there were several placement cases without court decisions. The optimal time for intervention and overcoming the emergency situation of the children victims of trafficking/violence is not more than six weeks

²¹² Ibid, p. 299.
according to the experts. In 2015 and 2016, the number of accommodated children in the 15 crises centers for children was 289, and only in 29 cases (1 of 10) the child has stayed in the facility for just a month. In 2017, no amendments were introduced in the Rules and Regulations to the Social Assistance Act concerning the time spent by children in crisis centres, which is too long (6 months) for the purposes of crisis intervention and leads to violation of a number of rights of the children. The practice related to the non-compliance with the deadlines for judicial review of the decisions for placing children in crisis centres was likewise not improved.

Most crisis centres do not employ medical staff, although children placed there often need more than psychological and social work to overcome emotional crises and past trauma. If the crisis centre has not signed a civil contract with a medical doctor, the child’s address registration needs to be changed and a general practitioner temporarily selected. Not all residential areas, where the crisis centres are located, have 24-hour access to a medical doctor. If needed, emergency medical service is sought from the closest town. Crisis centres may sometimes turn into facilities housing children with serious health problems. This situation requires specific material conditions and staff, which are not available at the crisis centres. Over the years, there have been cases of children with infectious diseases such as hepatitis B and syphilis, children suffering from drug addiction, as well as pregnant girls. At some centres, until the results of blood tests are received, the newcomer spends the nights isolated from the other children. The availability of dental care at most crisis centres is also a particularly problematic area. In most cases dentists provide their services on a pro bono basis.

Many children placed in crisis centres have previously never attended school or, if they have, their certified level of schooling does not correspond to their actual level of knowledge. In many cases, however, children subject to compulsory education do not attend school. At the end of November 2013, 29 children were not attending school, corresponding to one third of all resident children at the time of the research. Education is still the key issue about the stay of children in the crises centers. Every 6th child placed in crises centers in Bulgaria has no access to education, according to the most recent 2016 BHC report on the topic. The state of education in Bulgaria’s crisis centers for children victims of trafficking or violence is still a pressing concern. According to the managers of the 15 crisis centers for children the BHC visited, in 2015-2016 too much emphasis was put on the residing nature of the facilities rather than on the specialized and individual support (psychological, legal, social) that should be provided to a child in a crisis situation, especially when an emergency accommodation is concerned. The majority of children have very poor literacy skills that do not correspond to their completed level of educational - many of them can hardly read and are unable to

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216 Ibid.
219 Ibid, p. 256.
220 Ibid, p. 256.
221 Ibid, p. 257.
222 Ibid, p. 257.
223 Ibid, p. 257.
224 Ibid, p. 257.
write, and do not possess fundamental knowledge and skills. The children who have dropped out of the education system before their accommodation in a crisis center are at a higher risk of being deprived of education after entering the crisis centre. In 2015-2016, **17% of the residents (48 out of 289) in the 15 crisis centers in the country had no access to education.** This means that every sixth child is temporarily or permanently deprived of education due to conventional reasons or negative attitude towards problematic children, lack of interest from the institutions, bureaucratic obstacles (failure to provide the necessary documents, lack of regulations and under-aged pregnancy).\(^{225}\)

Crisis centres have a **restricted regime.** Leaving the crisis centre without permission is treated as an attempt to run away.\(^{226}\) Telephone calls, as well as visits, always take place in the presence of a social worker who keeps a record of the conversation/meeting.\(^{227}\) All these institutions are of the closed type, therefore the child is not entitled to leave them. For instance, in the case *A. and Others v. Bulgaria,* ECtHR found that the placement of a child in a crisis centre amounted to a deprivation of the child’s liberty under Article 5 of the ECHR.\(^{228}\)

Due to the uneven distribution of crisis centres throughout the country, child protection bodies sometimes place children in crisis centres **far from their normal living environment.**\(^{229}\)

Regarding children placed outside their family environment, the *Child Protection Act* and supplementary legislation contain no provision allowing **disciplinary punishment.**\(^{230}\) According to the Social Assistance Agency, the disciplinary practice and the procedure for filing complaints and signals by children placed in crisis centres are provided for in the *Ordinance on the Criteria and Standards for Social Services Provided to Children.* The service provider should ensure free and unimpeded submission of complaints and signals by children as well as develop a procedure for protection from violence, misconduct and discrimination. Furthermore, the provider exercises internal control on the work of the staff and the quality of the care provided.\(^{231}\) Thus, for example, **each crisis centre has developed and adopted their own set of rules for disciplinary practices.**\(^{232}\) This is without legislative

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\(^{225}\) Bulgarian Helsinki Committee, *Crisis Centers in Bulgaria* (2016).


\(^{227}\) *Ibid,* p. 258.

\(^{228}\) ECtHR, *A. and Others v. Bulgaria,* 29 November 2011, application No 51776/08, §§ 93-98.


\(^{230}\) *Ibid,* p. 258.

\(^{231}\) Information received from the Social Assistance Agency under a request for access to public information with Ref. no. RD-04-109 from 05 September 2014.

\(^{232}\) Methodology for the organisation of work in the provision of social services adopted by Vyara, Nadezhda i Lyubov Crisis Centre — Sofia, Art. 18 – 18.1: 18. Every member of the personnel of the Centre encourages socially acceptable behaviour of the child. Where behaviour is deemed unacceptable, staff members undertake measures in accordance with the Guidelines for Incentives and Punishments document approved by the director. 18.1. In the application of the Guidelines for Incentives and Punishments, personnel at the crisis centre shall observe the following basic principles: (a) individual approach to determine and apply incentives and punishments at the crisis centre in accordance with the age, ability to understand and the individual needs of the child; (b) respect for the personality of the child and consideration for their dignity; (c) punishments shall not contain physical force or inflict pain or injury; (d) respect for the opinion of the child and inclusion of the child in the process of determining the level of the incentive or punishment; (e) common action by members of the personnel at the centre in determining incentives, the level, duration and cancellation of the punishment; (f) publicity of the incentives and punishments.
delegation and contravenes international standards on lawfulness of the sanctions and measures imposed.

Running away and breaking the rules of the crisis centre are the severest types of misconduct (although breaking rules may be a sign or a symptom of crisis). The limitations imposed after establishing a violation of the rules often deprive the children of the opportunity to participate in activities in the crisis centre or in another outside event, or of access to television. Different types of measures may be imposed: 1) punishment through labour (the child is additionally included to the timetable for cleaning the common and sleeping premises), 2) punishment through solitary confinement (the child is forbidden to leave their space in the bedroom), 3) punishment through school non-attendance, 4) banned access to television.

All above-mentioned problems are not mentioned in state reports and still make it impossible to provide real special protection of children victims of trafficking in practice. The information below reveals the capacity of the shelters and crisis centres reported by the state. According to the National Commission for Combating Trafficking in Human Beings the total capacity of the existing accommodation services is around 211 places (the places for children include children victims of violence and delinquent children and are 145 and those for adults are 66). However, from the information provided by the NGOs running these shelters and centres it seems that altogether the victims of trafficking who were provided protection and support in social services in 2016 were 34 and 10 persons at risk were protected from recruitment in trafficking. The Supreme Prosecutor’s Office reports about 329 victims (10 times more than the persons provided with support) who had been involved in criminal proceedings for trafficking, whose cases were completed in 2016.

According to the 2016 Annual Report of the National Commission for Combating Trafficking in Human Beings the SOS Families at Risk Foundation in Varna provided a total of 17 victims with support and care at the support service facilities run by the NGO – an advisory centre, a crisis centre, a shelter for temporary accommodation, and a centre for the protection of and support for human trafficking victims. One of the victims was an underage girl. The victims’ age ranged from 17 to 43 years. Seven of the victims had some disability or disease, in most cases mild to moderate intellectual disability and schizophrenia. Fourteen of the victims had been trafficked for the purpose of sexual exploitation and three victims had been forced into begging. Eleven of the NGO’s clients provided with support and care had testified at various stages of criminal proceedings launched either in Bulgaria or in the country of destination.

According to the 2016 Annual Report of NCCTHB, the services provided by Demetra Association in Burgas in 2016, were:

- Shelter for temporary accommodation and centre for the protection of and support for victims of human trafficking in the Municipality of Burgas. A total of five victims of human trafficking were accommodated at the shelter from April 2016 when it was opened, till the end of the year.


• A shelter for temporary accommodation and follow-up reintegration in the Municipality of Burgas. One victim of human trafficking was accommodated at the shelter from April, when it was opened, until the end of 2016.

• Crisis centre for children and adult victims of violence. In 2016, the crisis centre provided care and support to 26 clients in total - 23 victims of domestic violence and three victims of human trafficking.

• Crisis centre for child victims of violence. The centre provides 24/7 care to children who have experienced violence. In 2016, the centre provided services to a total of 25 clients. Five of them were at risk of being recruited to trafficking and one was a victim of human trafficking.

• Vselena [Universe] Centre, the first Sexual Assault Referral Centre (SARC) in Bulgaria. The centre has been in operation since 1 June 2016 and was set up to provide medical assistance, crisis counselling, and support to the criminal investigation in cases of rape and sexual assault. A total of 13 victims of sexual assault were provided with support and care at the SARC from June 2016 when it was launched until the end of the year.  

In 2016, the PULSE Foundation assisted and supported seven trafficking victims and five other persons at risk of being recruited.  

The major problems identified in trafficking in human beings during the period under review are the low conviction rates, the extremely insufficient service provision to victims and the legal, financial and expertise obstacles to ensuring effective protection of victims both children and adults.

7.3. Assistance and financial compensation for victims of trafficking

The amendments to Article 6(2) of the Assistance and Financial Compensation to Crime Victims Act (AFCCVA) entered into force on 6 October 2016. Pursuant to the amended provision, the overseeing prosecutors in charge of pre-trial proceedings are required to ensure that the investigation bodies respect the victims’ rights and inform them about the options and services available to them. In view of the obligation to inform the victims of crime (including victims of human trafficking) of their rights, the Prosecutor General issued a letter dated 21 October 2016 publicising the templates of the form and of the statement for provision of information to the victims about their rights related to assistance and financial compensation of the AFCCVA to be used in pre-trial proceedings. According to the Prosecutor General the templates were approved by the Ministry of Justice and are available on its information site, translated into foreign languages as well. The authors of this report, however, were unable to find them. No victims of trafficking were identified as beneficiaries of compensation during the last several years either.

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236 Ibid, p. 66.
237 http://gdnp.mvr.bg/NR/rdonlyres/B9F10B09-736C-4BF4-8A06-5E214892131F/0/Protokol_ZPFKPP.pdf
8. TREATMENT OF MIGRANTS (ACCESS TO ASYLUM PROCEDURE, PUSH-BACKS, ILL-TREATMENT)

8.1 Developments since 2014

Since 2014, the number of migrants entering Bulgaria has increased. For most of them Bulgaria is a transit country on their way to Western Europe. Those who stay in Bulgaria face serious difficulties in dealing with the discriminatory behaviour of authorities and of private individuals and groups. Since 1994, BHC has maintained a programme for legal assistance of asylum seekers and refugees. BHC has access to the reception centres, immigration detention facilities and detention centres at the borders. Since 2014, the organisation has received numerous complaints from migrants of bias-motivated physical abuse, robberies and insults by border police and other law enforcement officials. In the period May-September 2016 BHC received 33 such allegations affecting more than 600 persons who had asked for international protection. The majority of received complaints (80%) concerned the seizing of cash, valuables or even food that migrants carried, without issuance of a protocol, upon their detention by the Bulgarian police authorities. There were reports about inappropriate treatment by the police: using rude language, setting personal belongings on fire and strip searches. A significant share of the complaints by asylum seekers (around 45%) concern physical violence, including knocking to the ground, kicking, beating people with batons and in one case - a handgun grip. In six cases, police dogs were used during the arrest for intimidation, which resulted in one case of a dog bite. In several other cases the policemen used warning shots (shooting in the air). On one such occasion, on 15 October 2016, the Afghan man Ziaullah Wafa, 19-years-old, was killed after a border policeman allegedly used a warning shot and the bullet ricocheted, killing Wafa. In June 2016, the Burgas Regional Prosecutor’s Office discontinued the investigation because the result of the police officer’s conduct was found to be coincidental and could not have been foreseen. In the last several years, BHC, Amnesty International, Human Rights Watch and other international organisations have criticised the Bulgarian government for pushing back asylum seekers through unlawful use of force and firearms.

In addition to law enforcement officers, private vigilante groups “hunting” for migrants near the Bulgarian-Turkish border have physically abused, detained and robbed migrants on numerous occasions. In April 2016, the Prime Minister Boyko Borisov talked with one such group, thanked them and praised their activities. Although criminal investigations were instigated and charges were brought against members of some of these vigilante groups, none have been convicted. In March

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2017, the leader of one such group, who was charged with tying several Afghan migrants with plastic cords and keeping them detained on the ground for a prolonged period of time, was acquitted by the Burgas District Court for lack of evidence.

Due to the uninterrupted activity of human trafficking networks, **only a small number of people seeking asylum stayed in Bulgaria** and resided in refugee camps between the beginning and the middle of 2016. During this period it took an average of 15-30 days for the citizens of third-world countries to be transported to Bulgaria, to apply for asylum, to be released from the centres for administrative detention of aliens to the Ministry of Internal Affairs (so-called Special Homes for Temporary Housing of Aliens, SHTHA), to register with the State Agency for Refugees (SAR) and to then leave the country almost immediately in order to continue to the countries that were their desired final destination. Consequently, although the number of persons who applied for protection remained comparatively high in 2016 (19,418 persons), the **percentage of asylum seekers who forewent the procedures that were underway and left Bulgaria significantly increased and reached 84% by the end of 2016** (43% of the procedures were terminated and 41% were suspended due to the absence of the applicants seeking asylum). As few as 15% of the persons seeking protection remained in the country long enough to receive a decision on their application.

Those asylum seekers whose petitions were originally filed in Bulgaria were supposed to fall under the **procedures of the Dublin III Regulation** (Regulation (EU) #604 from 2013) and these persons were supposed to be returned back to the original country of entry to the EU to complete their refugee proceedings. The law provides that the proceedings can be renewed only once within 6 months of being terminated — this period is shorter than the 9-month period that was established under the revised procedural EU Directive (2013/32/EU). Despite this, the national refugee system overcame the unlawful practice — that had existed for several years — to refuse the reopening of refugee proceedings for asylum seekers who had been sent back to Bulgaria under the Dublin III Regulation. Nevertheless, the number of the returned persons under the Dublin III Regulation in 2016 remained insignificant, inasmuch as 17,199 persons left the country and only 624 persons were returned back to Bulgaria.

However, in the middle of August 2016, the border authorities of Serbia took measures for the complete closing of the border with Bulgaria as a reaction to the preceding closing of the Serbian exit borders by Hungary and Croatia. This resulted in an increase in the number of persons seeking asylum within Bulgaria and in the refugee camps in the second half of the year in 2016, and **by the end of September the camps had reached their full capacity**. This, in turn, affected the rate at which the new arrivals were released from SHTRF, which increased the average length of their stay from 3-6 days in the first half of 2016 to an average of 9 days in the second half of the year.

