Human Rights in Bulgaria’s Closed Institutions

Bulgarian Helsinki Committee, June 2006

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List of abbreviations

BHC                              Bulgarian Helsinki Committee
BPA                              Bulgarian Psychiatric Association
CEMC                             Center for Emergency Medical Care
CMR                              Council of Ministers Resolution
CPT                              Committee for the Prevention of Torture
DC                               District Court
EBS                              Educational Boarding School
EBS Regulations                  Educational Boarding Schools Regulations
ESA                              Enforcement of Sentences Act
FES                              Fire and Emergency Safety
GP                               General Practitioner
HA                               Health Act
HAD                              Homes for Adults with Dementia
HCDPC                            Home for Children Deprived of Parental Care
HDDA                             Homes for Developmentally Disabled Adults
HDDCY                            Homes for developmentally disabled children and youths
HEA                              Health Establishments Act
HEI                              Hygiene and Epidemiology Inspectorate
HMAIA                            Homes for Mentally Ill Adults
HPC                              Home for Pre-School Children (former term)
ICPO                             Inspector of the Child Pedagogical Office
IMA                              Interior Ministry Act
IRNAC                            Implementing Regulations for the National Education Act
JDA                              Juvenile Delinquency Act
LCCJD                            Local Commission for Combating Juvenile Delinquency
LEPC                             Labour Expert Physician Commission
MH                               Ministry of Healthcare
MES                               Ministry of Education and Science
MLSP                             Ministry of Labour and Social Policy
MPHAT                            Multi-profiled Hospitals for Active Treatment
NHIF                             National Health Insurance Fund
NFA                               National Framework Agreement
PC                                Penal Code
PFA                              Persons and Family Act
PPC                              Penal Procedural Code
PD                               Psychiatric Dispensary
PHA                               Public Health Act
RC                               Regional Court
RESWA                            Regulations for the Enforcement of the Social Welfare Act
RHC                              Regional Healthcare Center
RHIF                             Regional Health Insurance Fund
RICPH                            Regional Inspection for Control of Public Health
RIE under MES                    Regional Inspectorate of Education under the Ministry of Education and Science
RPHEIPC                          Rules of Procedure of Health Establishments for Inpatient Psychiatric Care
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<th>Abbreviation</th>
<th>Description</th>
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<tr>
<td>SAA</td>
<td>Social Assistance Agency</td>
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<td>SACP</td>
<td>State Agency for Child Protection</td>
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<td>SEBS</td>
<td>Social Educational Boarding Schools</td>
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<td>SEBS Regulations</td>
<td>Social Educational Boarding Schools Regulations</td>
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<td>SPH</td>
<td>State Psychiatric Hospital</td>
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<td>SVTS</td>
<td>Social Vocational Training Schools</td>
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<td>SWA</td>
<td>Social Welfare Agency</td>
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<td>SWD</td>
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Introduction

The Bulgarian Helsinki Committee (BHC) is a non-governmental human rights advocacy organization, established in 1992. Since 1993 it is a member of the International Helsinki Federation for Human Rights. One of its activities includes monitoring and reporting on human rights in Bulgaria, as well as in other OSCE countries. BHC has been systematically monitoring closed institutions in Bulgaria since 1994. These include prisons, remand centers (investigation detention facilities), police establishments, detention facilities for illegal migrants, psychiatric hospitals, social care homes for mentally disabled, schools and other institutions for delinquent children. BHC arranged its possibilities and modalities to visit these institutions in different ways with different government ministries. Most often this was done on the basis of written agreements where the rights and obligations of both parties are spelled out in detail.

Monitoring was carried out on the basis of a methodology that was worked out in advance and uses a variety of techniques from the social science research, including structured and unstructured observation, analysis of documents and conducting different types of surveys. As a rule, BHC prefers to work with the researchers that are staff members of the organization with years of experience in the field. Occasionally it hires researchers on ad hoc basis. BHC researchers are instructed how to follow the methodology and how to behave in different situations that might arise during visits, as well as subsequently. As a rule, observations were published in detailed reports. In addition to monitoring reports BHC produced several publications for use by the staff and by the inmates of the closed institutions. So far the organization has published 14 books with reports and other publications on different types of places for deprivation of liberty in Bulgaria.1

The present report summarizes the findings of the BHC on the human rights in the Bulgarian places for deprivation of liberty over a period of four years. Their focus is on torture, inhuman and degrading treatment and punishment. Other human rights however, such as the right to private and family life, liberty and security of the person, fair trial etc are too dealt with, especially when they give rise to inhuman and degrading treatment. The monitoring project was made possible by a grant of the European Commission.

1 The publications are available at the BHC web site: www.bghelsinki.org.
1. Prisons

1.1 Overview of the system and trends. Overcrowding. Inhuman conditions of detention

There are a total of 13 functioning prisons in Bulgaria, of which eight are for recidivists, three are for non-recidivists, one is for women and one is for juveniles. The prisons are complex institutions that have closed, open and transitional hostels in which the inmates serve their sentences under different types of regime. The number of the prisons and their hostels amounts to 37. The number of inmates in the prisons of Bulgaria is constantly on the rise over the last six years. The tends at the end of the respective years is as follows:

<table>
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<tr>
<th>Year</th>
<th>2000</th>
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<tr>
<td>Number of inmates</td>
<td>8971</td>
<td>9026</td>
<td>9422</td>
<td>10066</td>
<td>10871</td>
<td>11436</td>
</tr>
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Thus the trend indicates an average 27% increase, with which the main indicator of the prison population in Bulgaria grew to 148 prison inmates per 100 000 population. Bulgaria has overtaken all West European countries in terms of this indicator, for example Germany (97), Spain (140), Italy (97), France (88), Portugal (123) and Austria (108).2

The increase in the number of prison population is in a marked contrast with the decrease in the rates of the street crime over the same period of time. According to several crime victimization surveys, as well as according to police statistics of registered offences the street crime decreased by more than 20% over the same period of time. At present Bulgaria’s level of street crime is lower than the average level of EU countries.3

The buildings of Bulgarian prisons are very old and run down. The Sofia prison was built 100 years ago. The main buildings of the prisons in Lovech, Pazardzhik, Vratsa, Stara Zagora, Varna and Burgas were built in the 1920s and 1930s, while the main buildings of the Bobovdol and Pleven prisons are former hostels converted to prisons. Inmates, not only in the hostel buildings, but also in all prisons, are accommodated in common rooms in contravention of U.N. Standard Minimum Roles for Treatment of Prisoners, which require individual accommodation to be the rule. At present there are no plans for conversion to smaller cells or individual accommodation, even in parts of the prisons. The capacity of closed establishments has not increased in the last few years. Despite this, more and more prisoners are accommodated in them and as a result the overcrowding in most closed prisons has reached three times their capacity. This contravenes the recommendations of the European Committee for the Prevention of Torture for a minimum of 4 m² floor area to be provided to each inmate. The everyday life problems arising from this are connected to the inevitable use of

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2 Data from International Center for Prison Studies, at: [www.prisonstudies.org](http://www.prisonstudies.org).
three-storey beds in sleeping quarters and the use of common rooms for sleeping, including clubs and sports facilities. In turn, this has an unfavourable effect on opportunities to occupy the inmates’ free time with various resettlement activities.

Bulgarian legislation has no compulsory standards for living conditions and living area in prison quarters. In accordance with European Prison Rules, every inmate has to be provided with enough fresh air, daylight, heating, access to sanitary facilities and drinking water, bathing, medical care and opportunities for educational, sport, labour and other activities. The available material resources in Bulgarian prisons are insufficient for most of these recommendations to be implemented. During prison monitoring missions in other countries in the region (Macedonia, Serbia, Hungary), conducted in 2004-2005 the BHC found that material conditions in Bulgarian prisons are the worst.

A fundamental problem facing the penitentiary system in the country is the lack of living space. The most crowded cells are those in the prisons for recidivists in Plovdiv, Sofia, Varna, Burgas and Pleven, as well as in two of the closed hostels: “Atlant” in Troyan and “Kremikovtzi” near Sofia. In the “Atlant” hostel about 30 inmates live together in 55 m² cells, which means that each inmate has 1.7 m² of floor area. In “Kremikovtzi”, 14-15 inmates are accommodated in cells measuring 25 m². Again, this amounts to 1.7 m² of personal space per inmate. The situation in the prisons in Plovdiv, Burgas and Varna is no less alarming. Here each of the inmates in some cells has only 1.5 m² of living space. In the main buildings of the other prisons each inmate has an average of about 2 m². There are exceptionally serious problems with the accommodation of a large number of prisoners in one sleeping room. This is the case in the prisons in Sofia, Varna, Pleven, Troyan and Kremikovtzi. In one cell in the Sofia prison, 70 defendants are accommodated in an area measuring 130 m². Nine of the beds in a cell are on the third storey of the bunk beds. The cell has small windows in relation to its cubage and as a result all four luminous lamps have to be left on even during the day. The floor of the cell is cement, which is cracked in places. The sanitary facilities comprise a washroom with a few wash basins and only one shower, along with a room with two cubicles fitted with squat toilets. The toilets are permanently occupied and there is always a queue to use them. This is also the case with the one and only shower.

As in the case with the state of the buildings in the prisons, the cells and the furniture in many of them are in an exceptionally poor condition. As a result, many of the complaints of the inmates to the BHC were connected with the state of the cells and of their furnishings, the lack of mattresses, pillows, bedding, clothes and footwear. In some prisons the state of the window frames prevents normal closure. In the prison in Pleven, visited by the BHC in December 2005, there were snow drifts inside the windows of some cells. In some cells the inmates were forced to fill the cracks with strips torn from rags or to hang blankets in front of the windows to keep the cold air out. In the prison in Burgas a group of inmates complained that there were no tables or chairs in their cells. Indeed, in their cell for 14 inmates there was only one cupboard which was used as a table, and there were no chairs, which meant that the inmates had to sit on their beds to eat and use the floor instead of a table, which they
covered with newspapers. In most prisons, each bedside table is used by a number of inmates.

The cells in the prisons in Sofia, Vratsa, Pleven, Stara Zagora, Plovdiv, Sliven, Varna and Burgas and those in the hostel in Troyan do not have independent sanitary facilities. As a result, in most of them one toilet in common sanitary facilities is used by 30 to 50 inmates. After the cells are locked up for the night, the inmates in the cells use buckets to relieve themselves in front of all the other inmates. The sanitary facilities in the prisons (washrooms, bathrooms and toilets) are in an exceptionally poor condition, which means that they cannot be kept in a good state of hygiene. The washrooms in most prisons do not have hot water or facilities for laundering and drying underwear and clothes.

All of these observations lead to the conclusion that the general material conditions in the prison system in Bulgaria give rise to suffering and inhuman and degrading conditions. This was established both by experts from the Committee for the Prevention of Torture during their regular visits to Bulgarian prisons and by researchers from non-governmental organizations during the joint mission to Bulgaria in 2004.

1.2 Disciplinary practices

Bulgarian legislation does not have any disciplinary provisions which clearly and unequivocally regulate what sanctions can be imposed for particular offences. The chapter entitled “Legal status of inmates” from the Enforcement of Sentences Act\(^4\), Art. 40, specifies behaviour prohibited for inmates whilst serving a custodial sentence. It includes: bringing in and keeping prohibited objects (for inmates in prisons, youth correctional facilities and closed inmates’ hostels this also means money), selling, buying, donating and exchanging amongst themselves objects possessed by the inmates, carrying out paid services, the use of spirits and narcotics (and for juveniles - smoking), gambling and other games prohibited by the administration, receiving or owning printed and other material with a pornographic content or which preaches national, ethnic, racial or religious hatred, holding demonstrations and group protests, holding meetings prohibited by the administration and uncontrolled movement inside and outside the area of the places for deprivation of liberty, except in cases envisaged by law. Bulgarian legislation does not differentiate punishments according to particular offences. Each punishment can be imposed for each offence. The nature and seriousness of the offence is taken into account in defining the disciplinary sanctions, as well as the attitude of the inmate to it, his behaviour prior to it and his state of health. An inmate may only be punished once for one offence. However, depending on the nature of the offence and the general behaviour of the offender, two disciplinary sanctions may be imposed simultaneously.

Disciplinary sanctions are imposed by the prison governor.\(^5\) Before issuing an order for disciplinary sanctions, the punitive authority must acquaint itself personally with

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\(^4\) *State Gazette*, No.30/1969, with many amendments and additions, the last one from 1 May 2006 (hereafter ESA).

\(^5\) ESA, Art.78.
the report by the employee who noted the offence and the written explanations of the inmate and must hear him. When necessary, information is also collected from other employees and inmates. The sanctions enforcement procedure, however, does not include the opportunity to hear out the witnesses to the offence, does not require the compulsory presence of an offender’s defence counsel and does not require clarification of the offence in terms which are accessible and comprehensible to the offender or for him to be provided with a copy of the sanction imposition order. A reasoned written order is issued for each disciplinary sanction and it must be read out to the inmate.

Orders for the imposition of all disciplinary sanctions are subject to appeal under administrative procedures, or judicial procedures for some punishments. Appeals are handed in to the governor of the prison, youth correctional facility or inmates’ hostel, who is required to forward the correspondents to the Directorate-General without delay. The Director-General of the Directorate-General is required to issue a pronouncement on the appeal within three days of receiving it. The appeal does not stay the enforcement of the punishment unless the Director-General of the Enforcement of Sentences Directorate-General orders otherwise. Only orders for disciplinary sanctions under Art. 76, letters “i” and “k” of the Enforcement of Sentences Act (placement in a disciplinary cell) are subject to appeal to the Regional Court serving the locality of the prison or youth correctional facility. The appeal is submitted through the authority which imposed the disciplinary sanction and may itself revoke the order. If the order is not revoked, this authority is required to send it immediately, but no later than three days, to the court, accompanied by the relevant material. The court immediately examines the case, but no later than three days after receiving it, sitting in a panel of one, with the participation of the authority which issued the order, the appellant and his defence counsel if one is authorised. The court assesses all circumstances related to the legality of the order and issues a pronouncement with a ruling which is announced to the parties at the court hearing and is not subject to appeal. The court hearing is not public.

Investigation of practices for imposing sanctions in the last few years reveals a number of defects in mechanisms regulated by law, which have led to various interpretations of particular provisions in the Enforcement of Sentences Act. In this respect the case of Angel Hristov Yordanov in the Burgas prison, visited by the BHC on the 20th September 2005 is revealing. Yordanov was punished with 14 days of solitary confinement for fighting with another prisoner. According to him, he was attacked and stabbed in the arm with the handle of a spoon by a cellmate who continually provoked him. On the 6th October 2005, after his turn came to be punished, he inflicted an injury on himself which, according to the doctor, was serious and undemonstrative, having cut the veins of his left hand. He was not punished for the self-inflicted wound because the prison administration recognized that the act was committed under severe emotional stress. Yordanov considered that he was not responsible for the incident and expressed his protest against suffering the imposed sanctions by inflicting injury on himself. Asked why he did not appeal against the sanction imposed on him, he replied that he was unable to do so as he was socially

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6  ESA, Art.78a.
disadvantaged and did not have an envelope or a stamp. According to him and the other inmates in the cell, the appeals did not proceed officially, i.e. at the expense of the prison.

Analysis of the case indicated shows that the reason for Yordanov’s protest and self-inflicted wound is the ineffective appeal mechanism against disciplinary sanctions. According to Art. 78, Para 1 of the Enforcement of Sentences Act, “Disciplinary sanctions shall be imposed by the prison governor”, while according to Art. 78B, Para 2, “appeals shall be submitted through the authority which imposed the disciplinary sanction.”. In Yordanov’s case the appeal against the sanction was made dependent on his material circumstances. In accordance with prison practices, sanctions are declared to a Commission, but before doing so the inmate must be heard out. On the day after the Commission hearing, the respective inspector hands the sanction order to the inmate. According to the prison staff, it is possible that Yordanov missed the three-day appeal deadline, as often happens, but it is also possible that he genuinely did not have paper or an envelope on which to write his appeal. Inspectors are issued with stationery which quickly runs out and it is possible that at the moment in question there were no available sheets of paper and envelopes.

In this particular case Yordanov’s problems arose from a lack of precision in the legislative provisions covering sanction enforcement procedures. The legislation does not contain any requirement for accurate and clear documentation of inmates’ objections before the imposition of sanctions, nor any requirement for the administration to acquaint the inmate with his right to appeal against the sanction and to document whether he wishes to appeal against it when he receives the order. Similarly, the legislation does not contain any explicit requirement for the administration to provide a sheet of paper and envelope to the appellant if he does not possess them and to provide him with assistance in writing the appeal if he is illiterate.

Two other cases in the prison in Lovech in January 2006 confirm the flaws in the procedure to impose sanctions. Krasimir Ivanov Dimitrov was sanctioned and declared to the BHC that he had written an explanation for his offence and given it to his inspector, who later handed him a sanctions order signed by the prison governor. Dimitrov refused to sign it and witnesses confirmed this refusal. When handed the order, he explained to the inspector that he did not agree with the imposition of the sanction, but did not have an envelope and stamp and so was unable to appeal to the court against his punishment. He asked for an envelope and stamp from the administration, but they were not given to him. Another inmate from the same prison, Kostadin Dobrev Iliev, was put in solitary confinement for seven days. He told the BHC that nobody heard him when the sanction had been imposed and that he did not appeal against it because he did not have anything to write the appeal on.

Problems of this kind, connected to appeals against disciplinary sanctions, were also noted by the BHC in the “Atlant” prison hostel in Troyan. During the visit, two inmates were serving sanctions in punitive cells for having been in a fight. They explained to the BHC that the governor of the hostel had not heard them out when imposing the punishment, but they had been told to provide written explanations and
later had been handed the order. In practice the inmates did not have the opportunity
to defend themselves or to clarify the circumstances around the incident. Both of
them also expressed mistrust in the mechanism for appealing to the court against
sanctions. One of them said that he had insisted on meeting the governor before the
sanction was imposed, but had been refused.

For the imposition of serious sanctions such as under Art. 76 letter “i” and letter “k”
and long-term administrative isolations under Art. 85 and 85a of the Enforcement of
Sentences Act, the offenders must be given the right to effective defence both during
the imposition of the sanctions and when appeals are made. For long-term isolation
under Art. 85, lasting up to two months, legislators have not even ensured any
opportunity for appeal. During the enforcement of sanctions, inmates in solitary
confinement without leaving the cell to work are denied visits and do not have the
right to food parcels or money for personal needs, which further aggravates their legal
situation.

Investigations of solitary confinement in prisons show considerable variation. The
proportion of this form of punishment in relation to the total number of sanctions
orders is lowest in the Varna, Pazardzhik and Pleven prisons and highest in the
prisons for non-recidivist offenders in Stara Zagora and Belene.

The interiors of disciplinary cells in the prisons in Lovech, Burgas, Vratsa, Plovdiv
and Sofia are identical. They comprise a wooden platform about 25 cm high across
the whole width of the cell. This is usually covered by a thin mattress and thin
blanket, which are usually worn out and dirty. The heating in some of the cells is
totally inadequate. In the prison in Lovech visited by the BHC on the 16th January
2006, one of the cells had a broken window. None of the cells on the right hand side
of the corridor has a radiator. During the winter those in solitary confinement do not
have the right to have more than two blankets. For this reason, solitary confinement
under these conditions in the winter bears the characteristics of torture and inhuman
treatment. Sheets are not allowed in the solitary confinement cells for security
reasons. There are tables, chairs and cupboards only in a few prisons (Boychinovtzi
and Pleven). These are fixed to the floor, again for security reasons. In most prisons
the solitary confinement cells do not have their own sanitary facilities and buckets are
used outside the hours in which toilets may be used. The only places where solitary
confinement cells have their own sanitary facilities are the prisons in Belene,
Bobovdol and Stara Zagora and the Boychinovtzi youth correctional facility.

1.3 Use of physical force and auxiliary means

With the amendments and additions to the Enforcement of Sentences Act of 2002, the
cases in which prison wardens may use physical force, auxiliary means and firearms
are listed separately. In the comparatively detailed legislation, however, there are no
disciplinary provisions which clearly and unequivocally regulate what punishments
can be imposed for specifically defined offences that border cases warranting use of
force and auxiliary means. This is one of the reasons for the variations in disciplinary

7 ESA, Art.84b, 84r and 84e
practices and the use of physical force in the different prisons. Reports on the number of offences and sanctions in prisons and the number of cases of use of physical force and auxiliary means reveal considerable differences between prisons in terms of the various indicators. This means that it is difficult to avoid subjective behaviour and prejudice on the part of wardens when they note offences, impose sanctions or use force. For example, practices for noting offences and imposing sanctions and solitary confinement in a number of prisons (Pazardzhik, Burgas, Plovdiv) are considerably more developed than in other prisons for recidivists. As a result, the number of disciplinary procedures in a given period of time in the prisons indicated is many times greater than, for example, in the Pleven prison. This is further confirmed by statistics on the average monthly number of reinforced security measures in prisons during 2005, which varies between 4.5 in the prisons in Burgas and Varna to 0.2-0.4 in the prisons in Vratsa and Pleven. Recidivists are accommodated in all four of these prisons, i.e. the profile of the inmates does not vary. For this reason the higher frequency of the use of force and auxiliary means cannot be justified in terms of worse personal characteristics of the inmates in the prisons with more intensive disciplinary practices. Similarly, the observed proportion of the most serious punishment – solitary confinement - in comparison with the total number of sanctions varies from 25 to 26% in the prisons in Pazardzhik, Varna and Pleven to 60% in the prisons in Stara Zagora and Belene. This does not confirm expectations that the offences noted in prisons for recidivists would be considerably more serious than those committed by non-recidivists. As mentioned in the previous research of the BHC into disciplinary practices in Bulgarian prisons, the arbitrary use of disciplinary authority is not only a violation of the principles of fair legal procedure and other fundamental rights and freedoms, but also in many cases it gives rise to situations which amount to inhuman and degrading treatment and punishment.8

In contravention to the requirements set out in the Enforcement of Sentences Act9, the use of physical force and auxiliary means is not always documented by wardens. For example, in 2003 inspectors from Enforcement of Sentences Directorate-General followed up ten alerts issued by the BHC with an inspection on the use of physical force and auxiliary means by wardens in the Burgas prison. Most of those who had complained confirmed to the inspectors what they had earlier said to the BHC researchers. The results of the inspection, however, which were then placed at the disposal of the BHC, contained no information on the existence of wardens’ reports on the cases described. The use of physical force and auxiliary means by wardens against inmates always provided grounds for ambiguous analyses. Investigations following signals about such cases show that the prison administration usually reacts in two ways: it either recognizes that reinforced security measures were taken, but in accordance with the law, or, in the absence of the required written evidence, denies the use of reinforced security measures. In many cases, despite the assertions of inmates that they were the victims of use of force, the lack of written reports, of complaints by the victims immediately after the incidents and of explanations and medical evidence makes it impossible to prove that use of force had taken place, especially when carried out in the absence of witnesses.

8 BHC, Disciplinary Practice in the Bulgarian Prisons, Sofia, October 2003 (in Bulgarian).
9 ESA, Art.84, para.2.
In many cases of the use of force, the employees do not document the measures taken in full, but only describe some of them. Such is the case with Maxim Zhelev Sandov in the prison in Burgas. According to the complainant, he was taken back to prison on the 18th August 2005 after investigations. He had taken two pieces of bread with him from the remand centre, which were found by employees in the course of the routine body search after he returned to prison but were not taken from him. In the evening of the same day, in the course of a body search in the cell, wardens found the pieces of bread. Sandov tried to explain that he had been allowed to keep them after the previous body search. During that time one of the employees called him a “gypsy”, pulled his clothes and tore off his buttons, after which he took him out to the lobby, where he began to kick him and punch him. After Sandov complained, the prison management notified him that the employee’s actions were provoked by Sandov’s attempts to explain the origins of the bread, during which he had raised his voice and gesticulated. Finally, the employee inflicted 4-5 blows to his head which broke two of his teeth, and he was kicked 6-7 times all over his body. After hearing Sandov’s cries, other employees came into the lobby but did not join in the assault. Sandov lost consciousness as a result of the blows. He was later made to write an explanation. He also wrote a complaint against the employee, which he handed to another warden, who read it and demonstratively tore it up in front of him.

The investigation into this case shows that in his report on the use of physical force the warden had written that his actions were provoked after Sandov resisted removal of the pieces of bread. This forced the warden to use physical force in order to push him into the lobby. The report does not mention anything about inflicting blows, kicking and punching. Two sergeants signed the report as witnesses to what had happened, which cannot support what was written in the report. The complainant has not been provided with the opportunity to appeal against the wardens’ actions. In addition, there is no medical document to certify the injuries inflicted on the complainant. As a result, the excessive use of force cannot be proved.

1.4 Inter-prisoner violence

In accordance with the Enforcement of Sentences Act, officers and sergeants may use physical force in cases of physical resistance, assault or attempts on their life or on the life of another person. Although not explicitly mentioned, wardens should intervene and prevent assaults and aggression on the part of one inmate against another in order to protect their honour and dignity. In the course of prison monitoring, researchers in the international mission found a case in which a warden was only a witness to violence and did not intervene to prevent it. During a visit to the Belene prison hospital, researchers heard a complaint from Group I inmate K. C.. According to the complainant, in the course of one week in the period from the 17th to the 24th September 2004 he was mistreated by three inmates in the same group, having been beaten on the back of the neck and on the chest and subjected to cigarette burns. He said to participants in the mission that he has severe chest pains. When asked for the reason for the mistreatment C. said that he presumed that it was provoked by the fact that he is a Roma. According to him, during the latest assault on the 24th September 2004 a warden was a dumb witness to what had happened.
During the international mission’s visit on 28 September 2004 to the prison in Belene, an interview was held in the hospital with inmate O. A., who said that shortly after entering the prison he was subjected to assault, threats, mockery and repeated rape on the part of another inmate. Later he was moved to another group together with an inmate who witnessed the violence. After finding out what had happened, the other inmates began to mock O. A. and prompt him to perform sexual services. As a result, O. A. tried to cut his veins and was moved to the prison hospital. He explained the reasons for his behaviour to the doctor and told him about the rape. The medical centre documentation contains no trace of the use of physical force against the plaintiff. Later, the plaintiff withdrew his complaint and although he did not deny the truth of what had happened, he refused to seek assistance to hold the culprits responsible.

In a case similar to that described above, in a complaint to the BHC dated September 2004 inmate Y. H. reported that after being taken to prison and waiting at prison reception, he was moved to a common cell where he was beaten, undressed and raped by three inmates during the night, after which he was forced to perform oral sex. During the day his attackers did not allow him to leave the cell and he was threatened that if he disclosed what had happened he would be beaten again. The same outrage was repeated the following night. It was only later that Y. H. managed to get to the medical centre, tell the doctor what had happened and ask for medicine to treat the pain and bleeding. After a medical examination, however, no medicine was provided. In his complaint Y. H. states that he had reported the violence to a prison employee, who did nothing about it.

In response to Y. H.’s complaint, the BHC notified the prosecutor’s office which ordered an inspection. In the end, however, all instances of the prosecutor’s office issued resolutions, stating that there was not enough evidence to institute criminal proceedings against the inmates.

In March 2006, Nova TV broadcast scenes from the prison in Sofia which were recorded on a mobile telephone in August 2005. This footage shows a naked prisoner performing oral sex with another inmate during an improvised festivity. This is followed by a scene in which the same inmate is tethered on a lead and on hearing the order to “sit”, barks like a dog and engages in a dogfight with another inmate, also on a lead. The initial reaction of the Ministry of Justice was that nobody was responsible for the perverted acts and that the internal regulations of the prison had not been infringed by the administration. Shortly afterwards, however, the prosecutor’s office charged three wardens who had been on duty on the day of the incident, and the prison governor was dismissed. Similarly, the employees responsible commented that the main participant in the scandalous scenes did everything voluntarily. He himself, however, asserts that he had been forced to participate in the orgy, that he had been beaten and that his ribs were broken as a result of the assault.

1.5 Opportunities for rehabilitation

Opportunities to carry out effective rehabilitation activities in prisons are very restricted because of the fact that one social work inspector has to cover 90-100
inmates, and when standing in for absent colleagues, over 150 inmates. This is a serious obstacle to effective individual and group work. In many prisons, especially where there are no possibilities for work prisoners spend their time all the day in the cells or in the corridors without any purposeful activity. The situation of the prisoners sentenced to life imprisonment is particularly difficult in that regard.

Representatives of registered religions have the opportunity to carry out religious services with inmates. Muslim prisoner however, who represent a significant share of the inmate body do not have the right to celebrate their religious holidays in the prison. Foreigners too are discriminated against in their opportunities for early release, weekly leaves and other activities. The high proportion of illiterate and semi-literate inmates creates a need for methodical and wide-ranging literacy and vocational courses.

The Bulgarian system does not provide for long-term and spousal visits to the inmates and there are no establishments for this. Prisoners in the only prison for women in Sliven are particularly disadvantaged in maintaining family contacts.

1.6 Medical care

The structuring and licensing of medical centres in the prisons which took place during 2004-2005 as a requirement of the new health legislation has not led to any improvement in the quality of medical care for inmates. Health care in prison continues to face problems with regard to the supply of medicines and the provision and payment of specialized medical examinations for inmates not covered by health insurance. The continuing increase in narcotics-dependent inmates is an exceptionally serious problem. Their proportion is estimated at 7 to 8% of the prison population. The profile of drug-related offenders does not change the legal situation of this category of inmates and does not include additional medical care or resettlement activities. As a result, there is a high risk of re-offending after their sentences have been served. For this reason it is necessary to set up separate hostels by law, in which drug-dependent inmates who enter prison for the first time can be accommodated, and to develop and introduce special programmes for work with this category of inmates. There is also a long-term trend towards an increase in the proportion of the inmates needing specialized psychiatric help. In order to prevent practices connected with torture and inhuman treatment in prisons, the medical personnel must be issued with detailed instructions to document traces of violence, self-inflicted injury and rape in order not to hinder the efforts of the competent authorities in investigating the complaints of victims.

1.7 Supervision for legality

In accordance with Bulgarian legislation the prosecutor’s office is obliged to exercise supervision to establish whether the enforcement of punishment and other compulsory measures is carried out legally. Prosecutor supervision covers the acting legislation for the enforcement of sentences to deprivation of liberty and the activities of the authorities charged with enforcing this punishment in prisons, prison hostels and
youth correctional facilities. Such legality supervision must be implemented by the District Prosecutor or his deputy. The BHC investigation found that prosecutor inspections in places for deprivation of liberty vary in their frequency and purpose, that in most cases they are carried out as a formality and do not establish whether inmates’ complaints against the administration are well-grounded or not. The impression of the BHC from joint inspections with prosecutors is that the latter are not trained to carry out inspections in places for deprivation of liberty and are not well acquainted with the specific methodology for this type of activity. In many prisons the inspections do not include interviews with the inmates, including face to face interviews, and frequently the inmates are unaware of the prosecutor’s visit to prison. This is probably the reason why nothing is said about imposed sanctions and punishments as a result of inspections under the legality procedure. Unlike the prison administration, which reports increased frequency of prosecutor visits, the inmates themselves bear witness that their groups have not been visited for years and, accordingly, they have not been interviewed even if they have explicitly requested so.
2. Remand centres

In March 1999 the Bulgarian Helsinki Committee (BHC) gained access to remand centres in Bulgaria, allowing it to begin systematic monitoring. In June 2002, with the amendments and additions to the Enforcement of Sentences Act, regulations were established by which access to defendants is subject to the explicit permission on the part of a prosecutor or judge. This requirement restricted possibilities for representatives of non-governmental organisations to hold meetings and interviews with detainees whose sentences have not entered into force. Despite this, in 2005 the BHC received permission to meet and interview detainees who had not been sentenced in private, in the course of an inspection that it carried out jointly with the Prosecutor's Office.

2.1 Overview of the remand centre system

Remand centres are establishments where inmates spend all the time during their preliminary detention pending trial, which can be between two months and one year, in some cases even longer. Formerly they used to be under the authority of the national police and were and continue to be by and large not suited for long-term accommodation. After 1998 the number of remand centres in Bulgaria was reduced repeatedly. Until then they numbered 89. At the end of 1999 the number was reduced to 80, and at the end of 2000 it dropped to 75. In 2002 and 2003 a total of ten remand centres were closed down, while from the beginning of 2004, shortly before the hearing on Bulgaria’s report to the UN Committee Against Torture, another 14 were closed down. Currently 51 remand centres remain in Bulgaria. Regional remand centre units function in each of the 28 regional centres in the country, which have detention facilities. In addition, one or more territorial remand centres function under each of sixteen of the regional units. These are situated in the larger cities in the region and are distributed in an arbitrary way. There are no territorial remand centres in regional centres such as Plovdiv, Varna and Ruse, despite their heavy workload, while for example there are a total of four remand centres affiliated to the Blagoevgrad regional remand centre unit. Twelve of the regional units do not have territorial remand centres. Most of the remand centres in the regional centres are located on the premises of the district police directorates, some of them on the top floors (Vratsa, Lovech, Plevens, Targovisht, Varna, Smolyan, Dobrich, Silistra, Haskovo, Montana and Stara Zagora). Other remand centres are located on intermediate floors, while two remand centres are located in the basement or on the ground floor (Pazardzhik and Pernik). The territorial remand centres usually occupy the parts of the buildings which accommodate the district police stations. Apart from the frontier remand centres in Svilengrad, Slivnitsa and Petrich, these usually have a lighter workload and since the premises are usually older, equipment maintenance and hygiene conditions are poorer.

Until 2002, when there were no individual beds in remand centre cells, there were also no established norms governing the capacity of the centres. Despite this, in 2001, when there were 75 remand centres, an information sheet based on the requirement to provide the necessary floor area for each detainee showed that the total capacity of the remand centres was for 1600 detainees. After this period, the capacity of centres
began to be defined in terms of beds available instead of on the basis of the floor area or cubage specified for each detainee. According to the report by the Enforcement of Sentences Directorate-General dated 25th November 2004, the overall capacity of the 51 remand centres had grown to 1832 detainees despite a reduction in the number of remand centres. The capacity of the centres was calculated on the basis of the number of beds in cells instead of the four square metres per detainee. The number of defendants accommodated in remand centres as of 31st December 2005 had not increased significantly in comparison with the previous year: from 858 to 862. In some remand centres however, e.g. in Plovdiv, the number of inmates was on a constant rise over the past years and overcrowding reached levels at which spending even a few days in it amounts to inhuman and degrading treatment. The distribution of detainees among the remand centres is extremely uneven. Some of them are permanently overcrowded and sometimes the number of detainees exceeds their capacity. In others, mainly territorial remand centres, few detainees are accommodated and these centres keep two or three detainees under guard.

The number of cells in the remand centres varies from 3 to 4 in the small centres to several dozen in the large centres (Sofia, Plovdiv, Varna). The largest remand centre on the G. M. Dimitrov Boulevard in Sofia has a total of 83 cells and a capacity of 332 detainees. It occupies four floors on the premises of the National Investigation Service. In most remand centres, the cells intended for women and juveniles are separated from the other ones. The area of the cells usually varies between 6 and 8-10 m², while 12 to 13 m² cells are less common. In some remand centres, the BHC noted that some cells are exceptionally small. In the remand centre at the Regional Remand Centre Unit in Vratsa, the floor area of the cells is 4 m² and their cubage is 11 m³ (these dimensions are taken from a report on the need to divide heating expenses between the District Police Directorate and the regional unit). The cells are fitted with two-layer bunk beds. The smaller cells in the Troyan remand centre measure 3m x 1.3m, i.e. less than 4 m², and are also intended for two persons. A report of the Enforcement of Sentences Directorate-General on the number of remand centres in which the cells are less than 6 m² in area does not indicate the centres mentioned above. However, the report places the remand centres in Razlog, Radnevo, Slivnitsa and one of the cells in the remand centre in Petrich in this category.

2.2. Material conditions

On the initiative of the Chief Prosecutor’s Office in February 2005, prosecutors from the Supreme Cassation Prosecutor’s Office, military and district prosecutors’ offices carried out a mass inspection of all remand centres and groups for defendants in prisons. The inspection aimed to ascertain the degree to which the legal and living standards of defendants were observed. Observations made during the inspection are that the remand centres in Petrich, Gabrovo, Lom and Svilengrad were absolutely unfit for use and that, apart from a few remand centres and separate groups for defendants in prisons, none of the remaining remand centres conform to European requirements for minimum amount of space, time allowed outdoors, independent sanitary facilities, illumination, etc. The prosecutors’ report recommends that underground remand centres without windows, sanitary facilities and water taps should be closed down as they cannot be refitted. This recommendation also refers to
remand centres situated on the top floors, as they do not allow for the installation of sanitary facilities, water taps and windows.

The closure of remand centres between 1999 and 2004 was not conditioned so much by their under-use as by the impossibility of improving the living and sanitary conditions in the cells. The closure was also spurred by the criticisms of international organisations. Among the stimuli for the closure of the remand centres which were unsuitable for use were a number of court cases brought successfully by detainees held in them. These included a Targovishte District Court case concerning the conditions in the local remand centre, as well as two resolutions of the European Court of Human Rights in Strasbourg: Kehaiov v. Bulgaria, concerning conditions in the Plovdiv remand centre, and I. I. v. Bulgaria, in which the court found infringements connected to the conditions of detention in the Shumen remand centre.

The closure of the total of 20 of the remand centres was implemented because they were located in underground premises and it was impossible to improve conditions in them. Eight such remand centres are still being used in Gabrovo, Petrich, Troyan, Lom, Pzardzhik, Nova Zagora, Shumen and Slivnitsa. In the course of a visit to the Gabrovo remand centre in 2004, the BHC established that, unlike in previous years, the walls of the cells were clean and painted white. The cells have windows to the exterior and for this reason humidity is supposedly reduced through natural airflow. In ten of the cells at the Regional Remand Centre Unit in Pazardzhik, which is also located underground, the openings to the exterior are immediately above ground level. However, unlike the openings in the Gabrovo remand centre, they are closed off with glass bricks, which allow the penetration of light but do not provide the necessary ventilation. Although they are underground, the cells in the Pazardzhik remand centre are more spacious and better illuminated than those in a number of remand centres located in upper storeys. The territorial remand centres in Petrich and Slivnitsa have taken measures to increase illumination and ventilation in the cells by installing additional metal grids immediately behind the doors, so that they can remain open during the day. In this way, considerably more light and fresh air can enter the cells through the corridor windows opposite the cell doors. In the Nova Zagora remand centre, the cells have external windows facing the inner courtyard. Only 1/3 of their height is above ground level, i.e. not more than 15-20 cm. The cells in the Troyan remand centre do not have external windows and only have artificial lighting. Ventilation is unsatisfactory. Although not underground, the Shumen remand centre is in an exceptionally poor condition. After the basement of the remand centre had been put out of use, detainees’ cells and their sanitary facilities and the staff room were separated in the corridor of the ground floor. This remand centre is very tight and restricted in terms of space. The corridor is T-shaped, which, according to the staff, makes it difficult to carry out supervision and guard duties.

Until 2001 most remand centres were only equipped with common wooden platforms on which sleeping spaces for each detainee were not separated. Currently, in addition to beds, most remand centres are equipped with small tables and, where the floor area allows, fixed chairs. In the centres where there were no cupboards in the cells, cupboards were fitted in specially made recesses between the cell doors, or a number of cupboards for all detainees were placed at particular locations in the corridor. In
other remand centres, the belongings of detainees are kept either in a common
cupboard partitioned into cells or on small shelves fixed to the outside of the cell
doors. The detainees thus only have access to their personal belongings when they
are taken outside the cell. Providing beds in the cells increased the capacity of the
remand centres as they were fixed one above the other. In cells measuring 3m by
2.1m, such as those in the Sliven remand centre, i.e. with a floor area of 6 m², four
beds were provided: two bunk beds on the left and two bunk beds on the right of the
cells. Each detainee thus has 1.5 m² of space. There is hardly any uncovered floor
area and the distance between the beds is no more than 35 to 40 cm. In some of the
more crowded remand centres, even after beds were fitted, the number of detainees
exceeded the number of beds. In the course of the BHC visit to the Plovdiv remand
centre on the 27th August 2004, there were 88 beds and 97 detainees, i.e. nine
detainees did not have beds, but only a mattress on the cell floor. According to the
report of the Enforcement of Sentences Directorate-General of the 25th November
2004 in seven of the remand centres the number of detainees in 2004 exceeded
capacity. Apart from the Plovdiv remand centre, these included the centres in Silistra,
Svilengrad, Varna, Dobrich, Slivnitsa and Pleven. In the course of the BHC visit to
the Veliko Turnovo remand centre on the 11th June 2004 it was established that
facilities intended for 44 detainees were accommodating 25 defendants and 58
persons brought there for court proceedings or for investigations, i.e. the remand
centre was overcrowded by about 200%, mainly to the detriment of those arriving for
proceedings. Although persons in this category are detained for a relatively short time
in the remand centres (from a few hours to 2-3 days), they are provided with a
mattress on the floor for the duration of their detention if there are no free beds.
There was a similar situation in the Plevens remand centre, where overcrowding in the
cells was mainly due to those arriving for proceedings. In the course of its visit to the
Silistra remand centre on the 25th October 2004, the BHC found that detainees
frequently slept on the floor due to lack of beds. Before 2002, this problem was not
so acute because the cells were equipped with common wooden plank beds on which
it was always possible to accommodate more detainees. In a BHC interview in the
Bobovdol prison on the 28th December 2004, detainee I. C. said that despite the
availability of empty cells in the Kyustendil remand centre, only two of the cells (the
12th and 13th) were allocated for accommodating persons brought in for proceedings
from other regions. There have been cases when sixteen to eighteen persons were
brought in for court proceedings, all of them accommodated only in the two cells
indicated. In these cases they had to sleep two to a bed or on the cell floor. The staff
did not allow them to open the ventilation openings as this would have let the
cigarette smoke through from the cells. When the detainees requested the use of the
toilet or opening of the windows, the staff began to shout at those who made the
requests and frequently beat them. If allowed at all, access was given to the toilets for
no more than 2-3 minutes. The staff forced the detainees brought in from other
regions to urinate in bottles to avoid having to open the cells.

During the BHC visit to the Slivnitsa remand centre on the 17th April 2004, the staff
said that the cells were almost always full. Frequently most of the detainees are
foreigners. 21 to 22 defendants have been accommodated in cells intended for 16.
On a visit to the remand centre on the 2nd February 2006, BHC noted that it was not
overcrowded, but an Afghan citizen had been detained there for five months. The
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reason for this long stay was a delay in receiving a report about this person from Interpol. In the other frontier remand centre in Svilengrad, where on the 26th August 2004 the staff said that despite increasing their capacity from 10 to 20 detainees by providing bunk beds in the cells, the capacity of the remand centre was not at all sufficient. The same problem was noted by the Committee for the Prevention of Torture delegation in April 2002 during a visit to the now defunct remand centre in Botevgrad, where three detainees were accommodated in a cell with two beds and two of them had to share one bed.

In the remand centres in which the number of detainees exceeds capacity, the requirement for juveniles, women and adult males to be accommodated separately is implemented, but requirements not to overcrowd cells are not. Women are duly separated from men, but when a woman is accommodated, a whole cell has to be emptied of men, who are then accommodated in cells which are already full. It is impossible to separate recidivists from first-time detainees when the staff have not received information about whether given detainees have a criminal record. In these cases, detainees are kept in separate cells only by the explicit instructions of the person in charge of the investigation.

According to the report of the Enforcement of Sentences Directorate-General of the 25th November 2004, in 9 of the 51 remand centres the cells are equipped with independent sanitary facilities. These are the remand centres in Varna, Montana, Targovishte, Popovo, Oryahovo (five cells), Stara Zagora (one cell), Elhovo (new remand centre) and the two remand centres in Sofia: on Major Vekilski Street and on the G. M. Dimitrov Boulevard. At the Plovdiv remand centre there is only a washbasin and running water in the cells. In 1999, by order of the Deputy Minister of Justice, the use of buckets for physiological needs in cells was prohibited. Since then, the wardens have been obliged to open the cells every time there is a knock on the door and take the detainees to the toilet. For this purpose, signalling bells were fitted in some regional remand centres. In small and under-used remand centres it is no problem for staff to open cells at all times. In the large remand centres, however, where 20 or more detainees use one toilet and there are only a few wardens on each shift, it is impossible to provide timely access to the toilet simultaneously. For this reason, in some remand centres the BHC noted that detainees were forced to urinate in the plastic bottles intended for drinking water. In the Silistra remand centre a detainee issued a complaint stating that he urinated in a bottle because he did not wish to disturb the wardens, who were very busy. The complaint was forwarded to the Military Prosecutor’s Office. During the BHC visit to the remand centre on the 25th October 2004, the staff confirmed that the wardens are overloaded and unable to ensure access of detainees to the sanitary facilities at all times.

Although in recent years renovation work has been carried out in the living accommodation in remand centres and the illumination, ventilation and hygiene have been improved, the general conditions in cells are far worse than those in prisons. A large number of the remand centres do not have the necessary outdoor exercise yards. According to the report of the Enforcement of Sentences Directorate-General of the 25th November 2004, only 19 of the total of 51 remand centres have the necessary facilities for outdoor exercise. These are the remand centres in Sandanski, Varna,
Veliko Turnovo, Vidin, Vratsa, Oryahovo, Troyan, Montana, Razgrad, Ruse, Silistra, Nova Zagora, Targovishte, Popovo, Elhovo (new remand centre), Sofia (Major Vekilski Street and G. M. Dimitrov Boulevard). After this date, the new remand centre in Elhovo joined those with exercise yards. According to this report, 37 of the remand centres have separate visiting rooms. In the remand centres with visiting rooms, they are also used for meetings between detainees and their defence counsels. The only remand centres with more than one separate room for this purpose are those at Major Vekilski Street in Sofia and at the Regional Remand Centre Unit in Kurdzhali.

Defendants in the remand centres are not provided with opportunities for any activities or access to television or radio programmes. Unlike Bulgarian prisons, where special, albeit insufficient, attention is devoted to rehabilitation activities and social work and education inspectors are employed to develop individual and group influence plans, in the remand centres that are no activity programmes and none of the staff are required to organise any activities with the detainees. The medical care of defendants is not integrated with the national health care system. As a result, specialised medical assistance and dental treatment provision do not meet requirements.

2.3. Use of physical force and auxiliary means

Several BHC surveys of the disciplinary practices and the use of force and auxiliary means in remand centres since 2001 shows that the staff resort to the use of physical force in very rare cases and it has not been necessary to use handcuffs, truncheons and straitjackets. Only in two of the remand centres the staff interviewed told the BHC that from the beginning of 2004 there were reports of the use of physical force and auxiliary means. In the Plovdiv remand centre such methods were used to restrain a detainee in hospital where he was sent for treatment of self-inflicted injury when he attempted to use physical force on another patient. In the Razlog remand centre there have been two reports of the use of reinforced security measures since the beginning of 2004. The general conditions in the remand centres are considerably more restrictive than those in prisons, where frequent use is made of reinforced security measures. Accordingly, the BHC has every reason to consider that either the staff in remand centres have not provided accurate information on the documented use of physical force and auxiliary means, or that such methods are used without being documented. Unlike the comparatively well-developed legislation for disciplinary practices in Bulgarian prisons, insufficient attention is devoted in remand centres to all procedures connected to violations of the law, punishment and the use of physical force and auxiliary means on the part of the personnel. The reason for this is not so much an absence of violations subject to the respective punishment, but rather a legislative deficit which does not allow remand centre staff to apply legitimate sanctions. The proportion of remand centres in which interviewed staff members said that detainees commit violations is less than 15%. There are no available statistics on the number and type of violations in remand centres. When such violations occur, the wardens can intervene and stop the action, but cannot impose punishment such as fines or providing opportunities for the damaged property to be repaired. The BHC did not find any documentation in a single one of the remand centres visited which
describes any violations and corresponding reactions on the part of the staff. In some remand centres, staff members said that in cases of offence, they submit a report to the person in charge of the investigation, who decides which measures should be taken. The reaction of staff members in cases of violations consists only of conversations with the offenders, and if a given measure can help and if circumstances allow, the staff members move the offenders to other cells. Until 2-3 years ago, it is maintained that detainees were deprived of cigarettes or newspapers as a way to sanction offences, but this is no longer practiced.

2.4. Contact with the outside world and correspondence

According to the report of the Enforcement of Sentences Directorate-General of the 25th November 2004, separate visiting rooms have been built in 37 of the remand centres. In the other fourteen, including those in regional centres such as Varna, Yambol, Kyustendil and Smolyan, there are no visiting rooms. In these centres, detainees meet visiting relatives and defence counsels either in the offices of those in charge of the investigations or in the entrances of the remand centres, in the corridors, on landings on the stairs or in former cells. The use of the offices of investigators, police investigators and of team commanding officers for this purpose makes special visits a problem, especially when there is a queue for ordinary visits, a meeting with defence counsels or a need for procedural action.

With the amendments and additions to the Enforcement of Sentences Act of 2002, the following text was introduced into Art. 132, para. 3: “The correspondence of defendants is subject to inspection by the administration”. This restriction was thus regulated by law. With the Decision No.4 from 18 April 2006 however the Constitutional Court declared this provision unconstitutional and since then it is not applied. Curiously enough it continued to be applied in the case of the sentenced prisoners.

2.5. Supervision for legality

In accordance with Art. 127 of the Constitution of the Republic of Bulgaria, the prosecutor’s office checks the legality of operations and exercises supervision in cases of enforcement of penal and other coercive measures. During BHC visits to remand centres, the supervision was subjected to special monitoring. A “prosecutor inspection book” is kept in each remand centre, in which the supervising prosecutors enter the dates of their visits and their observations. The frequency of prosecutors’ visits is not strictly regulated. An inspection of this book in the remand centres shows that the inspections entered very from several in the course of a month to several in the course of a year. At the beginning of 2006 the BHC noted that the remand centre in Troyan had not been visited in the last nine months. According to the staff in some remand centres in which few inspections are entered, the supervising prosecutor makes frequent visits, but does not enter each one into the book. Usually the supervising prosecutor visits on a monthly basis, but in some territorial remand centres weekly visits were said to have been made. The supervising prosecutor does not meet detainees on every visit, and individual face-to-face visits were recorded only in a few remand centres. In most remand centres, all that is registered is the
dates of visits and the absence of infringements. In other remand centres, standard entries have been made without detailed descriptions of the object of inspection. In these cases, after the visits, the prosecutor usually enters the number of detainees in the remand centre and that none of them is illegally detained, and that no infringements or irregularities have been noted. When entries are structured in this way, it is unclear on what basis the conclusion was reached that there are no infringements.

During a visit to the remand centre in Lom on the 7th October 2004, the BHC noted that since the beginning of 2004, only two visits by the town’s regional prosecutor had been entered: on the 10th March 2004 and on the 16th March 2004. Despite this, the observations entered were exceptionally detailed and contained descriptions of violations on the part of a warden in whose presence a detainee had had unregulated visits. As a result, the prosecutor ordered measures to be taken as provided by law. According to the remand centre staff members interviewed, after the visits the prosecutor noted that the offending staff member behaved strangely, but they were unable to explain how this behaviour manifested itself. Disciplinary sanctions were imposed on the employee after a later inspection.

Visits to remand centres by military prosecutors are considerably less frequent and usually made in response to particular complaints by detainees of physical violence during police detention.
3. Police detention

3.1. Duration and registration of police detention

Human rights violations as a result of the actions of police officers in Bulgaria have often been made the object of investigations and comments on the part of local and international governmental and non-governmental organizations. These violations are connected to illegal detention in the structural units of the Ministry of the Interior or outside them and with the use of physical force, auxiliary means or weapons during arrests or after detainees have been taken to police stations in the course of interrogation and other procedural actions.

On the 23rd June 2003, the Interior Ministry adopted Instruction No. I-167 on the procedure and actions of police bodies in detaining persons in the structural units of the Interior Ministry, on equipping facilities for accommodating detainees and maintaining order in them (promulgated in the State Gazette, Issue No. 71 of the 12th August 2003, in force from the 12th September 2003). Adoption of this instruction was a positive step, mainly because it introduced some measures for the prevention of torture, inhuman and degrading treatment during police detention for the first time in Bulgaria. It requires the duration of detention under the Interior Ministry Act to be considered as from the moment when the freedom of movement of these individuals is restricted (Art. 12). In February 2006 the Parliament of Bulgaria adopted a new Interior Ministry Act, where the guarantees introduced by the Instruction I-167 were provided for by the law.10

During its research, BHC documented a number of cases in which persons had been de facto detained in district police stations without this being duly recorded by order and without observing the guarantees for adherence to the three fundamental rights of detainees. During BHC interviews with detainees in prisons, de facto detentions exceeding 24 hours were described, despite the fact that the duration of the detentions entered in the book of detainees and their detention orders was less than 24 hours. In examining the documentation on district police station detentions, the BHC discovered that in many detention orders the time and date of release of the detainees were not entered.

3.2. Cases of torture and other ill-treatment

Bulgarian legislation contravenes international law not only in terms of some of the provisions it contains, but also in terms of what is lacking in it. Although Bulgaria has been a party to the UN Convention Against Torture since 1987, Bulgarian criminal legislation still contains no provisions to criminalise torture as is required under Art. 4, subpara. 1 of the Convention. In June 2004 the UN Committee Against Torture yet again recommended that the necessary changes be entered into the criminal code to criminalise torture. Investigation of the reasons for the use of torture and ill-treatment by police officers shows that such practices facilitate the extraction of evidence, but in some cases are purely punitive in character. Instruction No. I-167

10 State Gazette, No.17/2006. in force since 1 May 2006, hereafter IMA.
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does not contain detailed provisions for cases in which physical force, auxiliary means and firearms are used and refers these cases to the Interior Ministry Act. The new IMA regulates the use of force and firearms in Articles 72, 73 and 74. The provisions are the same as in the old law, including on the use of firearms. The new law too permits the use of firearms during the arrest of an individual who is committing or has committed even a petty crime, or to prevent the escape of an individual arrested for committing even a petty crime. This does not conform with Principle 9 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Instruction I-167 obliges police officers who have witnessed the excessive use of physical force, torture or inhuman and degrading treatment against a detainee to intervene with the purpose of preventing it and to inform their superiors immediately. However BHC documented numerous cases of torture and other illegal use of force, practiced with impunity during a focused research in December 2005 – January 2006 mainly through interviews with detainees during visits in four prisons in Bulgaria. Such information became available to the organization also through other sources: letters, verbal signals received in the offices of the BHC personally from the victims of violence, media announcements, etc.

In an interview in the Bobovdol prison, P. P. K. declared that during detention by police officers in Plovdiv in October 2004 he was punched and beaten with a metal pipe. The policemen continued to beat him after loading him into a police vehicle. He was also beaten for a long time in the police station.

A. C. M. in the Belene prison declared that in May 2004 he and three of his friends were detained in Dobrich by a total of ten uniformed policemen while they were collecting scrap metal. The four were brutally beaten with truncheons on their arms and legs and were kicked with boots. The beatings continued after they had been taken to the police station. As a result of the blows his arms and legs swelled up. The policemen told him to put his limbs in cold water to bring down the swelling.

A. R. C. in the Bobovdol prison said that in December 2004 he had been arrested at his home in Velingrad. From the moment they entered his home, the four policemen began to beat him. The beatings continued after he had been taken to the police station. The policemen used truncheons with which he was even hit on the head. He was also threatened with a pistol, which was also used to hit him on the head. During his 24-hour detention he was taken several times to the hospital and was refused first aid.

T. B. B. in the prison in Pleven declared that on the 26th February 2005 he had been arrested in the street after being hit unexpectedly on the back of the neck. He was then knocked down onto the floor and kicked all over his body. Immediately afterwards he was taken to the second district police station, where uniformed officers continued to beat him for two hours. In the words of the complainant, he lost consciousness several times and had to be picked and propped up to stay standing. When he was admitted to the remand centre he asked for a medical certificate to be issued, but the remand centre medical officer refused, arguing that policemen do not carry out beatings any more.
V. M. P., also in the Pleven prison, declared that on his arrest in Gorna Oryahovitsa in November 2004 he had been brutally beaten by policemen. The beatings continued after he was taken to the district police station where 7-8 persons simultaneously assaulted him, beat him with truncheons and kicked him. During his 24 hour detention he was not locked into a cell but was tied up in the duty officer’s room.

S. V. D. in the Plovdiv prison said that on his arrest at his home in Plovdiv in August 2004, plainclothes police officers had beaten him and the assault had continued in an office on the 3rd floor of the 3rd district police station in the city. During the assault the policemen used a chain, a chair leg and truncheons. Also, for an hour and a half he was forced to stand on tiptoe and lean against the wall without being allowed to stand on his feet.

Again in the prison in Plovdiv, C. A. A. said that in February 2005 he had been arrested by plainclothes policemen in the city and after being taken to the 4th district police station was beaten by five police officers in a room on the second floor. The assault continued for several hours with short interruptions.

A twenty year old illiterate Roma prisoner in the Bobovdol prison (E. V. M.) was detained on the 12th April 2004 in the Dupnitsa district police station by two uniformed policemen who punched and kicked him during an interrogation in the district police station building. Afterwards he was taken to the hospital in Dupnitsa and the doctor who examined him said that there were no traces of injury. He was not given any document from the examination. After the assault he was provided with a legal aid defence counsel, who also failed to advise him to seek protection against police violence with regard to the assault.

K. D. D., a 27 year old Roma prisoner in the Plovdiv prison, recounted his detention on the 4th – 5th May 2005 at the 3rd district police station in Plovdiv. He was beaten in the police officers’ briefing room on the first floor of the district police station building by three uniformed policemen and one plainclothes officer, who hit him all over his body. Afterwards they did not allow him to call his wife or use a legal aid defence counsel. He was examined by doctor who bandaged his head, which had sustained severe injury which caused him to lose consciousness. He also told the doctor in the remand centre about his injuries, but she also paid no attention to this.

A 25 year old ethnic Bulgarian prisoner in the Plovdiv prison recounted his detention in the 6th district police station on the 28th to 30th September 2005. Until the 6th October 2005 he had been detained and afterwards was taken to prison. He had been detained on two successive days for 24 hours each at the 6th district police station. He had not been given declarations in accordance with Interior Ministry Instruction 167 to fill in. He had not been examined by a doctor in the district police station nor in the remand centre. He had been undergoing withdrawal symptoms. The Centre for Urgent Medical Assistance had been called and he was injected with diazepam. He was not allowed to call his family after detention, nor to buy food or cigarettes. He does not remember whether he was beaten by policemen.
A 23 year-old Roma prisoner in the Pleven prison recounted his detention on the 8th March 2003 in the Pavlikeni district police station by two plainclothes police officers, a captain and the Pavlikeni neighbourhood policeman, who beat him with a strap and kicked him in the corridor of the district police station building. 24 hours after his arrest he was examined by a doctor brought in by the policemen, who measured his blood pressure but did not record the traces of beating. He had been arrested for theft of ferrous metals. He issued a complaint to the district prosecutor’s office but not to the military district prosecutor’s office and has not received a reply.

A 31 year-old Roma prisoner in the Pleven prison recounted his detention in the Polski Trumbesh district police station in 2005. During his detention he was beaten by four uniformed policemen with the butt of a pistol, which broke a tooth, and with truncheons. A warrant had been issued for his arrest, but not a declaration and he was not examined by doctor.

A 52 year-old ethnic Turkish prisoner in the Pleven prison recounted his detention in the Pleven district police station, from where two plainclothes policemen took him to a dam lake and beat him to try and extract a confession. He was not examined by a doctor until he reached the remand centre, but there were no scars on his body.

A 42 year-old ethnic Bulgarian prisoner in the Plovdiv prison recounted his detention on the 2nd February 2003 in the 4th district police station in Plovdiv, where he was beaten by policemen. A remand centre doctor examined him, but no document was issued about the incident. He received a warrant for his arrest but did not fill in a declaration.

A 24 year-old ethnic Bulgarian prisoner in the Plovdiv prison recounted his arrest by the transport police on the 7th April 2003. Four policemen punched and kicked him all over his body and he had visible bruises. On the 10th April he was also beaten in detention. He complained to the duty doctor and asked for a painkiller. On the third day of his detention he lost consciousness after undergoing withdrawal symptoms and he hung on to the bars of his cell on the sixth floor of the detention centre in Plovdiv. He was taken to hospital and treated with chlorazin.

According to detainees in about 70% of cases, assaults continued at a later stage with various auxiliary means: truncheons and other objects. Assaults are frequently combined with insults and threats. The use of physical force is not the only means of extracting evidence or inflicting punishment. The use of threats and other means of torture unrelated to the use of physical force should also be added to the list.

On the basis of information from the Military Court of Appeal, a total of 35 Interior Ministry officer were punished in 2005 for police brutality. Seventeen of them were detained and administrative sanctions were applied to the other eighteen. Court statistics indicate that the use of force by policemen is usually to obtain confessions.

Several surveys conducted by BHC and other organizations over the period 1999 – 2005 indicated that torture and other types of prohibited ill treatment by law
enforcement officials in Bulgaria decreased.\textsuperscript{11} This was due to a number of factors, including the improved access to legal aid during pre-trial stage; domestic and international pressures to bring perpetrators to justice and several decisions of the ECHR in Strasbourg. Yet, prohibited ill treatment is still often practiced during arrest and inside police stations and is not investigated adequately.

3.3. Recent cases of death after use of force by police officers and their investigation

In the last few years the number of cases of death or severe mutilation as a result of the excessive use of physical force or auxiliary means and firearms has decreased but did not drop. Over the past four years the BHC received information about four cases in which police officers killed civilians. In some of the cases action was taken to investigate the cases and hand the offenders over to the judicial authorities, but in other cases the behaviour of the investigation authorities was inadequate and led to impunity for the police officers.

On the 14\textsuperscript{th} April 2005, Sergeant D. B. of the 1\textsuperscript{st} district police station in Varna beat 37 year old Julien Krustev to death. Later on the evening of the 14\textsuperscript{th} April, the policeman had been returning from a discotheque when he found Julien Krustev sleeping in a doorway. During the investigation it was later made clear that he began to beat him because of an old refrigerator stolen on the previous day. Some of the beatings took place in front of two other police officers who did not react in any way. Forensic doctors established that Krustev had died of multiple internal injuries received during the assault. Sergeant B. tried to mislead the police during the investigation of the crime. He was detained, charged with murder and dismissed from his job. Investigation of the case is completed and it has been submitted by the District Prosecutor’s Office to the court in Varna. No date has yet been set for the hearing. However, the other two police officers who witnessed the murder are not being held responsible.

On the 14\textsuperscript{th} August 2005, Chief Sergeant P. V. of the 6\textsuperscript{th} district police station in Plovdiv, together with two plainclothes police officers, beat 37 year old Ivelin Veselinov to death. Veselinov had stabbed a young woman in the leg with a syringe near Block 93 in the Trakia neighbourhood. Chief Sergeant V. and two other persons caught up with the man and began to beat him. Later, Veselinov was taken in a patrol car to the 5\textsuperscript{th} district police station where he collapsed. The ambulance crew merely noted his death. Chief Sergeant V. was dismissed on disciplinary grounds. An investigation case-file was instituted against him and his two accomplices, which did not manage to conclude before the end of the year.