The over-crowding of the refugee camps at the end of the summer of 2016 once again illustrated the **shortcomings of the national system for handling refugees, which crashes when there is an influx that exceeds the currently existing housing capacity of 5,490 by more than 2/3**. What happens usually in these instances is that the **hygienic and health conditions at camps deteriorate** and 2016 was no exception. The conditions in the Ovcha Kupel and Voenna Rampa refugee camps in Sofia were particularly bad, as were the conditions in the camps in the village of Banya and in some of the facilities at the Harmanli camp. In addition to accommodation, asylum seekers received food and
basic medical help, but no monthly allowance, because the latter had been withdrawn as of February 1, 2015, notwithstanding that this was in violation of the national legislation and the provisions under Directive 2013/33/EU. Overcrowding and poor conditions brought about a mass brawl between Afghan and Iraqi refugees at the Harmanli camp, which, in turn, resulted in the first in the country high-security camp located outside the capital (the residents of high-security camps are kept confined within the premises until further notice). The extreme nationalist political group IMRO issued an ultimatum to the authorities to close the camp quoting as grounds fabricated information about the spread of infectious disease; as a result, on November 23, 2016 the camp was quarantined and the police blocked all exits without any prior notice to the camp’s residents. The mostly Afghan- incited rioting that broke out the next day was subdued by the police around midday. However, in the later evening hours, police and rioting squads invaded the camp’s living quarters again and, using excessive force and restraining devices, carried out random arrests of 325 Afghans despite the lack of evidence of their participation in the riot. The prosecutor’s office in Harmanli pressed charges against 16 of them. The other Afghan citizens were placed at the high-security facilities that were opened by SAR in September of 2016 in Sofia (82 people were placed there and the capacity was 60), as well as at the gym of the Border Police Regional Agency – Elhovo (164 people) which had been converted to a temporary high-security camp for the needs of SAR. The conditions at the temporary high-security camp (the gym of the BPRA – Elhovo) did not meet even the minimum legislative standards such as heating in winter conditions, bedding, clothing and providing meals that meet the daily minimum. The remaining 63 people were housed directly in the center for detention of aliens of the Ministry of Internal Affairs in SHTHA – Busmantsi, thus violating another explicit rule of law. The most serious infrac­tion, however, was the fact that, along with the adults, there were many unaccompanied minors and adolescents who were sent to the various high-security centers and facilities including a 14-year boy who had suffered severe injuries by the police. Upon receiving a report about this, SAR was able to relatively quickly organise the extraction of the detained unaccompanied children from the high-security facilities and move them to open-entry refugee camps.

Regarding proceedings on the evaluation of the applications for international asylum protection in 2016 there were improvements, but also deviations from the legal standards and good practices. For example, it was found that in 2016 the deadline of registration of 6 days after filing an application for protection with other state bodies was exceeded by about 1 day, which was a great improvement compared to previous years – 10 calendar days in 2015, 11 calendar days in 2014 and 45 calendar days in 2013. Besides, only 0.6% of those who filed for asylum at the deportation centers (SHTHA) of the Ministry of Internal Affairs (MIA) were detained for longer than 3 months, and 0.3% were detained for over 6 months before being released and moved to a SAR center for registration and processing. In the case of 66% of the latter, their access to registration and due processing was granted only after initiating court procedures on the grounds of length of detention, exceeding the legal registration deadline of 6 business days. In 90% of the cases the hearings in refugee proceedings were taped in compliance with the legislation that was introduced as the best standard for complete, objective and nonbiased recording of the statements of the applicants about their reasons for requesting asylum and also as a safeguard against corruption.

On the other hand, however, the quality of the decisions delivered by the refugee administration deteriorated in substance. In 2016 the decisions on asylum applications correctly identified the
reasons for granting asylum pursuant to the law in only 16% of the cases, and only 26% of the decisions included a review and discussion of the main elements of the applicant’s refugee story. In 67% of the cases the facts and circumstances matched the legal outcome of the decision, but only 16% of the decisions contained a review of all substantive issues of the declared refugee story. As a general rule, the decision-making authority, SAR, failed to specify what circumstances were admissible as credible and what were inadmissible in each particular case. In addition, SAR failed to provide reasoning in those cases when it had deemed the applicants’ explanations of the unclear or contradictory points in the refugee story not credible – SAR’s reasoning in these cases was general and unsubstantiated.

Furthermore, asylum seekers were not granted legal assistance. Since March 2013 aliens seeking international protection have been included in the category of persons entitled to state-subsidised legal assistance. Notwithstanding this law, in 2016 the candidates for protection again found themselves without legal assistance, even in cases where legal help and assistance to children, in general, and unaccompanied children, in particular, was mandated by law.

The most serious issue facing the refugee and immigration system – one that has not been resolved for over 20 years now – remains guardianship, care and procedures relating to unaccompanied children. In 2016 the number of unaccompanied children on Bulgarian territory who arrived without a parent or other adult relative who by law or custom was responsible for them continued to rise. In this sense, unaccompanied children who are seeking or have been granted protection, fully meet the legal definition of children at risk. However, just as in the previous 17 years, the most serious unresolved issue in the refugee procedure remained its application to unaccompanied children without an appointed guardian, which was carried out in violation of the imperative mandates of the law. According to the established court practice, these types of proceedings are deemed unlawful, and so are the proceedings against unaccompanied children in the absence of a legal representative of the children that was appointed by the municipality administration or without the assistance of an attorney to act as their procedural representative and advocate in their best interest. Nevertheless, in 2016 unaccompanied children continued to be registered with SAR in the absence of a municipality-appointed representative and, in some cases, in the absence of a social worker, as well. Unaccompanied children seeking protection were also not provided legal help during the administrative phase of the procedure, and in 100% of the observed cases unaccompanied children were not represented by an attorney to act as their procedural representative, which is in violation of the European general standards for international protection in the Member States. In 2016, BHC monitoring found that in 96% of the observed cases the registration of unaccompanied adolescent children was conducted in the absence of a social worker and this appeared to be the rule rather than the exception. The monitoring also found that in 100% of the observed cases unaccompanied adolescents were not appointed a guardian or custodian. In as few as 6% of the observed cases the social workers that were appointed to assist unaccompanied adolescents provided help or intervened when necessary during hearings of children. There was not a single case in which an unaccompanied adolescent was represented by an attorney.

The amendments and supplementations to the Asylum and Refugee Act (ARA) that entered into force at the end of 2015 were adopted so as to transpose the Directive 2011/95/EU (the Qualification Directive) to the Bulgarian legislation. According to the amendments, unaccompanied children who
are seeking or have been granted international protection must be appointed a representative of the local administration (this representative is appointed either by the mayor of the municipality or by another official authorised by the mayor). This legislation changed the propositions, which at that point had already been submitted to Parliament, requiring that a legal guardian or custodian be appointed by the representatives of the various units to the Social Assistance Agency (SAA) whose responsibilities include all actions related to the protection of children and the enforcement of protective measures. As a result, municipal administrations in those residential areas where SAR centres are located were not prepared to identify, train and assign municipal employees as representatives of unaccompanied children during their asylum procedures or after they received refugee status.

In 2016 a number of meetings took place between municipal administrations, the local departments for child protection, the management of SAR, UNHCR and NGOs. As a result of these meetings, a mechanism for appointing the representatives, required under the ARA, and for defining their obligations was established. As a follow-up, the mayors of those regions that have SAR centres started to appoint municipal administration representatives to unaccompanied children during international protection proceedings. BHC monitoring found that appointing this type of representative in the Regional Border Crossing Centre (RBCC) – Sofia, at the Voenna Rampa camp in Serdica district, was problematic up until December 2016. This problem was resolved at the end of the year and the mayor of the district was able to secure the presence of a municipal representative during hearings of unaccompanied children. However, one issue that remained unresolved as of the end of 2016 was the issue of unlawful registration of unaccompanied adolescents and minors seeking asylum (i.e., in the absence of a legal representative by the municipal administration or of a social worker from the Child Protection Agency within the corresponding social assistance unit of Social Assistance Agency). This unlawful practice violates not only the regulations of the legislation governing refugee issues, but also the principle of ensuring assistance to and safeguards for children who are parties to proceedings pursuant to the Child Protection Act.

In addition, the law mandates that SAR is responsible for monitoring and safeguarding minor and adolescent aliens seeking international protection from physical and psychological violence, and cruel, inhumane or degrading treatment. All throughout 2016 SAR failed to fulfil the legal requirement that unaccompanied children seeking asylum at its centres should be provided with special living accommodations. Instead, unaccompanied children were housed in facilities that housed single adult individuals and were subject to negative influences and environments, and were left without any monitoring or preventive care by an individually assigned social worker. From the middle of 2016 the head of SAR issued an order requiring that minor unaccompanied children seeking international protection be moved to the Ovcha Kupel camp within RBCC - Sofia, where in 2015 a separate floor was dedicated to housing unaccompanied children. Despite the steps taken to improve the living conditions in this particular dormitory, in 2016 the accommodations there still failed to meet the requirements of child-protection legislation and failed to provide safeguards for protecting the best interests of the children living there. For example, children were not placed under the 24-hour supervision of a person responsible for their care, nor did they receive the due care of their general wellbeing. After the SAR social workers left the camp at the end of their workday, children were left alone and unsupervised. In reality, there was no one responsible for their guidance or to make sure that they attended school. In the Ovcha Kupel camp the three required
daily meals were distributed twice a day even to unaccompanied children, which is in violation of the law. From the end of March 2015, they did not receive the individual monthly allowances, required by law, which rendered them virtually deprived of any means of physical survival, which then becomes entirely the responsibility of the state.

8.2 Detention of persons seeking protection

At the end of 2016, **the refugee legislation was amended**\(^\text{241}\) and **restriction of the freedom of movement was introduced for the persons seeking protection during the proceedings before SAR.** According to the amendments to the law, the persons seeking protection have the right to move freely only within the frameworks of the zones for movement assigned to them. The permitted zones for movement should be noted in individual registration cards. Repeated violation of the assigned zones for movement was introduced as grounds for accommodation in refugee centres of closed type.\(^\text{242}\) In September 2017, the government adopted a decision\(^\text{243}\) with which it officially defined the zones for movement of the persons accommodated in the registration-admission centres of SAR, and restriction on entering the border zones was also introduced for all persons seeking protection.

In 2017, the only functioning premise of closed type (PCT) of the State Agency for Refugees was the so-called “3rd block” in SHTAF Sofia (Busmantsi area), with capacity of 60 places. The Migration Directorate assigned the PCT to SAR on 19 September 2016. In the beginning of 2017, the refugee administration announced its plans to transform the Transit Centre in the village of Pastrogor into a centre of closed type by returning the “3rd block” under the jurisdiction of the Migration Directorate of MoI, but by the end of the year neither of the two was achieved in practice. Currently persons seeking protection are detained in PCT of SAR to establish their identity, or on the grounds of risk for the national security or of public order. On disputing the decision, the national court ruled\(^\text{244}\) and indicated the standard for proving the grounds for detention in PCT, as well as that the burden of proof is on the administrative body. The regular inspection of the grounds for detention, provided for in the law,\(^\text{245}\) was conducted formally in 2017, whereby the persons seeking protection were taken out of the PCT or freed only after the end of their refugee proceedings, or on the grounds of judgement.

The most negative development in 2017 was the **broadening of the practice to conduct refugee procedures in conditions of immigration detention in SHTAF of the Migration Directorate of MoI.** Under the law, SAR has the right to detain the persons seeking protection during the proceedings under certain conditions. However, that detention could be done only in refugee centres of closed type of SAR, but not in the common immigration centres of MoI for illegally residing foreigners. **Illegal conducting of refugee proceedings in SHTAF of MoI was applied in a discriminatory manner with respect to persons seeking protection from certain nationalities and states of origin: Afghanistan, Sri Lanka, Bangladesh, Pakistan and Turkey.** That illegal practice was entirely supported by the national regional administrative courts, which accepted that although the conducting of

\(^{241}\) State Gazette No. 96 of 6 December 2016, Article 29(1) item 1 LAR.

\(^{242}\) Article 95a LAR.


\(^{244}\) Administrative Court in Sofia-town, Judgement No.7173 of 29 November 2017.

\(^{245}\) Article 45\(\text{a}\) (2) LAR.
refugee proceedings in SHTAF constitutes violation of the rules for administrative proceedings, that violation is insignificant insofar as there is no serious restriction of the rights of the detainees seeking protection. Insofar as all proceedings in SHTAF were conducted under the accelerated procedure, whereby cassation appeal is not admitted, there is still no case law of the Supreme Administrative Court on this issue.

8.3 Access to procedure and quality of the procedure

The delay of the access to procedure for the persons who had applied for asylum from the administrative centres for detention of foreigners – the Special Homes for Accommodation of Foreigners (SHTAF) – deteriorated in 2017. If in the previous year the average detention period for persons seeking protection was 9 days, in 2017 that period increased to an average of 19 days. The extension of the period of detention was in contradiction to the considerable decrease both in the total number of foreigners who had entered the country, and in particular to the diminished number of the persons seeking asylum and protection: a total of 3,700. This contradiction cannot be explained in any other way except as a deterring measure applied so as to demotivate the filing of applications for protection from the places for administrative detention of foreigners. The same is also confirmed by the ratios between the average detention periods compared to the number of persons seeking protection in previous years, accordingly: in 2016 – 9 days average detention for 19,418 seeking protection, in 2015 – 10 days average detention for 20,391 seeking protection; in 2014 – 11 days for 11,081 seeking protection.

Translation, interpreting and communication in a comprehensible and preferred language during the proceedings for providing international protection and status were not secured for all persons seeking protection. For the persons speaking languages from and into which Bulgaria lacks identified translators and interpreters, the proceedings were conducted in a language chosen by the respective interviewer or decision-making body of the State Agency for Refugees (SAR), and not by the refugee. Moreover, that was applied without data on whether the refugee had given his/her consent for the procedure to be conducted in the respective language or evidence that he/she indeed knows that language. With the exception of the persons seeking protection from Syria and the ones without citizenship, the ratings were minimal and varied on the average from 7% to 0.5%. The applications for protection submitted by persons from states of origin like Algeria, Bangladesh, Pakistan, Sri Lanka, Turkey and Ukraine were treated in practice as clearly unfounded, with zero recognition rating and providing protection. The same approach was also applied to persons from Afghanistan seeking protection, to whom refugee status and protection were provided by way of exception (1.5%) and in the majority of the cases – on the grounds of court judgements revoking SAR’s refusals to grant status. With respect to a certain number of persons from the indicated nationalities, their refugee proceedings were conducted in the administrative centres for detention of foreigners residing illegally in violation of the national law (Article 45б of the Law on Asylum and Refugees – LAR). The abandoning by the refugees of their procedures initiated in Bulgaria continued to be at

extremely high levels, whereby in 2017 a total of 77%\(^{247}\) of the opened procedures were stopped or terminated, compared to 88% in 2016, 83% in 2015 and 46% in 2014.

**8.4. Legal aid**

At the end of 2017, the National Legal Aid Bureau (NLAB) received financing for a pilot project to provide legal aid and representation to persons seeking protection at the administrative phase of the refugee procedure. However, according to the parameters of the pilot project, **legal aid at the procedure phase conducted before SAR will be provided only to persons from vulnerable groups.**

At the end of the year SAR and NLAB signed general rules for providing legal aid at the administrative phase of the refugee procedure, among which rules for selection, for filing complaints against the quality of the aid provided and anti-corruption mechanism. The rules came into force on 31 December 2017, and the providing of the legal aid to vulnerable persons started in February-March 2018.

**8.5 Admission conditions**

With the exception of the hostel in the Vrazhdebna district at the Registration and Admissions Centre (RAC) in Sofia, the security of the people seeking protection, accommodated at the RACs of SAR in the capital and in the country was not fully guaranteed, above all with respect to the persons accommodated in the hostel in the Voenna Rampa area. The persons seeking protection in that RAC sent signals that outsiders had almost unimpeded access to the bedrooms at night. **Verbal and physical aggression, as well as direct assaults and robbery of persons seeking protection from that hostel were an almost regular phenomenon in the vicinity of the centre.** As a rule, the police did not investigate these incidents, and the perpetrators remained unidentified and unpunished. The lack of reaction on the part of the law enforcement and human rights bodies forced a number of NGOs to address an open letter to the Social Home for Temporary Accommodation of Refugees of MoI, which appeals for effective investigation, punishment and prevention measures to be undertaken under the prescriptions of the law.\(^{248}\)

Over the past two years the number of complaints about verbal and physical abuse decreased, as did the complaints about inhuman material conditions of accommodation. This is due to the decrease of the number of asylum seekers in Bulgaria. At present all reception centers operate much below their capacity.

Standard operational procedures for identifying and work with persons from vulnerable groups, including unaccompanied minors, were adopted only in 2018 with additions to the **Rules and Regulations of the Foreigners in Bulgaria Act.** At present, however, it is unclear how these procedures are going to be implemented. In the past vulnerable persons received specialised support and assistance basically from NGOs and providers of services financed from sources outside the budget.