On the 10\textsuperscript{th} November 2005, as part of the planned police operation dubbed “Respect”, 38 year old Angel Dimitrov, nicknamed Chorata, died while resisting arrest on Doyran street in Blagoevgrad. According to the Interior Ministry version, in order to arrest him, five police officers (three officers and two sergeants from the Blagoevgrad District Police Directorate special forces) resorted to the use of force.
because Dimitrov was resisting arrest. Shortly after he had been handcuffed, Angel Dimitrov fell to the ground and the ambulance team which had been summoned merely noted his death. Witnesses to the incident, however, assert that Angel Dimitrov did not resist, but pleaded with the policemen to stop beating him because he could not breathe. According to the forensic results made public on the 11th November by the Head of the Blagoevgrad District Police Directorate, general Bogomil Yanev, Angel Dimitrov had had a heart attack, and although the policemen had used force, his death had been unconnected to their actions. Angel Dimitrov’s Relatives refused to have him buried and demanded a second forensic investigation, which was carried out on the 19th November. On the 7th December it was revealed that the second five-fold forensic investigation had shown that Angel Dimitrov had died as a result of the injuries he sustained during the arrest (a brain haemorrhage), provoked by the police assault. On the 14th December, the Sofia Military District Prosecutor’s Office unexpectedly issued an order to discontinue criminal proceedings. This act, which legitimised police impunity, shocked the whole of society and provoked stormy debate in the Bulgarian media. On the 8th January 2006 the lawyer acting for the victim’s family submitted an appeal to the Sofia Military Court against the 14th December order. On the 19th January 2006 the Sofia Military Court withdrew the prosecutor’s order and resubmitted the case for further investigation.

On the 20th December in the Sofia village of Vlado Trichkovo, special forces police officers shot 30 year old Hari Milkovski dead during an operation to release British subject Christo Fanos. Fanos arrived in Bulgaria on the 15th December and on arrival at the airport was met by his acquaintance Ali Deni, an Iranian citizen permanently resident in Bulgaria. Fanos was taken to a house in the village of Vlado Trichkovo and Deni, together with two other men including Hari Milkovski, demanded a ransom of £44 000 from his son. The Interior Ministry received a signal on the 18th December from the British authorities. On the 20th December the anti-mafia forces stormed the house. Hari Milkovski was shot dead during the gunfight. An investigation into the case has been instituted.


Art. 18 of Instruction No. I-167 regulates the obligations of detention authorities to acquaint detainees with their rights to medical assistance, legal defence, to inform relatives or other close acquaintances of their arrest and to appeal to the court against the legality of the arrest. For this purpose the detainees fill in a special declaration form, of which they keep one copy. Apart from declaring that they have been acquainted with their rights, the detainees also declare whether they wish to use a defence counsel, to be examined by doctor and to notify their relatives or close acquaintances of their arrest.

In accordance with Art. 63, para. 5 of the new IMA Act, persons have the right to legal defence from the moment of their arrest. Instruction No. I-167 also stipulates the requirement for the person to be informed of the grounds for detention immediately after arrest and of his or her right to a defence counsel. Investigation of practices with regard to observing the right to a defence counsel shows that police officers do not
commit themselves to such practices during 24 hour detention. In many cases they explain that the detainees do not need a defence counsel before they have been charged, or explain that there are problems with the solicitors hired by persons detained for serious criminal acts, who often threaten the district police station staff. In the text of the declaration signed by the detainees, no explicit distinction is made between legal aid defence and the choice of detainees to hire their personal solicitor. BHC surveys of the right to counsel conducted every year reveal that legal defence counsels are usually not allowed to participate during the 24 hour police detention under a variety of pretexts.

Just as the old IMA, the new act too does not provide for the access to a medical doctor of detainee’s choice from the moment of detention. Instruction No. I-167 provides for such possibility in Art.20, para.5. BHC research of the medical care during police detention revealed that practices in that regard vary. In a few police stations, medical examinations are carried out immediately after the arrest of all detainees. In all other police stations medical examinations are only carried out if the person’s state of health requires it. The examinations are usually carried out by paramedical teams and less frequently by doctors employed by the District Police Directorates. In very rare cases medical examinations are carried out by the detainees’ own general practitioners. In most police stations the medical certificate is attached to the detainee’s file. However, in some police stations a copy of the medical certificate has been attached to the arrest warrant and the declaration.

The introduction of the declaration of the rights of detainees in March 2002 did not solve the problems related to medical care in police detention. The text from subpara. 2 of the declaration reads:

“ I declare that I do/do not have health problems manifested as ………………., which require consultation with a doctor.”

The following subpara. 3 reads:

“ I declare that I wish / do not wish to have a medical examination by a doctor of my choice at my expense.”

With the text under subpara. 2 the detainee can declare the existence of a health problem and describe the type of illness or the symptoms. However, even if he or she does not describe the ailment, the text under subpara. 2 implies that the person is able to assess whether or not the problem requires consultation with a doctor.

With the text under subpara. 3 the detainee not only declares that he or she wishes to have a medical examination, but also declares that he or she wishes to be examined by a doctor of his or her choice and at his or her expense, i.e. the detainee would have to have a particular doctor in mind or be given the opportunity to choose a doctor whom he or she would pay after the examination. Formulated as such, the text far from encourages detainees to call for a medical examination even if they are ill. The BHC found that only in a few of the district police stations visited have contacts been made with general practitioners on specific demand by detainees. The text under subpara. 3 also gives rise to a number of problems for police officers. In cases where there is a large number of detainees, in order to avoid the problems which would arise from their wishing to have a medical examination, usually the police officers fill in the
declarations themselves and give them to the detainees to sign at the bottom, or the employees dictate to the detainees what to write in the declarations.

3.5. Notification of third persons about the arrest

The new IMA provides for the right of detained persons to have a person of his/her choice notified about their detention.\(^\text{12}\) This is usually done by the police, which are under an obligation to inform such a person “immediately”. In cases of illegal detentions however, when the risk of ill treatment is the highest, this is usually not done.

\(^{12}\) IMA, Art.63, para.6.
4. Psychiatric hospitals and dispensaries

4.1 Overview of the system and general trends

In the period May-August 2005 the BHC paid visits to all 11 state psychiatric hospitals (SPH) and to 8 of the largest district psychiatric dispensaries (PD) in the country. In 2004, inpatient psychiatric care was provided in 11 state psychiatric hospitals (SPH) with 2,750 beds; 12 dispensaries for mental illnesses with 1,524 beds; 10 psychiatric wards in multi-profiled hospitals for active treatment (MPHAT); 6 clinics at medical academic institutions; one medical institute for the military and national centers. Out of the total number of patients hospitalized in psychiatric facilities, the patients admitted for compulsory treatment in 2003 were 1,966 and in 2004 they went up to 2,389. In 2003 their share was 5.4% and in 2004 - 5.9% of all hospitalized patients.

Within the framework of its research, the BHC carried out an assessment of the implementation of certain elements provided in the policy of the Ministry of Health on mental health for 2004-2012 in its part targeting people with severe mental illnesses. “Fighting the stigma and the discrimination against the mentally ill with the aim to relieve the economic and social burden of the mental illness” and “ensuring equal and adequate access to mental health care for all people with mental disabilities” are the key priorities of the policy. The policy also envisages the adoption of a social-health approach to the treatment of the mentally ill instead of the purely medical one. The system of measures proposed in the program includes: closing many of the existing inpatient facilities that provide psychiatric care and establishing inpatient facilities within the multi-profiled hospitals; providing services within the community and delivering care in the homes of the patients; introducing modern medical technologies; elaborating regional mental health programs and linking them to other elements of the social environment of the mentally ill, as well as respect of their human rights; drafting legislation to regulate the above measures. The program is based on and in line with the principles for Protection of Persons with Mental Illness and the Improvement of Mental Health Care adopted on December 17 1991 by UN General Assembly with Resolution 46/119 (as was the previous program of the Council of Ministers of 2001).

The Public Health Act (PHA), enforced on January 1 2005, and the supplementing Ordinances constitute the single element of the policies and the programs issued by MH that was implemented in practice and led to some visible results. The Act sets forth progressively the main measures for the rehabilitation and care of the mentally ill and the principles for the treatment of the mentally ill persons. The mental

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13 Under Art. 156 of the HA (SG No. 70 of 10.08.2004, enacted on 1.01.2005) they provide inpatient psychiatric care. National Health Information Center data show that the relative share of patients admitted to SPH and PD makes up around 67% of all persons placed at inpatient facilities in 2001. In 2004 the said share was around 66%. This explains why the attention of the BHC went to these facilities.

14 The number of beds in psychiatric facilities decreased by 10%: from 3,075 in 2000 to 2,750 in 2004, while the beds in the dispensaries decreased by 5%: from 1,604 in 2000 to 1,524 in 2004.

15 http://www.mh.govtment.bg/program_and_strategies.php

16 HA, Art. 145, para. 1.

17 HA, Art.148.
health policy of 2004 states that “respect for the human rights of users of psychiatric services is one of the main principles underlying the implementation of mental health policies.”\(^{18}\)

In the monitoring process, the BHC did not come across any evidence or views about the existence and effectiveness of the outlined measures. Despite that several day-centers for psycho-social rehabilitation (for example, Adaptatsia in Sofia and another one in Blagoevgrad) and some protected homes for people with mental disabilities (for example, living quarters owned by ex-patients at SPH-Novis Iskur) are in place\(^{19}\), they are far from sufficient to meet the growing needs of the mentally ill in Bulgaria. In addition, as few as they are, these are located in the big cities and have exceptionally limited capacity and narrow scope of operation. Alarmingly, the only protected home for mentally ill persons in Sofia, co-funded by Open Society Foundation and MH, was not successful in its operations and was closed down. As much as the provision of mental health services is still centralized within the inpatient psychiatric hospitals and dispensaries, it is carried out in contradiction with the identified reform measures. In addition, the few noticeable changes are effected inconsistently and stir contradictory reactions among mental health professionals. Since the main concepts underlying the mental health policy of the 2001 program are also part of the new policy, and will probably be enshrined in the new program for mental health of the citizens of Bulgaria for 2006-2012, the BHC is concerned about the virtue and effect of drafting strategies and political documents to regulate the activities in this field whose priorities remain unimplemented, as evidenced by the developments within the last four years.

4.2 Placement procedure of patients for compulsory and involuntary treatment

While conducting its previous monitoring in 2001, the BHC identified the major gaps in the Bulgarian legislation regulating the procedure for placement in a psychiatric facility for compulsory treatment which were in stark contradiction with the existent international fair trial standards – the absence of legal regulations providing for preliminary expert medical assessment of the state of the person detained even for medical examination in a psychiatric facility; no explicitly prescribed powers of the prosecution office to detain persons for medical examinations in psychiatric establishments; no entitlement of the detained person to appeal the lawfulness of his/her detention before a court. The new Health Act (HA) provides for the obligation to obtain an expert medical statement about the mental condition of the person whose detention is requested and about the potential danger ensuing from that state; from its very beginning the procedure is carried out before a court and entitles the detainee to appeal the placement order, as well as to have ex officio legal defense in the course of legal proceedings; it sets time limits to issue the medical examination report and to schedule court hearings; it also shortens the term for compulsory treatment to 3 months.


\(^{19}\) Progress Reports by the National Center for Public Health Protection within the National Program for Mental Health 2001.
4.2.1 Placement for compulsory treatment

In reality, the BHC noticed that some hospitals have established a practice not to provide compulsory treatment. Compulsory treatment that exceeds 1 month is performed at the nearest psychiatric hospital instead. Between 7% and 30% of all patients in the hospitals were placed for compulsory treatment, wherein the share was biggest in SPH-Novi Iskur, SPH-Karvuna, PD-Dobrich, and PD-Vratsa – around 30%. In the other hospitals that share varies between 10% and 25% of all patients, the lowest being in SPH-Lovech, SPH-Radnevo and SPH-Kurdjali. According to the interviewed physicians, the practice of placing patients for compulsory treatment is more rarely applied after the changes in HA and is considered as a last resort because it is burdensome and requires more efforts on their side. There is a tendency to avoid it by persuading the patient to consent to a voluntary treatment within several days after s/he has been detained or brought by compulsion to the hospital/dispensary.

Under the new HA, subject to committal to inpatient psychiatric facilities are persons who are likely to commit a crime that constitutes a danger to their relatives, to others, to the public or who seriously threaten their own health due to their illness.\(^{20}\) The Act requires to prove the probability of a mentally ill person to commit a crime due to his/her illness, which significantly limits the scope of actions performed by these persons that can serve as grounds for their committal for compulsory treatment. Therefore, the prosecution office has to prove before the court not only the actual dangerous behavior of the person due to his/her illness (which was one of the options provided by Art.36, para.3 of the repealed PHA)\(^{21}\) but also the probability of committing a crime. This, of course, is conducive to the persistence of the deficient court practice that hardly corresponded the legal provisions in the past as well. However, at present this practice results in the placement of individuals who are dangerous to their own health or to others without however proving the probability of committing a crime by these individuals. On the other hand, the new Act omits the provision of compulsory inpatient treatment as a protective measure for the ill individual because the sole ground for his/her placement/detention is the danger to commit a crime.

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\(^{20}\) Art. 146, para.1, 1 and 2 HA, “Persons with mental illnesses who need special health care as follows: 1. mentally ill with established serious disorder of the psychic functions (psychosis or grave personality disorder) or with expressed durable psychic damage as result of psychic disease; 2. person with moderate, severe or profound mental retardation or vascular and senile dementia; 3. persons with other disorders of the psychic functions, difficulties in education and troubles in adaptation, requiring medical help, care and support, in order to live adequately in family and in social environment.

\(^{21}\) Public Health Act, SG No 88 of 6.11.1973, enforced 1.01.1974, Art.36, para.3 (Amended – SG No 15 of 1991, No 12 of 1997, No 62 of 1999) “Mentally ill patients are to be placed in state psychiatric hospitals or dispensaries for compulsory treatment when they suffer from schizophrenia, paranoia, cyclophrenia, epilepsy, senility, presenility, traumatic-, vascular- and organic mental disorders, infectious-, somatogenic-, psychogenic- and intoxication psychoses, oligophrenia and severe psychopathy and due to their illness, are likely to perpetrate crimes constituting a serious danger to society or are dangerous to their relatives or others, or seriously threaten their own health shall be admitted for compulsory treatment in a state or municipal treatment facility under a judicial decree.”
However, the medical standard “Psychiatry”\textsuperscript{22} assists considerably the practical evaluation of the risk and the dangerous behavior of an individual with a certified mental illness by giving a definition for “risk behavior” – “behavior that is motivated by an illness and can constitute a danger to the patient or others”.\textsuperscript{23} According to the standard, risk levels are defined as high, medium and low. For the purpose of identifying that level the standard requires the simultaneous assessment of the four factors that contribute to risk behavior. These factors are – psychopathological stimuli, changes in the reactivity and the behavior due to a personality change, premorbide personality features and factors pertaining to the micro- and macro-social environment. The standard states explicitly that “personality changes are more closely linked to the risk of performing acts of public threat due to the patient’s impulsive decisions and actions as well as to his/her ethical deformation that entails nonconformity to moral and normative rules.” The Medical Standard “Psychiatry” lays emphasis on the problem of assessing the probability of committing a crime by a person diagnosed with a mental illness under Art. 146, para. 1 of the Health Act by stressing that “the assessment of the potential public threat (treated by HA) is only probable and may often be erroneous.” The standard sets forth a clear algorithm for emergency compulsory hospitalization when there is “aggressive or auto-aggressive behavior, psychomotor agitation, disorientation, mental derangement.” When the sum of all points in the risk-assessment algorithm comes to 35 or more, this is taken as an indication that the risk for dangerous acts is high and the patient is emergently hospitalized. Points that total between 20 and 34 are interpreted as a medium risk and a proposal for compulsory/involuntary treatment is motioned. Points below 20 indicate the need to provide treatment without compulsion, with the cooperation of the relatives of the patient.

The BHC monitoring showed that only some of the inpatient psychiatric facilities apply this standard in practice (PD-Vratsa, PD-Rousse, SPH-Karlukovo, SPH-Radnevo), while the other facilities do not apply a unified assessment methodology. However, although the standard has prescribed a unified method to screen out risk patients that are subject to compulsory hospitalization, it is alarming to notice that a variety of approaches are being employed to assess the risk behavior of patients that do not exclude the possibility of arbitrary committals upon the sole discretion of the physician who admits the patient with no objective grounds for that.

In the course of its research, the BHC came across various interpretations of the “emergency condition” concept. According to the Health Act emergency psychiatric care is a combination of medical rules and activities performed upon individuals with clear manifestations of a mental disorder when their behavior or condition presents direct and immediate danger to their own health or life or to the health or life of others”. Under the Medical Standard “Psychiatry” psychiatric patients are referred for emergency hospitalization by a certified psychiatrist after a high level of risk has been

\textsuperscript{22} Ordinance № 24 of 7.07.2004 for the adoption of the medical standard “Psychiatry”, issued by the Minister of Health, SG No 78 of 7.09.2004.(referred to as Medical Standard “Psychiatry”).

\textsuperscript{23} According to the text “the patient presents danger to him-/herself when there is a risk of committing suicide or self-injury, s/he is unable to meet his/her basic existential needs without external supervision or assistance, and can incur considerable material damage”. The patient presents danger to others when s/he “threatens or injures the personality, violates the rights of citizens, property, the rule of law in the Republic of Bulgaria as established by the Constitution, or other interests protected by law.”
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identified. Placement to an inpatient psychiatric facility is performed by specialized emergency teams or by the centers for emergency and urgent medical care. If necessary, they seek assistance from the law-enforcement bodies. Within 24 hours after the emergency placement of a psychiatric patient in a psychiatric ward without his/her consent the head of the healthcare facility calls a clinical meeting to assess the condition and determine the treatment of the patient and informs the court/prosecution office about the emergency placement by means of a medical report (specimen of the medical report is attached to the standard). The report includes detailed description of the patient’s symptoms and the related risk for him or others. It also includes an opinion about the need to institute a procedure for compulsory/involuntary treatment. The medical report has to be filed with the court/prosecution office by a special courier who immediately has to obtain a reverse opinion.

The BHC found no evidence that the inpatient facilities it visited implemented this practice. On the contrary, the BHC noticed various practices with regard to the emergency admittance procedure. All hospitals and dispensaries reported emergency cases where patients were transported to the psychiatric facility by police officers, often accompanied by a team from a center for emergency medical care (CEMC) or by a medical officer. However, a large number of them are persuaded to sign a declaration of consent for voluntary treatment within the first 24 hour of their stay at the facility.24 Once the patient’s condition is stabilized, s/he usually signs a declaration of informed consent for voluntary treatment (in 50 to 80% of the cases)25. Of course, there are cases when it takes 7 or more days to persuade a patient to sign a declaration of informed consent for treatment and within this period the compulsory treatment procedure is not motioned and his/her consent is waited for (PD-Rousse) upon request by the patient’s relatives. Some hospitals do not practice emergency admittance. Instead, emergency patients are admitted to the local dispensary that motions a committal procedure and transfers the patients to the nearest hospital within days. This practice is detrimental to the process of informing the patient about his/her rights in the course of the procedure and to the relevant actions of the court.

The purpose of risk assessment in the course of court proceedings for compulsory inpatient treatment is to justify the detention of a person in a psychiatric facility in the case that the person does not consent to undergo inpatient treatment. However, in reviewing the requests under Art. 154, para.2 of the HA filed by heads of psychiatric facilities for extension of treatment with another 48 hours after the patients condition is stabilized, the BHC team found no records of the risk assessment results to justify the compulsory hospitalization. The BHC found no risk assessment data in most of the expert medical reports produced in the course of the court proceedings for compulsory treatment. That is why the BHC researchers drew the conclusion that the detailed regulations on the risk assessment criteria are rarely applied in practice by the inpatient psychiatric facilities in Bulgaria.

24 Only 6 of the 35 patients admitted urgently at PD-Rousse within a 7-month period were detained under the conditions set forth in Art.154 of the HA.
25 For example, in 2005 22 patients were urgently admitted in SPH-Karlukevo for a period of 6 months and 20 of them gave their informed consent for voluntary treatment within 24 hours after their detention and no procedure for their compulsory treatment was instituted.
The BHC was interested to see the written records of the decisions taken by heads of psychiatric facilities to detain patients under Art.154, para.1 of the HA since the Act offers no concrete form. Only SPH-Tserova Koria had developed a form for that particular purpose – Decision for 24-Hour Detention. The medical staff in most psychiatric establishments explained that detention was carried out with an explicit entry in the case history of the patient. Such explicit entries in the case histories of patients were not identified. The case history usually states that the respective person has been emergently admitted; the date and hour of admittance are noted, followed by a short description of the person’s actions preceding the emergency hospitalization. According to the interviewed psychiatrists, the emergency detention practice varies – in some cases it is the head of the psychiatric facility who can detain a psychiatric patient for 24 hours upon emergency, while in others that is the psychiatrist on duty who has admitted the patient (PD-Vratsa, PD-Rousse). The document review showed that the psychiatrist on duty who admitted the patient was the one to perform the detentions.

Despite that the Act defines the extension of the initial detention period of 24 hours with another 48 hours upon permission by the district court as an exception, extensions turned out to be a common practice. The requests filed with the court by the different hospitals include different requisites and follow no unified form. That makes it impossible to verify the circumstances that justified the extension of the respective detention when reviewing the personal file of the patient. The BHC researchers looked for written replies by the court in response to the requests for extension of the detention period with 48 hours and found such in the patients’ files in few hospitals and dispensaries (PD-Vratsa, SPH-Kurdjali, SPH-Patalenitsa, PD-Plovdiv). This made the BHC conclude that even if such replies are received by the respective psychiatric facility, they are rarely filed. All replies fully comply with the physicians’ proposals.

The new Act provides for two options to motion a procedure for the committal of mentally ill persons. Under the first one, a prosecutor who has been informed about a person’s psychotic behavior motions the procedure; after a police investigation it is ascertained that the person’s criminal behavior probably owes to a mental condition. Thus the first option replicates the procedure under the previous PHA but with some significant changes. Under the second option, a person with some mental illness has already been placed at a health facility and the head of the respective facility can motion a procedure for his/her committal. The BHC established that in 2005 the patients undergoing compulsory inpatient treatment were predominantly committed upon proposals by the heads of the psychiatric facilities where they had already been placed. A probable explanation here is that the second option is more express and effective in view of the circumstances that call for compulsory hospitalisation of a psychiatric patient.

Regardless of the way it has been motioned, the committal procedure is closed with a decision of the district court at the location of the domicile of the person or the establishment where the person is placed. In the case that the prosecution office has

26 HA, Art.154, para.2.
27 HA, Art. 156, para.1.
requested the committal, the court has to send copies of the committal request to the person concerned, whereby the person can file objections and provide evidence within a 7-day period.\textsuperscript{28} This provision is not applied when the person is already placed at an inpatient psychiatric facility and the head of the facility has motioned the committal request. Then the person is informed about the request and the other evidence in the court hearing, while the head of the health facility has to ensure the appearance of the person before the court.\textsuperscript{29} In this case, the court hearing is scheduled immediately.

Under HA, when a decision for compulsory treatment of an emergently committed patient has to be made, the head of the respective health establishment immediately motions a reasoned request to that end which is accompanied by a medical examination report about the mental state of the person prepared by a psychiatrist.\textsuperscript{30} The Act does not provide a concrete form or requisites for the said request. The highest number of documents found in the visited facilities evidenced the implementation of this provision. Usually the requests were filed within the specified time limits but not all facilities fulfilled the requirement to substantiate them. The typical text of such a request would include the three names of the patient, date and hour of admittance to the hospital and the reasons for the patient’s emergent hospitalization.

The committal request form in SPH-Patalenitsa read as follows: “\textit{I propose that the person ........... (three names, personal identity number, address), emergently placed in SPH-Patalenitsa, be committed for compulsory treatment by virtue of Art.158, para. 3 of the HA. Extension of the period of detention under Art.154, para.2 of the HA of the same person was requested.}” The proposal is accompanied with a medical opinion, again in a special form, filled out by a psychiatrist. The form reads as follows: “\textit{I examined the person ........... (three names, personal identity number, address) and identified the following: diagnosis ............... The person’s behavior constitutes danger to him/her and to others, and therefore calls for treatment provided within an inpatient psychiatric facility}”.

The request for committal for compulsory inpatient treatment has to be accompanied with a medical examination report about the mental state of the person written by a psychiatrist \textsuperscript{31}. In practice, the psychiatrist who writes the report is either the head of the ward or the psychiatrist who has admitted the patient and has direct impressions about his/her state. The medical opinion mentions merely the patient’s diagnosis and the ensuing danger to others and to the patient’s own health (mainly acts of aggression towards self and others or unpredictable behavior), as well as some facts from the anamnesis related to the patient’s refusal to take prescribed medication or aggressive behavior even during the time of hospitalization.

While interviewing patients who were emergently committed to hospitals and dispensaries under the above procedure, the BHC did not identify cases when the patients were informed about the committal request in a court hearing. In addition,

\begin{footnotesize}
\textsuperscript{28} HA, Art.158, para. 1.
\textsuperscript{29} HA, Art.158, para.3.
\textsuperscript{30} HA, Art.154, para.3.
\textsuperscript{31} HA, Art.154, para.3.
\end{footnotesize}
they often shared that they felt uneasy during the hearing and were not aware of its purpose.

Most heads of psychiatric hospitals and dispensaries did not report about communication problems with the court as regards scheduling the court hearings immediately after the approval of the request for extension of the detention period with another 48 hours. The purpose of the first hearing in committal court cases is to verify the circumstances set forth in Art.155 of the HA – a mental state specified in Art.146, para.1 and 2, and ensuing probability to commit a crime that constitutes danger to the person, to relatives, to others or to the public, or posing a threat to the person’s own health.32 These circumstances are ascertained through questioning the person, the psychiatrist who makes a pronouncement about the mental state of the person, and witnesses when available. In the case that the above circumstances are present, the court appoints a mandatory forensic-psychiatric examination. Neither the psychiatric staff, not the patients expressed any concerns about the appearance in person in court hearings of the patient whose committal is considered. Clearly, the courts in Bulgaria observe this provision. This conclusion, however, applies only to persons who have been emergently placed at in inpatient psychiatric facility. On the other hand, the practice where persons who are summoned to the first hearing but do not appear before the court and their cases are deferred turned out to be a common one; afterwards it is impossible to bring the persons to court by compulsion because they do not reside on their permanent address. However, the mental condition of these persons in the first hearing and the degree to which the court succeeds in taking into consideration the opinion they express deserve special attention. Regrettably, few of the patients interviewed by the BHC could remember and were able to retell their impressions of the first court hearing for their committal to an inpatient psychiatric facility. The general impression is that the patients perceive the proceedings as sentencing and their attitude from the onset is that no matter how they intervene in the course of the hearing, the court will take into consideration foremostly the opinions of the psychiatrist and the prosecutor who take part in the hearing.

It should be noted that some of the patients and the medical staff reported that the person whose committal was under consideration was not present in the second, which is often also the last, court hearing. Regrettably, this fact is not entered in the text of the court decision and cannot be consistently verified through the records of the inpatient facilities. The BHC believes, however, that the presence of the person in the second hearing, where the court usually makes its pronouncement, is of utmost importance. Besides that, the court decision is appealable. Of course, even when patients are present in the second (last) court hearing, they are often in a condition that does not allow them to understand the possibility to appeal, and even less to benefit from it.

One of the most significant new provisions of the Act is the one that explicitly requires a psychiatrist and a defence counsel to be present at the hearing.33 Several conclusions can be drawn on the basis of the court hearing transcripts in the patients’ files. Firstly, the court always appoints an ex officio defense counsel. However,

32 HA, Art.159, para. 1.
33 HA, Art.158, para.4.
counsels develop no thesis in defense of their clients and their participation in the hearing often goes down to accepting the appointed forensic-psychiatric examination. The behavior of defense counsels is the cause of even greater alarm when they express opinions that clearly contradict that of their client and sometimes that of the prosecutor. Situations like that, absurd in their nature, raise a serious question regarding the quality of the appointed defence in court cases of this kind and the virtue of its present form. The BHC expresses its full disapproval of this deficient practice and believes that defence counsels who usually take part in committal cases have to undergo special training and accreditation relevant to their ex officio defence obligations. Secondly, the presence of a psychiatrist is always ensured. Unfortunately, it is not always possible to identify how the respective psychiatrist was appointed to appear in court and the law does not prescribe a mechanism for that. In most of the cases of emergently admitted patients the appointed psychiatrist is either the attending psychiatrist or a colleague from the same ward. In some health establishments the physician who advises the court is the one to make the medical examination report afterwards, while in others the practice is to have two different physicians for those purposes for financial reasons, i.e. to evenly distribute the additional remuneration for medical examinations among the physicians at the respective establishment. Heads of hospitals and dispensaries also seem to take part in first hearings. The opinions expressed by the physicians in these court hearings are interesting to note. In part of the cases, they substantiate the probable presence of a mental illness with the concrete manifestations of the person considered for committal, while in others, they directly relate the presence of a chronic mental illness diagnosed in the past with the danger of committing a crime. Actually, only some of the psychiatrists taking part in these hearings are aware of the fact that their role is limited to identifying “probable presence of a mental illness” and not to determine any danger ensuing from the illness. Thirdly, witnesses (usually relatives of the person whose committal is under consideration) give testimonies in the course of the hearing about the actions of the person. These are: discontinuation of the medicamentous therapy and ensuing acts of verbal aggression, murder threats, throwing stones at people, breaking furniture, setting houseware on fire, throwing household items out indiscriminately, disturbing neighbors at night by speaking loudly and shouting, self-injuring. It was nevertheless established that there were no witnesses present in some of the hearings. At the end of the first hearing, after it has been verified that the person probably suffers from a mental disorder, which consequently presents danger to the person, to others, to relatives and the public, the court appoints: a medical examination and determines its type (inpatient or outpatient), the health establishment and the expert to perform it, as well as the time limit for its completion, which cannot exceed 14 days, and schedules the next hearing of the case, which takes place not later than 48 hours after the completion of the medical examination. Practice shows that the court complies

34 A relevant example here is a court case which the BHC attended in DC-Karlovo, where the defence pleaded for inpatient compulsory treatment for a patient who expressed willingness to undergo outpatient treatment and the prosecutor recommended outpatient treatment as well.
35 HA, Art.159, para. 1.
36 A psychiatrist made the following statement about a patient in the first hearing “K suffers from paranoid schizophrenia and is currently having a psychotic episode. The illness presents danger to the relatives and the patient”.
37 HA, Art.159, para.1.
38 HA, Art.159, para.2.
almost invariably with the type of medical examination proposed by the psychiatrist. The procedure for the appointment of the expert varies in the different courts. In Sofia District Court experts are appointed from a list of relevant names. Other courts (DC-Pazardjik, DC-Dobrich, DC-Lovech, DC-Pleven, DC-Troyan among others) appoint as experts the psychiatrists who were present in the first court hearing and advised the court about the type of the medical examination. In the case that the so appointed psychiatrist refuses in the first hearing to perform the medical examination, another psychiatrist is appointed instead. From the document review in SPH-Lovech it became clear that it was the head of the hospital that motioned committal requests in most of the cases and he was consequently appointed as expert by the court. In SPH-Sevlievo and SPH-Tsarev Brod the psychiatrist to perform the medical examination is appointed by the head physician.

The time limits for the completion of the medical examination report are 7 or 14 days. Some courts do not set time limits for that (DC-Gabrovo, DC-Sevlievo among others) but schedule the next hearing in two-weeks time, which naturally sets the time limit for the medical examination report. The interviewed psychiatrists left the BHC with the impression that they find it to be a sufficient and optimum time limit.

As regards the medical examinations, the Act provides for their performance under the terms set forth in an ordinance issued by the Minister of Health and the Minister of Justice; the Act also stipulates that no treatment is to be applied prior to the completion of the medical examination except for emergency conditions or after obtaining informed consent from the person; and that along with the medical examination report the expert is to give opinion about the ability of the person to give informed consent for treatment, to propose a treatment for the concrete illness and recommend health institutions where the proposed treatment can be applied. On 13.05.2005 the Minister and Health and Minister of Justice issued an Ordinance for the performance of forensic-psychiatric examinations for compulsory treatment. The Ordinance defines the main purposes of such examinations as follows: 1. the relevance of committal and compulsory treatment of the person who needs special care, 2. the relevance of terminating or extending the committal and compulsory treatment.

Only physicians with an accredited specialization in psychiatry are considered qualified to perform the examination, the only exception being localities with no such specialist and where a physician with not less than 2 years of service at an inpatient psychiatric facility can be appointed as expert. The forensic-psychiatric examination for committal and compulsory treatment of minors is performed in the presence of a psychologist.

40 HA, Art.160, para.2.  
41 HA, Art.160, para.3.  
42 Ordinance No. 16 from 13.05.2005 on Forensic-Psychiatric Examinations of Persons with Mental Illnesses for Committal to Health Institutions for Compulsory Treatment, SG No. 45 from 31.05.2005 (referred to as Ordinance No 16). 
43 Ordinance No 16, Art.5.
The respective health establishment performs a quarterly forensic-psychiatric examination for termination or extension of the compulsory inpatient treatment and the district court at the location of the establishment pronounces itself *proprio motu* for termination or extension of the treatment on the basis of the examination report.\(^{44}\)

The forensic-psychiatric examination report is in writing and consists of an introduction, data from the psychiatric examination, a medical discussion and a conclusion. Data from the psychiatric examination include: information regarding the anamnesis and sources of that information; information from all additionally collected documents, especially about the health condition of the person; the results from the overall physical, neurological and mental examination, from the laboratory tests and measurements and from consultations with other specialists; information about the behavior of the person during the examination; data on the applied treatment, if applicable.\(^{45}\)

The BHC researches did not have the opportunity to see forensic-psychiatric examination reports in all visited establishments because they were not kept in the personal files of the patients. It can be concluded that there is not even one requirement or unified practice prescribed by law for safekeeping the examination reports after they are completed. For example, in PD-Rousse, SPH-Patalenitsa and SPH-Radnevo examination reports could be found in the personal files of almost all patients on compulsory treatment, while in SPH-Novis Iskur was found none and the content of the examination reports was inferred on the basis of the court decisions which reiterated parts of them. The BHC detected no variations in terms of the form of the examination reports for compulsory treatment. However, the newly introduced requirement to assess the ability of the patient to give informed consent clearly encumbered most of the psychiatrists. That is why various practices were observed with respect to that. The requirement to the expert performing the examination to provide an opinion about the ability of the patient to give informed consent was observed. Although it was not clear how those assessments were made, the BHC came across various opinions given by psychiatrists from different hospitals under similar circumstances and cases. In SPH-Tserova Koria, PD-Vratsa, SPH-Kurdjali, SPH-Novis Iskur, SPH-Karluukovo most of the assessments were that patients were unable to give informed consent and their relatives or local officials were usually entitled to give such consent on their behalf. In SPH-Patalenitsa all patients were considered able to give informed consent for treatment.

The examination reports reviewed by the BHC showed that the experts quite often inferred that patients were unable to give informed consent from the patients’ reluctance to give such, i.e. “the patient refuses to give informed consent, therefore the patient is unable to give informed consent.” The BHC finds this practice deficient and unlawful.

In most of the visited hospitals and dispensaries the BHC found no problems with regard to scheduling hearings after the completion of the forensic-psychiatric examination report. In some cases, this takes place immediately, while in others - within 48 hours after the reception of the examination report. When the parties are

\(^{44}\) Ordinance 16, Art.8.  
\(^{45}\) Ordinance 16, Art.14, para 3.
regularly summoned, the committal cases are completed in the course of two court hearings. In the second and last hearing, the court hears out the person’s opinion about the findings of the forensic-psychiatric examination and pronounces its decision on the case on the basis of the collected evidence. Interviews with patients showed that some of them were not present at the second hearing and were not informed about the content of the examination report, the court decision and the opportunity to appeal the decision if they disagreed with it. However, even the patients who were present at the hearings, including the ones that the BHC monitored, were in a state that prevented them from understanding and intervening in the course of the hearing. They did not perceive the ex officio counsel as their defence and often they did not communicate. What is more, the comments and responses of the persons whose committal was under consideration were discarded and in some of the hearings the judges were openly patronising or hostile to the patients.

In the court hearings the content of the examination report is not presented to the participants and they are expected to have acquainted themselves with it in advance. Therefore, the patient and often the defense too learn about them during the hearing and hear out only the conclusion. After that both the defense and the prosecutor plead that compulsory treatment of the patient is necessary “in the patient’s interest”. The court decisions reiterate only the conclusions of the examination reports and some of the more flagrant actions of the person that have lead to his/her hospitalization. All reviewed court decisions comply with the treatment proposed in the examination report.

The court pronounces itself about the necessity for committal to inpatient facility, determines the health establishment for that and the ability or inability of the person to give informed consent. The court sets the term of placement and treatment, as well as the type of treatment – outpatient or inpatient. The BHC noticed that in 2005 the district court in Balchik, DC-Sofia city, DC-Svoge and DC-Kavarna continued to apply the old Public Health Act and therefore committed people for compulsory treatment unlawfully. Most often the grounds for compulsory treatment in these courts’ decisions were discontinuation of the medicamentous therapy that had lead to aggressive behavior by the patients – insults, threats for physical violence, disturbing neighbors at night, throwing stones, setting fire, throwing household items out, vagrancy, neglecting their children (especially female patients). It is noticeable that most of the court decisions for compulsory treatment are based on acts of public threat or possibility for such acts and rarely on behavior that poses a possible threat to the patient’s own well-being. Apart from the legal provisions and the practice employed by other courts, the courts in Balchik, Kavarna and Dobrich take into consideration two criteria for committal – a social and a medical one. The social criterion meant only that the person had no place to live because the relatives refused to live with the person due to his/her aggressive behavior, or the person was unable to take care of his/her basic needs because s/he had no relatives. Some medical examination reports and court decisions for placement or extension of the compulsory treatment stated that even though the medical criteria were met and the patient was willing to leave the

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46 HA, Art.162, para.1.
47 HA, Art.162, para.2.
hospital, the treatment was extended because the social criteria were not met (lack of place to live, unemployment, no “supportive environment”).

The court prescribes the compulsory treatment term, which is usually from 1 to 6 months in view of different criteria. There were court decisions that did not set such a term. Under the HA, when the court establishes that a person is unable to give informed consent, it orders compulsory treatment and appoints a relative to express informed consent for the treatment on behalf of the patient. In the case of conflict of interests or when there are no relatives, the court appoints a representative from the municipal healthcare service or a person appointed by the mayor in the municipality where the health establishment is located to express informed consent about the person’s treatment. The BHC noticed that this provision of the Act is the one most often violated by the courts and the psychiatrists at the inpatient facilities. Most often the person to give informed consent is specified by the court but this is a violation of the HA because when the relatives have motioned the compulsory treatment procedure and during the court hearings have clearly expressed the desire to commit their relative to an inpatient psychiatric facility, it is again them who give informed consent about his/her treatment when the person’s inability to do that is established. Besides that, when the patient is committed, the relatives are not asked for such consent and the patients themselves sign the declaration. Clearly, such a practice makes the legal provision for informed consent redundant. The described practice is employed in PD-Vratsa, SPH-Radnevo, SPH-Kurdjali, SPH-Karvuna and SPH-Karlukovo. The physicians from the visited hospitals justified it with the fact that they could not track down the patients’ relatives and take their consent. Representatives from the municipality were appointed to give consent on behalf of patients at the hospitals in Lovech, Karvuna, Byala, Tsarev Brod, Kurdjali, Tserova Koriya and the dispensaries in Vratsa and Radnevo. However, the BHC team found such declarations in PD-Vratsa and PD-Kurdjali. The municipal representatives are informed, if informed at all, about the prospective treatment of the patient and have to give consent about it within the court hearings they attend. Some hospitals did not require from the patients placed for compulsory treatment to sign a declaration of informed consent in violation of the law (SPH-Nov I iskur, SPH-Patalenitsa, SPH-Tsarev Brod).

Among interviewed patients the BHC researches rarely met people who were aware of and understood their status at the hospital and their pertaining rights and obligations. Since committed and voluntary patients in all facilities were placed in mixed wards or sectors and even the voluntary patients often asked the researchers to be released, the BHC was left with the impression that the procedures and options pertaining to the status of the inpatients were rarely explained. Often members of the medical staff were also unable to say which of the patients in the ward were voluntary and which were committed. Patients from different wards and hospitals explained that even though they were placed for voluntary treatment, the attending physicians persuaded them to stay in the hospital for at least three months, just as they did with

48 HA, Art.162, para.3
49 For example, a decision issued by the district court in Varna on 7.04.2005 regarding the treatment of a patient at SPH-Karvuna stated that consent had to be given by a person from Balchik municipality but SPH-Karvuna sent a letter to that municipality 3 months after the court ordered the appointment of the person and meanwhile the patient was treated without consent.
committed patients. When asked, the physicians explained that the course of the patients’ treatment required that period of time to achieve better results. The BHC talked with patients who were aware of the option to appeal the committal order and who had intended to do that, but encountered various obstacles when they tried to – no access to a copy of the first instance decision, no access to writing materials, lack of stamps, etc. In many hospitals and dispensaries the BHC met patients who had not understood about the opportunity to appeal the first instance court decision in the last hearing of their case. As the court pronounces itself in that hearing, the period while the decision is appealable starts as of its date. Even when that is not so, due to the absence of the person whose committal is being considered, the said person is informed about the court decision in writing. However, the researchers could not establish whether the patients were informed about the content of the decision. It is more probable that they have not been informed about it at all or only formally so. The BHC thinks it is absolutely mandatory that the patients be provided with the documents related to their committal and have permanent access to them. Some patients shared that when they asked about the possibility to appeal their attending physicians dissuaded them by saying that the appeal would extend their stay and that it was in their interest not to appeal. That is probably why there are only isolated cases of appeal of committal court decisions. The BHC found such cases in PD-Vratsa, SPH-Lovech, SPH-Novi Iskur, SPH-Tsarev Brod, SPH-Tserova Koriya, SPH-Byala, PD-Rousse and SPH-Karvuna. Unfortunately, the outcome of only one such case is known – the patient was released from the hospital. The appeal of the committal decision suspends its execution unless the first or appellate review instance court rule otherwise. The majority of the examined court decisions mentioned noting about suspending the execution during the appeal proceedings, and the emergency patients and the patients whose committal procedure was under way were detained in the hospital during the appeal period too.

The date of termination of the compulsory inpatient treatment stirred heated discussions. Under the HA, it is terminated with the expiry of the term established with the court decision or upon decision issued by the district court at the location of the health establishment. Upon the expiry of the term established with the court decision the patient must be released. However, the perception shared by the majority of the physicians was that patients committed for compulsory treatment cannot be released without court order (SPH-Kurdjali, SPH-Novis Iskur, SPH-Byala, SPH-Tsarev Brod). Every three months the district court at the location of the facility is obliged to pronounce itself proprio motu whether to terminate or extend the committal and the compulsory treatment based on the forensic-psychiatric examination report presented by the health facility. The interviewed psychiatrists thought that it was not possible to release a patient after the expiry of the term of the compulsory treatment determined by the court without undergoing this procedure. In practice, about two weeks before the expiry of the term, i.e. when the patient was to be discharged from

50 HA, Art.163, para.1. The decision of the court can be appealed by the interested persons in 7 days term after it is decreed. The regional court shall pronounce in 7 days term decision, which shall not be subject to appeal.

51 HA, Art.163, para.2.

52 HA, Art.164, para.1.
the hospital, the psychiatrists prepared a medical examination report and submitted it to the court. The patient was discharged from the hospital only after the court ordered so. The BHC thinks that this practice should be discontinued because it is a waste of resources and allows for exceeding the term of committal. When the grounds for the compulsory inpatient treatment are eliminated before the expiry of the specified term, the committal can be discontinued upon request by the patient, the prosecutor or the head of the health establishment. This provision of the Act is applied in SPH-Lovech, SPH-Tserova Koria, SPH-Tsarev Brod, PD-Dobrich and SPH-Nov i Iskur.

The enforced placement order and the court decision to appoint a forensic-psychiatric examination are implemented by the respective health establishments with the assistance of the law-enforcement bodies if necessary. Most of the psychiatrists deemed that obligation inappropriate and unfitting their official duties. However the impatient facilities have developed a negotiation mechanism to address the issue and it has worked out well. In 2005 only SPH-Karvuna has sent out notifications to patients whose committal orders were issued in the period 2003-2005 but the patients themselves were not tracked down and they did not appear in the hospital. They were invited to appear at the hospital for treatment. There were cases when the law-enforcement bodies were unable to track down a person for months after the enforcement of the court decision and turned the person in for compulsory inpatient treatment when they found him/her. The purpose of the committal procedure is to provide inpatient treatment to persons who are dangerous to themselves and to others, therefore a person should not be committed for treatment several months (or years) later only to formally implement the court decision; instead, there should be a mechanism in place to re-assess the necessity for treatment so that to guarantee against arbitrary detentions.

The BHC came across many cases in which persons were unlawfully detained for compulsory treatment after the expiry of the prescribed term. In many of the cases the attending physicians persuaded the persons to sign a declaration for voluntary treatment after the expiry of prescribed term for purely social reasons, for example placement at a social home (SPH-Karvuna and PD-Lovech) or to continue the course of the treatment that would otherwise be terminated because of the lack of supportive environment outside the hospital (SPH-Lovech, SPH-Radnevo).

4.2.2 Placement for involuntary treatment

Involuntary treatment is regulated by the Bulgarian Penal Code (PC), whereas the procedure for its implementation is stipulated in the Penal Procedural Code (PPC). In the course of its survey, the BHC tried to research the practice of committing patients for involuntary treatment under Article 89 of the PC. Almost all of the visited hospitals and dispensaries had carried placement in line with the procedure, but they were, rather, of singular incidence. In abidance with the established practice, and not with the legislative regulations, in 2005, patients were committed to the hospitals in

53 HA, Art.164, para.3.
54 HA, Art.165, para.2.
Lovech, Sevlievo, Tsarev Brod, Byala and Kurdjali as per Article 89c of the PC, whereas in the PD-Vratsa, the SPH-Karlukovo, SPH-Radnevo, SPH-Tserova Koriya, PD-Dobrich, PD-Rousse, SPH-Nov Iskur and SPH-Karvuna committals were made under Article 89b of the PC. The psychiatrists in the SPH-were of the opinion that the measure provided for in Article 89b of the PC is implemented only in the SPH-Lovech, in the so called “closed ward for the criminally irresponsible”. However, it turned out that patients of the same group were also placed in other hospitals, where the court had obviously thought existed a social ward for involuntary treatment. The interviewed psychiatrists firmly held that only SPH-Lovech and the St. Naum Clinic of Forensic Psychiatry and Psychology at the Specialized University Hospital for Active Treatment in Neurology and Psychiatry correspond to the term *specialized psychiatric hospital* by virtue of Article 89c of the PC. In addition, it is obvious that the choice of a psychiatric establishment for serving compulsory and involuntary treatment also depends on the degree of public threat associated with the patient. Therefore, probably, the patients committed under Article 89c of the PC were considered by the court to be of greater public threat. Thus, for instance, in SPH-Lovech, the files of the criminally irresponsible patients placed in the closed ward showed that the grounds for the placement were the commitment of a crime in the condition of legal insanity during the act due to a mental illness. More than 90% of the patients placed in the ward have committed homicidal acts and the remaining 10% were detained for sexual abuse, theft and robbery, usually performed against their relatives. At the time of the visit by the BHC, there were two patients in the ward, who had been transferred from prison. They had developed a mental illness in the course of serving their sentence, which called for suspension of serving of the sentence. The BHC review of the files of patients committed for involuntary treatment in some hospitals, though limited in scope, showed that the regulatory procedure is being observed.

The opinion of the interviewed psychiatrists and the review of the files of inpatients committed for involuntary treatment have lead to the conclusion that the procedure is strictly followed by the court. However, the fact that the closed ward for criminally irresponsible individuals in SPH-Lovech had hosted a patient for a course of treatment exceeding 10 years in the past (according to the information given by the chief physician of the psychiatric ward) is the cause of some concern. Two weeks prior to the BHC visit, there was a patient in the ward, who was placed in 1998, but was sent to SPH-Sevlievo. On 09.06.2005, the BHC visited the patient having undergone the longest course of treatment in the hospital: since 2000. With regard to replacing the measures under Article 89 of the PC, the chief physician in SPH-Lovech shared that for the last five years (2000-2005) physicians from the ward recommended to replace the measure under Article 89c of the PC to the one pursuant to 89a only for patients with severe somatic damages. One of these cases was a patient treated in the hospital since 1998.

The involuntary treatment of individuals sentenced to imprisonment is administered at the psychiatric hospital at the Prison in the city of Lovech simultaneously with the serving of the sentence. The report of the hospital filed to the Ministry of Justice shows that prisons still apply the deficient practice of referring cases for inpatient treatment almost exclusively on social or regime grounds, as well as patients with
predominantly somatic sufferings. Besides, since the beginning of 2004, the health facilities in most prisons do not have permanent qualified psychiatric staff, as the specialists had quit for various reasons. The use of external consultants – who are not familiar with the specifics of the environment not the patients themselves, and are not sufficiently committed to addressing comprehensively the medical as well as the social aspects of the patient’s problems – has resulted in giving “diagnoses that barely correspond to the patients’ actual state”. The set of documents submitted upon the prisoners’ arrival in the hospital can vary in volume and sometimes contains no information about any preceding illnesses of the patient or the respective reason for placing him/her in the ward. Usually, the imprisoned person arrives with a referral and a medical report by the psychiatrist from the medical center in the respective prison. The patients are not asked of their informed consent in prison and, therefore, there is at least one patient per month who refuses to be treated and whose behavior is not psychotic but conflictual. Thereby, the prison administration handles the problems generated by the respective prisoner by referring him/her for involuntary treatment.

4.3 Material Conditions

4.3.1 Buildings, sanitary facilities, hygiene

The buildings and facilities of the psychiatric establishments are still quite old, neglected and do not fit the patients’ needs. The funds allocated for their maintenance are scarce, and the performance of renovation works is not always adequately supervised. During its 2005 visit, the BHC found that sectors in compliance with the provisions of the Rules of Procedure of Health Establishments for Inpatient Psychiatric Care (RPHEIPC) pursuant to Article 5, para. 1 of the Health Establishments Act (HEA) and the Medical Standard “Psychiatry” were established in PD-Vratsa, PD-Rousse, PD-Plovdiv, PD-Dobrich, PD-Veliko Turnovo and the distinction concerned mainly the wards for acute conditions. Sectors have been established in the hospitals in Sevlievo, Tserova Koriya, Tsarev Brod, Kurdjali, Novi Iskur (in two of the wards), Lovech (one ward) and Karvuna (on a functional, rather than a territorial principle). The renovations during 2001-2005 did not result in any significant reconstructions of inpatient psychiatric facilities, either functionally or structurally. During that period, renovations were carried out in several hospitals and dispensaries. SPH-Karlukovo was the most thoroughly renovated facility. One of its buildings underwent a complete reconstruction (2nd Female Ward accommodating 19 patients), and meets high standards of psychiatric care. The finalization of the ward for male patients is also pending. The reconstruction works were funded by the Ministry of Health following the visit by the Committee for the Prevention of Torture (CPT) of the Council of Europe, in April 2002.55 The CPT noted the deplorable state of the male ward for acute conditions: falling wall-coating, eroded floors, windows with no casing, lack of premises for group work, no running hot water, blocked toilet sewerage. According to a letter from the Bulgarian Government dated 26 July, 2002

55 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 from 17 to 26 April 2002, http://www.cpt.coe.int/documents/bgr/2004-21-inf-eng.htm
to the CPT, measures were to be taken to renovate Wards 1, 3 and 5, the sanitary units, and funds would be allocated for food and bedcover stock. During the visit of July 2005, the BHC was still concerned about the material conditions in the acute disorders ward for male patients, which ranks among the shabbiest facilities in the country. The wall-plastering there was completely peeled off, the beds and the patients’ personal closets were in a despicable state, the floor needed a new tiling and bedcovers were extremely dirty and insufficient.

According to data obtained from the hospitals, in 2004 renovations were carried out in nine establishments to an amount varying from 9 to 90,000 BGN. In 2003-2004, the surgeries, patients’ rooms, sanitary facilities and diagnostic sections at the dispensaries in Vratsa, Rousse, Dobrich, Sofia, Plovdiv and Haskovo underwent reconstruction, and similar activities were still underway in PD-Rousse and Vratsa. It has to be noted that inpatient facilities and dispensaries were in a much better condition than hospitals. The hospitals in Byala (the wards for the treatment of acute conditions), Lovech (the closed ward for criminally irresponsible patients and the male ward for acute conditions) and Patalenitsa (the acute condition wards) were in worst overall condition. There are several psychiatric establishments, which provide daily access to running hot water around the clock – SPH-Sevlievo, SPH-Tserova Koriya, SPH-Kurdjali, SPH-Karvuna, PD-Vratsa, PD-Rousse, PD-Dobrich and PD-Veliko Turnovo. For the remaining inpatient facilities, hot water is supplied once a week, on schedule, for taking showers. This makes it difficult to wash the patients’ clothes – a chore performed by the inpatients themselves in all facilities, except for those who have relatives to bring in clean wear. Thus, in some of the hospitals, washing is done with cold water. In most cases, hot water, especially in the summer season, is heated by electric boilers on particular occasions (bathing, dishwashing, etc.). During the cold months of the year, water is heated by a local heating system. The most grievous problem in terms of heating and hot water supply was identified in SPH-Radnevo. The situation was reported as early as 2001, and, by the BHC’s visit in June, 2005, no solution had been found.

The problem of maintaining hygiene in the psychiatric establishments is quite severe. As a rule, the sanitary facilities in these institutions are in the poorest condition. In almost all of the visited inpatient facilities, these are of Asian layout and the doors do not lock from the inside for safety reasons. The sanitary facilities in SPH-Patalenitsa, SPH-Byala, SPH-Tserova Koriya, SPH-Tsarev Brod, SPH-Lovech, SPH-Karvuna and the acute condition ward for male patients in SPH-Karlukovo had no running water and the toilets could not be flushed.

The supply of personal toiletries, clothing and shoes is also left to the patients, with the exception of SPH-Tserova Koriya, where these are provided by the hospital. Patients also have to see to washing and drying their clothes, while having no reasonable conditions for that. The orderlies and the nurses on-duty are usually in charge of the bathing of the patients. It needs to be noted, however, that only in few of the establishments did patients look neat and clean. Staff usually pointed out the patients’ mental illnesses as a reason for their neglected appearance. A disproof of that, however, was the state of the patients at PD-Rousse, SPH-Tserova Koriya, SPH-Kurdjali and SPH-Sevlievo, who were of the neatest appearance. Closets for personal
belongings (that did not lock) were available everywhere with very few exceptions (SPH-Patalenitsa, SPH-Tsarev Brod, the male ward for acute conditions in SPH-Novis Iskur, and their number was insufficient in SPH-Byala). The availability and condition of the bedcovers and the linen in the visited hospitals and dispensaries varied considerably. The male wards for the treatment of acute conditions in SPH-Byala, SPH-Karluovo, SPH-Tsarev Brod and SPH-Lovech, and the acute conditions treatment sectors in SPH-Patalenitsa were in greatest need of mattresses and bed linen. The bed linen in most facilities is visibly worn-out.

The psychiatric establishments have various resources when it comes to premises where patients can spend their free time. No premises are provided for organized leisure activities, except the canteens, and the canteens in SPH-Lovech and PD-Veliko Turnovo had TV-sets installed. In SPH-Novis Iskur, SPH-Karbunya, SPH-Kurdjali, SPH-Karluovo Karluovo, SPH-Tsarev Brod, SPH-Byala, and SPH-Radnevo there are libraries working for an hour or two per day. Day activities clubs were available at SPH-Karbunya, PD-Dobrich, SPH-Karluovo, SPH-Novis Iskur, SPH-Kurdjali, SPH-Tserova Koriya, and SPH-Sevlievo. The dispensaries in Rousse, Haskovo, Plovdiv and the hospitals in Sevlievo, Karvuna, Kurdjali, Novis Iskur, Karluovo and Radnevo have small foodstuff shops for the patients. SPH-Tserova Koriya has a room for knitting and embroidery, a creative therapy studio, a sewing studio and a computer hall with two PCs and a TV-set for the patients. SPH-Radnevo and SPH-Tsarev Brod have sports rooms. The hospitals in Radnevo, Novis Iskur, Karluovo, Sevlievo, Byala, Tserova Koriya, and Tsarev Brod and the dispensaries in Dobrich, Plovdiv, Rousse and Vratsa have rooms for group, art and occupational therapy. Occupational therapy farms and/or workshops are available in SPH-Radnevo, SPH-Karbunya, SPH-Tserova Koriya, SPH-Sevlievo and PD-Rousse.

4.3.2 Nutrition

By the data of the Institute for Social and Trade Union Research, the daily food allowance per person over 18 (working or labor capable) is BGN 5.85 [2.93 EUR] as of June 2005. The BHC found that the cost of the daily food allowance in inpatient psychiatric facilities is BGN 1.32 [0.66 EUR] on the average. In comparison with the data from the 2001 Report (BGN 1.00 [0.50 EUR] on the average), an increase of 30% is marked of the average cost of daily food allowance. The psychiatric hospitals in the country allocate for food about 7.12% of the state funding. No institution examines nor monitors the actual calories and ingredients of the food. In conversations with psychiatric patients the BHC heard numerous complaints about the quality and quantity of the food offered. The review of the weekly menus in the psychiatric facilities show that food is rarely assorted, meat is offered not more than twice a week in one of the courses (most often the soup), soup and desert are often not on the menu, fruit and vegetable allowances are scarce. In the visited hospitals, the BHC researchers were convinced that patients had free access to food and beverage outside the meals hours. However, many of the patients are in closed wards and have no access to food and beverage outside the meal hours, in the acute conditions wards.

in SPH-Byala, SPH-Sevlievo, SPH-Patalenitsa, SPH-Tsarev Brod, SPH-Lovech, SPH-Karlukovo, etc. (except for SPH-Tserova Koriya and SPH-Kurdjali). The BHC believes that nutrition in the Bulgarian psychiatric establishments would improve considerably if the norms for physiological nutrition are adapted to the needs of the mentally ill persons and tailored to their individual course of treatment.

4.4 Death cases and their investigation

The number of deaths in the inpatient psychiatric facilities is not proportional to the placements. The BHC established that there was lack of information about the causes of death and no feedback on correcting the circumstances that have resulted in death cases. Actually, the reasons thereto are not known, because the notifications of death most often state “ACVD-acute cardiovascular deficiency”. This is a phrase that does not convey any information about the causes for the death and reflects the ignorance and the reluctance of medical specialists to work on the case. Only some of the establishments have adopted the practice of autopsy and verification of the clinical and pathoanatomical presentation. For most cases, however, autopsy is evaded by means of a request and a declaration signed by the relatives. This procedure is partly applicable for patients undergoing voluntary treatment, but is absurd and illegal for committals. During 2005 BHC came upon information about several death cases in psychiatric hospitals. For some of them BHC carried out thorough investigation and took legal representation of the victim’s relatives before prosecution offices and courts. Other cases remained not investigated yet. Below are given some of the cases that are illustrative about the practice of investigation of deaths in psychiatric hospitals.

Ivaylo Vakarelski

During a regular monitoring visit of the BHC’s research team in Karlukovo Psychiatric Hospital (North-Western Bulgaria) it came across records about a recent death case of a young man (Ivaylo Vakarelski). Ivaylo Vakarelski was admitted for compulsory treatment to Karlukovo psychiatric hospital on 27 June 2005. On 30 June 2005 at 9 p.m. he died under suspicious circumstances in the hospital. At the moment of his death he was restrained and secluded. No autopsy was carried out. The body was buried by his relatives on 2 July 2005.

Because the case seemed unusual on 12 July 2005 a BHC’s researcher visited the parents of the dead person at their home. During this visit he learned that parents found traces of violence - bruises on the right side of the forehead and neck and around both wrists over the death body. On 16 July 2005 Vakarelski’s mother signed a power of attorney for starting a criminal procedure to a BHC’s lawyer.

57 A typical example of that is SPH-Byala.
BHC initiated a criminal procedure on behalf of the mother at the Lukovit District Prosecution Office to investigate the death of Vakarelski. BHC asked the prosecutor to exhum the body and to conduct a post-mortem examination to establish the circumstances and reasons of the death. On 18 July 2005 BHC’s lawyer requested Lovech Regional Prosecution Office to start a criminal procedure. On 15 August 2005 senior sergeant Atanasov, who works at the District Police Office in Lukovit prepared a decree for verification based on the instructions of Lovech Regional Prosecution Office. The decree says that Vakarelski was very aggressive and for this reason he was tied several times during his stay in the hospital. According to this decree the father took his son’s corpse and refused autopsy in written. On 8 September 2005 in an informal talk the prosecutor told BHC’s lawyer that there is no evidence of offence. Vakarelski’s father stated that he signed a document at the hospital but he did not understand what he was signing. The handwriting of the text (when BHC’s lawyer saw it) was obviously different from the handwriting of Vakarelski’s father.

On 14 September 2005 the Prosecutor Hristo Hristov at Lovech Regional Prosecution Office delivered a decision by which he refused to open criminal proceedings because there was no evidence of offence. He underlined that he took as evidence the preliminary check performed by the police (mentioning that Vakarelski was very aggressive towards the rest of the patients and the staff, hit the doors, broke windows and for this reason was immobilized). The decision states that he got low blood pressure and according to the explanations of Dr. Iliev and the assessment done the cause of death was irregular functioning of the heart. The prosecutor did not take into consideration many of the facts known by BHC’s lawyer during the investigation because “they are not relevant”. Vakarelski’s father has not been inquired at all.

On 21 September 2005 BHC’s lawyer appealed the prosecutor’s decision of 14 September 2005 arguing that the prosecutor did not establish the cause and the circumstances around the death. BHC’s lawyer argued that the father’s consent to non-exhumation was not taken properly since he was not adequately informed about the procedure.