\(^{247}\) Information from SAR: 30.6% or 6,251 stopped proceedings; 46.7% or 9,551 terminated proceedings; 23% or 4,624 substantive judgements.

\(^{248}\) Letter from Caritas Sofia, BHC, the Council of Women Refugees, Nadya Centre, CVS Bulgaria and Lumos Foundation, 22 December 2017.
8.6 Integration of the recognised refugees

The Ordinance for Integration of Refugees and Persons with Humanitarian Status, which was adopted in 2016 after a discussion that continued for two years, never worked in practice, but it was revoked on 31 March 2017 by the caretaker government on the last day of its term in office. The revoking was motivated with the fulfilment of the election promise given by the newly-elected President Rumen Radev – in contradiction to the Constitution and to the principle of separation of powers proclaimed in it. The new Ordinance on Integration adopted on 19 July 2017 did not differ substantially from the rules of the revoked ordinance. In spite of the adoption of the new Ordinance on Integration, the government did not approve concrete rules and budget for encouraging the municipalities to undertake integration plans and measures. In this way, the situation of zero integration of the refugees in Bulgaria continues.

9. FORCED EVICTIONS OF ROMA FROM THEIR ONLY HOMES

The Bulgarian legislation and practice on forced evictions does not comply with the standards of the Covenant in that it allows for such evictions on the sole basis of the inhabitants’ unlawful occupation of a property or of the unlawful construction of the property, without due consideration of the risk of their becoming homeless in a situation in which satisfactory replacement housing is not immediately available to them.249 There have been no changes in the legal situation in Bulgaria over the past five years. On the contrary, in 2017, the situation deteriorated in practice, part of the deterioration resulting from racist instigation originating from or finding support among the extreme nationalists who participate in the government.

In September 2017, in the context of the monitoring on the implementation of the ECtHR judgements, the Committee of Ministers of the Council of Europe expressed regrets that for yet another year the Bulgarian authorities had failed to take actions to submit amendments to the State Property Act (SPA), Municipal Property Act (MPA) and Spatial Planning Act (SpPA), which would guarantee proportionality of the actions aimed at coping with the illegal possession of public property and the orders for illegal buildings to be demolished. The Committee invited the State to submit information on what had been done and a plan-schedule for the adoption of the required legislative reform by 1 February 2018.250 Although in 2016 in a report of the Minister of Justice on the enforcement of the judgments from the group Yordanova v. Bulgaria it is stated that in connection with the convictions “it is necessary to consider the explicit introducing” of the principle of proportionality in the demolition of illegal construction under Articles 195, 225 and 225a of SpPA, Article 80 of SPA and Articles 46 and 65 of (MPA) in the cases affecting the right to respect for one’s personal and family life and home under Article 8 of ECHR,251 no actions in that direction had been undertaken.

250 http://hudoc.exec.coe.int/eng#"EXECIdentifier":"[004-1924"]"
The problem with the forced evictions from Roma houses was exacerbated during 2017. The BHC invested a substantial resource in the protection of a number of Roma families under immediate threat of becoming homeless as a result of planned forced evictions. With the inclusion in the government of the ultranationalist coalition of the United Patriots, whose three parties have incited for years anti-Roma moods in society, the local authorities in a number of Bulgarian towns and villages launched massive campaigns over the year to demolish illegal dwellings of Roma people, built over privately owned or municipal land. In most cases those were houses built decades ago, which the municipalities tolerated during all that time. What is more, some municipal authorities implicitly recognised the existence of these buildings over the years: citizens of Roma origin who turned to the BHC were registered as permanently residing at the addresses of the houses marked for demolition; for other buildings the municipal authorities had calculated for years taxes and fees; service providers were supplying electricity and water – not without the knowledge and cooperation of the authorities – to some of the buildings. In all cases in which the BHC provided legal aid and representation in court to the citizens of Roma origin, the local authorities had not offered any alternative accommodation or offered accommodation that is entirely inadequate to the families threatened with planned demolitions of their homes. In most of these families there were children, including newborn babies, as well as people with serious health problems. In most cases the buildings targeted to be demolished were the only home of the families living in them. In all cases the families could not afford to buy or even rent another place to live in, because they lived below the poverty threshold estimated by the National Statistical Institute. They were all doomed to homelessness and life in the street – the fate of a number of other families for whom the limited resources made it impossible for the BHC to reach them.

The affected Roma citizens, who received legal aid from the BHC in connection with the described events, were a total of 87 persons from three Bulgarian towns: Asenovgrad, Plovdiv and Sofia.

The Arman Mahala case in the city of Plovdiv

In April 2017, the municipal authorities in Plovdiv launched a campaign to demolish illegal buildings in the segregated Roma Arman Mahala neighbourhood. The BHC Legal Defence Programme (LDP) provided legal aid and representation in court to six of the affected families, a total of 21 persons, among whom there were babies, young children, pregnant women, elderly people above 70 years, as well as people with serious diseases. All six houses date decades back (the earliest two are from 1991). They were built without a building permit over land that is private municipal property. The families have lived in their homes since the time when they were built to this day with the knowledge of the municipal authorities. The authorities tacitly recognised and accepted the existing situation: most of the members of the families had permanent residence and were registered at the address of the houses planned to be demolished, as is evidenced by their ID documents; the municipal authorities collected taxes and waste collection fee from the owners of four of the houses; water and electivity were supplied to the houses of all by the respective public utilities. The houses of all people concerned were with massive construction. None of the families had another place to live in. All six families survived on money far below the poverty threshold calculated by the Bulgarian National Statistical Institute.
On 24 April, the BHC LDP filed a request to the ECtHR for interim measures for protection of these six families. In response, the ECtHR instructed the Bulgarian authorities not to demolish the homes before they had provided guarantees that they would secure alternative shelter to the families. The Bulgarian government undertook such a commitment before the ECtHR. As a result of that guarantee on the part of the Bulgarian authorities, the ECtHR revoked the temporary measures. Yet, not all families received alternative housing. The case is pending before the ECtHR.

The Loznitsa case in the town of Asenovgrad

On 26 June 2017, an incident occurred between youths of Bulgarian origin training rowing and Roma citizens. According to data from the media, “eyewitnesses claim that the fight on Monday started from a training of the canoeists and kayakers from the Asenovets youth training school, whereby Roma citizens sunbathing nearby started mocking rowers whose boat turned upside down in the water. Sharp words, swearing and insults followed, which degenerated into throwing of stones and a fight. Three of the rowers and one of the Roma children were injured. The fight continued later in front the hospital in Asenovgrad, but already with the participation of the relatives of the two belligerent groups. The police arrested nine people there. The total score was seven people in hospital, one of whom with a broken wrist, and another one with two broken ribs.” According to information in the media, the Public Prosecutors’ Office filed a total of 11 charges against Roma citizens for hooliganism of particular aggressiveness and cynicism.

On 28 June 2017, there was an anti-Roma protest of about 1,000 people who tried to enter the Roma neighbourhood, but were stopped by the police and gendarmerie. On the next day representatives of the protesters met with the authorities, including with Valeri Simeonov, Deputy Prime Minister for the economic and demographic policy, who later tweeted, cited in the media: “The state authorities entered the Gypsy neighbourhood in Asenovgrad and will check the legality of the houses: the illegal ones will be demolished. The police maintain permanent presence in the Gypsy district in Asenovgrad and will remain there for as long as is needed. The fight against everyday crime starts from the ghettoes. The Gypsies who had come to Asenovgrad from the nearby villages will be subjected to thorough check of their address registration.”

On 2 July 2017, the anti-Roma protests continued. A procession of thousands of participants (about 5,000) and a protest (about 10,000 participants) were organised, with the participation also of nationalist rockers bikers’ clubs and football hooligans from all over the country, who tried again to break the cordon of the police and gendarmerie around the Roma neighbourhood. A part of the participants chanted: “If you don’t jump, you are a gyp!” “Gypsies into soap, Turks under the knife!”, “Sell-outs!”

253 “11 charges for the Gypsy fight near Asenovgrad – some face up to 10 years in prison,” Clubz.bg, 14 September 2017, also accessible on the Internet at: https://clubz.bg/node/58353.
254 See “After a fight the authorities threatened the Roma in Asenovgrad with eviction and demolition of houses,” www.mediapool.bg, 29 June 2017, cited above.
255 Ibid.
On 4 July 2017, the Mayor of Asenovgrad declared that the anti-Roma protests of Bulgarians would not stop before the three claims of the protesters have been met, one of which is to remove illegal residents in the Roma neighbourhood and to demolish their houses, and, accordingly, the municipality will undertake the demolitions.256

On 24 August 2017, the National Round Table on Real Policy and Effective Solving of the Problems of Ethnic Integration was held in Asenovgrad, at which representatives of the local Roma citizens were not invited. Deputy Prime Minister Valeri Simeonov was cited saying: “The State’s commitments to solve the problem with the ethnic tension in Asenovgrad have been fulfilled.” “The second thing we undertook as commitment was to list and demolish the illegal buildings; 16 have been demolished already and the documents for 17 more have been prepared. These are slow processes because they have the right to appeal in court, but the process goes on.”257 According to the same article, the authorities inspected residents of the neighbourhood to check their address registration and current, and – according to Simeonov – more than 830 people without registration were found.

On 23 August 2017, BHC researchers met with representatives of the Asenovgrad Municipality: Mr Atanas Toshev, Head of the Construction Control Directorate, a lawyer at the same Directorate and an official from the Humanitarian Activities Directorate. Mr Toshev explained the actions of the municipality aimed at removing the Roma houses in view of the resulting situation with protests and public pressure on the part of initiative committees with their demands. Otherwise, as can be seen from the Action Plan of the Asenovgrad Municipality for Roma integration (2014–2017), the municipal authorities had known at least since 2014 about the illegal Roma buildings: “in the town of Asenovgrad, between Lale Bair Street and the new cemetery park at Minyor Street, there is a territory outside the town’s urban planning, with a compact Roma population where about 230 illegal buildings had been erected.”258 The Roma neighbourhood Loznitsa in Asenovgrad is divided in two parts: the lower part is legal and regulated, while the upper part is illegal and not regulated, the land is privately owned or municipal property, stretching from the town to the new cemetery. That was precisely the district also cited in the Action Plan of the Asenovgrad Municipality for Roma Integration (2014–2017), where about 230 houses had been built by 2014.

According to the explanations of the municipal officials in August 2017, the strategy of the municipality was to start the demolition of all illegal houses from those that are furthest from the town, i.e., the most recently built – from the cemetery park towards the town. No alternative housing was offered to those in need, although the municipality has 6-7 vacant municipal houses. There are no social services for finding accommodation on the territory of the municipality, the closest such services being in the city of Plovdiv. According to the representatives of the municipality with whom BHC spoke, the authorities had not investigated whether the houses planned to be

257 “Deputy Prime Minister Valeri Simeonov: the State’s commitments to solve the problem with the ethnic tension in Asenovgrad have been fulfilled,” www.focus-news.net, 24 April 2017, also accessible on the Internet at: http://www.focus-news.net/news/2017/08/24/2428678/vitsepremierat-valeri-simeonov-izpalnenie-sa-angazhimentite-na-darzhavata-za-reshavane-na-problema-s-etnicheskoto-naprezhenie-v-assenovgrad.html.
demolished are actually the only housing for the affected persons. With a view to assessing the housing needs of those affected, they drafted general information based on available documents and municipal databases on these persons, which was submitted in a report to the Mayor of the municipality, which was for internal use, not for undertaking any measures vis-à-vis the persons affected. The information was drafted only after the designation orders had been issued. On the day of the demolition, officials of the municipality were present at the site, engaged in some kind of social survey.

On 20 July 2017, the Mayor issued a total of 16 new orders for voluntary demolition, 5 of which were appealed by the affected persons before the Administrative Court in Plovdiv, the proceedings being pending at the end of August, and 11 had come into force without being appealed. On 18 August 2017, 10 of the 11 orders that had come into force were coercively executed; one of these 10 orders being for a house sharing a wall with a house whose demolition is appealed. Three of those demolished houses were legitimately connected to the electric grid by the EVN electricity company. In the words of the municipal officials, none of the ten houses had been connected to the town’s water supply system. The land below some of them was private property of third persons.

According to officials at the municipality, the victims were not informed of the exact date and time of the coercive demolition of their homes, which was imminent after they had not complied with the order for voluntary demolition. That information was confirmed by all victims with whom BHC talked on the spot in the Loznitsa district. According to the municipal officials, a municipal warehouse had been made available for the belongings of the persons whose homes had been demolished, but the victims explained that they had not been offered the option of using it. During the first wave of demolitions, **16 buildings were destroyed on 21 July 2017**, which – according to the municipal officials – were light shacks made of planks, plastic sheets, i.e., movable premises that could not be categorised under Article 137, Paragraph 1, items 1–6 of SpPA. These buildings were on municipal land. Two of them were for farming needs, eight – for housing (most of them were inhabited by one person per house, one house – by two adults and one house – by a family with two children). Six of them were demolished voluntarily. No alternative accommodation was offered to the persons affected.

On 23 August 2017, nine orders for voluntary demolition had come into force, but the municipality refused to reveal before the BHC researchers the time for which the coercive demolition had been planned. According to information from the affected persons with whom BHC talked, the demolition had been scheduled for 25 August. They explained that during the last wave of demolitions on 18 August 2017, persons unknown to them from the municipal authorities informed them orally that the demolition would take place on 25 August 2017, at 10:00 a.m. The coercive execution of a total of nine orders for voluntary demolition, which had come into force, was also scheduled for that day. According to information provided by the municipal officials, seven reports of findings were also issued on 23 August 2017 with respect to other houses for which issuing of orders for voluntary removal were imminent. The BHC researchers managed to speak only with three families from the houses planned to be demolished. They had started to demolish their houses partially so as to protect a part of their belongings, as well as out of fear that they would be forced to cover themselves the costs for the demolition. In the Roma neighbourhood the BHC researchers identified
acts for administrative violation and penal orders for a BGN 50 fine for the fact that the persons do not live at the address indicated in their ID documents.

On 4 October 2017, according to data from the media, 18 illegal buildings were planned for demolition in the Roma neighbourhood in Asenovgrad. The notifying letters about voluntary removal of the illegal buildings were to be handed to the inhabitants by 8 October. Mr Atanas Toshov, Director of the Construction and Urban Planning Municipal Directorate, informed that the intention was to demolish housing and farm buildings located outside the town’s regulation, built not on own terrain and lacking any documentation. Since the start of the campaign against illegal construction in the Roma district of Loznitsa in July, **65 penal orders for illegal construction were delivered. The demolished buildings numbered 36, whereby 27 of them were removed coercively, and nine were demolished voluntarily by their owners.** Municipality officials with the assistance of the police conducted inspections twice a month for illegal construction in the Roma neighbourhood. Social workers also participated in the committee, but until that moment there were no people wishing to be accommodated in municipal housing.259

At the end of October 2017 the administration in Asenovgrad explained before the media that 68 statements of findings identifying illegal construction in the Lakovo locality in Asenovgrad were drafted on 25 October, referring to a total of 90 housing and farm buildings. **A total of 65 orders for abolishing the illegal construction were issued; 17 of the orders are appealed in the Administrative Court in Plovdiv. A total of 48 buildings were demolished: 12 of them voluntarily and 36 coercively.** The team of officials from the Asenovgrad Municipality formed so as to find illegal construction in the Lakovo locality comprised also a staff member from the Humanitarian Activities Directorate, who conducted conversations with the persons and drafted social surveys with the aim of identifying their social status. A total of 41 surveys were drafted and the information from them was summarised and submitted in a report to the Social Assistance Directorate in Asenovgrad. The number of the social surveys drafted does not correspond to the number of orders issued, because a part of the buildings belonged to unknown persons. During the last three visits to the Lakovo locality there were also officials from the Social Assistance Directorate in Asenovgrad. They clarified the social status of the persons and families, and consulted them, if necessary. Three applications for accommodation in municipality housing were filed with the Asenovgrad Municipality and one for filing in 2018. The Social Assistance Department in Asenovgrad consulted two persons with health problems. They were offered accommodation in suitable social institutions, but they refused in writing.260

**The Orlandovtsi case in the city of Sofia**

On 25 October 2017, the BHC received information about at least **50 people from the Orlandovtsi district in Sofia, no less than 30 of whom were children**, who had become homeless after their only homes were destroyed on the order of Engineer Todor Krastev, Mayor of the Serdica District of the

Sofia City Municipality. According to the available information, all the families were of poor people, and their homes were demolished irrespective of the proportionality of the measure and without offering them alternative accommodation.\(^{261}\)

On the same day, a BHC researcher visited the place where the demolished homes had stood. They talked with the rest of the people who were rendered homeless and were still at the place, and took photos. Church representatives offered tents to some of the homeless peoples; others huddled in sheds made from debris of their demolished homes. Some of the thirty children who were forced at that time to live under such conditions continued to attend school, in spite of their plight.

The procedure of destroying the homes of the targeted persons started not later than 2015. The correspondence was without the knowledge of the people living there. The District Mayor notified the families orally about the imminent entering of excavators in the neighbourhood one week in advance. During that period, which lasted for more than two years, no attempt was even made to find out what families lived in those houses and what their social profile was. According to BHC data, in addition to small children and babies, there were also persons suffering from severe diseases. At the same time, no social services were provided to the affected people and access to accommodation in municipal houses involved a long and complicated procedure.

In October 2017 the BHC legal defence programme provided legal aid and representation before court to three families from the Orlandovtsi district in connection with the planned demolitions of their only homes. The total number of people affected by the actions of the authorities in those three families was 22, among whom babies, young children and minors, and elderly people with severe health issues. The BHC applied before the ECtHR for interim protection measures for those families. The BHC asked the Court to indicate to the authorities not to demolish the homes of the families until shelter had been provided to them. The authorities had provided no shelter to any of the families. What is more, the authorities had not handed demolition orders to the families, thus depriving them of the chance to defend themselves before a Bulgarian court. The ECtHR met the request by the BHC and instructed the authorities not to abolish the only homes of the families before providing guarantees that alternative shelter would be provided to them. The Court also decided that it would examine the cases submitted to it with respect to the three families with priority. The cases are pending before the ECtHR. The houses of the three families are not yet demolished, unlike more than 30 other illegal buildings of citizens of Roma origin in the Orlandovtsi district, some of which date back from several decades.

The Batalova Vodenitsa case in the city of Sofia

The BHC provided legal aid and representation before court to five families from the Batalova Vodenitsa segregated Roma neighbourhood in the Serdica district of Sofia in connection with actions by the authorities to demolish their only homes that are illegal buildings, without offering them alternative shelter. The total number of people affected by the actions of the authorities in these five families is 40, among whom there are babies, young children and minors, and pregnant

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women. All five houses scheduled for demolition were built more than three decades ago and are massive buildings. None of the families had enough money to buy or rent alternative housing.

The BHC helped the families to appeal the acts of the local authorities in the procedure of demolishing their homes. The case of one of the families had already been communicated by BHC to the ECtHR. The other cases await the exhausting of the legal remedies for protection at national level. None of the families was offered alternative accommodation by the authorities.

Other cases of evictions

On 22 August 2017, according to information in the media, five of the 143 houses indicated for demolition in the Zaharna Fabrika district in Sofia were destroyed. Some of them were shacks, others were solid buildings. A total of 50 people were taken out of their homes; 540 people proved to be registered at the same address.262

According to the media, the illegal Roma houses in the Kazmera district in Kazanlak were demolished on 15 June 2017. The municipal authorities started the campaign back at the end of 2016. Initially statements of findings were issued for 13 dangerous and crumbling buildings and for two that were unlawful. They were built on municipal land. The Kazanlak municipality had notified the people living in the illegal premises to take actions on their own to move and to demolish the buildings before coercive demolition was undertaken.263

On 24 August 2017, according to data in the media, more than 20 illegal buildings in the Pobeda district in Burgas were demolished during a campaign of the municipality, police and gendarmerie. A part of the Roma houses were dismantled voluntarily several days earlier, while the rest were demolished using heavy machinery. In the words of the Mayor, the listing and description of the illegal buildings was an ongoing process, with another 10 houses being demolished in July. The Mayor’s office in the Vazrazhdane district explained that the social services were ready to accommodate the families that had nowhere to go, but no requests had been filed with them to that effect. There are a total of 40 illegal houses, some of which were removed voluntarily by the Roma.264

In March 2017, an analysis by the non-profit Equal Opportunities Initiative Association and the Open Society European Policy Institute was published, outlining the principal issues in the legislation and in the practice connected with the evictions of the Roma houses.265 The analysis also concludes

262 “143 illegally occupied Roma houses are being demolished in Zaharna Fabrika,” article and video recording, Nova TV, 22 August 2017, accessible on the Internet at: https://nova.bg/news/view/2017/08/22/191012/ събарят-143-незаконни-ромски-къщи-в-захарна-фабрика /.
263 “Illegal Roma houses in Kazanlak are being demolished,” article and video recording, Nova TV, 15 June 2017, accessible on the Internet at: https://nova.bg/news/view/2017/06/15/185115/ събарят-незаконни-ромски-къщи-в-казанлък-видеоснимки /.
that the issuing and the execution of orders for the demolition of illegal houses affects particularly adversely and disproportionately the Roma families. This is proven by the fact that 97% (or 500 of a total of 514) orders by the Directorate for National Construction Control (DNCC) concerning residential buildings, issued in 2010–2012, target only homes of Roma citizens. According to data collected from 61% of all municipalities in Bulgaria, 89% (or 399 out of all 444) orders concerning residential buildings, issued by the local administrations, target only homes of Roma citizens. The administrative practices applied during the demolition of the only homes of Roma families, are in violation of norms in international law for protection against discrimination, adopted by Bulgaria. There was no discussion on a possible reasonable alternative prior to the demolition; the affected families were not offered adequate alternative accommodation and in practice they remained homeless – without a possibility to be registered at a new permanent address, which hampers the issuing of regular identity documents and hence the access to fundamental rights and services. According to the analysis, there is no accurate statistics concerning the number of the illegal housing facilities in the segregated Roma neighbourhoods, but they are considered to be at least one quarter of all houses in those areas. The local authorities are not in a position to offer an adequate solution to the problem due to insufficient or non-existent availability of municipal and social housing. For this reason, orders issued for the demolition of illegal houses in the Roma neighbourhoods in response to demands by citizens are often not executed for years. However, once issued, these orders have no statute of limitation and are activated sporadically during election campaigns or when there is intensified investment interest in the respective places.

According to the analysis, the practices of removing illegal buildings that are the only homes of Roma citizens in the segregated areas do not contribute to a lasting resolving of the problems with the housing situation of the Roma minority and are in contradiction to the country’s adopted long-term strategy for integration of the Roma population. Due to the fact that the affected families are not provided any housing anywhere and remain homeless, as a rule, they remain to live in the same neighbourhoods: initially they stay for a while with relatives and in a few weeks or month they build something to live in – at the same place where their former demolished homes were, or in immediate proximity.

A serious obstacle before the improvement of the practices related to the illegal only homes of people in segregated Roma neighbourhoods can be seen in the delayed implementation of most of the principal goals under the third priority of the National Strategy for Roma Integration of the Republic of Bulgaria (NSRIRB): improvement of the housing conditions, including the adjacent technical infrastructure. The main problem is the lack of effective results for the stated goal of “improving and complementing the legislation in the sphere of the housing conditions,” both for creating possibilities to legitimise the buildings fit for living, and for synchronisation of the legislation regulating the illegal construction with the stated norms and principles of non-discrimination.

Another major problem is the non-attainment of the stated goal for a systematic communication plan to raise public awareness about the integration policies. In the priority sphere connected with improvement of the housing conditions of the Roma population, the absence of systematic communication on the part of the central and the local administrations, both with the affected

persons and with the majority intensifies the interethnic tension: the anti-Roma moods among the majority and total lack of trust in the institutions among the Roma. The prevalent part of the executed orders for mass demolition of the Roma houses was during the 2012–2016 period, when there was a clear tendency towards intensification of the anti-Roma actions and conflicts, especially in 2014–2015. The passiveness of the responsible institutions with respect to the growing conflicts and manifestations of anti-Roma actions, and the lack of explanatory activities on the need of integration and planned policies, in practice block the implementation of NSRIRB. 266

10. RIGHT TO LIBERTY AND SECURITY OF PERSON AND RIGHT TO PRIVACY – DEVELOPMENTS IN LEGAL CAPACITY LEGISLATION AND PRACTICE

10.1 Placement in social care institutions

Bulgaria ratified the UN Convention on the Rights of Persons with Disabilities (CPRD) on 26 January 2012. A few days earlier, on 17 January, the Grand Chamber of the European Court of Human Rights issued its judgment in the case of Stanev v. Bulgaria. 267 The ECtHR established that Mr Stanev’s placement in the social care institution, against his will and for an indefinite period of time, on the order of a government employee and without necessary safeguards, meant that Mr Stanev had clearly experienced deprivation of liberty, in violation of Article 5(1) ECHR. The Court went on to state that a need for social assistance, such as was clear in Mr Stanev’s case, should not automatically lead to measures involving deprivation of liberty. It was the presence of a mental health condition, which had led directly to the decision to place Mr Stanev in the institution, and this was not a sufficient justification under the European Convention of Human Rights. The system of guardianship in Bulgaria meant that Mr Stanev had no realisable right to challenge the lawfulness of his detention in the Bulgarian courts (Article 5(4) of the ECHR). His legal standing to do so had been


[267] ECtHR, Stanev v. Bulgaria, application No. 36760/06, Judgment of 17 January 2012. This case was a joint litigation project of the Bulgarian Helsinki Committee and the Budapest-based Mental Disability Advocacy Centre. The two organisations provided the applicant’s legal representation in the proceedings. In 2000, Mr Rusi Stanev was placed under partial guardianship by a Bulgarian court and a municipal employee was appointed as his guardian. In 2002, without ever having met Mr Stanev, the guardian had him placed in a social care institution in a remote mountainous area 400 km from his home. Once there, the director of the institution became his guardian and controlled all of his affairs. The conditions in the institution, as documented by the Council of Europe Committee for the Prevention of Torture, were extremely bad. The amount of food was insufficient, the residents were obliged to sleep in their coats during winter due to the lack of proper heating, the sanitary facilities were nothing more than holes in the ground covered by dilapidated shelters in the institution courtyard. Mr Stanev had no ability to challenge this situation as he could not initiate any legal proceedings, including proceedings to lift his guardianship, without his guardian’s consent.
removed at the time he had been placed under guardianship, which the Court found to be a breach of his rights under this article. Given that Mr Stanev’s right to liberty had unlawfully been restricted, the Court went on to assess whether he would be able to have this situation recognised and compensated under Bulgarian law. The Court found that this was not the case, due to Mr Stanev’s status as a person under guardianship, and the Bulgarian government had breached his right to compensation (Article 5(5) ECHR). *ECtHR* found violations of Articles 5, 6, 3 and 13 of the *European Convention on Human Rights*. Unfortunately, Mr Stanev died on 9 March 2017, without his guardianship being lifted, after 12 years of judicial proceedings and five years after winning his case at the *ECtHR*.

The ratification of the *UN Convention on the Rights of Persons with Disabilities* and the Stanev judgement, which took place at the same time, triggered the formation of a working group at the Ministry of Justice on the implementation of Article 12 of CPRD in domestic legislation. The working group was composed predominantly of representatives of non-governmental organisations. In August 2012 it prepared a concept paper,268 which was presented to the public at the end of September.269 On a session of the Council of Ministers held on 14 November 2012 the Concept paper was adopted by the Council of Ministers.

The concept paper envisages abolition of the institute of full incapacitation and adoption of protection measures in the form of advanced directives, supportive decision-making and partial guardianship (‘попечителство’).270 It also spells out the conditions, under which a protection measure may be imposed on a person with intellectual/psycho-social problem. They are to be based on the principles of necessity, proportionality, flexibility, respect for the will of the person, periodic review and avoiding conflicts of interests. The concept paper was deficient on the scope of rights,271 which are to be guaranteed to the persons with reduced capacity and in providing for a time frame for the adoption of the legislative amendments. It envisaged elaboration of draft laws and/or amendments to the current legislation so that plenary guardianship is abandoned as a notion and

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270 Partial guardianship is used in the concept paper as a last resort for people who are in permanent incapacity to form and express their will. It should be applied only after the court has exhausted the other less restrictive alternatives and only in these spheres of life in which the person is not able to form and express will. Guardian is appointed by the court for the concrete case and person only after it is convinced that the person is not able to act without the guardian. Only in this case the guardian makes decision instead of the person (substitute decision making) and for a certain period of time and with the obligation to research what the wishes and needs of the person under guardianship are. The person to be placed under guardianship is asked to point out who to be the guardian. To guarantee the rights of the person to be placed under partial guardianship the person should be heard in person and a complex assessment by psychiatrist, psychologist, social worker, personal physician and a trust person should be done.
271 The concept envisages in short term (without specification what short term means) only the *Family Code*, the *Persons and Family Act* and the *Civil Procedure Code* to be amended as in these acts provide for the terms and procedures for placement under guardianship. This means that only rights to access to justice and rights to marry, adopt children and take care of biological children as well as to inherit property by the spouse and the family would be regulated in a new way. The other rights are provided for in other acts that are envisaged to be amended in long term plan (again not specified).
detailed support measures are incorporated in the laws to enable people with psychosocial and intellectual disabilities to develop their full potential.

On 15 May 2014, the Ombudsman requested that the Constitutional Court in Bulgaria declare Article 5(1) of the Persons and Family Act with regards to ‘and they lose their legal capacity’ and Article 5(3) of the same act as provisions in violation with Article 4(2), Article 5(4) and Article 51(3) of the Constitution of Bulgaria. The Ombudsman stated that Article 5 of the Persons and Family Act violates the rights of people with intellectual/psycho-social disabilities as it poses a restriction of their legal capacity, which is not proportionate to their condition and is, therefore, discriminatory. The Ombudsman stated also that this legislation in Bulgaria is a violation of Article 4(2) and Article 12(2) of the UN Convention on the Rights of Persons with Disabilities.272

In the above case, the Constitutional Court considered several third-party submissions. According to submissions of the Council of Ministers, the Supreme Court of Cassation, the Prosecutor General, the Ministry of Labour and Social Policy, the Ministry of Healthcare, the Bulgarian Union of Physicians and the Union of Lawyers in Bulgaria, the request of the Ombudsman should be rejected, as the Council of Ministers and the Supreme Court of Cassation had already established earlier that the disputed regime did not deny, but ensured the dignity and the rights of individuals. The contrary view is taken in the submissions of the Bulgarian Centre for Non-Profit Law, the Bulgarian Lawyers for Human Rights, the Bulgarian Helsinki Committee and the Bulgarian Psychiatric Association (all of them NGOs). The Bulgarian Centre for Non-Profit Law and the Bulgarian Lawyers for Human Rights found that the removal of legal capacity of adults means that they are deprived of their basic constitutional rights on the basis of disability. The Bulgarian Helsinki Committee maintains that the state of incapacitation is a kind of civil death.