On 2 November 2005 the Appeal Prosecution Office in Veliko Turnovo issued a decree № 1666/2005 that repealed the decree of the Regional Prosecution Office in Lovech № 883/2005 of 14 September 2005. The decree was referred back to the Regional Prosecution Office in Lovech for starting an inquest proceeding to find the reasons and the perpetrators of the death of Ivaylo Vakarelski. It says that there are enough facts supporting offence under Art. 123 of the Penal Code in Bulgaria which provides that “who causes death to somebody else due to a lack of knowledge or negligent fulfilment of a profession or another legally stipulated activity representing a source of high danger, shall be punished by imprisonment of up to five years.” The instruction given by the Appeal Prosecution Office in Veliko Turnovo to the Regional Prosecution Office in Lovech is that “…the specific circumstances regarding the death of Vakarelski call for starting of inquest proceeding”. According to the Appeal Prosecution Office the prerequisites based on Art. 48 of Instruction 1 of March 22, 2004 for the work and interaction of the bodies
Boyko Lazarov (age 23) has been runaway of the Dupnica District Court while he was supposed to participate on a court hearing on a criminal case against him. The police detained him and on 26 July 2005 Lazarov was placed to the Psychiatric hospital of the Lovech prison on the ground of doubt of mental disease. On 26 July 2005 at 4 p.m. Lazarov was taken for one-hour-outside-walk with other patients from the same ward. In several minutes he started to quake, fell to the ground and died. On 26 July 2005 the Lovech Regional Investigation Office opened a criminal proceeding (№ 547/2005) against unidentified perpetrator on the suspicion of murder. On 29 July 2005 information about his death was published in a national newspaper (“24 hours”). On 8 September 2005 the Lovech Regional Prosecution Office issued a decree for terminating the proceedings because the reason of the Lazarov's death was heart attack according to the findings in the forensic doctor’s report and there were no traces of violence and no evidence of crime committed. The criminal proceeding (№ 547/2005) was suspended by decree № 907/2005. On 12 October 2005 BHC’s lawyer (who had received power of attorney by the relatives of the victim) appealed this decree to the Lovech Regional Court. On 3 November 2005 the Lovech Regional Court issued a decision by which the decree was cancelled and instructions for conducting further investigation were given to the prosecution office. The investigation was to include searching for medical documentation in Lovech prison,

58 Prom. SG. 30/13 Apr 2004, corr. SG. 37/4 May 2004, Section III, Obligatory Constitution of Preliminary Proceedings
medical documentation from Bobov Dol prison and an additional forensic medical assessment for the purpose of the investigation.

Lazarov was diagnosed as having cardiac problems earlier in 2004 and the medical documentation gathered under the investigation stated that. The proceedings are still open. After the file was sent back to the Regional Prosecution Office in Lovech new investigation activities were performed. But the proceedings were terminated again on 27 January 2006. The reasoning is that the newly gathered evidence lead to the conclusion that Lazarov was admitted to the Bobov Dol Prison physically and mentally healthy on 16 May 2005. After he was examined by a psychiatrist in Dupnica the findings were that his mental condition was unstable, he complained of depressed mood, suicidal thoughts, changing behaviour. This is why hospitalization was recommended. Lazarov was admitted to the Psychiatric hospital within the Prison in Lovech on 26 July 2005 at 3,30 p.m. The nurse on duty recorded what he explained about history of his illness. Lazarov did not mention any past illnesses but only a heart attack he had in 1994. However he was unable to describe the clinical syndromes of the illness and what treatment he had at that time. The same day while he was on one-hour-outdoor-stay he died at 4,15 p.m. It was impossible to conduct any examination or treatment of any mental illness for this short period of time even if there were any. The additional forensic assessment points out that there is no connection between his mental state and his death, which was caused by heart attack. The prosecutor’s decree was appealed again.

Ivan Vladov

Ivan Vladov (age 57) was placed in the psychiatric ward at the hospital “St. Marina” in Varna where he died. The “Trud” daily announced on 5 November 2005 that on 3 of November 2005 at 2, 15 p.m. on the 4th floor of the hospital, in the first male ward one of the patients murdered another one. According to the newspaper the victim was put on an intravenous system because he was ill with pneumonia. He was murdered by Chochko Chochkov (age 27) who rushed into his room and started hitting him with the metal pole on which the bags with medicines were hung near the bed of the victim. The team on duty in the hospital managed to take the pole off the hands of Chochkov relatively fast but Vladov was dead by that time. Criminal investigation proceedings were opened. Chochkov was placed in a psychiatric hospital for compulsory treatment. BHC has not investigated this case so far.

Petar Georgiev

Trud daily reported on 27 March 2005 that Petar Georgiev – a patient in the State psychiatric hospital in Radnevo, died after a fight with another patient which took place on 25th of March 2005 at 4 p.m. in one of the rooms of 4th male ward in the hospital. The men placed there were ill with chronic schizophrenia according to the newspaper, and had spent many years under treatment. The newspaper received the information from the Regional Department of Internal Affairs in Stara Zagora. The reasons for the fight was not clear yet but the man was murdered as a result of kick and fist fight. The orderlies managed to separate the two fighting men but after that Georgiev died. Autopsy was performed in Stara Zagora and the forensic experts
concluded that the man died because of breathing insufficiency, caused by broken ribs. The other participant in the fight – 48-years-old man – was secluded in a room in the hospital. Criminal investigation was opened and questioning of the witnesses was forthcoming. BHC did not manage to investigate that case.

4.5 Seclusion and Restraint

The problem of seclusion and restraint in the course of inpatient psychiatric treatment continues to be a burning one. In the recent years a few statutory acts came into force to regulate in detail the terms and parameters of measures for physical restraint – *the Medical Standard “Psychiatry”* that contains the conditions for supervision and a general description of staff actions performed to manage patients’ agitation 59, *The Public Health Act* 60 and *Ordinance No. 1* adopted pursuant to Article 150, para 8 of the *Public Health Act* on 28 June, 2005, on the Procedure for the Implementation of Measures for Temporary Physical Restraint of Patients Diagnosed with Mental Disorders, which furnishes a detailed definition of both the measures themselves and the timing and manner of their enforcement, the circumstances calling for such measures and the maintenance of the required documentation. The BHC found that the lack of separate premises for seclusion and restraint, the unnecessarily bulky description of each measure undertaken, the lack of staff to supervise the patients placed under restraint measures, as well as the requirement of temporary restraint being carried out by no less than four persons from the therapeutic team, at least one of them being of the same sex as the patient, are the major problems associated with the actual implementation of the new ordinance.

Separated high-security sectors exist only in SPH-Kurdjali, SPH-Novи Iskur and SPH-Tsarev Brod but even in these hospitals the residential premises are not furnished with the necessary equipment and are not safe or fit for a long-term placement. The law does not prescribe the term of placement in these sectors. It depends on the level of risk of aggressive, self-aggressive or unpredictable behavior. The Standard provides for reporting aggressive outbreaks in the clinical case history, noting them down in the nurses’ reports, in the intensive monitoring and supervision chart, the temperature record, etc. After the initial registration, aggressiveness has to be monitored throughout the entire period of attendance, keeping a record of developments. The

59 The Standards provides for the management of patients’ agitation to be done by four staff members (each aiming at a particular limb), where necessary – restraint administered by a physician and monitored every 30 minutes, and a mandatory written report in accordance with the physical restraint record keeping (3.2.1.d)

60 Art. 150, HA Art. 150. (1) For patients with established psychic disorders, fallen into status, being direct and immediate danger for their own health or life or for the health and the life of other persons, can be applied measures for temporary physical restriction. (2) The measures of para 1 shall be applied only as prerequisite for creating conditions for conducting the treatment and they do not substitute the active treatment. (3) The undertaking of measures for physical restriction shall be ordered by a doctor, who defines the kind of the measure and the term for its application. This term cannot be longer than 6 hours. (4) The measures of para 1 shall be implemented by staff, trained for this in advance. (5) The kind of the undertaken measures for physical restriction, the reasons, imposed this, the term for their application, the name of the doctor, who has ordered them and the applied medicamental treatment shall be entered into special book of the medical establishment and in the history of the disease. (6) The person, towards who have been undertaken measures for physical restriction, must be under constant observation by doctor or nurse. (7) The order for applying measures for physical restriction shall be provided with ordinance by the Minister of Health together with the Minister of Justice.
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BHC inspection of aggressiveness records showed the lack of a consistent practice for regular monitoring and making entries in the respective documentation about the degree of aggression. Therefore, patients placed in high-security sectors upon their admission remain there till the end of their stay at the inpatient facility, despite the reduced level of their aggressiveness and the need for high security later on. Inpatient facilities monitor patients’ behavior with regard to suicide, aggression, self-aggression, agitation, eating, escape, taking medications, epilepsy, robbery and intensive care. Monitoring information is updated on a daily basis.

Temporary restraint and seclusion is often performed in the rooms before and among other patients. Monitoring of patients during restraint has to be more intense as compared to that during seclusion. According to Article 11 para. 3 of Ordinance No. 1, a nurse has to keep vigil by the bed of the restrained patient. The lack of permanent monitoring in the closed ward for the criminally irresponsible in SPH-Lovech in November 2004 resulted in one of the patients, who was residing in a room where another patient was under restraint, untied the strap during the night and hanged himself on the bathroom shower. The nurse taking the night shift had managed, together with an orderly and the security, to take down the patient who was still breathing as only seconds had passed from the hanging. She applied artificial respiration, but while the emergency team arrived, the patient had died.

In accordance with Ordinance No. 1 the mechanical tools used for physical restraint have to be straps or straight jackets. It explicitly bans the use of chains, handcuffs and other sharp and dangerous tools. Irrespective of this, during the BHC visit in the seclusion premises of the male ward for acute conditions in SPH-Tsarev Brod on 20 May 2005, two patients (placed in two isolators, independently from each other) reported to have been immobilized for the whole night with leather straps on three limbs and a chain on the forth. When asked to show the straps used for the physical restraint of the mentally ill, the orderly took them out of a cabinet, but refused to open it for examination afterwards. There were entries of neither the fixing methods, nor of the patients’ stay in the isolator in the registry book for measures of physical restraint. During the BHC visit to the closed ward for the criminally irresponsible in SPH-Lovech, patients reported privately to the researchers that handcuffs were also used for restraint but were kept by the security. A private company provides security in the ward and the guards have handcuffs. The nurses later confirmed the use of handcuffs for physical restraint too. Patients from the male ward for treating acute mental conditions in SPH-Patalenitsa also reported cases of physical restraint in which one of the hands was handcuffed to the bed for several days. In SPH-Novi Iskur straps are used for immobilization across the chest and linen sheets are used for the limbs.

The grounds for imposing a physical restraint measure are stipulated in para (1) of Article 150 of the Health Act and a similar wording is used in Ordinance No. 1. They are associated with the need to prevent a direct and immediate threat to the patient’s own health or life or the health or life of other persons. The BHC found that restraint measures were imposed both to punish patients and to maintain peace and order in the
wards. The measure has also been used as a penalty. Pursuant to Ordinance No. 1, para 3, the physician makes entries into the clinical case history with regard to nine indicators about each measure of physical restraint – the temporary condition of the patient, the circumstances calling for the use of such measure, its type and time of duration, the names of the staff members enforcing the measure, the names of the monitoring nurses, the prescribed medications, the changes in the patient’s condition, the alternations in the medicamentous therapy, date, hour, name and signature. Not in one of the visited inpatient facilities did BHC find consistent documentation of the clinical case history and the measures of physical restraint. The practice in inpatient facilities of entering the physical restraint instances and the measures taken in a register was rather diverse. The female ward for the treatment of acute mental conditions in SPH-Patalenitsa and PD-Veliko Turnovo had no registry book for the physical restraint measures, whereas the first male ward in the SPH-Kurdjali had a notebook of physical restraint and seclusion in which no entries were made since 2002. However, the report book listed six physical restraints and involuntary administration of medication of four patients within a month only. In the male ward for acute mental conditions at SPH-Patalenitsa, the latest entries dated back to the beginning of 2004 but the nurses’ reports contained data about the physical restraint for two patients within the last two weeks only: from 29.06.2005 until 01.07.2005. The irregular entries and the discrepancies between the information in the report books and the register of physical restraint measures were the case in other inpatient facilities. The volume of the entries in the report books and the register of physical restraint measures varied from one inpatient facility to another. Only the date but not the hour of physical restraint can be ascertained through the records of the closed ward for the criminally irresponsible in SPH-Lovech, SPH-Sevlievo, the female wards for acute mental conditions in SPH-Novi Iskur and SPH-Patalenitsa.

According to Article 150, para 3 of the Health Act the measures of physical restraint shall not imposed for over six hours. Ordinance No. 1 further specifies that seclusion cannot exceed six hours, and physical restraint – two hours. The BHC found out that the duration of the physical restraint of patients as per the entries in the records exceeded considerably two hours both before and after the entry into force of Ordinance No. 1. Thus, for instance, in SPH-Sevlievo, the book of the male ward for acute mental conditions had an entry about a physical restraint of a young man, which had lasted over ten days. In PD-Vratsa, a patient was physically restrained, his arms and legs tied, for four full days and one hour from 27.01.2005 to 31.01.2005 due to aggression and resistance to medication. The practice in SPH-Patalenitsa is of greatest concern, as the duration of measures is extremely long. The nurses’ report book from the male ward for treatment of acute mental conditions contains data of physical restraint for two patients only within the last two weeks: from 29.06.2005 until 01.07.2005.

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61 In the physical restraint book in SPH-Novi Iskar the “grounds for the restraint” are listed against the name of the patient as follows: N. S. “became a nuisance, he was pestering and disturbing the others’ sleep”. The reports book of the female ward in SPH-Patalenitsa stated that a patient was restrained physically because she “...gets up from the bed, runs along the hallway, takes her clothes off, opens and shuts the windows with a thressh”. Further down the book mentioned about the same patient: „She was awake all night, she was multiply restrained physically, but with no effect.” And still further down, about the same patient, the report read: “She slept until 12 o’clock and then started going around and disturbing other patients. She had to be physically restrained until the morning.”
During that period the patients were not visited by a physician and were unable to go to the toilet (other patients had to bring in a waste-bin for them to urinate in). According to the chief physician from the female ward for acute mental conditions in SPH-Patalenitsa, and the nurse on duty, the physical restraint continues on the average for 10 - 12 hours, but sometimes for 36 hours, the patients being released for meals and going to the toilet. Most striking is the case of a female patient of 46, suffering from decubitus ulcer, who was admitted to SPH-for voluntary treatment on 04. 05.2005, who has been physically restrained continuously from 8 to 11 May, 2005, later on, from 15 to 24 May, 2005, and finally, from 27 May, 2005 to 1 June 2005. The patient was discharged from SPH-Patalenitsa on 7 June 2005, i.e. one week following the period of 24 full days spent in physical restraint with short interruptions.

The other physical restraint measure – temporary seclusion (isolation) of patients in separate premises – was not used as intensively in 2005 as it had been in the period 2000-2001. In some inpatient facilities (SPH-Patalenitsa and PD-Vratsa) the seclusion measures were enforced only for the night, while the patients could move unrestricted within the ward during the day. The recording of the seclusion measure was not done in the manner prescribed by Ordinance No. 1 for any of the cases. The isolation of patients was perceived as a placement in individual premises, rather than as a measure of physical restraint, and in some cases, as the staff put it, patients unable to communicate with other patients without getting into conflict were accommodated in the isolator at their own will (SPH-Kurdjali). Ordinance No. 1 provides for no specific requirements regarding the premises for temporary seclusion and makes a cross-reference to the Standard “Psychiatry”, where these premises are described as being part of the high-security sectors. Αχχορδινγ το τηε Στανδαρδ, τηεσε σεχτορσ προσβε µορε ιντενσε µονι τορινγ ανδ χαρε ωφ πατιεντσ ωηοσε στατε ενταιλσ ρισκ αφ αγγρεσσιϖε, σελφ− αγγρεσσιϖε ορ υνπρεδιχταβλε βεηαϖιορ, ορ ωιτη χο−µορβιδιτψ οφ βοδιλγ αν δ µενταλ πατηολογψ. Τηε τεξτ οφ τηε Στανδαρδ, ηοωεϖε νοτ χονταιν α νψ ιµπερατιϖε προϖισιονσ ρεγαρδινγ τηε ιντεριορ, εθυιµεντ, σαφετψ πρινχιϖ λεσ, αχχεςσ ανδ µονιτορινγ πραχτιχεσ.

Only in SPH-Karlukovo, after the renovations, two isolators were furnished with terroglass, specially delivered multifunctional beds and a surveillance camera, which, at the time of the visit by the BHC on 8 July, 2005, were not being used what they were intended for. All other hospitals use as isolator rooms which are in no way different from those that accommodate the patients in the wards for acute mental conditions. There are single isolators with massive metal beds in SPH-Kurdjali, but these premises are also incompliant with the safety and monitoring requirements.

In most of the inpatient facilities the patient’s stay in an isolator was not around the clock. They were allowed access to the hallways and the common premises during the day. Isolated patients should be monitored directly or via remote surveillance devices. Only PD-Vratsa had an operational surveillance camera, which allowed for the monitoring of risk patients from the surgery, whereas in PD-Haskovo the surgeries in the male and female wards share a terroglass wall with the premises for seclusion and restraint and the nurses can monitor the patients around the clock. All other inpatient
facilities have turned regular premises with metal doors into isolators, without conditions for monitoring patients in acute psychoses permanently, as prescribed by the Medical Standard “Psychiatry” and lacking the necessary safety equipment.

4.6 Other patients’ rights

The patients’ access to telephone is formally regulated. The response that the BHC usually got with regard to that access was that patients used the telephone in the surgery. Interviewed patients shared with the BHC researchers that they could really use this telephone to talk to their relatives but only if the call was made from the outside. The patients who cannot afford to buy a phone card for long-distance calls and those committed to the closed wards have no access to telephone. The BHC found that several facilities had telephones that operated with coins or cards but were out of order. The staff explained that patients had broken or damaged the telephone sets and they could not be repaired due to the lack of funds.

The right to uncensored correspondence is also not respected. The patients’ letters are often read by the staff prior to sending them out “because of their inappropriate content and the threats included in them”. It is important that the brochures of each inpatient facility place a special emphasis on the right to private uncensored correspondence, of which the patients were not aware. The provision of paper, pens and envelopes in the canteens and the inpatients’ clubs would guarantee this right to a higher degree.

The right to a home leave is observed everywhere. Home leave is included in the individual treatment plan and is often presented by physicians as part of the rehabilitation program preceding discharge. Patients are most often let out for a home leave on the condition that their state has considerably improved since admission and can be handled by their relatives at home. In most of the hospitals, the committed patients are not entitled to any home leave for the period of treatment ordered by the court.

The overall appearance and hygiene of the patients is indicative of the staff’s attitude towards them. The BHC established that in many of the visited facilities the inpatients did not look well and found it difficult to maintain their personal hygiene and clean wear. Conversations with staff members showed that they did not perceive assisting patients who are not critical to their personal hygiene and/or have lost the ability to maintain it to be part of their responsibilities.
5. Social care homes for people with mental disabilities

5.1 General overview and trends

BHC has been carrying out systematic monitoring of social care homes for adults with mental disorders in Bulgaria. These institutions are social, rather than healthcare institutions, and the presumption is that their clients do not need active treatment. In the most general terms, they can be defined as institutions for placement of people who as a result of mental illness or a developmental disability are unable to take care of themselves alone; who do not receive any support from their relatives or do not have any relatives, since they have been abandoned by them from early childhood and are thus left to the care of society. There are three types of social care homes in Bulgaria: Homes for Developmentally Disabled Adults (HDDAs), Homes for Mentally Ill Adults (HMIAs), and Homes for Adults Suffering from Dementia (HADs). This categorization, however, as this publication will illustrate, is to a great extent provisional since in many of the homes the categories of residents are mixed.

In the course of a several years monitoring of the social care homes for people with mental disorders, the BHC researchers visited every one of these homes, making follow-up visits to many of them. These visits were made possible thanks to the cooperation of the Ministry of Labour and Social Policy (MLSP). After the first year of monitoring, the BHC concluded a formal agreement for the visits with the MLSP which enabled our researchers to make unannounced visits to the homes, to inspect the documentation and interview residents and staff. Information was gathered using a special questionnaire.

The BHC research in the homes for people with mental disorders was carried out in a period of reform of both the social welfare system in Bulgaria as a whole, and in the social care institutions. Some of the worst social care homes were closed down, and the material conditions and quality of care in several others improved in 2001-2004. Although the changes were carried out by the Ministry of Labour and Social Policy, it came about mainly under the pressure of local and international human rights organisations. It has to be noted however that such changes were also carried out by previous ministers of the Labour and Social Policy and that the reforms undertaken by the current minister are far from ensuring an adequate system of care and protection for the rights of people with mental disorders in Bulgaria. In many cases the reforms were cosmetic and did not significantly affect the lives of the people in the institutions.

5.2. Placement

When the Bulgarian Helsinki Committee team began its investigation of all social care homes for people with mental disorders in September 2001, Bulgaria barely had any regulatory mechanism for the provision of social services to such persons. It was primarily regulated by Regulation No. 4 on the Conditions and Procedures for the
Provision of Social Services of March 16, 1999,\textsuperscript{62} which defines “adults with mental disorders”\textsuperscript{63} as those who have been diagnosed with different degrees of developmental disability, psychological disorders or dementia. According to Art. 12 of the Regulation, homes for adults with developmental disorders aged 18 and over (HDDAs), homes for mentally ill adults aged 18 and over (HMIAs), and homes for adults aged 18 and over suffering from dementia (HADs) are designated as institutions for the year-round provision of social services outside the normal home environment. As they are financed by the state budget, they are state homes in the sense of Art. 2 of the Regulation.

The inability to provide "care specific to the state of their health, in the home environment" (Art. 27), after all the possibilities for remaining with the family have been exhausted, is grounds for placement in a home for people with mental disorders. In addition, Regulation No. 4 (Art. 39) stipulates that "the placement in a social care home of persons whose psychological and physical condition do not correspond to the profile of the institution is prohibited," and that "placement in a social care home must be made according to district location."

Since the amendments made to the Regulations for the Enforcement of the Social Welfare Act (RESWA) and the establishment of the Social Welfare Agency (SWA), which replaced the National Social Welfare Service, placement in homes for people with mental disorders is made in accordance with the following procedure: the candidate or his/her legal representative submits a request to the Social Welfare Department (SWD) in the region in which he or she resides, along with a medical document that certifies the candidate's illness. Afterwards a social worker from the local department conducts a social assessment, in which the family, property and social situation of the candidate are studied, and prepares a proposal for placement in a social care home (or a denial of placement, if the social worker finds that there are other means of providing social services to the candidate). Then the entire set of documents is sent to the Social Welfare Department, which issues an accompanying letter to the appropriate Regional Social Welfare Department for the candidate's placement in a home. Upon placement, a contract is signed between the institution and the individual in need of care or his or her legal representative, stating the amount and time-frame of the provision of social services, as well as the fee the resident will pay for them. A mandatory medical examination is made of each individual newly accepted into a social care home. In letter SG-91-00-77 of October 20, 1999, paragraph 9, subparagraph b), former Deputy Minister of Labour and Social Policy Dr. Tatyana Vassileva stipulated that "when an individual placed in a social care home has no parents or designated guardian/trustee, it is the responsibility of the director of the home for mentally disabled adults to send a request to the court that the individual be declared incompetent and placed in the home" and in subparagraph c):

\textsuperscript{62} State Gazette, issue 29, March 30, 1999, amended in issue 54 of June 15, 1999 and not repealed to date.

\textsuperscript{63} From this point on in its analysis the present document uses the term "adults with mental disorders" to encompass three groups of people 18 years of age and over with developmental disabilities, mental illnesses and persons suffering from dementia.
"after the ruling of the court [it is the responsibility of the director of the home] to consult with the liaison of guardianship in the appropriate municipality for the designation of a trustee or guardian."

In and of itself this procedure for placement in a social care home does not appear to presume involuntary detention or custody. Investigations by international and Bulgarian human rights organisations show, however, that in practice there are exceptionally few individuals with mental disorders who have been placed in social care homes upon their own request. Often placement requests and social service contracts contain not only the name of the provider of the services and of the candidate for placement, but also the names of relatives, neighbours or spouses of the mentally disabled person, who are not even the candidate's guardians or trustees, but have submitted a request for placement in a home in their name. And even when the placement is made in the candidate's own name by a guardian or trustee, the will of the candidate is not taken into account. The candidate is not represented by an attorney. There is also no follow-up court supervision of the social welfare agencies.

Since after placement there are only exceptional cases when those living in social services homes are transferred or taken in by their families, most of those placed in the homes live the remainder of their lives in them. This is why it is so important that the initial placement be made by a court organ, with guarantees that the interests of the candidate for receiving social services be protected. The actions of the municipal or state agencies that carry out the social assessment and make the decision with regard to placement should be observed and supervised by an independent agency. This would be one way to reduce the number of cases of arbitrary placement of individuals in social care homes. Of course, parallel to this, new and alternative methods of providing social services also need to be introduced, as appropriate to the varying needs of people with mental disorders.

At present in Bulgaria there are 26 social care homes for developmentally disabled adults, 13 homes for adults with mental illness and 13 homes for adults with dementia. About 4,500 people live in these homes, of which about 2,500 are in HDDAs, about 1,200 in HMIAs and about 800 in HADs. Thirteen HDDAs and eight HMIAs are for the placement of women only, and ten HDDAs and five HMIAs are for men only. Both men and women are placed in all of the HADs, and in six of the HDDAs. Overall, women make up about 55% of the total population in the three types of homes. There are about 30% more women than men in the HMIAs, and about 24% more women than men in the HADs. Men outnumber women only in the

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65 With the amendments made to the Child Protection Act (prom. State Gazette, issue 48, June 13, 2000) from April 18, 2003, placement in children's institutions is made by the court. Article 26 as amended (State Gazette, issue 36, April 18, 2003) provides: "Placement of a child in the family of relatives or close friends, as well as placement of a child with a foster family or a specialised institution, is performed by the court. Until the court has ruled on the case, the Social Welfare Department makes a temporary placement on the child's behalf, according to the administrative rules." Such a procedure, however, is not provided for placement in a social care home for adults.
Most of the residents (52%) are placed in homes that house 50 to 100 people, with
most of these being placed in HDDAs. A further 42% of residents are placed in homes
housing over 100 people, again most of them in HDDAs. Only 5.8% of residents are
in homes for fewer than 50 people, and they are primarily in HADs. There is not one
HMIA that has a capacity or population of fewer than 50 people. About 70% of social
homes for people with mental disorders are located outside of populated areas (towns,
villages, etc.).

Designation of the profiles and regions served by the homes has proven in practice to
be entirely nominal. It is clear that not only employees of the social welfare districts,
but also employees of the Social Welfare Agency, consistently fail to follow the
regulatory requirements and place people in homes whose profiles are inappropriate
to the individuals' respective diagnoses. Because of this atrocious practice,
developmentally disabled people and people with mental illnesses reside together in
many of the homes. Unfortunately, this cohabitation has led to the death of the most
vulnerable residents in several of the homes. In Bulgaria's homes for the
developmentally disabled, about 26% of the residents suffer from mental illnesses,
and their placement does not correspond to the profile of the institution in which they
currently reside. Although less common, there are also cases of residents with
developmental disabilities living in homes for adults with dementia. Of a total of 818
people placed in HADs, 78 (9.5%) are diagnosed as having a "developmental
disability." In addition to the homes' profiles, their regional district designations are
also not adhered to, due to the fact that not all districts have all three types of homes.

Another, more serious problem with the placement of people with mental disorders in
social care homes is the lack of possible alternatives for the provision of social
services. In practice, the "exhaustion of possibilities to remain with the family," which
is a mandatory precondition before the placement of an individual in a home, is not an
enforced regulatory requirement.

In the course of its 2003 investigation, the BHC visited 25 social welfare departments,
on the territory of which there are homes for people with mental disorders. The aim
was to establish how the placement of such people in homes was being conducted,
with relation to the exhaustion of the other possibilities for care within the community
before placement in a home. The directors and social workers in these districts were
unanimous in stating that the criteria for placement in specialized institutions were:
medical (the primary diagnosis and the level of developmental disability or mental
illness), and social (abandonment by relatives and friends, poverty, unemployment,
lack of social support or preventative measures against institutionalisation by the
state, incapability of the individuals to care for themselves and lack of
relatives/friends or of desire on the part of the relatives/friends to care for them).
Employees of some of the social welfare departments also indicated that the
departments on whose territory people are placed into institutions have the least
participation in the social assessment of the reasons for placement due to the
problematic profile and district designations of the homes. Assessment of the so-
called "exhaustion of possibilities" is carried out according to the place of residence, and the final placement decision is made by the Social Welfare Agency.

In theory, before the social assessment can be prepared and a report recommending placement in a home written, the social status of the person requiring social services should have been investigated, the possibilities for the delivery of services: private and social assistant, social patronage to have been analysed, and job opportunities for the people close to the person who submitted the request to have been sought. Regardless of whether the social worker does this to a greater or lesser degree, the only possibility for a person in need of social services still turns out to be placement in a home. In most of the cases that the BHC learned about, the social assessment questionnaire does not contain information regarding the concrete daily needs and existing capabilities of the candidates, it does not indicate their precise diagnoses, nor when they were last re-evaluated, and does not reflect contact made with relatives (if any) and their opinion regarding the reasons for which they cannot or do not wish to care for the candidate.

The BHC researchers uncovered numerous instances of social assessment questionnaires being completed with incorrect or unverified data, which then have a serious influence on the Social Welfare Departments’ decision regarding placement in a home. This conclusion was also confirmed by some of the social workers and home directors. In addition, the recommendation for placement and the placement decision do not contain information regarding the exhaustion of possibilities for the given candidate's remaining with the family and/or community. The overall impression given by the social placement questionnaires (of those already placed in homes) that were examined by the BHC was that in most cases they were prepared according to a model, without including documented evidence of the candidate's assets or marital status, and without an individual approach being taken toward the decision in each particular case with regard to the exhaustion of possibilities, but rather that data were collected to support the argument that the only possibility for assisting the candidate was placement in a home. The BHC also determined that the social workers in the Social Welfare Departments are not specially trained to conduct the social assessment, how to verify the data about the candidates or how to make a precise selection of candidates who could benefit from other social services provided by the community.

Up to now many people have ended up in social care homes entirely or primarily due to social reasons; homelessness, lack of material means, unemployment, and lack of desire or ability on the part of their relatives to care for them. The medical indications in these cases have not been the main criteria for placement in a home. It is noteworthy that during the past two to three years, people have been placed in homes for individuals with mental disorders when with precisely targeted, adequate assistance they could have remained in the community, but due to a lack of variety of forms of social welfare available to them and their families, they end up in a home. Some of the residents are placed in homes as the result of the self-serving interests of their relatives. Others end up in a social care home because they were abandoned by their relatives as children, due to birth defects or social reasons, such as lack of resources to care for a child, unemployment, inability to provide care due to the
mother having a health problem, etc. This is a tendency more characteristic for the homes for adults with developmental disabilities, in which the prevailing part of the residents have been transferred from homes for children and youths with developmental disabilities or from special schools and Social Vocational Training Schools (SVTS). Even among this group, however, there are people who could have lived independently in the community with minimal assistance and intervention. The picture is different in homes in which the majority of residents come from homes for developmentally disabled children and youths (HDDCY). The diagnosis of the persons placed in these homes is usually "moderate or severe and profound mental retardation." These diagnoses have not been re-evaluated except in the case of those who acquire a disability pension, and the institutionalisation of these people from an early age has led to serious violations and the prevention of their social reintegration.

In the course of its project the BHC determined that the majority of the residents (about 80%) have no contact whatsoever with their relatives - they do not write or receive letters, they do not receive packages or visitors, and their relatives do not come to pick them up for home visits.

5.3. Declaration of incompetency

5.3.1 Definition, consequences and procedures

At the time of the visits by the BHC investigators, about 85% of the residents of HDDAs, about 73% of the residents of HMIAs and about 44% of the residents of HADs had been declared incompetent. Among these, the overwhelming majority were cases of total incompetency: 92% of those committed to HDDAs, 89% of those committed to HMIAs and 88% of those committed to HADs.