The Constitutional Court considered the gaps in the legislation concerning people under guardianship. Its decision states: “The lack of detailed legislative regulation of the legal regime of the incapacitated persons leads to not just limitation of those rights, the exercise of which carries a risk to the interests of incapacitated, third parties or the society, but also limits the exercising of unreasonably wide range of rights, including the constitutional ones”. The decision also states that “the current legislative framework does not take into account the requirements of the CRPD – the restrictions of the rights of such persons to be proportionate to their condition, to apply for the shortest possible term and to be subject to regular review by an independent body”. However, on 17 July 2014 the Court held that the disputed provisions do not contradict the Constitution as in this way the legal status of incapacitated persons would not be improved and because thorough amendments of the legislation are needed.273

272 Bulgaria, Ombudsman, Request of the Ombudsman on the basis of Art. 150(3) of the Constitution for announcing Art. 5(1) of the Persons and Family Act with regards to “and they lose their legal capacity” and Art. 5(3) of the same act as provisions in violation with Art. 4(2), Art. 5(4) and Art. 51(3) of the Constitution of Bulgaria, available in Bulgarian at: http://www.ombudsman.bg/public-positions/3062?page=3#middleWrapper.
As a product of the working group at the Ministry of Justice, which consisted of NGOs, academic and governmental representatives, a Draft Law on the Natural Persons and the Support Measures was elaborated and introduced in parliament by the Council of Ministers on 4 August 2016. The draft law is centered on the UN CRPD recognition of legal capacity concept and was elaborated to implement the supported decision-making concept in legislation. Discussion and voting meetings at the parliament did not take place due to resignation of the Government and new parliamentary elections.

In 2015, ECtHR issued a judgement in the case of Stankov v. Bulgaria. The Stankov v Bulgaria case concerns Mr Stankov’s legal incapacitation and his subsequent placement by his mother, as his guardian, in a social care home for people with mental disorders. On 21 May 1999, a court declared Mr Stankov to be partially incapacitated on the grounds that he suffered from schizophrenia, which had led to a change in personality and deprived him of the ability to manage his own affairs and interests. Mr Stankov’s mother was appointed as his guardian. On 22 June 1999, she asked the social services to take her son into care. On 30 June 1999, Mr Stankov was admitted to the Dragash Voivoda institution for men with mental disorders, an institution under the responsibility of the Ministry of Labour and Social Policy. On 26 September 2002, he was transferred to the Rusokastro institution for adults with mental disorders, which was under the responsibility of the same Ministry. In June 2006, Mr Stankov, through his lawyer, asked the public prosecutor’s office to apply to the regional court to have his legal capacity restored on the grounds that his condition allowed him to manage his own interests. The prosecutor refused to institute proceedings for restoration of his legal capacity. Mr Stankov submitted in particular that his placement in a social care institution was in breach of Article 5(1) (right to liberty and security) of the European Convention on Human Rights. Relying on Article 5(4) (right to a speedy review of the lawfulness of detention), he complained that he had been unable to have the lawfulness of his placement in the institution reviewed by a court. Relying on Article 5(5) (right to compensation), he submitted that he had not been entitled to compensation for the alleged violations of his rights. Relying on Article 3 (prohibition of inhuman or degrading treatment) read separately and in conjunction with Article 13 (right to an effective remedy), he complained in particular about the living conditions in both institutions, in which he had been placed. Indeed, the ECtHR found violations of Articles 3, 5, 6 and 13.

In January 2016 the Social Assistance Act was amended. The amendments concern the placement of persons with disabilities placed under plenary guardianship in residential institutions/services. The first amendment is that social services are to be provided according to the personal wish and choice of persons under plenary guardianship and the opinion of the guardian and if there is a contradiction between them, the personal wish of the person under plenary guardianship is leading. The second amendment is that such placement would be done by the district court upon written declaration of the wish of the person in need and temporary administrative placement by the SAD is to be done only when no other opportunities exist, again upon written declaration of the wish of the person.

The request should be accompanied by a report about the opportunities for home care of the person; assessment of the needs of the person and report about the available appropriate social services.

275 Bulgaria, Regulation for Implementation of the Social Assistance Act (Правилен за прилагане на Закона за социално подпомагане), Art. 16a(3), available in Bulgarian at: http://lex.bg/bg/laws/idoc/-13038592.
276 Bulgaria, Regulation for Implementation of the Social Assistance Act, Art. 16b.
community-based services. In case of temporary administrative placement, the SAD should inform the court in one month. The stay of a person under plenary guardianship in a residential service cannot be longer than three years, but it can be prolonged if there are not any other opportunities for care.\textsuperscript{277} When deciding on the placement the court may gather evidence but must explore the personal wish of the person in need and the SAD representative and the guardian should be present.\textsuperscript{278} The court must issue a decision in one month. The court may decide placement in institution only if there are no options for home care or community-based residential centres.\textsuperscript{279} The person under plenary guardianship may ask to leave the residential services/institutions under the same procedure.

The group of cases \textit{Stanev v. Bulgaria} are under \textbf{enhanced supervision by the Committee of Ministers}. The ECtHR found for those cases lacking possibility for periodic assessment of the health status of the institutionalised person after prolonged stay in the institution, or an opportunity to challenge in court the legality of the placements. The \textbf{Bulgarian legislation continues to lack a requirement for periodic evaluation of the person's health status} after coercive placement in institutions or for \textbf{seeking express consent} by the person lacking full legal capacity in the event of voluntary placement and judicial review of the placement. It continues to \textbf{fail to secure direct access to court for a person placed under partial guardianship}, irrespective of the consent of his/her guardian. At its last session in June 2017 on the enforcement of the cases \textit{Stanev} and \textit{Stankov}, the Committee of Ministers at the Council of Europe set a deadline until 1 October 2017 for information to be provided on:

- The way to \textbf{assess the capacity of persons under partial guardianship to give consent} for placement in specialised institutions and on the body that would be competent to make that assessment and to inform those persons about the placement;
- The \textbf{additional guarantees provided for temporary administrative placement and its termination}, and the procedure to be applied for the placement of persons who are not capable of expressing their wish/will;
- The measures needed for securing \textbf{direct access to court to persons under partial guardianship}, with a view to restoring their legal capacity, including through temporary solutions before the planned ambitious reform in the sphere of the legal protection of adults is introduced;
- The \textbf{concrete results attained to improve the living conditions in the specialised institutions}, on the mechanisms permitting to improve the living conditions of a concrete individual placed in a home, as well as on the additional guarantees for effective compensation under the SMRDA.\textsuperscript{280}

A certain minimal progress related to all issues listed above can be noted only in connection with guaranteeing the involvement and taking into consideration the wish of the persons placed in institutions, i.e., on the voluntary nature of the placement. At the end of 2016, amendments were made to the Implementing Regulations for the Social Assistance Act; their coming into force was postponed for 1 January 2018 due to the fact that the system for social services was unprepared for

\begin{itemize}
\item \textsuperscript{277} Bulgaria, \textit{Regulation for Implementation of the Social Assistance Act}, Art. 16.
\item \textsuperscript{278} Bulgaria, \textit{Regulation for Implementation of the Social Assistance Act}, Art. 16c.
\item \textsuperscript{279} Ibid, Art. 16c(6).
\item \textsuperscript{280} Committee of Ministers, 1288\textsuperscript{th} meeting (6-7 June 2017): http://hudoc.exec.coe.int/eng#\{"EXECIdentifier":\"004-3767\"\}
their implementation. They envisage preparations for individual evaluation of the needs and an individual support plan for persons wishing to use social services, including in specialised institutions. The assessment of the needs of the detained persons and of the availability of support services/measure should be done by administratively appointed concrete “specialists” in a multidisciplinary team for whose independence and competence no guarantees are provided in the law. Revision of the evaluation and of the plan is to be made at least once in 12 months again by the multidisciplinary team, and for long-term placement in an institution – by a team within that institution, i.e., no judicial review is provided for the placement of persons under partial guardianship in institutions or resident community services. According to the provisions of the Regulations, the person to whom services are to be offered (including the persons under partial guardianship) is included in the preparing of the evaluation and the plan, his/her wish is taken into consideration and is reflected in the evaluation and in the plan, which are signed by the individual personally. However, there are no provisions on the procedure according to which this is to be done. There are likewise no provisions for the accommodation of persons who are incapable of expressing their will. Similarly, no guarantees are provided against arbitrary temporary administrative placement of persons with limited incapacity, possibility for access to court with a view to lifting their incapacity, or effective means of compensation under the legislation on the liability of the state and the municipalities for damages.

With respect to the placement, in the event that the person wishing to use social services is an adult placed under plenary guardianship, his/her application for use of social service, according to the new provisions, should be accompanied by: a copy of the judgement for placement under guardianship; a copy of the certificate issued by the body responsible for the guardianship and trusteeship for the constituting of the guardianship/trusteeship and opinion of the person’s trustee/guardian (which may also be requested through administrative channels, if the person does not possess it). The Director of the Social Assistance Department organises the preparations for individual evaluation of the needs and an individual support plan for the person by a multidisciplinary team, and issues guidance on the drafting of the evaluation and of the plan within three business days of the filing of the application. The guidance mandatorily specifies the leading social worker on the case.

The multidisciplinary team drafts the evaluation and the plan within 15 business days after the filing of the application by: researching the person and his/her family/domestic environment; visiting the person’s home or his/her place of residence; holding meetings with the person and with his/her relatives and/or friends; consultation with the person’s GP/attending physician, if necessary; analysing all options for providing support to the person: social services, financial assistance,

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281 Implementing Regulation for the Social Assistance Act (IRSAA), Article 40, Paragraph 1, item 3.
282 According to IRSAA, Article 40, Para. 1, item 6 “the evaluation and the plan are drafted by a multidisciplinary team of one of the social services: day care centre, centre for social rehabilitation and integration, or centre for public support, whose composition is determined by the head of the social service and includes: no less than two specialists (psychologist, pedagogue/special pedagogue, medical specialist, social worker, rehabilitator, etc.), who will be assigned, depending on the concrete case, by the head of the social service and a leading social worker appointed by the Director of the Social Assistance Directorate.” According to Art.40, para.1, item 9 “the evaluation and the plan are revised and updated, if necessary, but not later than 12 months after they have been drafted, except in the cases when the person had discontinued the use of the service before that deadline. In the cases when the person is included in the waiting list for placement or use of social services, the evaluation and the plan are to be updated immediately prior to the placement or use of the social service.”
When the social services are included in the individual support plan, the team respects the person’s wish and personal choice, and in the event that he/she does not accept the social services recommended by the team as suitable for him/her, this is reflected in the plan. The individual support plan mandatorily includes: 1. social services suitable for the person; 2. recommendations for support measures of a social, health, labour, educational, etc. character depending on the person’s concrete needs, as well as the body that can provide them; 3. recommendations for support measures in the domestic environment; 4. the results to be attained through use of the social services and application of other short-term and long-term measures; 5. deadline for the implementation of the plan. The evaluation and the plan are signed by the members of the multidisciplinary team and by the person, and are submitted to the person and to the body that had asked for them within 20 business days of the filing of the application.

Based on the plan, the placement in specialised institutions and residential community-based social services, when these activities are delegated by the State and local activities, is done subject to order accordingly by: the Director of the Social Assistance Department – for activities delegated by the State or by the mayor of the municipality, or by an official authorised by him/her – for the local activities, and for non-resident services – with a referral. The orders and the referrals are issued on the basis of the individual support plan subject to availability of vacancies and the persons are informed in writing within 14 days of their issuance, and they may be appealed under the Administrative Procedure Code. In the cases when there are no vacancies in the social service, the Social Assistance Department includes the person in the waiting list for placement or use of services.

In compliance with the individual evaluation and the plan, the providers of social services draft a detailed individual plan for work with the user, which clearly formulates the goals to be attained through the providing of concrete social services. The plan includes activities for satisfying: daily, health, educational and rehabilitation needs; leisure needs and needs of contacts with the family, friends, relatives, etc. The individual plan of the user of social services in the specialised institutions comprises measures for taking the person out of the institutions and for inclusion. The providers of long-term social services evaluate the implementation of the plan and update it every six months.

283 IRSAA, Article 40a, Para. 1.
284 IRSAA, Article 40a, Para. 3.
285 IRSAA, Article 40a, Para. 4.
286 IRSAA, Article 40b, Paragraph 1.
287 IRSAA, Article 40b, Paragraph 3.
288 IRSAA, Article 40d, Paragraph 1.
289 IRSAA, Article 40d, Paragraph 3.
290 IRSAA, Article 40d, Paragraph 5.
10.2 Inhuman and degrading treatment in institutions for adults with mental disabilities

A 2014-2015 BHC monitoring in 40 institutions and 81 residential community-based services for persons with psychosocial and intellectual disabilities where 3,993 persons were living, showed that 2,794 (2,447 of whom live in institutions) were placed under plenary guardianship, 230 – under partial guardianship and the rest were not placed under guardianship. In addition, the monitoring visits in 81 new residential community-based services concluded that placement again is done upon request of other persons, not the person with disability and his/her wish often is not explored and that guardians of the majority of the users placed under guardianship are staff members.

The same research revealed that application of medication for the reasons of discipline and physical seclusion and restraint are still a practice. Caged spaces, without any furniture, poor hygiene and access to sanitary facilities, arbitrary placement in them by orderlies or nurses for uncertain periods, prescription of medicines on the phone are some of the other inhuman and degrading practices the researchers described. In several cases they found that persons with psychosocial problems placed in institutions caused a serious physical injury to a guard in an escape attempt and murder of another resident (in search for a cigarette). The residents have also severe self-destructive behaviour. The material conditions and the attitude of the staff in some of these institutions continue to amount to inhuman and degrading treatment.

11. FREEDOM OF ASSEMBLY AND OF ASSOCIATION

Several groups in Bulgaria experienced repeated violations of their rights to freedom of assembly and of association. These were mostly members of the Macedonian and of the Turkish minority. So far, the European Court of Human Rights issued 12 judgments on the right to freedom of assembly and freedom of association of ethnic Macedonians. The last ones were from January 2018. In 11 of them the Court found violations of the right to freedom of assembly and of association due to the denials of the Bulgarian authorities to register Macedonian groups or because of arbitrary prohibitions of their peaceful assemblies. This long list exhibits systemic violations of the applicants’ right to freedom of assembly and of association over a period of two and a half decades. No other representatives of an ethnic minority in Bulgaria have been subjected to such a repeated denial of their right to freedom of assembly and association. What underlines these denials is the unwillingness of the authorities to recognize Macedonian ethnic identity, although in many instances they claimed reasons other than the applicants’ ethnic affiliation. These include propagation of ideas that undermine Bulgaria’s national security, incitement to public disorder and discrimination, setting of statutory goals that are political in nature, as well as minor technical mistakes in the documents,
which they submit for registration. All these reasons were found to be incompatible with Article 11 of the ECHR. Several other cases of denials of the right to freedom of association of ethnic Macedonians are pending before the ECtHR. The reasons are the same as those that the Court has already found to be incompatible with Article 11, which suggests that the Bulgarian authorities are prepared to find themselves in a constant breach of international law, rather than to recognize ethnic Macedonians and to register their associations.

On 8 June 2017, the ECtHR gave judgment in the case on the National Turkish Union and Kungyun v. Bulgaria, and found a violation of Article 11 of the Convention due to the fact that the Bulgarian courts refused to register an association aimed at encouraging the rights of the Muslim community in Bulgaria. In 2006, the applicant Menderes Mehmet Kungyun, Bulgarian citizen, founder and president of the association, filed an application for registration of the association before the Plovdiv Regional Court. The Regional Court rejected the application, accepting – inter alia – that one of the declared goals of the association is of political nature. In this connection, it is emphasised that under the Constitution only political parties may engage in political activities. The applicant appealed the ruling. The Court of Appeal upheld the first instance court, adding that the name of the association should not be misleading and contrary to public morals and that the name “National Turkish Union” implied the existence of a Turkish nation in Bulgaria and suggests that there was a separatist goal. The applicant filed an appeal. The Supreme Court of Cassation rejected the appeal and upheld the judgement of the Court of Appeal. The ECtHR in earlier cases against Bulgaria examined the motive related to the political nature of the association’s goals. The Court observed that such a motive cannot justify the refusal to register a certain association. The Court upheld that there was no “compelling public need” to require that any association wishing to pursue political objectives should establish a political party, if its founders have no intention to participate in elections. As regards the motive that the association’s goals and name pose a threat to the national security, the Court recalled that the expression of separatist views does not imply a threat to the territorial integrity of the State and to the national security, and does not justify in itself the restriction of the rights guaranteed under Article 11 of the Convention. The use of the terms “national Turkish” in the name of the association does not seem to pose a threat to the territorial integrity or to the unity of the Bulgarian nation. Similarly, the Court does not see how the disputing by the association of the monopoly of one political party in the mixed ethnic regions could constitute a risk to the ethnic peace and consequently a threat to the country’s security. The Court indicates that the national judiciary bodies do not mention activities of the association or of its members, which could threaten the territorial integrity or the unity of the nation, nor its activities or statements that could be interpreted as a call for hatred or violence. The Court noted that the national bodies are not powerless in the event that the association, after its registration, undertakes concrete actions contravening the Constitution, the law and public morals. In that case the Regional Court may order its termination. The general assumption that the association would be capable of engaging in such activities does not justify the refusal to register it. The Court deemed that the refusal to register the association was not “necessary in a democratic society” and led to violation of Article 11 of the Convention.

The group of cases related to the violation of the right to freedom of association of ethnic Macedonians, as well as the case National Turkish Union and Kungyun v. Bulgaria are at present under an enhanced procedure of supervision by the Committee of Ministers. The latter expressed
numerous concerns about the repeated denials of registration of Macedonian groups on grounds that had been found incompatible with the ECHR.294

At the end of December 2016, the National Assembly adopted amendments to the Non-Profit Legal Entities Act (NPLEA) and to the Commercial Register and the Register of the Non-Profit Legal Entities Act (CRRNPLEA). They came into effect on 1 January 2018. The aim of the amendments was to streamline the registration procedure for associations of citizens and foundations. Instead of registration in the courts, the registration is done by the Registration Agency with the Minister of Justice. A register of non-profit legal entities is also kept there.

The registration procedure is simplified and was intended to be faster. The official responsible for the registration must first recommend amendments in the registration papers. He/she may refuse registration, but the refusal should be motivated and based on the results of the mandatory inspection under Article 21 of CRRNPLEA. Many of these grounds are formal. In addition to them, registration may be refused if the circumstance declared for registration does not correspond to the requirements of substantive law. The refusals of the Registration Agency may be appealed before the regional court located at the seat of the non-profit association, and the judgements of the regional court may be appealed before the Appellate Court, whose judgement shall be final.

Article 29, Para. 1 of CRRNPLEA admits every person with legal interest, as well as the prosecutor, to present a claim for declaration of nullity or inadmissibility of the registration. Such a claim is filed with the district court in the seat of the non-profit legal entity. If the claim is deemed valid, the Registration Agency deletes the registration.

The amendments to the NPLEA are aimed at creating a Council for Civil Society Development with the Council of Ministers, consisting of representatives of non-profit legal entities with the aim of engaging in public benefit activities. It should participate in the formulating and coordinating of the policies of the State for assisting and encouraging non-profit legal entities. Parallel with that, the Council will distribute the funds for encouraging and financial support for projects of the civil organisations.

The idea behind the adoption of the amendments to NPLEA and to CRRNPLEA was to address the long persisting problem of the non-compliance with the group of ECtHR judgments on the refusals to register associations of Macedonians in Bulgaria. After the amendments to NPLEA and to CRRNPLEA entered into force on 1 January 2018 several Macedonian organisations filed requests for registration. All of them were denied. The officials of the Registration Agency for the most part cited technical reasons. In some cases, they issued denials in clear violation of the law without an initial recommendation for amendments in the registration papers or after several hours of waiting after such recommendations were made. On 15 June 2018 UMO Ilinden, the association, which had received the most denials for registration in the past, was denied registration again for reasons, which the ECtHR found to be incompatible with Article 11 of the ECHR – a statutory goal, which existed also in its previous statutes that were reviewed by the ECtHR, envisaging a possibility to propose independent candidates for parliamentary and municipal

294 See a summary of the Committee’s periodic reviews at: https://hudoc.exec.coe.int/eng#{%22EXECIdentifier%22:[%22004-3657%22]}.
12. FREEDOM OF CONSCIENCE AND RELIGIOUS BELIEF AND THE RIGHTS OF RELIGIOUS MINORITIES

In the period under review the situation regarding religious freedom in Bulgaria did not improve. In 2016 the openly discriminatory Ban on Clothing that Partially or Completely Covers the Face Act was passed. In addition, a series of offences were committed against representatives of religious denominations, which, for the most part, were not prosecuted by the state. The known offences included: vandalizing temples and assaulting religious worshippers; discriminatory depiction of rituals and religious identity by the media; the practice of passing local legislation by municipal councils that limits the religious activities of certain minority religious groups; cases of criminal prosecution against representatives of the Muslim community because of their religious beliefs.

12.1 Activities of the Prosecutor’s Office regarding crimes against the equality of citizens and crimes against freedom of religion

Statistics provided by the Prosecutor’s Office of the Republic of Bulgaria for 2016 show that special provisions of the Criminal Code regulating hate crimes, including those motivated by religious bias, as well as crimes against various religious denominations, continue to be rarely applied.

In 2016, there were 19 newly opened pre-trial proceedings (PP) related to crimes against the equality of citizens (on all legal grounds) and religious freedom. At the same time, only one of these cases, or less than 5%, resulted in an indictment. Table 5 contains detailed information about the outcomes of the PP during 2016.

Table 5: Information about opened and submitted to a court PP under Articles 162, 163, 164, and 165 of the Criminal Code for 2016

<table>
<thead>
<tr>
<th>Art. 162, para. 1</th>
<th>Art. 162, para. 2</th>
<th>Art. 162, para. 3</th>
<th>Art. 163, para. 1</th>
<th>Art. 163, para. 2</th>
<th>Art. 163, para. 3</th>
<th>Art. 164, para. 1</th>
<th>Art. 164, para. 2</th>
<th>Art. 165, para. 1</th>
<th>Art. 165, para. 2</th>
<th>Art. 165, para. 3</th>
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<tr>
<td>Newly-opened PP</td>
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<td>3</td>
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<td>Suspended PP</td>
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<td>3</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>0</td>
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<tr>
<td>Dismissed PP</td>
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<td>0</td>
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<td>0</td>
</tr>
<tr>
<td>Indictments</td>
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<td>0</td>
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<td>0</td>
<td>0</td>
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</tr>
</tbody>
</table>
12.2 The Islamic denomination

12.2.1 The case against the 13 imams

In 2011 the Pazardzhik Regional Prosecution initiated proceedings against 13 Muslim religious leaders from different parts of Bulgaria for disseminating anti-democratic ideology and membership in an organization propagating anti-democratic ideology. Some were prosecuted for disseminating or inciting discrimination, violence, or hatred on religious grounds. In March 2014 the Pazardzhik Regional Court found all of them guilty for disseminating anti-democratic ideology and for membership in an organization propagating “the [anti-democratic] ideology of the Salafi branch of Islam consisting in opposing the principles of democracy, division of powers, liberalism, statehood and the rule of law, based on human rights such as the equality of men and women and religious freedom”. The court did not find that they have used violence or incited to violence in any way. Most of them were sentenced to pay fines. Two received conditional prison sentences and one, Mr. Ahmed Musa, an imam from Pazardzhik, was sentenced to one year of effective imprisonment. The convictions caused wide unrest in the Muslim community as it was considered that the defendants were punished for peaceful expression of their religious beliefs. On 1 July 2015, the Appellate Court in Plovdiv increased the sentence of Musa to two years of imprisonment. Two of the other defendants, who had received conditional sentences by the first instance court on the count of disseminating anti-democratic ideology, were found innocent by the Appellate Court on this charge, but the fines they had received on the other charge – of being members and leaders of an organisation aiming to disseminate anti-democratic ideology – were increased.

On 28 July 2016, following an appeal by Ahmed Musa of the sentence issued against him by the Appellate Court in Plovdiv, the Supreme Cassation Court (SCC) reversed the judgment regarding the charges against Ahmed Musa under Art. 108, para. 1 (disseminating anti-democratic ideology), Art. 109, para. 2 (being a member of an organisation or group with anti-governmental goals), and Art. 164, para. 1 (disseminating or inciting discrimination, violence, or hatred on religious grounds) and returned the case to be re-examined by a different panel of judges in the Appellate Court. In addition, the SCC reversed the judgment against all of the other parties who were convicted under Art. 109. In its reasoning, the SCC unanimously decided that the judgment of the lower court contained serious legal flaws and pronounced that decision to be ill-informed and filled with a number of significant procedural violations. According to the judges of the SCC, when the Appellate Court examined the charges within the provisions of the Criminal Code it used a general approach and failed to present reasoning as to the criminal actions of the perpetrator and the specific instances of disseminating anti-democratic ideology and it also failed to name the specific actions that led to the conclusion that the defendant had disseminated religious hatred. As a result, all 13 persons were again defendants in the case. The case is ongoing at the Plovdiv Appellate Court.

12.2.2 Draft law on “radical Islam”

In early December 2017, the Bulgarian Parliament adopted at first reading amendments to the Criminal Code, according to which imprisonment of one to five years and a fine of BGN 5,000 would be imposed upon persons preaching “radical Islam” or another ideology using religious.

beliefs for political goals. The United Patriots tabled the bill. According to the text adopted at first reading, “radical Islam” is “when a person lobbies for the creating of an Islamic state (caliphate), when he/she lobbies for the imposition of Sharia law over secular laws, for coercive applying of religious principles, preaching violence in the form of a holy war against non-Muslims, lobbies and recruits followers for terrorist organisations based on Islam.”

Under a number of international treaties Bulgaria has the obligation to criminalise some forms of public expression inciting to violence or hatred, aimed against groups on account of their racial, ethnic, religious or national belonging; used to incite to terrorist crimes or other coercive acts; used to spread ideas about racial superiority or hatred, or to incite to racial discrimination. The Bulgarian Criminal Code provides for criminal liability also for insult and defamation, as well as for forms of expression constituting incitement to crime, disclosing of state secrets, etc. The bill builds on the part of the Criminal Code under which maximum punishment of up to three years imprisonment is stipulated for preaching a “fascist or another antidemocratic ideology.” That provision, which has been inherited from the criminal law of the communist regime, continues to contravene the international standards for protection of the freedom of expression with the obscurity of the term “undemocratic ideology” and with the total ban on any form of “preaching” it, irrespective of the context and effect. Currently many — and widespread — religious doctrines preach supremacy of the norms of religion over those of the State, and some reject the democratic rule of law in the name of one based on the prescriptions of the religious doctrine. When this is done using peaceful means, without calling for violence, being an expression of a deeply ingrained religious faith, criminalisation of the respective forms of expression, which the bill stipulates, is inadmissible.

A serious problem can also be observed in the amendment proposed in the bill, which criminalises the use of “religious beliefs for political purposes”, including advocating “changes to the existing constitutional order and rule of law.” In a number of cases against Bulgaria the ECHR noted the obscurity in the content and the inadmissibly broad scope of the concept “political goals” adopted by the Bulgarian law enforcement bodies on cases for registration of political parties and non-profit organisations. It follows from the text of the bill that no religious community in Bulgaria would be in a position to advocate amendments to the legislation, including on matters connected with its own status. The proposed amendments are discriminatory; they contravene international law and may result in stigmatising the religious beliefs of large groups of people, both Muslims and representatives of other religious communities. This bill is due to be voted at the second reading.

12.3 Provisions prohibiting religious activities in public places

Recent information provided by the members of Jehovah’s Witnesses revealed that as of 2016, in at least 51 towns where this denomination had members, there existed municipal ordinances that restricted religious activities. Although these restrictions were not enforced everywhere, the group reported that it was reviewing a total of 29 instances relating to infractions of the above-mentioned regulations: 11 instances in Burgas, 6 in Kyustendil, 6 in Stara Zagora, 2 in Karlovo and one instance in each of the cities of Mezdra, Shumen, Kavarna, and Sandanski. In some of these instances the members of the Jehovah’s Witnesses were threatened and degraded by the police and municipal authorities.

In 2016, decisions were handed down on two of the lawsuits, which the Jehovah’s Witnesses denomination had brought against the regulations passed by the municipal councils, which banned
religious activities in public places. In the first case, the Administrative Court in Kyustendil declared null and void some of the disputed regulations under the Ordinance on Activities of Religious Groups within the Territory of Kyustendil that bans religious propaganda which is defined as “the purposeful persuasion of the public through written or verbal speech, sound, images or other means with the goal of forming religious beliefs and attracting new members to join a specific religion”. The court found that by regulating public relations, for which there are provisions under the Denominations Act the Municipal Council had violated its subject matter jurisdiction by overstepping their legislative powers as outlined in the Administrative Procedure Code (APC). Furthermore, the court found that the disputed provisions contradicted the European Convention on Human Rights (ECHR), the Constitution of the Republic of Bulgaria, and the Denominations Act.296 The case was appealed to the Supreme Administrative Court (SAC) and at the end of 2016 the case was still pending.

In a similar case, the Administrative Court in Burgas also decided that the Municipal Council did not have the subject matter jurisdiction to pass the Ordinance for Maintaining Public Order within the Territory of the Municipality of Burgas, which states that, among other things, the public expression of religious opinions pertaining to officially registered religions shall be practiced in accordance with the Law on Gatherings, Demonstrations, and Parades, and prohibits proselytizing at citizens’ homes without their explicit consent, as well as proselytizing on city streets by handing out free informational materials – brochures, leaflets, books, and others.297 According to information from the denomination the decision of the Administrative Court has not been appealed.

During the past year incidents were registered in Elhovo, Mezdra, Pernik and Vratsa, whereby representatives of Jehovah’s Witnesses were intimidated and insulted. On 15 January 2017, a group of young people in Lom banged the door of a place of worship of the organisation and screamed that they were there to prevent illegal meetings, after which they broke in with force. The police was called, but the youngsters left before it arrived. On 11 July 2017, a house of prayer in the town of Popovo was vandalised. Eggs and stones were thrown at the building. That was the third such incident in the town within nine months. On 30 July 2016, a French national, follower of Jehovah’s Witnesses, was assaulted in the town of Shumen and sustained a moderately severe injury. The Public Prosecutors’ Office brought charges of injury driven by hooligan motives under Article 131 of the Criminal Code, which did not take into account the discriminatory motives for the crime. In 2017 the Court imposed a suspended sentence of three years imprisonment to the perpetrator with a five-year probationary period.

On 5 January 2017, the Supreme Administrative Court delivered its final judgement after appeal by SKAT Television, found guilty by the PADC in 2016 for disseminating false information about the Jehovah’s Witnesses and for inciting to violence against them. The SAC rejected the complaint. Earlier the Burgas Administrative Court rejected it as well.

In 2017, there were 44 municipalities in Bulgaria that voted ordinances restricting the right to peaceful preaching of religious beliefs. Representatives of the Internal Macedonian Revolutionary Organisation (IMPRO), one of the parties in the ruling coalition in Bulgaria and principal initiator of such ordinances, indicated repeatedly that the aim was to restrict precisely the activities of Jehovah’s Witnesses. So far that organisation had filed and won a total of eight cases against fines imposed as a

result of similar ordinances. In all cases the administrative courts ruled in their favour. Municipal ordinances were revoked in Burgas, Kavarna, Asenovgrad, Karlovo and Mezdra, and in Kyustendil, Stara Zagora and Shumen the municipalities are appealing the decisions before the higher instance. Jehovah’s Witnesses note the absence of assistance by the state institutions, and at the local level they encounter strong opposition.

12.4 Manifestations of anti-Semitism

The organization of Jewish people in Bulgaria, Shalom, reported that there were a number of cases of anti-Semitic rhetoric over the past several years. In the period under review nationalist demonstrations, called “Lukov March” by its organisers, took place every year despite the fact that the mayor of the municipality of Sofia had officially called off the event. The march attracts Nazi activists from Bulgaria and other countries to celebrate the killing during World War II of a famous Bulgarian Nazi leader, general Lukov. The participants display Nazi greetings, lit torches, wear Nazi uniforms.

Other displays of anti-Semitism in 2016 included openly anti-Semitic statements by a member of Parliament, Metodi Andreev, in an interview for the online edition of the newspaper 7 Days of Sports,298 as well as “humorous” anti-Semitic publications in the newspaper Now,299 and others.