Under Bulgarian law, incompetency is the deprivation or limitation of a physical person's civil legal capacity – their ability to conduct lawful legal proceedings, through which they initiate, preserve, amend, lapse or terminate rights and responsibilities. The *Persons and Family Act* (PFA) recognizes only two degrees of this legal status: full or partial incompetency. An adult that has been declared partially incompetent is put on an equivalent level of ability to conduct legal affairs as a juvenile child (14 to 18 years of age). A juvenile or an adult that has been declared fully incompetent are put under the same status as a minor child (up to 14 years of age). A guardian is appointed for a person declared fully incompetent, while a trustee is appointed for a person declared partially incompetent. The difference in the basis for determining full or partial incompetency according to this regulation is in the degree. According to Art. 5 of the *Persons and Family Act*, "adults with such afflictions, whose condition is not so severe as to warrant declaration as fully incompetent, are declared partially incompetent." Using language from the beginning of the previous century, Art. 5 of the PFA (last amended in 1953) sets forth two

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67 This basic principle has not, however, been subsequently incorporated into Bulgarian law. See as one of many examples Article 54, para. 4 of the *Family Code*, in which the position of those pronounced partially or fully legally incompetent is equivalent to that of the minor.
criteria for declaring a person incompetent:
1. Medical: presence of "feeble-mindedness or a mental disease" or
2. Legal: presence of a state in which the person "is unable to manage his own affairs."

The legal criteria are also similarly defined. The social relationships in which different people participate are different. The scope of his or her "own affairs" that a person must "manage" differs depending on many characteristics of one’s social status. The BHC observations in cases of declaration of incompetency and of the clients in social services homes who have been declared incompetent confirm this supposition. The motives for evaluation by the court of whether a person "is able to manage his/her own affairs" includes a broad spectrum of factors of dubious legal character. Such factors include the person's lifestyle (for example, whether they are vagrants or engage in "amoral behaviour"); whether they have a place of their own; income, including the pension paid by the state; attitude on the part of other family members toward them, etc.

The BHC researchers also received many complaints from clients in the social care homes, some of them confirmed by the staff, of the use of groundless declaration of incompetency and commitment to a social care home by family members, in order to receive property benefits, especially when those persons succeeded in being appointed the guardians of those declared incompetent. In quite a few of the homes visited by the BHC, the researchers met people who had been declared incompetent, the grounds for which were debatable from the very level of medical diagnosis. This was most clearly seen in the cases of residents with slight developmental disabilities.

In Bulgaria, declaration of a person as incompetent deprives them of or limits their civil legal capacity, thereby seriously affecting their ability to sufficiently achieve fulfillment in life. The generalized, not individual, approach toward declaring incompetency is compounded by the limited legal norms in many laws and sub-regulations that presume to describe a set of officially regulated social relationships, participation in which by persons declared incompetent is prevented or limited, without regard for their individual possibilities.

The procedure for declaring a person incompetent in Bulgaria is legally regulated by one of the special provisions in Art. 275-277 of the Code of Civil Procedure (CCP). The procedural guidance in these provisions is quite vague and has largely been expanded by interpretation/precedent. The regional district courts have jurisdiction over cases requesting a declaration of incompetency. The procedure may be instigated by filing a claim "from the spouse, from close relatives, from the prosecutor or from anybody who has a legal interest in this [matter]" (Art. 275, para. 1). This circle of people includes direct and lateral relatives up to the fourth level, and any legal heirs.

68 The BHC researchers met R.T. during two of its visits to the Home for Adults with Mental Illness in the village of Pastra. He conversed articulately and lucidly, and was well-acquainted with money and the prices in the region. According to R.T. the main reason for his being declared incompetent and placed in a home was his family's desire to remove him from the family residential property.
threatened by dissipation of the estate, who may not necessarily be close relatives.\textsuperscript{69} The participation of a prosecutor is mandatory. The court makes a ruling regardless of which kind of incompetency is requested – full or partial.\textsuperscript{70}

According to Art. 275, para. 3, "the person whose declaration as incompetent is being sought, must be personally interviewed and if necessary, made to appear involuntarily. When the person is in a medical institution and his health condition does not allow his personal appearance at the court hearing, the court is required to obtain a first-hand assessment of his condition." When the person is in a medical institution, the entire panel of judges must go to the medical institution, in order to familiarize itself with the condition of the defendant.\textsuperscript{71} It is not permissible for the questioning of the defendant to be carried out by a delegation from another court. The same court [panel] that rules on the declaration of incompetency must question the defendant. Failure to adhere to this condition is grounds for striking down the ruling of the first-instance court and for the case's being returned to be reheard by a different panel of judges.\textsuperscript{72} According to Art. 276, Para. 1 "the court rules on the claim after questioning the person whose declaration as incompetent is being sought, and of the people close to him.\textsuperscript{73} If the court does not do so, it would be committing a procedural violation.\textsuperscript{74}

Art. 276, para. 1 of the CCP permits the "collection of other evidence and testimony of expert witnesses." However, this is not mandatory in all cases. The court may make a ruling on the basis only of its own first-hand impressions and other evidence.\textsuperscript{75} In practice, it happens only in cases when some medical data regarding the defendant's condition has already been gathered for the case, such as, for example, a decision by the Labour Expert Physician Commission (LEPC). The BHC's observations regarding incompetency hearings show that in the vast majority of cases, it is precisely the medical experts' report that dictates the court's ruling. Once that report has been accepted, it is difficult for the court to disregard its conclusions. According to one Supreme Court decision, in order for the court to discount the conclusions in the medical report, the court is obligated to identify "concrete shortcomings, or an incorrect or unscientific starting point for the medical experts' report."\textsuperscript{76}

In principle, it is possible for an attorney hired by the defendant or a representative appointed by the court to participate in the incompetency hearing. However, the defendant was represented by an attorney in only one of the total of 58 cases...
examined by the BHC. In all of the other cases the defendants had to fight for their own freedom by themselves, against the people close to them and their attorneys, the prosecutor and the medical expert.

According to Art. 277 of the *Code of Criminal Procedure*, "the procedure for overturning the finding of incompetency is the same as that for declaring incompetency." This does not mean, however, that the procedure can be initiated by filing a legal claim to overturn the ruling of incompetency, since the would-be claimant has already been found unable to engage in legal proceedings. This, in accordance with Art. 16 of the CCP, renders him unable to participate in court hearings on his own behalf. Both the precedents set by the Supreme Court and the interpretations of leading attorneys are categorical with regard to this matter. A person who has been declared fully incompetent may request that the organ in charge of guardianship and trusteeship or the prosecutor's office file a claim to overturn the declaration of incompetency. People who have been declared partially incompetent may take part in court hearings on their own behalf, but only with the permission of their trustees.

When the incompetency hearings of the clients of social care homes (those who were not legally incompetent at the time of their placement) are instigated by the social welfare services or the homes' directors, the legal expenses are usually covered by the budget of the home. However, on one of its visits the BHC discovered the curious fact that the legal costs of the incompetency hearings of 20 of the residents were paid for by the defendants themselves. The funds came from the residents' disability pensions.

The BHC monitoring of incompetency proceedings discovered that the court hearings were essentially a formality, in many cases to the extent that they actually constituted a mockery of justice. The BHC researchers witnessed how Bulgarian courts would place people in a position of being deprived of almost all of their rights, including some of their most fundamental human rights, in the course of a hearing lasting five to 10 minutes, conducted without the defendants' representation by an attorney and in many cases without any expert testimony. In addition, contrary to the rulings in many other types of civil proceedings, rulings declaring incompetency are in practice not subject to appeal under the initiative of the person declared incompetent. Not one of the district courts, whose work in 58 cases was observed by the BHC researchers,

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77 See: Decision No. 585 of the 2nd civil section of the Supreme Court, 10-Mar-1965; Also: Zh. Stalev, *op cit*, p. 581.
78 Decree No. 5/79 of the 13-Feb-1980 Plenary Session of the Supreme Court, §10.
79 On March 5, 2004, the BHC monitored a hearing from the incompetency proceedings in the city of Russe District Court against 10 youths from the HDDCY in the village of Mogilino. The youths had reached the age of majority and, in order to be transferred to a home for adults, they would have to be declared incompetent. The hearing, which was the first in the case, lasted for a total of about 20 minutes. No experts were called upon to testify on the case, but the LEPC decisions regarding each of the 10 youths were submitted. No medical professional was present. Not one of the people, whose incompetency was being sought, was represented by a defence attorney. It was not clarified at the session whether or not they had any relatives. The only person to be questioned, besides several of the defendants, was Ms. T.R. from the administration of the home in Mogilino.
had ever held a hearing on whether to overturn a declaration of incompetency.

5.3.2 Procedure for the appointment of a guardian or trustee

The procedure for the appointment of a guardian or trustee and the duties of guardians and trustees are set forth in the *Family Code*, Art. 109-128. Art. 128, para. 3 specifies a group of persons who may by law become guardians or trustees. These are the legally responsible spouses of persons declared fully or partially incompetent, or, if they have none, their parents. The *Family Code* also provides that the guardians or trustees of minors or juveniles placed in specialised institutions shall be the directors of those institutions. However, no such requirement is specified for social care homes for adults, although there is a practice in some of them for the homes' directors to be appointed en masse as guardians or trustees. In the remaining cases, which are in fact the majority of cases in HDDAs and HMIAs, the guardians or trustees are appointed by the liaison in charge of guardianship and trusteeship. This liaison is either the mayor of the municipality or an official appointed by the mayor, often the municipal secretary. Together with the guardian or the trustee, the liaison appoints to each person declared fully incompetent an alternate guardian and two counsellors. Together, these persons constitute the guardian committee. A guardian committee is also appointed when the parents of the person declared incompetent, although still living, are for one reason or another unable to fulfil their obligations as guardians. In cases of partial incompetency, a guardian committee is not formed; only a trustee and an alternate trustee are appointed. According to Art. 114, para. 1 of the *Family Code*, until the appointment of a guardian or trustee, the guardianship and trusteeship liaison is obliged to take an inventory of the [incompetent person's] property and take measures to protect the interests of the person who is to be placed under guardianship or trusteeship. In cases with guardians, as well as those with trustees, the *Family Code* requires that they be appointed from "among the relatives and close persons... who shall best take care of [the person's] interests." In practice, however, especially in the case of the clients of HDDAs, who were abandoned by their parents and families from very early childhood, such persons cannot always be found, due to which in such cases the employees of the homes become their guardians and members of their guardian committees or trustees and alternate trustees.

This situation leads to an obvious conflict of interests. The idea of guardianship or trusteeship is for the person who has been declared incompetent to be assisted by another person in his relationships with the outside world, and especially with those who might violate his rights. In the social care homes this means above all the members of the administration of the home, who, because of their objective position supervise and/or perform the activities that affect every important aspect of the residents' lives. In reality, however, according to the observations of the BHC, in about 62% of the cases in HDDAs, in about 65% of the cases in HMIAs and in about 38% of the cases in HADs, the clients' guardians or trustees are people from the staff

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80 The erroneous opinion is unfortunately circulated, in commentary literature and elsewhere, that if the person is placed in a social institution, “the director [of the institution] is by law the guardian or trustee of the person declared incompetent.” (M. Pavlova, op cit, p. 246).

81 Decision No. 1213 of the 2nd civil section of the Supreme Court, 03-Jan-1996.
of the home, most often the director. According to one of the most out-of-touch with reality rulings of the Supreme Court, when a conflict of interests arises between the guardian and the person declared incompetent, the guardianship and trusteeship liaison must exclude the guardian from the guardian committee.82

This ruling is out of touch with reality because, according to the observations of the BHC, the guardianship and trusteeship liaisons who take any interest at all in how the guardians and trustees take care of their charges are the exception, rather than the rule. Above all, in a series of cases the BHC discovered that the guardianship and trusteeship liaisons in the municipalities, in which the homes for people with mental disorders are located, do not appoint guardians or trustees for months, or sometimes even years, at a time, even though they have received from the respective district courts rulings declaring incompetency or other documents, according to which they are clearly legally required to fulfil this duty. In other cases, due to inexperience, inefficiency, lack of interest or frequent administrative changes, the directors of the homes or social welfare departments in question do not seek out any information about the guardians or trustees of the homes' residents.

Still, many of the cases in which relatives were appointed guardians or trustees were no different from the cases in which relatives could not be found. The Family Code imposes several obligations upon guardians and trustees. Guardians are required to care for the person placed under guardianship, to manage his property and to represent him in dealings with third parties (Art. 117, para. 2). The guardian and the trustee may dispose of the property of their charges only with the permission of the regional court (Art. 118, para. 1). They are also required to inform the guardianship and trusteeship liaison about any property acquired by their charges (Art. 117, para. 3). The Family Code requires that people under guardianship or trusteeship reside with their guardians or trustees, "except when important reasons require that they reside elsewhere" (Art. 120, para. 1). Each year, by the end of February, a guardian is required to render an account of his activity to the guardian committee, after which the report is submitted to the guardianship and trusteeship liaison (Art. 126, para. 1). A trustee submits such an account only if requested to do so (Art. 126, para. 2). The guardianship and trusteeship liaison exercises supervision over the accounts and when necessary requests additional explanations. The liaison has the right to penalize the guardian or trustee with a fine, if the account or a requested supplementary explanation is not submitted (Art. 126, paras. 3 and 5).83 At the request of the liaison, the regional court may issue a writ of execution against the guardian for any funds not accounted for (Art. 126, para. 4).

Both guardians and trustees are to receive the cooperation of the municipal councils in the execution of their duties (Art. 124).

According to Art. 117, para. 1 and Art. 122, para. 1, the duties of guardians and

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82  22 Decision No. 1249 of the 2nd civil section of the Supreme Court, 23-Dec-1993.
83  This fine is currently set at a maximum of 20 stotinki (0.20 levs). The fact that legislation with regard to this matter has not been re-evaluated for many years is in itself proof of the low level of attention paid by Bulgarian legislators to the fulfilment of these functions.
trustees are "honorary"; i.e., they do not receive payment for them. Some of the
directors of social care homes and employees of the social welfare departments and
municipal social welfare services confided to the BHC that this is one of the reasons
for which guardians and trustees have no interest in the fate of their charges,
especially once they have been placed in social care homes. However, this is surely
not the only reason. No less important is the system of supervision over the fulfilment
of their duties. The BHC observations reveal that such a system does not, in practice,
exist. For the mayors of the municipalities, who appoint the majority of the guardians
and trustees of the clients of the social care homes, this activity [appointing
guardians/trustees], which is not supported by the voters/electorate, is obviously near
the bottom of their list of priorities. Even lower are duties related to the supervision of
the fulfilment of the guardians' and trustees' functions, which the law also imposes
upon them.

With regard to all of the defects in the legislation/regulations dealing with
incompetency, guardianship and trusteeship in Bulgaria, the observations of the BHC
show that on the local level there is a problem with the enforcement of even the most
basic legal regulations, such as the submission of annual accounts by guardians to the
guardian committees and the guardianship and trusteeship liaison. At the time of its
visits to the guardianship and trusteeship liaisons, the BHC researchers did not
discover a single reasonable account by a guardian, which presented in a more-or-less
adequate manner the nature of the care provided to the incompetent person over the
course of the year. In the best cases these accounts amounted to the reporting of the
charge's existing property and financial resources expended during the year. In some
municipalities, no reports at all were found, and there were even some guardianship
and trusteeship liaisons who had no idea at all of what these activities consisted of.
There were unique instances of municipalities that had created forms for reporting the
annual accounts, which in general terms fulfilled the legal requirements.

At the time of the BHC visits, the chaos in the system of guardianship and trusteeship
had led to several instances of situations in which, regardless of the fact that there was
a home for mentally disabled adults on the territory of a certain municipality, as well
as municipal residents who were guardians/relatives of persons declared fully
incompetent, there was not one functioning guardian committee.

The absurdities in the system for deprivation and limitation of the ability to participate
in legal procedures (legal incompetency) call for serious legislative reforms.

5.4. Material conditions

The material conditions, as well as the lack of adequate medical care and activities, in
the social care homes have provoked extremely serious concerns among the human
rights monitors from joint Fact-finding missions of the BHC, Mental Disability Rights
International (MDRI), Amnesty International and Mental Disability Advocacy Center
(MDAC). The BHC's very first visit to the social care home for women with
developmental disabilities in the village of Sanadinovo on September 11, 2001, gave
the impetus for an international campaign of several human rights organisations on account of the categorically unacceptable material living conditions and the staff's degrading attitude toward the residents there.

According to Amendment 40a of the RESWA, the social services provided in specialised institutions must meet the following standards for location and material necessities: "accessibility [and] a well-maintained household and surrounding environment." Of the total of 52 homes for people with mental disorders in Bulgaria, only 10 are located in cities. All of the rest are located in or just outside of small villages, where they are the only source of income for the local population. Several of the homes are located close to the border checkpoints at Bulgaria's borders with Turkey, Macedonia, Serbia and Romania, and nine of the homes are located in mountainous regions, away from populated areas.

Most of the social care homes are housed in buildings constructed for a variety of purposes during the period from the 1930s to the 1960s, from a gunpowder factory and an alcohol distillery to military boot camps, schools and hospitals. Only four of the homes are in buildings specifically intended to be social care homes. Of the total of 52 social care homes, seven are housed in military boot-camp barracks, two in dormitories built for construction workers of a hydroelectric power station, eight in school buildings constructed between the 1920s and the 1960s, two in hospitals, four in state farming cooperatives and three in monasteries. The remainder are spread among buildings that were originally customs stations, a gunpowder factory, a border station, a forest ranger station, brigade work camps and an alcohol distillery.

According to information from staff members of most of the social care homes, overhaul of the buildings has not been carried out since the homes were established in the 1960s and the 1970s. For this reason, as of 2001 most of the buildings, with a few exceptions, were in extremely dilapidated condition. As is seen in the information regularly submitted to the MLSP by the home directors, hardly any funds have been allocated from the state budget for repairs or new buildings. In the autumn of 2002 the MLSP announced that repairs and reconstruction work had been made in 14 social care institutions in the country, at a cost of 2 million levs (1 mil. Eur), paid for by the Social Welfare Fund and from the NSWS. During 2003, 2004 and 2005 many homes received serious amount of additional money to repair toilet facilities, bedrooms, dining rooms. BHC observed the process of renovation in some of the most problematic homes and was surprised to see the great amount of money spent on repair work on former farming cooperatives and monasteries in remote villages. BHC strongly criticizes this policy of improvement of material conditions solely without creating any other infrastructure and communication allowing better social integration of the clients. Besides BHC came to the conclusion that even this simple renovation

84 Mental Disability Rights International, web page for its Bulgarian campaign http://www.mdri.org/takeaction/bulgaria.htm. Amnesty International created a special web page about the Bulgarian social care homes, where a film about the homes visited by AI representatives is also available, http://web.amnesty.org/web/content.nsf/pages/gbr_bulgaria.
85 State Gazette, issue 40, May 1, 2003.
work did not sufficiently change the environment and the quality of services provided in the homes since it was done very fast and in an unprofessional way so that some of the renovated areas showed flaws right after the work was finished. This is how much of the funding spent on renovation was not used efficiently and was not monitored at all.

While it is true that in several of the homes the construction of new buildings using budgetary funds was begun in the period of 1990-1994, in four of these construction still has yet to be completed. Construction of new buildings or fundamental repairs to existing buildings has been completed at 12 homes, again with funds from the state budget. At seven homes, repair work has been conducted using only funding from donors.

According to the evaluation of the BHC researchers there still are homes with appalling conditions despite the campaign work on improvement of material conditions. The homes in the most critical material condition are: the Home for Adults with Mental Illness in the village of Pastra, the Home for Adults with Developmental Disabilities in the village of Orsoya, the Home for Adults with Developmental Disabilities in the city of Svilengrad, the Home for Adults with Developmental Disabilities in the village of Bulgarevo, the Home for Adults with Developmental Disabilities at Gara Samuil, the Home for Adults with Developmental Disabilities in the village of Butan, and the Home for Adults with Mental Illness in the village of Petkovo.

Of course, during its visits the BHC also discovered some good practices in the organisation of some homes and the management of a good level of material upkeep. Such cases were found in the HDDA in the city of Plovdiv, the HDDA in the village of Pchelishte, the HDDA in the village of Draganovo, the HDDA in the village of Malko Sharkovo, the HAD in the city of Dryanovo, the HAD in the village of Dobri Dol, and the HAD in the city of Slavyantsi. In these homes, the good material living conditions of the residents are the result of the initiative and active engagement of their directors in attracting funding (from the budget and from donors) for repairs, as well as a high level of motivation among the staff and of the organisation of their work.

As a result of its observations, the BHC determined that there are a few single homes in which the dormitories (sleeping/bedrooms) meet the established standards. First and foremost, the capacity of the social care homes is designated according solely to the number of available beds, without taking into account access to toilet facilities, square footage or the furnishing of the rooms. Of all of the homes for people with mental disorders, those with the largest capacity are the HDDA in the village of Tvurditsa, with a capacity 220 persons, and the HDDA in the village of Kudelin, with room for 180. The maximum capacity of any HMIA is 114 persons, and 115 persons is the maximum capacity of any HAD. Among the 26 HDDAs, only six have a

capacity and occupancy of 50 to 60 persons.

The most overcrowded rooms are in the HDDA in the village of Prekolnitsa, with 9 to 12 people, the HDDA in Prisovo with eight to 10 people and the HDDA in the village of Trustika, with 13 to 17 people. On the average, in the system of social care homes for the people with mental disorders one resident occupies two to three square meters in a dormitory, including the area occupied by the bed. In most of the homes, the dormitories contain only beds (donated by the Ministry of Defence, from decommissioned military bases). In some places even the beds are in extremely dilapidated condition. In the homes that have lockers or cabinets for the storage of personal items (these are mostly homes for people with dementia), there are not enough of them in each room for all of the people who reside in them.

Very rarely in these homes, and only in unique instances, do some residents keep personal belongings in their rooms. This is entirely understandable, given that the residents mostly do not have any personal belongings; they wear communal clothing and shoes and personal hygiene articles are given to them for use only when they are getting dressed. The only rooms that are furnished with any thought for the people living in them are those in a few of the homes that are sponsored by foreign donors.

Heating in most of the homes is supplied by local central heating with liquid or solid fuel. However, the central heating systems are often dilapidated or of outdated construction, so that they consume unreasonably high amounts of fuel. The BHC team very rarely found normal temperatures in the residents' dormitories during its winter visits. Just as rare were its discovery of findings to this effect by the Hygiene and Epidemiology Inspectorate (HEI) or of recommendations that a temperature of 20 degrees Celsius be maintained. There are, however, still some homes that are heated by solid-fuel burning stoves.

Residents of five of the homes have only outdoor toilets. There is an average of one toilet to every 13 to 14 residents in the HMIA and HADs. At the HMIA in the village of Pastra there is one toilet for every 30 residents, one for every 25 at the HMIA in the villages of Petkovo and Rovino, one for every 22 at the HMIA in the city of Svilengrad and the HAD in the village of Opanets, and one for every 20 at the HADs in the village of Gorna Mahala and the city of Kazanluk. In the HDDAs there is an average of one toilet to every 15 residents; in eight of them there is one toilet for every 20 to 45 residents. Besides the high number of residents to each toilet, in most of the homes the toilets themselves are extremely filthy and neglected.

Most of the homes have one bathing facility, which is used by all residents. In three of the homes, over 100 women use one bathroom with one shower. Most of the bathing facilities do not afford the residents the opportunity to bathe when and as often as they wish. Hot water in the homes is provided by boilers, which are insufficient in quantity and require frequent repairs. Conditions in the bathrooms are miserable, with mildew on the walls, stained and broken tiles and porcelain, faucets that don't work, missing shower heads, a lack of heating and of dressing rooms, and long distances to the bathing facilities from the dormitories, and sometimes even from the residential building.
The social care provided in the specialised institutions and in the community must meet the established standards and criteria for nutrition. With a few exceptions, the food in the homes is prepared onsite in the kitchens, and is consumed in ground-floor cafeterias that are in need of refurbishment and entirely new furniture. The electrical equipment in the kitchens is about 20-30 years old. The canteens, especially in the HDDAs and the HMIs, are dingy and extremely dilapidated, with no tablecloths, chairs with bent or broken seats and legs, and torn-up upholstery. The residents’ food, especially in the HDDAs and the HMIs, where there is less funding for food than in the HADs, is monotonous and insufficient, in terms of both quantity and quality. Dairy products, fresh fruits and vegetables and processed meats are provided very rarely.

5.5 Mortality

The relative proportion of deaths in homes for people with mental disorders is one of the main indicators of the quality of social services, including medical care, provided to the residents. The mortality statistics in these homes show a disturbingly high number of deaths in proportion to the total number of residents. Depending upon the profile of the home, annual mortality rates vary from 0-20% in HMIs and HDDA, and 10-120% in HADs. Because of the wide variation in mortality rates in homes for adults with dementia, the mortality rates in HADs will be examined separately from those in the HDDAs and HMIs.

In 1996 and 1997 public attention was focused for the first time on the high mortality rates in the homes, following external observers' findings about the conditions in the HMIs in the villages of Radovets and Terter. In the former, 24 people had died just in the period from January until the end of June 1997. In not one of the cases was an autopsy performed.

The problem of high mortality rates among the residents was discovered again during the BHC visits to the homes during the fall of 2001. At the beginning of 2002, the BHC ascertained that there had been a total of 22 deaths in a one-year period (January 2001 - January 2002) at the social care home for men with mental illness in the village of Dragash Voyvoda. On-site attempts by the investigators to obtain more detailed information regarding the circumstances of the residents' deaths were unfruitful, since no statistics regarding the deaths were maintained at the home and the employees could not explain under what circumstances or for what reasons so many residents had died. In February 2002 the BHC investigators presented their findings about the high mortality rates and the inhuman conditions in the home to then-Deputy Minister of Labour and Social Policy, Ms. Christina Christova. They also demanded detailed information about the deceased residents: their total number, their ages of death, causes of death and dates of death. The Municipal Social Welfare Service (MSWS) in the city of Nikopol submitted information to the National Social Welfare Service (NSWS), from which it became clear that 12 residents had died in January and February 2001, and the other 10 had died during the period from October 22, 2001 to

88 RESWA Art. 41, para. 1.
January 14, 2002; i.e., almost all of the residents had died during the coldest months of the year. According to the home's former director, the main factor in most of the residents' deaths was severe bilateral bronchial pneumonia, which resulted from medical care not being provided in time by the home's former physician, and a lack of medicines for treatment. Several letters from the director of the home, in which the dire situation was described, had been sent to the Nikopol MSWS and remained unanswered. An analysis of the medical care in the home showed a significantly high turnover in medical staff. The residents' general practitioner had also been changed several times during this period. According to a doctor from the Pathological Anatomy Ward of the Medical University in the city of Pleven, who performed autopsies on three of the residents in February 2001, the cause of the men's deaths was bronchial pneumonia, which had not been diagnosed and treated, and further, in all three cases the disease had progressed with the sufferers being in a state of chronic malnourishment, and was additionally exacerbated by their extremely miserable living conditions. Immediately following the exposure of the problem of high mortality at the HMIA in Dragash Voyvoda, it became clear that the District Social Welfare Service in Pleven had not submitted information to the NSWS about the number of deceased and their causes of death in a timely fashion; however, this does not justify the inaction of the responsible state employees from the then-NSWS [now the Social Welfare Agency].

As early as 2002, the leadership of the MLSP and of the NSWS had aligned themselves toward the only possible solution to the many problems at the home in Dragash Voyvoda: closure of the institution and transfer of the men living there into homes that could provide better conditions. This was not done until 2003, when half of the residents were transferred to such other homes, while the other half – a total of about 70 men – were transferred to a home opened specifically for that purpose in the village of Govezhda, in the province of Montana. Prior to the new home's opening, repairs had been made on the existing bungalows and job positions had been advertised.

During the year 2001, there were a total of 17 deaths at the HDDA for men in the city of Batak. In only three of those cases was the cause of death disease (cancer, cirrhosis and anaemia, respectively). As in the HMIA in the village of Dragash Voyvoda, the cause of death for all the others was "severe cardiac and respiratory insufficiency." This assignment of identical diagnoses for the cause of death does not provide objective information about the true causes of death, and would not in any of the cases correspond to the pathologist's findings if an autopsy were conducted. Most of those who died in the homes were young people. In previous years, autopsies were conducted on all of the deceased, but this practice has been discontinued. During the following year of 2002, there was only one death at the home. The high number of deaths during a short period of time again suggests that the reasons for this mass of residents being allowed to die off are hidden in inhuman living conditions and in the total medical negligence of and irresponsibility for the health of the residents.

Gaining access to information about the deaths in those homes with distressingly high mortality rates has always been problematic. As in the above-mentioned homes in Dragash Voyvoda and Batak, the staff of the HMIA in the village of Radovets either did not maintain mortality statistics, or did not want to make the statistics available to
the researchers. In one of the joint visits to this home in June 2002, a representative of Amnesty International ascertained that the number of deaths during the first nine months of 2001 had not been six people, as had been reported earlier, but nine. At a visit during the following year it was reported that the total number of deaths in 2001 had been 14. During a visit to the home in June 2003, staff members presented information to the BHC investigators according to which there had been not 14, but 17 deaths during 2001. The difficulties in researching mortality rates for 2001-02 were compounded by the lack of uniform standards for recording and maintaining documentation, including after the residents' death. Thus, for example, in several homes the BHC ascertained that death certificates were not kept at the home, and could be found only at the corresponding social welfare service.

Ten women died during the calendar year of 2001 at the HDDA in the village of Malko Sharkovo, in the Yambol province; 10 women died in 2002 at the HDDA in the village of Banya and 12 men died during 2003 at the HDDA in the city of Tvurditsa. The general overview of the number and proportion of deaths in 2002 and 2003 is as follows:

<table>
<thead>
<tr>
<th>Type of Home</th>
<th>Number of Residents in 2003</th>
<th>Number of Deaths in 2002</th>
<th>Number of Deaths in 2003</th>
<th>Deaths as Percentage of Total Number of Residents in 2003</th>
</tr>
</thead>
<tbody>
<tr>
<td>HDDA</td>
<td>2536</td>
<td>98</td>
<td>110</td>
<td>4.3%</td>
</tr>
<tr>
<td>HAPD</td>
<td>1112</td>
<td>91</td>
<td>60</td>
<td>5.4%</td>
</tr>
<tr>
<td>HAD</td>
<td>811</td>
<td>328</td>
<td>339</td>
<td>41.8%</td>
</tr>
<tr>
<td>Total:</td>
<td>4459</td>
<td>517</td>
<td>509</td>
<td>11.4%</td>
</tr>
</tbody>
</table>

Inadequate psychiatric care, a shortage of orderlies and inappropriateness of the profile of the type of home are the basis for the majority of conflicts between residents, which sometimes result in fatal consequences. At the HDDA in the village of Butan, an argument and fist-fight between two residents resulted in the death of one of them. On February 24, 2004, at the HMIA in the village of Govezhda, in an argument and fist-fight between two residents – over two cigarettes – one of them died. Beatings suffered in fights were also the cause of two of the deaths at the HDDA in the village of Batoshevo. Six women died at the HDDA in Butan between January and November 2001, with the cause of all of the deaths reported as severe cardiac and respiratory insufficiency.

An analysis of the fatalities in the homes shows that the average mortality rate in the HMIA is slightly higher than that in the HDDA. The reason for this, despite better medical care in the HMIA, is that the residents who suffer from mental illness significantly more often have ancillary diseases, and their state of health is very dynamic.