The 2017-year was marked by a series of scandals connected with photographs of high-ranking officials in the state administration. In May 2017, Pavel Tenev, Deputy Minister of Regional Development and Urban Planning, proposed by the NFSB, resigned after a photo of him was made public with him posing in a museum in a Nazi salute. Ivo Antonov, Head of the Social Policy Directorate of the Ministry of Defence was also photographed in a Nazi salute before a German Maybach tank. Although the Prime Minister gave orders for him to be dismissed, the Minister of Defence and VMRO President, Krassimir Karakachanov, decided to keep Antonov at his post. Plamen Uzunov, Minister of Interior in the caretaker government in 2017 and Adviser to President Rumen Radev, was photographed disguised as Hitler at a party. Although the President criticised the incidents with Tenev and Antonov, he chose to refrain from commenting the photos with his adviser Uzunov. In November, Mr Plamen Haralampiev (VMRO), Director of the State Agency for Bulgarians Abroad, was photographed with a T-shirt with Nazi symbolism. Mr Haralampiev explained that the T-shirt was of the US rock group Wehrmacht and that he bore no responsibility for its content. However, when the rock group was sought for commentary, it distanced itself from the T-shirt and confirmed that it was not among the official commodities that they sold. Haralampiev likewise did not resign.

In September Israeli tourists sent a signal to the Ambassador of Bulgaria in Israel concerning the sale of souvenirs with the image of Adolf Hitler and other Nazi symbols. With the cooperation of the Ministry of Foreign Affairs and the Mayor of Varna orders were given for inspections along Bulgarian Black Sea resorts, and the traders withdrew the souvenirs. The case had coverage in the international media as well.

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The 2017 witnessed a series of **anti-Semitic acts of vandalism**. In August vandals desecrated the Monument of Gratitude next to Stambol Kapi, near the building of the Vidin Municipality, placed there by Vidin Jews from Israel as an expression of gratitude to the civil society in the town that did not allow the deportation of their fellow-citizens during World War II. In September, on the eve of three of the most important Jewish holidays, tombstones in the Jewish cemetery at the Central Cemetery Park of Sofia were destroyed. In November unknown persons wrote on the Monument to the Soviet Army in Sofia: “100 years Zionist occupation.” Days later, Alyosha’s monument in Plovdiv was also covered with swastikas and inscriptions “communism = Jewry.” **There were no detained persons for any of those acts.**

### 12.5 Other religious denominations

The discriminatory practice of the courts to refuse to register other Orthodox Christian denominations, thus maintaining the monopoly of the Bulgarian Orthodox Church, continued throughout the year. In September 2016, the City Court of Sofia (CCS) refused to enter the Orthodox Christian Church, represented by Christopher Subev, into the registry of religious denominations. In December this refusal was confirmed by the final decision of the Appellate Court in Sofia. The Appellate Court in Sofia ruled that the name of the newly founded religious institution was similar to the point of confusion to the Bulgarian Orthodox Church, which, according to the Court, endangers the rights of the believers of the Bulgarian Orthodox Church. In addition, according to the Court, based on the available documentation, it could be deduced that the new church was a branch of the Bulgarian Orthodox Church that had split off in 1993, in which case the use of an identical name was unacceptable. This court decision was a continuation of a number of similar decisions in the past that denied the registration of Orthodox religious groups. It was a serious violation of several judgments of the ECtHR by which Bulgaria was found in violation of Article 9 of the Convention for allowing state authorities to give preferential treatment to certain religious communities and institutions over others.

In May 2017, the ECtHR received yet another complaint against Bulgaria from an Eastern Orthodox organisation to which registration was refused. The Court of Appeal in Sofia refused registration to the Orthodox Christian Church in December 2016, because it finds its name to be “similar to the point of being confused with the name of the Bulgarian Orthodox Church registered under the law.” **This brought the total number of complaints filed by Eastern Orthodox religious denominations against Bulgaria to three.** The other two are Complaint No. 56751/13 (Bulgarian Orthodox Old Calendar Church and Others v. Bulgaria) and Complaint No. 76620/14 (Independent Orthodox Church and Zahariev v. Bulgaria) alleging violation of the freedom of religion, viewed in the light of the freedom of association, as well as discrimination compared to the Bulgarian Orthodox Church – Bulgarian Patriarchate. A standard practice of Bulgarian courts to this moment is to admit the Holy Synod of the Bulgarian Orthodox Church as a third party in registration proceedings of other Eastern Orthodox religious denominations, as well as to refuse registration as legal entities to such religious denominations, if their names contain the word “Orthodox.”

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12.6 Recent jurisprudence of the ECtHR on Bulgarian cases relating to freedom of religion

On 23 March 2017, the ECtHR gave a judgment in the case of Genov v. Bulgaria. In 2007 the applicant, together with six other founding members, decided to create a new religious association: The International Society for Krishna Consciousness (ISKCON) – Sofia, Nadezhda, with Mr Genov elected Chairman. The Bulgarian subdivision of the International Society for Krishna Consciousness was registered in 1991 as a religious denomination under the name of Society for Krishna Consciousness. The applicant filed a request to the Sofia City Court for registration of the new religious community, which, as its founding members claim, is an independent unit, not hierarchically subordinated to the existing Bulgarian association. The SCC rejected the request on the grounds that the name is not sufficiently distinctive, and the Statute is identical to that of the existing association, which presupposes a danger of schism among the believers. The appellate instance confirmed the SCC judgement with slightly altered motives, and the SCC ruled that in the case there had been no unjustified interference in the exercising of the right to freedom of religion, while the law allows the establishing of a new legal person only in two cases, which are not present. The ECtHR found that the refusal by the Bulgarian courts to register the new association violates Article 9, interpreted in the light of Article 11. Its reasoning was that the applicant and the remaining members continued to hold meetings or to practice religious rites, but could not obtain registration as legal entities and that is interference in the exercising of their rights. That interference, according to the Court, was not, because the identical nature of the name with that of the already existing association was not sufficient as grounds for refusal of registration. The ECtHR also believes that the sharing by the followers of the new organisation of the same beliefs and rituals as those of the already existing association cannot constitute grounds for refusal of registration, because the approach adopted by the Supreme Court of Cassation would result in the practice to refuse registration to any new religious denomination professing the same doctrine as an already existing religious denomination.

On 15 June 2017, the ECtHR gave a judgment in the case of Metodiev and Others v. Bulgaria. The Court found a violation of Article 9 in connection with Article 11 of the European Convention on Human Rights (ECHR) due to the refusal by the authorities to register a new religious association by the name of Ahmadiyya Muslim Community under the Religious Denominations Act (RDA). The Sofia City Court (SCC) stipulated the refusal, because the Ahmadiyya movement is perceived to be a sect by Muslims in the world and hence its registration could provoke a split in the Bulgarian Muslim community. The Court of Appeal, on its part, confirmed the SCC ruling with the motive that the Statute does not indicate sufficiently clearly the religious convictions and the liturgical practices of the association. The Supreme Court of Cassation confirmed the ruling of the Court of Appeal and stipulated that the Statute did not comply with the requirements under Article 17, item 2 of the RDA, which are aimed at distinguishing between the religious denominations and at avoiding controversies among the religious communities. The ECtHR, recalling that the opportunity for citizens to establish a legal person so as to act collectively in a certain area of shared interest represents one of the most important aspects of the right to freedom of association, without which that right would have been deprived of any value, and bearing in mind that the religious communities traditionally exist in the form of organised structures, ruled that in the present case it is necessity to examine the potential violation of Article 9 in connection with Article 11 of ECHR, which protects the association against any unfounded interference by the State. The Court found that the approach adopted by the SCC stipulates as a condition for the registration of the religious association that it would prove that the
religious conviction shared by its followers differs from that of the already registered religious denominations. Such an approach, applied strictly, as in the present case, would lead in practice to refusal of registration for every new religious association and to the existence of only one association for every religious current. The ECtHR ruled that in a democratic society it is not necessary for the State to undertake measures to guarantee that the religious communities are or will remain under one unified leadership. The role of the authorities consists in securing tolerance between different opposed groups. Therefore, the Court believes that the alleged absence of concreteness in the statement of the religious conviction and liturgical practice of the religious association in its Statute are not of such a character that would substantiate the procedural refusal of registration, which consequently is not “necessary in a democratic society.”

13. PROTECTION OF CHILDREN AND THE RIGHTS OF THE CHILD

13.1. Juvenile justice
In its judgement in the cases A. and Others v. Bulgaria (2011) and I. P. v. Bulgaria (2017), the ECtHR found violations of Article 5 § 4 of the Convention due to imperfections in the provisions of the Juvenile Delinquency Act (JDA). JDA provides in Article 37 that the time spent in the homes for temporary accommodation may not exceed 15 days, and detention for more than 24 hours is authorised by a prosecutor. In exceptional cases the duration of the accommodation in the home may be extended to not more than 2 months with permission granted by the respective prosecutor. JDA does not provide for a possibility of judicial review of the legality of the accommodation, hence the procedure does not comply with the requirements under Article 5 § 4 of the Convention. The judgement in the case D. L. v. Bulgaria (2016) refers to the absence of periodic judicial review of the detention of a minor in a juvenile detention centre, as well as to the impossibility for the detained person to apply directly to a court with a request for a change of the measure. This necessitates legislative changes in JDA to allow the possibility of judicial review of the detention in homes for temporary accommodation of minors, as well as periodic judicial review, including upon request by the detained person, of the detention in a juvenile detention centre and in socio-educational boarding schools.

Unfortunately, the issues raised in the three cases remain unresolved. The Juvenile Delinquency Act was not amended in compliance with the ECHR in 2017, and the bill for diversion from criminal proceedings for minors and for imposing correctional measures, which is expected to reform juvenile justice radically, was not submitted to Parliament, in spite of the campaign and the online petition by NGOs: the National Network for Children (NNC), the Social Activities and Practice Institute (SAPI) and BHC.301 The demands in the campaign are for: adoption of a new law on juvenile justice to replace the 60-year-old law on the fight against antisocial behaviour of minors; closing down of the correctional boarding schools and of the socio-educational boarding schools in which the children

were shut for rehabilitation, but the opposite effect resulted, creating specialised juvenile courts, securing a fair trial, accessible and high-quality legal aid for children, specialisation of the professionals working with children: police officers, investigators, judges, prosecutors, social workers, etc., and developing of new services and measures that are alternative to deprivation of liberty: programmes and services for prevention, support and re-integration of the children and young people.

13.2 Deinstitutionalization

By the end of 2016, all institutions for children with intellectual disabilities had been closed down. However, ten of them turned into institutions for adults as the children who were placed in them turned 18.

The first six years of deinstitutionalisation confirmed a steady trend of reducing the number of children in institutions. By June 2016, nearly two-thirds of children institutions (91 of 137) were closed down. The total number of children and youth in specialised institutions decreased from 7,587 in 2010 to 1,232 or nearly six times. By 1 June 2016, 2,355 children were in foster care, those living in residential care were 3,351, 4,755 children were adopted, 9,390 children were reintegrated in their biological families and 5,927 children were placed in foster care with families of relatives.302

Despite the progress of deinstitutionalisation in childcare, the positive trend was broken in 2016. The institutionalisation of children did not stop. According to official data, 751 children and young people were placed in institutional care in 2016. By 1 June 2016, there were 46 childcare institutions: 29 institutions for children deprived of parental care (ICDPC) with 585 children aged 3 to 18 and 17 institutions for medico-social care for children (IMSCC) with 647 children aged 0 to 7.

With a decision 208 of 10 August 2015 the Council of Ministers regulated the residential type of service for children in need of permanent medical care and provided for the mechanisms for closure of eight institutions for medico-social care for children. A total of 208 children were assessed, 408 staff members were trained and supervised, 239 staff members were trained to work in the new services under a Chance for Happy Childhood Project. In the course of the project, 181 children were reintegrated in families. At the same time, the total number of children placed in these eight institutions was 342. As of October 2015, the eight institutions had been closed down.303 Under the same project eight complexes for “innovative integrated health and social services for children aged 0 to 3” were opened, that include: seven family consultation centres, three foster care centres, five early intervention centres, three centres for child mental development, eight day care centres, two Mother and Baby Units, eight Mother and Child Health Centres, nine specialised residential care centres for children aged up to seven who need constant medical care.304

During the period January 2012 - 30 September 2015, 434 children aged up to 3, including 149 children with disabilities, were placed in family and close to family environment. Out of them, 11 were placed in other institutions, 159 children were adopted, 144 children were placed in foster families, 89 children were reintegrated in biological families, 9 children were placed in relatives’ families and 33 children were placed in family-type accommodation centres and 27 of whom were placed in family-type accommodation centres for children with disabilities. However, the National Network for Children (NGO) comments in its 2016 report that the newly established services “are still not statutory regulated and there are no activities for ensuring their sustainability and financing mechanisms. This was the reason for the newly created complexes providing services to be forced to suspend their work”. However, no plans have been identified about the remaining 17 institutions for medico-social care for children aged 0 to 3 in the country.

As of 1 January 2017, Bulgaria has 284 family-type accommodation centres of children and young people (FTACs) throughout the country, 134 of which, or nearly half of all centres, host children and youth with disabilities, including seven centres for family-type accommodation for children who need constant medical care. According to expert assessments, nearly a third of the children with mental disabilities placed at FTACs exhibit risk behaviours. Some of the children with harmful behaviour also have multiple disabilities and communicate only non-verbally. These factors turn them into a serious challenge for the staff providing the services who often lack the necessary qualification and choose the easy way out of the crisis by adhering to stereotypes and redundant common practices: fixation (limitation) of movements, isolation or prescribed medical treatment to suppress behaviour despite the absence of a mental disability diagnosis. The instances of challenging behaviour grow more serious following relocation into the community, namely due to a past of living in isolation, experts have argued. The full capacity of day centres for children with disabilities has been reached according to data provided by the municipalities, members of the National Association of Municipalities in the Republic of Bulgaria. Alternative services have not been made available everywhere. At the same time, FTACs do not necessarily provide transportation. As a result, in 2016 access to services supporting children with multiple disabilities remained limited. According to an assessment by LUMOS, 67% of the children at FTACs continue to live in isolation.

### 13.3 Cases of violence in FTACs

In 2016, several cases of negligence, harassment and violence against children at FTACs became the subject of prosecutor investigations. In March 2016, the Ombudsman filed an alert with the Prosecutor General stating that children at the FTAC in the village of Dren were being subjected to violence and psychological harassment. The Ombudsman pointed out that, “the detention of children in institutions is in direct violation of their rights”. In July 2016, the Bulgarian State Agency for Child

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307 In the summer of 2016 at a day centre for weekly care (DCWK) in the town of Pazardzhik the case was observed of a boy whose harming behaviour was “handled” through immobilisation by means of tying back the arms and establishing “control” by an older boy, also a client of the service, whom staff had assigned the task “to hold the arms of the aggressive boy to prevent him from hitting his head and face”. On the day of the visit by BHC researchers, the two boys were lying next to each other in the common bedroom with the older boy holding the arms of the younger one.

Protection inspected an incident at FTAC in the town of Vidin, which resulted in bruises on the victim’s body. According to a surgeon, the victim – a boy – had suffered a superficial head injury, hematoma indications in the area of the left cheek, and bruising in the left hand area. In August 2016, the Regional Prosecutor’s Office in Shumen ordered an inspection at a FTAC in the town of Shumen to address the case of physical harassment of four children by an educator and employees of the security company. In July, the State Agency for Child Protection performed an inspection following a case of violence alert at another FTAC in Shumen. In a video recording aired in a news broadcast by national TV channel Nova Television, an employee at the centre addressed a child by calling them “an animal” and went on to add, “I am going to kill you”. A former educator claimed that pushing, rude language, and kicking with a slipper were among the practices applied at the service. For more details and information for 2017, see section on Rights of persons with disabilities, Deinstitutionalisation of children.