The mortality rate statistics show that the proportion of those who died in the homes with bad living conditions is significantly higher than the proportion of deaths in the homes that have acceptable living conditions. Thus, for example, in 2002 and 2003,

89 Ibid.
24 people died in each of two of the homes – the HDDA in the village of Podgumer and the HMIA in the village of Pastra. During the same period a total of 19 residents died in the HMIA in the village of Petkovo, and 18 at the HMIA in the village of Radovets. For this reason, extremely miserable living, sanitary and hygienic conditions can be placed first among the reasons for the high mortality rates in the HDDAs and HMIA. The other reasons for the high mortality rates may be generalized as follows:

- Lack of adequate individual care for bedridden residents who are unable to care for themselves;
- Inadequate action on the part of the GP;
- Shortage of qualified medical personnel on staff and negligent medical care;
- Ineffective mechanisms for the provision of specialised medical care;
- Lack of emergency medical assistance;
- Lack or shortage of the necessary medicines.

As is evident, all of the reasons listed above can be attributed first and foremost to serious deficiencies in the management, organisation and regulation of the system of care for people with mental disorders. For this reason, the possibility that such people might lose their lives if they end up in an institution is significantly greater than that if they remain in the home environment.

It became clear during the visits to HADs near the end of the research period of the project that the mortality rate in the HADs is significantly higher than that in the HDDAs and the HMIA. The consistently high mortality rates in these homes are due not only to the advanced age of the residents, but also to the development of their disease being in the final stages at the time of their placement in the homes and the fact that other possibilities for treatment have previously been exhausted. The poor quality of care in the homes is also a contributing factor. In two of the homes it was discovered that the number of deaths was disturbingly high. The employees working in HADs are prone to accept a high mortality rate as normal. When they have to explain this fact, in addition to the reasons mentioned above they usually answer that the deceased had severe disabilities and a series of ancillary illnesses. Despite this, the overall impression of the BHC researchers was that the mortality rates in HADs are to a large degree a function of the total range of care that the employees provide for the residents. On a regular monitoring visit of the BHC’s team in a social care home for people with dementia in Sofia the researchers were informed that one of the residents (Violeta Markova) died in the morning. Her daughter was asked by the staff to arrange the burial of the resident and she was also present at the time of the BHC’s visit in the home. She complained to the BHC’s monitors about material conditions and degrading treatment of residents in the home since she used to pay visits to her mother every day.

Violeta Markova died in Knyazhevo Social Care Home on 23 February 2004 at the age of 80. Before that Violeta Markova was allegedly beaten and restrained without reasons. Her head and eyebrows were shaved and she had bruises all over the body (including a broken collar bone one year earlier) but no medical record of any of the abuse was found during the police investigation (though there were even pictures of
them taken by the physician working in the home). The District, Regional and Supreme Prosecution Offices refused to investigate the case. The case was reported to them by the daughter of the resident. Neither the home, nor the police informed prosecutors. Supreme Prosecution Office’s decision of 11 March 2005 states that Markova’s collar bone broke while her stay in the social care home but because she was not able to say what happened to her, and from the statements of the staff it was clear that it is impossible to establish how she was injured there are no evidence regarding the cause of the injuries, whether they were inflicted intentionally and who might be the perpetrator. Therefore the Supreme Prosecution Office terminated the case admitting that shaving of hair and eyebrows is justified because of lice. during the investigation the prosecution office questioned the victim’s daughter and the staff in the home. Since Markova’s daughter complained to other state authorities regarding material conditions, ill-treatment and management of the home a visit by the municipal officials took place. But there was no investigation about how the home was managed, what was the responsibility of the director etc. on behalf of the prosecutors. Markova had been placed under guardianship by the court in 1999 but no guardian was ever appointed.

Just after several international human rights organisations campaigned on closure of Pastra home for Mentally Ill Men one of the national newspapers in Bulgaria reported (on 17 November 2004) that Boris Ivanov (age 59) died in the most appalling ward there after he was allegedly beaten by other inmates. BHC’s team visited the home afterwards and tried to gather information regarding the cause of the death and the official investigation if any. The director of the home stated that Ivanov was found alive in his bed early in the morning by an orderly, but he was severely injured and in coma. According to the director the staff called the GP and Ivanov was taken to the nearest city’s hospital. The physician at the hospital examined Ivanov and told the members of the staff accompanying Ivanov that the hospital cannot help his condition and Ivanov was taken back to the social care home where an hour later he died. Ivanov was diagnosed with schizophrenia and he also had physical disabilities. The Dupnica Prosecution Office opened criminal investigation on its own initiative. The proceedings were not terminated yet.

In April 2003 a 41-year-old man living the social care home for men with developmental disabilities in the village of Podgumer, near Sofia, died after being strangled by another resident. The information was published in the electronic media based on a report of the Interior Ministry. Information about the fatal incident was released on 16 April, two weeks after the victim died in hospital. The autopsy revealed that the man had been strangled, and the subsequent death occurred as a result of aspirated blood which caused aspiratory bronchopneumonia. The investigation carried out by the Second Police Department in Sofia established that the killing was carried out by a 26-year-old resident from the same institution, who is also mentally disabled. The materials from the case have been sent to the District Prosecutor's Office from which BHC did not manage to find any further information.

The death case that illustrates best the problems in social care homes with lack of adequate care of the most vulnerable residents is that of Vasil Spasov’s death. The
Sega daily reported on 24th of March 2003 that a 32-year-old mentally ill man was found beaten to death in the social institution for mentally disabled adults in the village of Bastoshevo, near Sevlievo. His body was found in the early morning of 22 March on the floor between the beds in one of the rooms. The newspaper reported that the men from the room have still not been questioned because of their "delicate physical and mental state". The staff had not heard or seen anything. An inquiry has been opened. The BHC carried out its own investigation in the home. BHC’s researcher found that Spasov died on 21 March 2003 as a result of a fight between clients of the home. Spasov was moved to Bastoshevo home for adults with intellectual disabilities after the home for adults with mental illness in Dragash Voivoda (where he was placed before that) was closed down in February 2003. He had been diagnosed as severely intellectually disabled. He also had paralysis of both legs and was dumb. He was not able to take care of himself. Another client living in the same room had fed him. Spasov lived with three other clients in his room (diagnosed as intellectually or mentally disabled). His behaviour was perceived by them as irritating and annoying. All of them were placed under plenary guardianship. Spasov’s guardian was his mother. The night shift in the home consists of a single nurse and an orderly. Both buildings of the home are locked at night. The orderly is obliged to walk and monitor all rooms during the night. The regularity of the monitoring activities and the manner of these activities during night was not provided for in details in his job description and in the orders issued by the director of the home. The director of the home has been working in the home for the last 4 years and reported that she had found out two cases of violation of duty obligations of the orderlies during the night shifts and she had dismissed both of them. The medical care of the clients is provided by their GP who has been in some personal conflict with the director. As a result of it no examination of the clients’ mental condition were done since January 2003. No psychiatrist worked at that time in the home.

On 18 March 2003 at 6, 30 a.m. an orderly noticed the traces of violence on Spasov’s body. Spasov was examined by the GP at noon and the therapy prescribed and the findings of the examination were recorded in the Spasov’s medical file (which was taken by the investigation office at the time of BHC’s visit). Biting wounds over the hands and the breast were allegedly found. The breast and the hands were treated with medicines and bandaged. The suspected perpetrator was moved in an isolation room. On 21 March 2003 at 6,30 a.m. Spasov was found dead among the beds in his room. The GP and the police were informed immediately. Emergency unit transported the corpse to a morgue in Sevlievo (the nearest city). A forensic doctor had performed the autopsy and issued a notice of the death. According to the information the forensic doctor gave to BHC’s researcher the death was caused by numerous breakings of the ribs that penetrated into the pleural cavity which caused pneumotorax leading to asphyxiation. The forensic doctor was of the opinion that all traces of violence found over the body were caused on 18 March, not on 21 March.

Criminal investigation proceedings were opened №85/2003 at the Regional Investigation Office in Gabrovo. Initially another client - Dobrin Dimov Nedelchev (who used to live in the same room with the victim) was charged. Criminal investigation file № 279/2003г. was also opened at the Regional Prosecution Office in Gabrovo. But the proceedings under it were terminated on 5 September 2003. The
prosecutor’s decision for termination stated that during the investigation the following facts were clarified: A nurse (M.B.) noticed the traces of violence on Spasov’s hands and breast and treated the wounds with medicines on 18 March 2003. One of the clients pointed out Dobrin Nedelchev as perpetrator of the murder. Nedelchev had been isolated in another room.

One of the feldshers and the GP provided Spasov’s treatment after that. On 22 March 2003 an orderly found out that Spasov was dead. One of the clients stated that another one called Germanov had beaten up Spasov during the night. The GP, the nurse who found the traces on 18 March 2003 and the other nurse confirmed that new traces of violence occurred on 22 March 2003. The prosecutor’s decision quoted the conclusion of the forensic doctor who performed the autopsy. The death was caused by severe breathing insufficiency as a result of severe trauma of the chest and numerous broken ribs and torn pleura of the lungs. The perpetrator was determined by DNA test of lower part of the right sleeve of a short what belonged to Germanov that was stained with red-brownish spot proved to be left by the Spasov’s blood.

After the proceedings at the Regional Prosecutions Office in Gabrovo were terminated the court procedure at the Sofia district court was opened with the aim of placement of the perpetrator on compulsory treatment in psychiatric hospital since he was unable to comprehend the character and the importance of his deeds. The initial decision of the Sevlievo district court issued on 24 October 2003 /№327/. He was placed in the Lovech psychiatric hospital for compulsory treatment.

On 11 June 2004 the Lovech District Court issued a decision for Germanov’s removal to Sevlievo psychiatric hospital. Sevlievo district court issued a decision on 14 December 2004 for termination of Germanov’s compulsory treatment. Germanov was brought back to the home for adults with intellectual disabilities in Batoshevo and he is there at the moment.

Death cases still happen for a variety of reasons showing lack of organisation at the elementary level of care, ignorance and neglectful attitude even in social care homes for children with developmental disabilities. Capital weekly reported that on 19 October 2005 two blind children (Roza and Lubka) from the Home for children with developmental disabilities in the village of Dobromirici were left alone in the bathroom of the home. According to what the staff in the home stated 9-years-old Seda entered the bathroom and turned the tap of the hot water till its utmost position. The blind girls could not go out the room, nor could they stop the running water. Later 5-years-old Lubka died in the hospital in Plovdiv. Roza was injured less and she survived. A 12-years-old boy who also lived in the home for children with developmental disabilities in Dobromirici died in the hospital in Kurzhdali in October 2005 too. The publicly announced cause of the death was sepsis. An official from the Regional Department of Interior announced that criminal proceedings had been opened and that the Regional investigation Office was working on the Lubka case. The Regional Prosecutor in Kurdzhali – Lazarov stated while interviewed by Capital weekly that the investigation was terminated in December 2005 and that till the end of January 2006 he would propose opening court criminal procedure based
on charges or he would propose agreement. One of the staff members with 15-years of experience in the home was charged. Her name is Keimet Sali.

On 20 October 2005 a commission from the Inspectorate at the Social Welfare Agency performed check-up and found out “serious problems in the organisation of the activities”. The report also stated that the material conditions were unsatisfactory, individual plans for the children had not been developed, no therapeutic or rehabilitation activities were performed, the quality of care is on elementary level and the staff is very low qualified. In November 2005 the State Agency for Child Protection visited the home and found out the same situation. On the basis of a decision of the Ministry of Labour and Social Policy the home was closed down as a children care home and its profile was changed to an adult institution since most of the children were over 18. Those who were under 18 were moved to another children institutions.

In only a few of the homes, which are located close to regional centres, did the BHC hear reports of autopsies being performed following the death of residents. In a further few homes, there were reports of unique instances of autopsies being conducted. It is necessary that autopsies be performed on every deceased resident of the homes, in order for there to be an unbiased investigation into the reasons for each fatality. This is even more so, since the circumstances surrounding the deaths of people with mental disorders most often remained unexplained.

5.6 Physical restraint measures and violence. Restraint and seclusion

The BHC discovered that sometimes in order to punish or restrain residents, orderlies and nurses resort to the use of physical force, with the goal of forcing the residents to stop doing something, or to frighten or punish them. Of course, in most cases it is impossible to prove categorically that residents' injuries have been caused by actions of the staff. Despite this, staff members, as well as the medical personnel, are responsible for the health of the residents and they should be ready at any given moment to prevent any attempts at self-inflicted harm. The BHC researchers witnessed many instances of beatings and violence among the residents, in which the staff either would not get involved or failed to respond adequately.

5.6.1 Restraint

When the use of physical force on people with mental disorders does not have the punishment or behaviour-modification effect desired by the staff, they resort to restraint, by binding the limbs with chains, using straitjackets or handcuffs, or restraining the body with belts (straps). There is no law or other regulation that permits the use of physical restraints on the mentally ill in Bulgarian social care homes, and with regard to their use in other institutions in Bulgaria, it is not regulated as to duration, type of restraints or procedures for their use. Despite this, physical restraints are used in the social care homes in order to control outbursts of agitation caused by the mental state of the residents, as well as for punishment. Restraint is most often imposed in unlocked rooms, by binding the limbs with chains, holding down the body with straps or by using a straitjacket.
International law, which is directly applicable in Bulgaria, also fails to offer some sort of standard regarding restraint and seclusion. The so-called "soft" international standards are more clear-cut, but they are also sometimes contradictory. Principle 11 of the UN Principles on the Protection of People with Mental Illness permits the seclusion and restraint of mentally ill people, provided that these measures are:

- used as a last resort in cases when there is immediate or imminent harm to the patient or others;
- employed in accordance with the officially approved procedures;
- recorded in the patient's medical record;
- applied in humane conditions, under the regular supervision of a qualified staff member;
- and provided that a personal representative of the patient is promptly informed.

Recommendation 1235 of the Parliamentary Assembly of the Council of Europe permits the use of restraint, but not of mechanical restraint. The European Committee for the Prevention of Torture makes contradictory statements on this important question. On the one hand, it recommends that restraints be applied "in principle, without using leather straps or straitjackets [and be limited to manual control]," while on the other hand it still permits their use [the use of straps and strait-jackets], although only "exceptionally." Still, the Commission requires that each instance of seclusion or restraint, regardless of its character, be ordered by a physician and entered in a special institutional logbook, as well as in the patient's record. "The entry should include the times at which the measure began and ended, the circumstances of the case, the reasons for resorting to the measure, the name of the doctor who ordered and approved it, and an account of any injuries sustained by patient or staff."

The internal written regulations of Bulgaria's social care homes for people with mental disorders contain nothing regarding the question of seclusion and restraint. In the autumn of 2003, in outgoing letter No. 9100-251 dated September 30, 2003, the executive director of the Social Welfare Agency, Mr. Nikolay Angelov, informed the directors of the regional social welfare departments that seclusion and restraint in areas behind metal bars is a gross violation of the human rights of residents suffering
from developmental disabilities or mental illness. However, the letter gives no orders for the dismantling of existing apparatus and bars, nor does it require the documentation of each use of confinement.

5.6.2 Seclusion

The third group of restraining measures consists of confining the residents in solitary confinement rooms, in isolation rooms inhabited by several persons, in outdoor cages, in rooms with prison bars, or in wards completely isolated from the outside world, with their own toilets, in which aggressive, hostile or unpredictable residents live permanently, without any access to the common areas of the home. Periods of confinement in solitary or group isolation rooms is most often used as a punishment, and the length of time spent in them may be from several hours to one or two weeks. Confinement in outdoor cages and mesh-enclosed gazebos or barracks is usually for shorter periods and besides being used as a punishment and disciplinary measure, is imposed preventatively on residents who often disturb the others or would attempt to escape. There are rooms located in the dormitory buildings that are partitioned off by bars and used as permanent isolation rooms, in which violent or escape-prone residents are most often confined. There are locked sections – probably modelled after the so-called "acute wards" in psychiatric hospitals – where aggressive and escape-prone residents are confined, as well as those with unstable/unpredictable behaviour. In one of the homes, this separate ward was known as the section with increased supervision. In homes for adults with dementia, lock-out and exclusion from the residents' rooms is practiced in certain cases.

By the beginning of 2004, local and international pressure had resulted in some of the isolation rooms being removed and no longer used for that purpose.

5.6.3 Long-term confinement in locked wards

In several of the HDDAs and HMIAs, the staff had adopted the practice of designating locked or "acute" wards, for permanent occupation by residents. The selection of residents placed in them was subjective, without using previously established criteria. Most often the home's director and medical staff would decide whether a resident's behaviour deviated drastically from that of the others, whether he was dangerous to himself and/or others, and whether he was likely to attempt escape or commit violence.

5.7 Rehabilitation, activities, occupational therapy, recreation

In accordance with Art. 41, para. 3 of the RESWA, the social services provided in specialised institutions and in the community must comply with the following standards and criteria for educational services: they must help secure the participation of the users in an educational programme, in keeping with their age and personal choice, and ensure access to information.

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At the time of its observations during the 2001-2005 period, the BHC ascertained that in the prevailing percentage of social care homes in the country, due to a deficit of administrative and financial resources, as well as their distance from larger cities, activities are not offered that fulfil the requirements of contemporary mental health care for people with severe, permanent psychological disabilities, which call for an individual and comprehensive approach. The more severely disabled people in the homes do not participate, as a rule, in the organized forms of socialization activity. At the time of the BHC visits to the homes, the prevailing part of the residents were watching television in the day rooms, walking around in the yards or lying down in their rooms. Special group and individual activities, conducted according to programs developed in advance, are not conducted almost at all.

There are several reasons for this nearly complete lack of social work with those placed in social care institutions: a lack of necessary infrastructure [appropriate space and equipment] for conducting the activities on the territory of the homes, a lack of sufficiently qualified staff, and a lack of funds for having a recreation break at least once a year. In addition, the social work in the homes is still viewed as a luxury, which most of them cannot afford due to the necessity to solve much more serious problems regarding the material conditions in the residential buildings, toilets, clothing, food and medical services.

Since as of now almost all of the homes for people with mental disorders occupy buildings that were not originally intended to meet the needs of social care homes, the rooms that are used for daytime activities are not suitable for that purpose. They are insufficient in number and square footage to accommodate all of the residents and they do not have enough furniture and equipment to ensure the effective provision of daytime activities. Moreover, the residents do not always have access to them at all hours of the day. In some of the homes, the foyers or lobbies of the residential buildings or the canteen are used for daytime activities. In the rest of the homes there are day rooms, although they are sparsely furnished, with just tables, chairs and a television (and sometimes a stereo system), and have insufficient space for all of the residents.

Besides the day rooms, which are usually used only for watching television and/or listening to music, a few of the homes also have other types of space; two of the homes have student kitchens and one has built a culinary atelier, four of the homes have cafes, three have chapels, three have gyms and four have libraries. Twelve of the homes still have functioning subsidiary farms, the maintenance of which is supported by foreign donors.

Along with the problem of the insufficient or in some places completely lacking infrastructure for conducting any kind of activities, as well as inadequate staffing, the BHC observations naturally also perceived the problem of the lack of activities in which the residents can participate, even though almost every home has a social worker. Most often the residents whose faculties are still most intact (5 to 10 people in each home) are included at the staff’s discretion in the daily household chores: cleaning the yard, cleaning the rooms, help in the kitchen or serving the food, helping carry firewood or groceries, help with the laundry. In some cases the residents who
perform these activities are actually carrying out the staff's duties, and are being demeaningly exploited, without being paid. In the homes that have auxiliary farms, a small percentage of the residents engage in digging, weeding, feeding and caring for the animals, and other activities, without receiving payment.

With regard to helping ensure the participation of the user of social services in an educational programme, the homes undertake almost no initiatives. Literacy training for certain individual residents is conducted in just four HDDAs.

Only in about 1/3 of Bulgarian social care homes are there organised excursions or vacation trips outside the home for the residents. In contrast to the HDDAs, for which out of 26 homes one-day excursions are conducted at least once a year in 12 of them, of 13 HMIAs and 13 HADs, excursions are conducted in just three of each type of home. The homes that do organize excursions usually manage to fund them with resources from donors or the residents' own personal funds. Only those residents who are able to serve themselves and move around unassisted participate in the excursions and vacations, since the accompanying staff is usually limited to two or three employees for about 20 or 30 residents. Most often the social reintegration activity consists of walks or hikes in the mountains, or a once-a-year visit to the nearest city. Rehabilitation, social work and occupational therapy are not conducted in Bulgarian social care homes. There are a few disorganised, sporadic initiatives that involve only a few of the residents, are not financed by the state budget, and do not have a significant effect on the lives of the people placed in the homes.

In more than half of all social care homes, the residents do not have closets or any other place to keep their personal belongings. Most often, personal belongings (for those who have any) consist of televisions, radios, cassette players, cosmetics, clothing and linens, and books. In most of the homes, the employees claim that the residents are free to maintain their physical appearance. In practice, this is not really possible, since only a small number of the residents possess clothes and toiletries of their own. The clothing in the homes is mostly acquired from donations, which in a large number of cases come from decommissioned military bases. The residents' personal funds are often used to purchase personal underwear, but are not sufficient to buy clothes and shoes. Since parasites are a problem in some of the homes, in most cases women's hair is kept short.

Only about 20% of the residents maintain contact with their friends and relatives. Visits and contact with friends and relatives are more frequent in the homes for adults with dementia. Unfortunately, in many of these homes the directors complain that some of the residents' family members only visit the homes in order to take the residents to a notary public to conduct a transaction related to their real estate property. In most of the HADs in Bulgaria, access to friends and relatives is not denied, and they may call the residents by telephone at any time. Most of those placed in HDDAs have no relatives, since they were babies or children when they were abandoned and institutionalised by their parents, who signed declarations surrendering their parental rights. Visits from friends or relatives are very rare in these homes, and letters are almost never written or received. While the residents of HMIAs do in most cases have family, they usually end up in homes because their families cannot or do
not want to care for them, and for this reason there also is not much visiting or contact with relatives in the HMIs.

Separation of the sexes in most of the homes, social isolation of the residents from the outside world and limited freedom in most of the homes to go out in the towns and villages all limit the possibilities for the residents of homes for the mentally disabled to have mixed-sex contact. Only the homes for adults with dementia, as well as six of the HDDAs, have men and women residing together. There is not one mixed-sex home for adults with mental illness. In many of the homes, the BHC found dissatisfaction among the residents with regard to their inability to have contact with members of the opposite sex.

In some of the social care homes, acts of sexual harassment of some of the residents by others have been observed, as well as by employees of the homes. These cases are extremely difficult to prove, given the fear and the illness of the victims. At this time the BHC does not possess evidence from any official investigation into such cases, only the testimony of the residents who have suffered harassment and of eyewitnesses. This is because the practice of the homes' directors in cases of sexual harassment of a resident by an employee is not to alert the prosecutor's office, but simply to impose disciplinary action.

A high proportion of the HADs, HMIs and HDDAs maintain good relations with religious communities and churches, which raise funds and collect donations for the homes. Some of the most active donors and visitors to the homes are representatives of the Catholic Church and of foreign Christian organisations. Despite all of this expressly religious charity work, very few of the homes have any religious activities for their residents.

Almost all of the homes, except for the HDDA in the village of Butan and the infirmary of the HAD in Sofia, have televisions. Despite this, televisions are not put in the rooms of the most severely disabled and bedridden residents. The homes have cassette players, radios and stereo systems, most of which were acquired as donations or purchased with the residents' personal funds. Most of the homes do not subscribe to newspapers, because they can't afford to, and staff members bring newspapers and magazines from home to those residents who can read and are interested. In every home there are at least a few residents who are interested in the news and current events in Bulgaria and the world.

According to the staff of all social care homes that were visited, the residents are not prevented from expressing their own opinions, and some readily did so in the presence of the staff and the BHC researchers. In many cases, however, the staff of the homes did not allow the BHC representatives to talk to residents in private.

The number, type and qualifications of the employees in social care homes in Bulgaria are designated in MLSP Regulation No. 5 of February 16, 1999, and in the RESWA. It is interesting to note that this regulation on the number of employees is not fully complied with almost anywhere. In some places the homes are far too short-staffed to provide for the needs of the residents, and most of the employees are
support staff, not specialists appropriate to the residents' specific needs. This is why it is common practice in social care homes for the staff to orient itself toward the physical and physiological care of the residents. In the best-case scenario, there would be one social worker and one occupational therapist in each home. However, even with the most optimum distribution of the social workers' hours, it would be impossible for them to conduct individual and group sessions with the residents who need them and at the same time to meticulously keep up the required documentation. Only 11 of the homes have a staff position occupied by a hired physician; in most cases they are half-time or even 1/4-time positions. There are about four or five people on the medical staff of most of the homes. For this reason it is difficult to arrange the schedule in such a way as to comply with the regulations on overtime work and also ensure 24-hour medical care in the homes. A lack of specialised staff members in Bulgaria's social care homes – in terms of both numbers and qualifications – is the basis for the inadequate attention paid to the social integration and rehabilitative activities of the residents.

The low or inappropriate qualifications of the staff in Bulgaria's social care homes also present an obstacle to adequate healthcare being provided to the residents. In 95% of cases, the nurses and medical assistants have no supplementary qualifications for work with people with mental disorders. In only about 20 of the social care institutions do the social workers have degrees in Social Work or Social Education. The occupational therapists usually have a secondary education or are former music, art or vocational teachers. The directors of two of the homes are physicians; the rest are primarily engineers, economists or educators. Only a few have an advanced degree or a supplementary qualification in Social Work.

The location of most of the homes in small villages and unincorporated areas in economically depressed municipalities makes it impossible for the directors to hire qualified staff, especially in the area of service. It is exceedingly rare for the service staff in the homes to have received training specific to their work, such as how to behave toward the residents, how to earn their respect and trust, how to deal with violent outbursts without endangering themselves or the residents, etc. Such qualifications cannot be achieved without appropriate, up-to-date, practical and theoretical training of the staff, nor without attracting particular specialists from larger towns and cities. Unfortunately, qualification courses and lessons cannot be organised without additional financing from the state. Instead of just filling the laws and regulations with requirements regarding the necessary numbers and qualifications of employees in social care homes in Bulgaria, the state should make it easier to train staff.

Working conditions for the staff are exceptionally harsh, and the wages paid are not only insufficient to motivate them in their work, but in most cases aren't even enough to pay for transportation to the workplace.

Night shifts by staff in homes for the mentally disabled are paid at about 0.60 levs (0.30 Eur). The average monthly salary in social care homes is about 200 levs (app. 100 Eur) – 120 to 160 levs for orderlies, 190 to 250 levs for social workers and 250 to 350 levs for the directors. The employees in all of the homes are dissatisfied with their wages. Despite this there is low, almost nonexistent staff turnover, since there aren't any alternative job opportunities in the poor municipalities in which the homes are
located. In most of the homes, the staff members have been employed in them for over ten years. The social workers have been working in them for a shorter period of time, since most of the homes had not hired a social worker until the past few years.

5.8 Inspections

Inspections and visits are made to homes for people with mental disorders by a series of state and municipal organs, and by a very few non-governmental organisations. Among the agencies that check up on the homes most often are HEI, PAB (Fire Safety Department), the Social Welfare Department (SWD) for the territory of that municipality, the Regional Social Welfare Department (RSWD), the MLSP, the SWD, and representatives from the municipal administration, since the homes are under the direct authority of the municipalities in which they are located. The municipalities mostly conduct financial supervision over expenditure of the homes' budgets and also over the personal funds of the residents.

In each of the homes there is usually a journal, into which the visits of HEI and PAB (Fire Safety Department) are recorded, along with their findings, recommendations and penalties imposed (if any). Written documents are rarely left after the other types of inspections, and official reports of findings are rarely sent to a home that has been inspected. For this reason, misunderstandings often arise about the inspections carried out in the homes, between the information given by the staff on the basis of the documentation left by the inspectors and the information given by the inspectors themselves. Such misunderstandings occur most often with the employees of the SWDs and the RSWDs. They claim that they visit the homes several times per year, but in the homes themselves there are no official reports from such visits.

The SWDs and RSWDs are not particularly regular in their visits to and inspections of social care homes, especially since the homes were placed under the direct authority of the municipalities on January 1, 2003. The new functions of the SWDs and RSWDs are connected with the provision of methodical assistance and direction to the staffs of the homes, as well as quality control of the social services they provide. As of now there is no effective cooperation between the social welfare organs of the municipal administrations and the regional structures of the SWA/MLSP, and contact by specialists from the SWDs with the social care homes is limited. Unfortunately, aside from the fact that representatives of some of the SWDs and RSWDs do not visit the homes on a sufficiently regular basis, representatives of the SWDs and RSWDs also do not always approach their duties diligently enough.

The BHC concerns and those of other NGOs regarding the lack of sufficiently effective supervisory control over the entire system of homes for people with mental disorders are also shared by the state as embodied by the MLSP. Unfortunately, at the time of their visits to these institutions throughout the country, the BHC researchers did not come across many attempts on the part of the MLSP to set up an independent control mechanism, despite its expressed readiness to do so. As of the beginning of 2004, most of the social care homes had not been visited by MLSP representatives for several years. On March 22, 2004, the MLSP, the SWA and the RSWD undertook an inspection campaign in over 40 homes for people with mental disorders, in cooperation with NGO representatives. The results of these inspections were not
Representatives of the MLSP and the SWA did not leave reports of their inspections in most of the homes they visited during 2002 and 2003 – or at least that was the information received by the BHC team from the homes' directors – but in some places they did leave recommendations and even took some measures to improve conditions in the homes.

The prosecutors do not feel any responsibility toward the social care homes in Bulgaria. The only instance of a prosecutor making a check on a social care home was instigated by a letter that Amnesty International sent to the Prosecutor General. Case File No. 6675 of 2001 was opened, in which the district prosecutor in the city of Pleven was delegated to make an inspection in the Sanadinovo case. Although the material conditions in Sanadinovo are described in great detail in the inspection report and fully correspond with those witnessed by representatives of the BHC and Amnesty International at the Sanadinovo home, the prosecutor concludes that "the inspection did not uncover conditions that would give us grounds to undertake any preliminary proceedings against any guilty official persons." According to the prosecutor's conclusions, the home needs "more employees and doctors, to take increased care of the patients, and mostly greatly increased financial resources and improved structure of service, much more medical care, and more social contact." The municipalities usually exercise financial supervision over the homes' activity and the expenditure of the residents' personal funds.

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98  http://asp.mlsp.government.bg
6. Correctional schools

The Bulgarian Helsinki Committee (BHC) started studying the human rights in the system of Educational Boarding Schools (EBS) and Social-Educational Boarding Schools (SBS) soon after its establishment. Our organisation published its first report on the "Labour Educational Schools" (LES) in 1996. In 2001, a special study on Educational Boarding Schools and Social Educational Boarding Schools was published as part of the large-scale BHC project on monitoring the rights of institutionalised children in Bulgaria. Meanwhile, the correctional schools caught the attention of some other national and international organisations (Human Rights Watch, UNDP, European Committee for the Prevention of Torture) which, either jointly or independently, were engaged in research and intercession activities striving to achieve thorough reformation of this system. The interest was provoked by the numerous infringements of human rights at these schools – arbitrary placements, inhuman and humiliating treatment, selective and discriminative recruitment of "customers" for these institutions among the Roma children, and the utterly inadequate system of education, rehabilitation and social integration which functions to ensure salaries for a horde of teachers, supervisors and support staff rather than to assure children's well-being. The prolonged and multilateral pressure exerted upon the Bulgarian authorities triggered two attempts for reform – in 1996 and 2004 respectively. The first reform implemented on the eve of the presentation of the Government's report to the UN Committee on the Rights of the Child was formalistic only. The second one claimed to be more comprehensive. Particularly, it aimed at solving completely one of the most serious problems of this system – the problem with arbitrary placements and lack of any guarantees for fair trial which the Bulgarian authorities had reluctantly acknowledged that constituted a deprivation of liberty in essence.