14. INDEPENDENCE OF THE JUDICIARY AND FAIR TRIAL

In 2017, no substantial amendments were introduced with a view to improving the legislative framework regulating the independence of the judiciary and the fair trial. Conversely, some amendments to the Judicial System Act (JSA) and to the Criminal Procedure Code (CPC) undermined the independence of the court and created prerequisites for violation of the rights of the parties in criminal proceedings.

In October 2017, the European Commission for Democracy through Law (the Venice Commission) published its long awaited opinion on the amendments to the JSA following the constitutional changes of 2015. The opinion contains a number of criticisms of the law – both in terms of the regulations adopted soon after the constitutional changes, and of the amendments of 2017. The opinion notes that the present composition of the Supreme Judicial Council (SJC) does not comply with the requirement in Recommendation CM (2010)12 of the Committee of Ministers of the Council of Europe (2010), according to which no less than half of the Council member ought to be judges elected by judges. Such members are a minority in the present SJC composition.

The most severe criticism in the opinion of the Venice Commission is directed towards the accountability and the powers of the Public Prosecutors’ Office, and more specifically of the Prosecutor General. According to it, the Prosecutor General is “essentially immune from criminal prosecution and is virtually irremovable by means of impeachment for other misconduct.” This is a serious problem that had already provoked a judgement against Bulgaria by the European Court of Human Rights in the case of Kolevi v. Bulgaria (2009). This needs to be resolved through new constitutional and legislative changes.

312 Ibid., § 37.
Another cause for concerns stems from the broad powers of the Bulgarian Prosecution outside the scope of criminal law in discharging its constitutional powers of “supervision of lawfulness.” According to the Venice Commission, these powers are very unclearly defined both in the Constitution and in the law, and they do not set clear limits of the coercion that the Public Prosecutors’ Office may exercise. It may participate in administrative proceedings and even in civil disputes when it deems it necessary to defend the interest of the State. Moreover, in exercising its powers under Article 145, Paragraph 4 of JSA, it may require both from public and from private officials to assist the prosecutor in exercising his powers and to secure access for him to the respective premises and places. In the opinion of the Venice Commission, “coercion powers of the prosecution service outside of the criminal law sphere should be seriously restricted, if not totally suppressed.”  

Another series of criticisms in the opinion targets the role of the SJC Inspectorate. They concern the election, accountability and powers of the inspectors. Their election by Parliament, even when it is with qualified majority, does not guarantee their impartiality. The opinion finds overlapping of the powers of the inspectors and of the SJC. According to it, the role of the inspectors for influencing the career development of the judges may result in undermining the constitutional mandate of the SJC, which alone should have powers in that respect. The opinion also recommends a clearer stipulation of the procedure for the inspections by the Inspectorate.

The Venice Commission also recommends the abolition of all powers connected with inspections, as well as generally in the disciplinary sphere of the administrative heads of the courts. It also recommends more transparent regulation of the right of the latter to second judges.

In November 2017, the European Commission submitted its regular report on the progress of Bulgaria under the Cooperation and Verification Mechanism, in which it made an evaluation of the JSA enforcement after the legislative changes in 2016. The Commission defined the election in June of a new composition of SJC as being in compliance with the principle “one magistrate – one vote” and as progress compared to previous elections. However, the Commission was much more critical with respect to the parliamentary quota. It shared the criticisms of a number of representatives of NGOs that the result of the voting was predetermined through arrangements between the principal political parties, and the debate was superficial and did not affect the qualities of the candidates.

With respect to the other monitored problem – the fight against corruption and organised crime – the Commission’s report is much more sceptical. Reporting the undertaking of some “steps” towards fulfilling the formulated recommendations, the report finds that a number of key initiatives have not yet been adopted and implemented.

In July 2017, the National Assembly adopted amendments to the Judicial System Act, some of which violated the independence of the court. The amendments in Article 230 provide a possibility for temporary suspension of a judge, prosecutor or investigator from the respective SJC Judicial

313 Ibid., § 43.
315 Ibidem, p. 10.
Chamber on the demand of the Prosecutor General, when he/she has been arraigned for any deliberate indictable offence. The provision in practice obliges the SJC Judicial Chamber to dismiss automatically a judge upon the demand by the Prosecutor General without appraisal, without a possibility for protection or judicial review concerning the need of such a measure and irrespective of the grounds of the charges. In this way, the Public Prosecutors’ Office has a chance to manipulate the trial by eliminating from it inconvenient judges for the period of the completion of criminal proceedings that had started on the initiative of the prosecutor. The launching of criminal proceedings in the Bulgarian criminal law system is likewise not subjected to judicial review.

These amendments provoked a strong criticism both at national and at international level. On 31 July 2017, the Union of Judges appealed to the President to return the bill for a new discussion. At the end of September the possibility the Public Prosecutors’ Office to suspend judges from the proceedings was specifically noted by the rapporteur of the Parliamentary Assembly of the Council of Europe, Mr Fabritius, in his explanatory memorandum to the Assembly’s proposed resolution on “new threats to the rule of law in Council of Europe Member States.” In its opinion of 9 October 2017 the Venice Commission expressed concern that similar powers of the Public Prosecutors’ Office “may be very dangerous for the judges’ independence.” It recommends amendments to the JSA with a possibility for the JSA Judicial Chamber to “review the substance of the accusations and decide whether the evidence against the judge is persuasive enough … and whether it calls for a suspension.”

As a result, at the end of October 2017 the National Assembly revised the provisions and introduced new amendments to the JSA. According to them, automatic temporary suspension by the respective SJC Judicial Chamber is allowed only if with his/her act the judge, prosecutor or investigator had committed an intentional indictable offence (Article 132 of the Constitution). In all other cases of intentional indictable offence under Article 230, Paragraph 2 the Judicial Chamber “may suspend him/her” until the end of the criminal proceedings and “may hear the judge, the prosecutor or the investigator prior to reaching a decision.” In this way, although the October amendments introduced certain guarantees against possible prosecutor’s arbitrariness, allowing the suspended persons to be heard only as a possibility, not as an explicit requirement, as well as the absence of an obligation on the part of the respective Judicial Chamber to review the substance of the accusations, do not guarantee a fair trial and do not rule out entirely the possibility of arbitrary prosecutor’s interference with the independence of the court.

The July 2017 bill for amendment of JSA also envisaged additional provisions in Article 217 of the law, aimed at restricting the possibility to finance professional organisations of the magistrates: judges, prosecutors and investigators, as well as of the court staff. The sources of their property, according to the new Paragraph 3, are limited only to membership dues, material contributions and donations from their members. Any other financing or offering property in any form is prohibited. According to the additional text in Article 195, Paragraph 1, item 4 of the law, the judges, the prosecutors and the investigators may participate in research and teaching activities, but not when they are “financed exclusively by a foreign state or by a foreign person.” These restrictive additions to the JSA were

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subjected to sharp criticism immediately after they were submitted in the beginning of July. On 7 July, 17 NGOs addressed the Speaker of the National Assembly, the chairpersons of the parliamentary groups and the Chairman of the Committee on Legal Affairs, qualifying the restrictions as unjustified, and the unclear motives to them as entirely inconsistent. If they had been adopted, they undoubtedly would have limited the right to association of the magistrates on discrimination grounds, weakening their organisations and as a result they would have stifled the voice of these professional communities in public space. \footnote{BHC, etc., Joint opinion in connection with a bill for amendments to the Judicial System Act, Sofia, 7 July 2017, accessible at: \url{http://www.bghelsinki.org/bg/novini/press/single/svemestno-stanovishe-vv-vzka-ss-zakonoproekt-za-izmenenie-i-doplenie-na-zakona-za-sdernata-vlast/}.} Subsequently similar criticisms of the bill also came from a number of other local and international organisations. In the long run, the National Assembly did not pass that part of the bill. However, a provision was adopted, according to which judges, prosecutors and investigators may not participate in the managing and control bodies of organisations that are different from ones created for protection of their professional interests, and whose individual members they are. In this way, they may not participate, e.g., in the managing bodies of the Union of Bulgarian Jurists, or in the managing bodies of international organisations of magistrates. The provision in § 7 of the adopted law is also restrictive as it introduces an obligation to declare within one month of its coming into force membership of the magistrates in any non-profit organisations before the Supreme Judicial Council.

The National Assembly adopted in July amendments to the Criminal Procedure Code, some of which can damage severely the rights of the accused and of the defendants. New provisions aimed at “speeding up criminal proceedings” were introduced in Chapter 26. In practice, however, they can cause its slowing down and the return of the figure of the “eternal culprit.” According to the old procedure, if more than two years have passed in the pre-trial proceedings since the arraigning of a certain individual as accused of a serious crime, and more than one year in the remaining cases, the accused may ask the case to be re-examined by the court, except when he/she is charged with serious wilful crime with which death has been caused. That option to examine the case upon request by the accused was abolished, introducing instead the option if more than two years have elapsed in the pre-trial proceedings since the arraigning of a certain individual as accused of a serious crime, and more than six months in the remaining cases, the accused, the victim and the harmed legal person to file a request to the court for speeding up of the investigation. The Court may find a delay and may indicate actions within a certain period, but may not examine the case. In the event that the Public Prosecutors’ Office fails to comply with the indicated actions, the accused may ask again for their performing after the prescribed deadline expires, and this can be repeated \textit{ad infinitum}.

The amendments also introduced the so-called \textit{“regulatory session”} after the indictment was introduced in court by the Public Prosecutors’ Office. All participants in the proceedings are subpoenaed to that session and they need to present all their objections for violated rights during the pre-trial proceedings. In the future, when the case is examined, it will not be possible to raise such objections before any instance, including the Supreme Court of Cassation. The purpose of these amendments is to speed up the proceedings and to prevent the return of the case to the Public Prosecutors’ Office. According to bar representatives, however, the inadequate access to attorney
defence both of the accused and of the victims during the regulatory session could result subsequently in serious miscarriage of justice.

A strong objection in the legal circles was also provoked by the amendment in CPC complementing the jurisdiction of the Specialised Criminal Court that had been created initially to try serious crimes against the State and cases concerning organised criminal activities. In addition to these crimes, the amendments also introduced a possibility for that court, which is considered to be close to the ruling circles, to be responsible within its jurisdiction also for a number of other crimes committed by Members of Parliament, high-ranking officials, heads of state agencies, mayors, deputy mayors and chairpersons of municipal councils. The determining of the jurisdiction of the Specialised Criminal Court in accordance with the capacity of the perpetrator of the crime evokes justified concern that it may serve as an instrument in the hands of the rulers for a crackdown with political opponents.

Objections among lawyers also came from the possibility introduced with the amendments to the CPC, in the event of acquittal the defendant to be sentenced for administrative violation. This can be done by the last instance as well, the Supreme Court of Cassation, whose decisions are not subject to appeal. Such a possibility can also create difficulties for the rights of the defence, insofar as the Public Prosecutors’ Office is not obliged to indicate in the indictment alternatively what administrative norms have been violated so that the defendant can prepare his defence.

**RECOMMENDATIONS**

The Bulgarian Helsinki Committee makes the following recommendations regarding the compliance of the legislation, judicial and administrative practice in Bulgaria with the standards of the Covenant. The recommendations below are by no means exhaustive. They focus on the most important and urgent problems, which need to be addressed with priority.

1. Bulgaria should improve its legislative framework for providing in law for enhanced punishment of all types of biased-motivated violent acts. Hate crime legislation should include also other grounds, in addition to nationality, race, ethnic belonging and religion. Measures should be adopted to prevent, identify, and punish manifestation of bias among law enforcement officials.

2. Bulgarian law enforcement authorities should take seriously investigating and prosecuting of public incitement to hared, discrimination and violence against vulnerable groups. They should speak out against discrimination and promote tolerance toward minorities and vulnerable groups.

3. Step should be taken for further reform of the Bulgarian judiciary, including the Constitutional Court, in order to make it fully independent from the other branches of government and to strengthen its integrity.

4. Bulgarian law enforcement authorities should investigate vigorously and punish appropriately assaults and desecration of mosques and other places of worship.

5. Bulgaria should adopt comprehensive legislative and administrative framework for ensuring gender equality in practice. It should monitor discrimination against women on a systematic basis and should adopt effective measures to combat it in all spheres of social life.
6. Bulgaria should take legislative, judicial and administrative measures for combating violence against women and domestic violence. Legislative reforms should be undertaken to introduce the concept and to deal effectively through criminal law and administrative measures with gender-based violence, which is widespread and affects predominantly women and girls.

7. Bulgaria should adopt comprehensive legislative and administrative measures for ensuring equality before the law and non-discrimination of LGBTI persons, including equal access to the institution of marriage, providing for a recognition of same-sex unions, change of one’s legal gender and protection against hate crimes.

8. Bulgaria should implement a comprehensive reform to ensure non-discrimination of persons with disabilities. It should step up its deinstitutionalization efforts with the aim of total abolition of institutional long-term care for persons with disabilities. Measures should be taken to reform the outdated system of guardianship and for ensuring their integration in society, including through offering viable and decent employment opportunities.

9. Conditions and treatment of residents in institutions for persons with disabilities should be improved. They should never and in no way be subjected to inhuman and degrading treatment and punishment, as well as to any other violations of their human rights.

10. All children with disabilities should be offered education, rehabilitation and other services in integrated environments and the institutions for placement of children for the purposes of long-term care should be abolished.

11. Bulgaria should adopt a definition of torture that is in full compliance with articles 1 and 4 of the Convention against Torture, and with article 7 of the Covenant.

12. Bulgaria should adopt comprehensive legal, judicial and administrative reform in order to prevent and punish torture and other ill-treatment by law enforcement officials. All such incident should be subject to prompt, independent and effective investigation and the perpetrators should be punished with serious sanctions. Investigation should be subject to independent oversight and guidance.

13. Bulgaria should ensure in law as well as in practice that all persons detained for having committed criminal offences, including those detained administratively under the Ministry of Interior Act, should be informed about their rights, including the right to remain silent, and should be provided immediately with an effective access to a lawyer. The system of legal aid should be extended to cover effectively police detention.

14. Bulgaria should continue to improve material conditions of detention in the prisons and in the investigation detention facilities. Special consideration should be given to the conditions of the prisoners in high security wards and of those undergoing disciplinary punishments of solitary confinement.

15. Life imprisonment without the possibility of parole should be abolished from the Bulgarian criminal justice system.

16. The preventive remedy against inhuman and degrading treatment in the prisons and in the investigation detention facilities should be improved. Administrative courts should react faster to the complaints by the prisoners and should offer effective relief in cases of inhuman and degrading treatment. Such a remedy should be introduced for all other forms of detention.

17. Bulgaria should step up its efforts to combating human trafficking, especially that which involves minor girls. Shelters for victims should offer appropriate services and should not
amount to deprivation of liberty. Education should be ensured to all persons placed in crisis centers for children without regard to the duration of the placement.

18. All **asylum seekers** should be offered adequate access to the procedure, decent accommodation, appropriate social services, especially for unaccompanied minors, and programs for integration of those who receive refugee or humanitarian status. They should be protected against physical abuse from public officials and from private individuals and groups.

19. Bulgaria should reform its legislative framework and practice on **forced evictions** and should introduce requirements of necessity and proportionality in order to ensure that the specific conditions of persons evicted from their only homes is taken into consideration. No person should be rendered homeless as a result of a forced eviction without regard to the specific circumstances of the case. Forced evictions should never be used for punishment and with discriminatory purposes against Roma.

20. Bulgaria should reform its **juvenile justice legislation and practice**. It should introduce due process guarantees in indicating correctional measures, periodic review of their effectiveness and should ensure that minors below 14 years of age are treated entirely in the framework of the child protection system. Indication of correctional measures should be preceded by a multi-disciplinary and comprehensive personal assessment of the juveniles.

21. Bulgaria should ensure the right to **freedom of association through registration** of the associations of the Macedonian and other ethnic minorities.

22. Bulgaria should reform its legislative framework and practice in order to ensure **equal treatment of religious communities**. Dissident groups inside established religious communities should be allowed to register and to practice their religion without impediments. Restrictive ordinances discriminating against religious minorities at the municipal level should be repealed.