The Bulgarian Helsinki Committee tried to evaluate the results of this reform. The goal of such an evaluation was to draw a generalized picture of these institutions at the beginning of 2005. For several months, the BHC researchers visited all SBS and EBS to collect information which affected a broad range of issues concerning both the internal conditions of these institutions and their relations with the other formal and informal structures of Bulgarian society. The visits were intended to be unexpected to the directors of the institutions. Nevertheless, the researchers had sufficient opportunities to conduct a comprehensive and thorough research. They were provided with an access to the required documentation and with an opportunity to talk to the institutionalised children in private.

6.1. Placement

The procedure for placing children in SBS and EBS is an essential and important issue for numerous reasons. The procedure was amended in July 2004 and, to a great

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100 Bulgarian Helsinki Committee, Correctional Boarding Schools and Social Educational Boarding Schools in Bulgaria, Children in Institutions, vol. 1, Sofia, 2001. This field study was conducted in 2000.
extent, its new provisions have been made compliant with the international standards for fair trial and legal aid. However, there are problems regarding its recognition and application by the local commissions and courts in Bulgaria. On the other hand, placement, as a correctional measure, in SBS and EBS, being institutions with a very poor functionality and effect on children’s behaviour and oftentimes stimulating their destructive and criminal development due to negligence and lack of clear government policy, questions the existence of such a type of correctional measure in terms of efficiency and adequacy. The overall impression from the amendments to the Juvenile Delinquency Act (JDA) is that they were made to justify and provide for the future of the existing institutions rather than to find more adequate mechanisms for prevention and correction of children’s socially adverse behaviour. The new JDA introduced a too unclear definition of an anti-social act – "an offence which is dangerous to society and in breach of law or contravenes public morality and accepted norms of orderly behaviour"\(^{101}\). This definition poses many questions regarding its relation to the real behaviour of children branded as perpetrators of anti-social acts and the adequate measures for correction of their "socially intolerable" behaviour.

The amendments also introduced a provision for court supervision over the decisions of the Local Commissions for Combating Juvenile Delinquency about placement in SBS. The amendments also contain new opportunities for provision of legal aid to children\(^{102}\), sanctioning the parents for their children’s behaviour\(^{103}\), new types of correctional measures other than placement in SBS and EBS\(^{104}\), a more thorough and

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101 Juvenile Delinquency Act (State Gazette No. 13/14.02.1958, as amended in State Gazette No. 28/1.04.2005), JDA, Art. 49a, item 1.
102 Art. 19, para 3, JDA.
103 JDA, Art. 15 (amended in State Gazette No. 53/1975) (1) (amended in State Gazette No. 66/2004) With respect to parents or their legal substitutes about whom it is found during the correctional case that they have shown neglect in educating their children and have committed offences under Art. 11, para 1, one of the following measures may be imposed: 1. Warning; 2. Duty of attending special courses and counselling related to children's education; 3. Fine from BGN 50 to 1,000. The measures are administered by the local commissions in panel, as determined under Art. 11, para 2, which has heard the correctional case. At the request of the persons under para 1, the chairman of the local commission may substitute the fine with voluntary labour to the benefit of the community; the hours of the labour done must comply with the amount of the fine, but no more than 160 hours. The labour and the procedure, the way and the time for such labour is determined by the mayor of the municipality (area or mayoralty), taking into account the age, education, profession, family status, health condition, working hours of the parent or the legal substitute, and any other circumstances which have relevance to the enforcement of the measure.
104 JDA, Art. 13. (amended, State Gazette No 53/1975, amended, State Gazette No 66/2004) (1) The following correctional measures may be imposed to minors and adolescents who had committed anti-social acts and adolescents who have committed crimes but released from penal liability by virtue of Art. 61 of the Penal Code: 1. Warning; 2. Duty of apology to the victim; 3. Duty to participate in consultations, training sessions and programmes for overcoming any behavioural deviations; 4. Placement under correctional supervision of the parents or their legal substitutes with instructions for special care; 5. Placement under the correctional supervision of a supervisor; 6. Prohibition to visit particular places and establishments; 7. Prohibition for meeting and contacting particular people; 8. Prohibition to leave the current place of residence; 9. Duty of removing the damage inflicted, where possible, if within his/her powers; 10. Duty of community service; 11. Placement in a social educational boarding school; 12. Warning on possible placement in a correctional boarding school with a probation term of up to 6 months; 13. Placement in a correctional boarding school. With a view to the
clumsy procedure (it takes at least 2.5 months from the receipt of the signal to the actual placement in SBS or EBS) of taking decisions by the local commissions, including delivering opinions by different specialists who work with children.

6.1.1 Legal Provisions for Placement Procedure

According to the Juvenile Delinquency Act, the competent body for hearing correctional cases of anti-social acts committed by minors (individuals between 8 and 14 years of age) and adolescents (individuals between 14 and 18 years of age) and crimes committed by adolescents who are released from penal liability under Art. 61 of the Penal Code is the local commission that has jurisdiction at their current place of residence and consists of a chairman (who is a qualified jurist) and two members whom the chairman selects among the members of the local commission on a case-by-case basis.\(^\text{105}\)

The procedure for imposing the correctional measures of "placement in SBS" and "placement in EBS" as well as any other correctional measures is initiated by a delivering a report about anti-social acts and/or crimes committed by juveniles. Such a report can be submitted to the Local Commissions for Combating Juvenile Delinquency by courts, prosecutors’ offices, police authorities or other government officers and citizens and is usually registered by the commission’s secretary in a special registry book.\(^\text{106}\) After the signal reported by citizens or government officers is properly registered, the secretary of the local commission assigns two supervisors (who are not members of the local commission) the task to investigate within 7 days whether or not there are sufficient data available about any offence. The results of such an investigation are presented in writing to the secretary of the local commission.\(^\text{107}\) When a signal is reported by the prosecutor's office or the court as well as in the cases when the investigation on a signal reported by a government officer or a citizen founds sufficient data for existing offence, the secretary of the local commission immediately reports the case to its chairman.\(^\text{108}\) Then the chairman selects the panel members of the local commission and assigns a commission member, who is not a panel member, the task to prepare within 14 days a written report about the personal characteristics of the offender, his/her age, health condition, physical and mental development, family environment, family relationships, the extent of care taken by the parents or their legal substitutes, education and upbringing.\(^\text{109}\)

The panel of the local commission initiates a correctional case, schedules a hearing and promptly notifies in writing the juvenile, his/her parents or their legal substitutes,

\(^{105}\) Art. 11, JDA.  
\(^{106}\) Art. 16, para 1, JDA.  
\(^{107}\) Art. 16, para 2, JDA.  
\(^{108}\) Art. 16, para 4, JDA.  
\(^{109}\) Art. 16, para 4, JDA.
and the respective Social Assistance Directorate. The hearing date is scheduled one month after the case initiation date. The commission panel selects a case reporter who prepares the case for hearing. Before hearing of the correctional case, the chairman enables the juvenile, his/her parents or their legal substitutes, the persons who defend his/her legal rights and interests to familiarize themselves with the report of the local commission and the report of the Social Assistance Directorate prepared under Art. 21, para 1, item 15, of the Child Protection Act. The reports are enclosed to the materials on the correctional case.

The correctional case is heard in camera. The hearing must be attended by the juvenile, his/her parent or their legal substitutes. The hearing may be also attended by the supervisors who investigated the reported signal and a representative of the respective Social Assistance Directorate. On the correctional case, the juvenile’s legal rights and interests are defended by a trusted representative or an attorney-at-law. When no trusted representative or attorney is specified, the juvenile’s legal rights and interests are defended by a representative of the Social Assistance Directorate. If the chairman of the local commission decides that it is in the juvenile’s interest to invite other experts, such as teacher, psychologist, psychiatrist, class administrator, pedagogical counsellor, school psychologist, supervisor, etc., and the victim of the anti-social act. When any of the persons whose presence is compulsory fails to appear at the hearing, the commission's chairman adjourns the hearing; if the person who failed to appear without any serious cause, the chairman also submits a written request to the authorities of the Ministry of Interior for bringing him/her in by compulsion.

After opening the hearing, the chairman explains to the juvenile his/her rights on the case, the offence, the subject matter of the case and its consequences. The chairman asks the juvenile to give explanations, if he/she desires so. The juvenile should not be

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110 Art. 16, para 5, JDA.
111 Art. 16, para 5, JDA.
112 Art. 21, para 1, item 15 of the Child Protection Act, "prepare written reports and opinions in cases under the Art. 15, para 6; the notification shall include: the subject of the court proceeding; the parties involved; the particular task formulated ex officio or upon request of a party involved in the court proceeding; deadline for implementation of the task, not shorter than 14 days of the date of receipt of the notification by the Social Assistance Directorate; parents or the person who takes care of the child."
113 Art. 16, para 6, JDA.
114 Art. 19, para 5, JDA.
115 Art. 19, para 1, JDA.
116 Art. 19, para 2, JDA.
117 Art. 19, para 3, JDA.
118 Art. 19, para 4, JDA.
119 Art. 19, para 6, JDA.
120 Art. 20, para 1, JDA.
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coerced to give explanations and plead guilty. The juvenile is heard in the absences of his/her parents or their legal substitutes, if the commission panel deems to be in the juvenile’s interest.

The following persons are given the opportunity to ask questions and call witnesses: the minor – through his/her parents or their legal substitutes, or the persons who defend his/her legal rights and interests; the adolescent – personally or through his/her parents or their legal substitutes, or the persons who defend his/her legal rights and interests; the juvenile’s parents or their legal substitutes, or the persons who defend his/her legal rights and interests. The commission panel interrogates the persons appeared and collects and verifies any written and material evidence presented on this case. When establishing that the facts on the case are not properly clarified, the court adjourns the hearing until further evidence is gathered. If a teacher, psychologist, psychiatrist, class administrator, pedagogical counsellor, school psychologist, public supervisor, etc., as well as the victim of the anti-social act are invited, then the chairman, at his own discretion, gives them the opportunity to express opinion. Before the commission panel withdraws to consider their decision, the juvenile is given the opportunity to express his/her final view on the act, which is a subject-matter of the case. A recording secretary, who is not a member of the commission panel, takes minutes of the hearings. The recording secretary is selected by the chairman of the local commission on a case-by-case basis. The following details must be recorded in the minutes: the date and the place of hearing; the panel which hears the case; the persons who appeared; the proceedings and their sequence; and any evidence gathered on the case. The minutes are signed by the chairman and the recording secretary. The juvenile, his/her parents or their legal substitutes, the persons who defend his/her legal rights and interests may, within 14 days, appeal before the relevant regional court against the decision whereby the correctional measures under Art. 13, para 1, items 3–10 and 12 of JDA are administered.

After hearing the correctional case and taking into consideration the personal characteristics of the offender, his/her age, health condition, physical and mental development, family environment, education and upbringing, the nature and burden of the act, the motives and circumstances in which the act has been committed, whether an attempt has been made to correct the damages, the subsequent behaviour of the offender, the existence of any previous acts and the respective measures and punishments imposed, and any other circumstances which have a bearing to the particular case, the local commission renders a decision whereby it can propose the

121 Art. 20, para 2, JDA.
122 Art. 20, para 3, JDA.
123 Art. 20, para 4, JDA.
124 Art. 20, para 5, JDA.
125 Art. 20, para 6, JDA.
126 Art. 20, para 7, JDA.
127 Art. 20, para 8, JDA.
128 Art. 23, JDA.
district court to impose a correctional measure like placement in SBS and EBS. The decision is executed in writing stating the motives, signed by the panel members and announced in the very same session.

In the cases when the local commission has proposed the court to administer the placement in SBS or EBS as a correctional measure, the district court schedules the hearing within 14 days as of the day when such a proposal was received. A single judge hears the case in a sitting in camera by summoning the child, the parents or their legal substitutes, the persons who defend his/her legal rights and interests, the prosecutor from the relevant prosecutor’s office. The court may collect new evidence. After hearing the above-mentioned persons, the court announces within 7 days either a motivated decision on imposing the measure of placement in SBS/EBS or another similar measure or a ruling for dismissing the case if it is found that no anti-social act has been committed or if the juvenile has not committed the act or if the act is apparently insignificant, or delivers a ruling for sending the materials on this case to a prosecutor, if the acts constitutes a crime. The decision of the district court which imposes the measures of placement in SBS or placement in EBS can be appealed or challenged before the respective regional court by the adolescent, his/her parents, the minor’s parents or their legal substitutes, or the persons who defend his/her legal rights and interests within 14 days of its rendition. The district court schedules the appealed or challenged case within 14 days after the request hereof is lodged. A three-member panel of judges hears the case in sitting in camera, summoning the child, the parents or their legal substitutes, the persons who defend his/her legal rights and interests, the prosecutor from the relevant prosecutor's office. The parties may present evidence until the court proceeds with the case. The court hears the appellants and the prosecutor’s conclusion. Then the court renders within 7 days a final decision which either affirms or repeals the appealed decision and imposes another correctional measure or repeals the appealed decision and terminates the case if the act is found to constitute a crime. After closing the proceedings, the case is referred back to the chairman of the local commission to enforce the decision.

129  Art. 21, JDA.
130  Art. 21, para 2, JDA.
131  Art. 24a, para 1, JDA.
132  Art. 24a, para 2, JDA.
133  Art. 24a, para 4, JDA.
134  Art. 24a, para 5, JDA.
135  Art. 24b, para 1, JDA.
136  Art. 24b, para 2, JDA.
137  Art. 24b, para 3, JDA.
138  Art. 24b, para 4, JDA.
139  Art. 24b, para 5, JDA.
140  Art. 24c, JDA.
6.1.2 Criteria for placement in SBS and EBS

According to the currently effective Juvenile Delinquency Act, "minors who have turned 8 years of age and adolescents who have committed or there are prerequisites for committing anti-social acts are placed in the Social Educational Boarding Schools".\textsuperscript{141} The Social Educational Boarding Schools Regulations (SBS Regulations)\textsuperscript{142} made provisions for a larger range of pupils to be placed in SBS by interpreting the availability of "prerequisites for committing anti-social acts" in relation to the family environment and its effect on pupils. Due to the above-mentioned prerequisites, the children subject to placement in SBS are those with "parents whose criminal acts have had a harmful effect on them and constitute a risk factor for their development" and "exhibit deviant behaviour, are victims of criminal assault, or have been ill-treated in the family or by other persons"\textsuperscript{143}. In addition, the SBS Regulations further provide that in SBS can be placed "pupils who are deprived of suitable living conditions and parental care and supervision: a) who have mentally ill parents, whose behaviour and way of life have induced their deviant behaviour; b) whose parents abuse alcohol, psychotropic and narcotic substances, causing a harmful effect and inducing their deviant behaviour."\textsuperscript{144} Defined in such a way, the placement criteria are too general and provide for placement of children from diverse family and social environments. It was explicitly forbidden to place children in SBS "for purely social reasons, linked with financial difficulties in the family, as well as children with severe chronic diseases, severe mental and behavioural disorders (schizophrenia, frequent epileptic fits), counter-indicative of placement in SBS".\textsuperscript{145} There are no other Regulations issued by the Ministry of Education and Science so far, although the issuance term has expired, and therefore the above-mentioned Regulations are still in force. The interpretation of the currently effective JDA excludes the category of children who have no appropriate living conditions and lack parental care and supervision from the children subject to placement in SBS, despite preserving the extensive wording of available "prerequisites for committing anti-social acts".

According to the amended JDA, "in social educational boarding schools are placed minors who have turned 8 years of age and adolescents who have committed anti-social acts for whom the correctional measures under Art. 13, para 1, items 1–10 and 12 have proven inadequate and who lack a suitable social environment for its normal education". In these institutions are also placed minors on whom the court or the prosecutor have imposed such a correctional measure by virtue of Art. 61 and 64 of the Penal Code."\textsuperscript{146}

\textsuperscript{141} Art. 28, JDA.
\textsuperscript{142} Promulgated in State Gazette No. 73/17.08.1999.
\textsuperscript{143} Art. 6, para 2, JDA.
\textsuperscript{144} Art. 6, para 3, JDA.
\textsuperscript{145} Art. 7, SBS Regulations.
\textsuperscript{146} Art. 28, JDA.
Although the amendments to JDA are made with the purpose to avoid formalism and provide more efficient protection of the rights and interests of the children who have committed anti-social acts, no appropriate comments can be made on these amendments – either because it is too early to do so (the amendments came into force in August 2004) or because many of the children are placed under the former procedure. Their status is still unclear, insofar as they are, in fact, unlawfully deprived of liberty for an unlimited period of time and a greater part of them are placed in such institutions (especially SBS) for social reasons. The JDA seems to turn a blind eye to the usual causes of the children's behaviour that is dangerous to society by pretending to introduce alternative methods to face them. Despite laying no special emphasis, it has preserved the right of the local commissions to propose children, who need mostly protective measures, rather than correctional ones (let alone the measures taken at institutions such as SBS and EBS), to be placed in correctional institutions. Although the Minister of Education and Science is obliged by law to issue regulations that govern the SBS and EBS activities within 3 months as of the time when the JDA amendments come into force, the 1999 Regulations are still in effect as of March 2006. These Regulations encourage the mixing of deviant children and non-deviant children who live at risk at SBS, which is a poor practice incapable of attaining a positive correctional effect.

The allocation and placement of juveniles in correctional boarding schools are done by a commission of the Ministry of Education and Science. To place children in EBS, the Local Commissions for Combating Juvenile Delinquency must submit the following documents to the Ministry of Education and Science: a decision of the district court on the correctional measure administered by the Local Commission for Combating Juvenile Delinquency; a judgement, ruling or order by the court or the prosecutor's office in the cases provided in Art. 61 and 64 of the Penal Code; minutes and decision of the Local Commission for Combating Juvenile Delinquency; a statement of character prepared by the inspectors of the child pedagogical offices based on a model form approved by the Minister of Interior – 2 copies; a birth certificate or another document issued by the mayor of the relevant municipality certifying the juvenile’s date and place of birth; a certificate verifying that the juvenile has completed the respective school level or a certificate of primary education and a certificate for transfer of a pupil subject to compulsory education; a certificate issued by the municipality to the pupils who have not gone to school; a medical certificate based on a model form approved by the Minister of Health – 2 copies; a personal medical record of the child.

The children are allocated to schools on the basis of their sex, educational level, age, psychical state, personal characteristics and the nature of the anti-social acts. A commission organised by the Ministry of Education and Science sends a Letter of Placement to the respective school, the Local Commission for Combating Juvenile Delinquency, the inspector of the child pedagogical office (local police office at the

147 Art. 30, JDA.
148 Art. 11, EBS Regulations.
149 Art. 13, EBS Regulations.
child’s place of residence), the district prosecutor’s office or district court in some cases, and the child's parents or their legal substitutes.

6.1.3 Placement practice

Seven SBS and two EBS were closed down in the last four years mostly because these institutions had no longer housed sufficient number and lawfully placed children. The number of residents was maintained to avoid staff lay-off. The Ministry of Education and Science still supports 24 correctional institutions (18 SBS and 6 EBS) with an average capacity of more than 2,000 places – about 1,500 at SBS and about 550 at EBS. The BHC conducted a monitoring study in January–March 2005 in all SBS and EBS. It found out that at 12 of these institutions the number of registered children is almost half of or even less than the capacity requested by the institution. The documented number of children amounted to 1,500, but during the BHC visits about 900 children only were present. Approximately 60% of the institutionalized children are of Roma origin reported the directors of these institutions. Data collection and summing-up the number of children placed in SBS and EBS have always been conditional. Very often the directors of such institutions cannot determine the exact number of the children, explaining the situation by the fluctuation of the children coming to and going out of this type of institutions – frequent escapes and unsuccessful searches, non-appearance of a child whose placement is documented at the beginning of the school year, lack of coordination between the different correctional institutions, thus allowing a child to be registered with two institutions, etc. It was even more difficult to determine the number of the children who are at the boarding school on the day of the visit because the director, the kitchen staff, supervisors and children themselves gave contradictory data. The BHC researchers were left with the impression that there was no trustworthy source of information about the number of the children present at the boarding schools at the time of the visit. The directors frequently explained the absence of children with their failure to return from home leave or the necessity to work to earn money. In practice, the BHC researchers saw about 20–30 children at the boarding schools and 3–4 pupils in the classrooms.

6.1.3.1 The placement practice under the new JDA procedure

Since the beginning of the 2004/2005 school year, there have been only single placements under the new JDA placement procedure. The staff at most schools explained this either by the clumsiness of the new procedure or the demographic collapse. Despite being small in number, the examples of placement under the new procedure are diverse and show different approaches, different levels of knowledge of the legal framework and different interpretation of this legal framework. At one of the visited institutions only was there a group of 14 children placed illegally (SBS – Ostritsa). Their files contained only the parent’s application for placement of the child (many applications were even undated), a birth certificate, a certificate of transfer and an anonymous and undated psychological and pedagogical evaluation. After notifying the Ministry of Education, Ms. Peshka Korkinova, Director of Educational and Cultural Integration Directorate at the Ministry of Education and Science, claimed in a letter that "to remedy the violations committed with regards to placement of children
in SBS – Ostritsa, the director of this institution was handed a written order with obligatory instructions. Curious was the reaction of the Regional Inspectorate of Education under the Ministry of Education and Science that carried out an inspection and recommended that "all steps necessary to register the persons with undetermined status (placed at the institutions under the provisions of Juvenile Delinquency Act) should be taken following the lawful procedures". It is evident that the inspectors presume the existence of legal grounds to place such children at the boarding schools and these grounds need to be just substantiated "formally". A more serious investigation of this case, of course, should include an examination of each particular case and an assessment whether or not the respective child is subject to the correctional measure of placement in SBS, rather than just providing valid documents for registering them with such institutions.

In SBS – Berievo the BHC researcher found five children who have no placement documents issued by the Local Commission for Combating Juvenile Delinquency. At other schools, there were just single cases of placement without documents of the local commissions or the court. For example, a 13-year-old from the fifth grade from the special school for intellectually disabled children in Lom was placed in SBS – Pelatikovo for "regular begging on the trains", as the decision of the local commission stated. No court decision was available for his placement there in February 2005. His file contained an undated medical certificate issued by a physician in Lom stating that the child has a normal mental and physical development. The other documents in his file showed that the boy came from a family with many children and had been living in a wretched household environment. This case poses many questions about the quality of education to be provided to a child who has been studying at a rehabilitation school for several years and subsequently "integrated" into SBS as well as the depletion of any other correctional and protective measures to assure best protection of his rights and interests. Another 8-year-old child had been placed in SBS – Pelatikovo since September 2004 at the parents' request only. On 18 February 2005 the District Prosecutor of Dupnitsa announced that on a proposal by the School Commission for Combating Juvenile Delinquency at SPS – Pelatikovo the child must be placed in SBS "due to the grave household and social conditions of the family, the lack of suitable living conditions and a risk for committing an anti-social act". This placement again has been made without a court decision, therefore being unlawful. Two sisters were placed in SBS – Straldzha for the 2004/2005 school year by virtue of decisions issued on 12 January 2000 by the Local Commission for Combating Juvenile Delinquency in Tvarditsa. The decision about one of the sisters said that she "is allowed to be placed in SBS because of impossibility to be brought up and educated by her parents". Enclosed was an application by the mother for placement in SBS because she was divorced and had three children, one of whom had a serious physical handicap. The girl's record file also contained a school certificate for completed fifth grade by 10 January 2000 and a certificate for transfer to SBS due to "family reasons". The director reported that the child had been placed in SBS in 2000 together with her sister but for two years they had not gone to school and since the 2004/2005 school year they had been placed again in SBS without any new admission.

150 Letter, ref. no. 11-4/16.03.2005, from Ms. Peshka Korkinova, Ministry of Education and Science, to BHC.
documents. The director, however, was unable to find her sister's documents. By December 2004 a 14-year-old girl was placed again in SBS – Straldzha, who since 9 December 2004 had been transferred to SBS – Varbitsa by virtue of a letter of the Ministry of Education and Science, although we found no document of the Ministry in her two files kept at both boarding schools. No documents issued by a Local Commission for Combating Juvenile Delinquency were found at any of boarding schools where she had been placed. Moreover, at SBS – Straldzha we discovered a written request of the father dated 20 September 2004 asking to release his daughter from SBS and return her to her real family. According to one of the psychological and pedagogical characteristics of the girl, dated 3 May 2004, she escaped on 9 March 2004 to Yambol to be "sold to some person" and on 27 March 2004 she went to Varna to "join a human traffic channel". The report made on 17 June 2004 by the Social Assistance Directorate and enclosed to her file at SBS – Straldzha said that her parents had been retired persons, her mother disabled and her father retired after an occupational accident, she had a sister, that her parents had lodgings, a monthly family income of BGN 140 [70 EUR] and wanted to take care of her. The following documents were found at SBS – Varbitsa: a birth certificate, pedagogical reference prepared by SBS – Straldzha, a letter of transfer issued by SBS – Straldzha, a certificate for transfer dated 9 December 2004, a health record. During the BHC visit to the SBS, this girl was again reported as "runaway", although the boarding school had no document substantiating her lawful placement there.

According to the documents at the boarding school, one of the girls recently placed in SBS – Varbitsa was 15 years old and had not gone to school prior to 2004. These documents also reported that she was a wanderer, did not go to school, drank alcohol, smoked cigarettes, and treated her mother and minor sisters cruelly. There was an evident lack of parental control and financial means in the family. The report of the Social Assistance Directorate claimed that she lived in a wooden shed without any potable water supply and electricity; the family lived on social allowances; the father was in prison. The proposal of SBS dated 1 December 2004 and the decision of the district court was accordingly taken on 21 December 2004. We cannot draw the conclusion from the documents prepared by the Local Commission for Combating Juvenile Delinquency that the procedure provided in Art. 16 of the Juvenile Delinquency Act had been duly followed. According to the court decision there were "convincing evidence demonstrating deviations from the moral norms, although they did not constitute a crime". It is curious that in some cases the court sticks closely in its decisions to the recommendations of the Local Commissions for Combating Juvenile Delinquency and places children in SBS on the basis of social indications only, provided that there is possibility for placement in institutions for children deprived of parental care.

The only example for appeal against a court decision on placement in SBS found by the BHC researchers is the case of a 12-year-old girl who was accommodated at SBS – Varbitsa. The school documents reported that she had been abroad where she was pickpocketing in a shop. Sofia District Prosecutor's Office refused to initiate penal proceedings against her and forwarded the materials to the Local Commission for Combating Juvenile Delinquency in Chirpan. The commission had a hearing on 18 October 2004, decided to place the girl in SBS and informed the district court of its
decision. The court hearing also took place on 18 October 2004 in the presence of the
girl's mother, father, and a supervisor. The court decided to place the girl in SBS. On
18 October 2004 the father submitted an opinion against the court's decision.
Nevertheless, the girl was placed in SBS – Varbitsa. Then the father lodged an appeal
against the decision of Chirpan District Court to Regional Court of Stara Zagora
within the legal term, although the decision of Chirpan District Court had explicitly
stated that it was not subject to appeal. The Regional Court of Stara Zagora held a
hearing on 5 November 2004 and found numerous violations of the Juvenile
Delinquency Act by the district court. Firstly, the regional court found the decision of
the local commission for placement in SBS to be incorrect because, according to the
currently effective law, the commission was able only to propose such. Moreover,
there were no data that an inspection by two supervisors who were not commission
members had been carried out on the reported signal; there were no data that Chirpan
District Court had explained the rights for the girl's defence; there was no report under
Art. 16, para 4, item 2 of JDA; Art. 21, para 1, item 15 of the Child Protection Act
was infringed; there were no reasonable motives for taking a decision on placement in
SBS and data that other correctional measures had been applied but proved to be
insufficient. In addition, there was no fax copy to report the crime committed by the
girl abroad, which had been persistently mentioned as evidence in the decision of the
local commission and the decision of the Chirpan District Court. The decision of
Chirpan District Court claimed not to be subject to appeal, which contradicts the law.
The Regional Court of Stara Zagora mentioned in its decision that the Juvenile
Delinquency Act did not clearly provide for its powers but, nevertheless, the Regional
Court repeals the decision of the district court and decreed that the measure of
"placement under correctional supervision" should to be imposed for a year. The BHC
researchers saw in several SBS decisions issued by district courts that they stated not
to be subject to appeal. This and some of the other omissions mentioned above show
an alarming tendency for improper interpretation of the amendments to the Juvenile
Delinquency Act, which continue to result in detention of juveniles at correctional
institutions.

6.1.3.2 Placements following the former JDA procedure and placement activities
of the Local Commissions for Combating Juvenile Delinquency

Except for their predisposition to stick to the letter of the law, there is also a concern
about the activities of the Local Commissions for Combating Juvenile Delinquency
before and after the adoption of the JDA amendments. Directors of the correctional
institutions complained that children had been placed in SBS and EBS with no or
incomplete documents issued by the Local Commissions for Combating Juvenile
Delinquency. In many institutions, although such a decision is available, it contains
too little information about the decision-making process – no information whether all
commission members have been present or signed the decision; no information
whether a parent or guardian had attended the hearing and what his/her position was;
no information of imposing any previous correctional measures whose inefficiency
required placement at a correctional institution; no details (time, date, nature) of the
particular anti-social act, etc. At some institutions, there were minutes of the hearing
enclosed to the decisions of the local commissions but the minutes have been kept
very curtly and formally, sometimes even absurdly and cynically. Oftentimes, the
described acts are mere symptoms of illness or signals of crimes against the children who are being placed in SBS. Take, for example, the case of a 13-year-old girl placed in SBS – Rozovo by the local commission in Panagyurishte. The motives stated in its decision taken on 18 November 2003 maintained that the placement in SBS was required because the girl's mother had abandoned her and her father had been a heavy drinker and drowned in a local lake in July 2003. For these reasons, there was nobody who can take care of the girl (claimed the report of the Social Assistance Directorate). A decision of the local commission asserted that she had frequently escaped the correctional school and played truant. The second reason for placement in SBS, according to this decision, was: "ascertained participation in a molestation (on her)". It is evident that the local commission has taken a protective rather than a correctional measure, but placement in SBS hardly being the most appropriate one. According to this decision, the girl had been placed in SBS for one year. Nevertheless, she was still kept on the SBS records, although more than a year had elapsed since the placement at the time of the BHC visit (24 February 2005).

Another girl, initially placed in SBS – Straldzha and then in SBS – Varbitsa, had been sexually abused by her stepfather many times, as evidenced the documentation of the Social Assistance Directorate. The report of the Social Assistance Directorate, dated 19 May 2004, indicated the location of the father and who was the real father of all the children in the family and what the girl's family environment was like. The report mentioned that her mother's partner had abused sexually the girl for two years (1999–2001) and that the girl had not gone to school in this period. Previously, the girl had been placed at the homes for children deprived of parental care "Nadezhda" and "Asen Zlatarov" (probably in Sofia, not specified). She has three brothers, two of whom accommodated at a home for medical and social care, and two sisters placed at other institutions. The place where the whole family had lived had no electricity and water supply and was comprised of two rooms. In May 2001 the girl was accommodated with an adoptive family. On 25 September 2001 the Local Commission for Combating Juvenile Delinquency in Parvomai took a decision for placing her in SBS. The decision stated that she had been living for a while with a friend (aged 21 and earning money as a prostitute) and working at a massage parlour in Plovdiv. In this period she went to the First Police Station in Plovdiv and reported that she had been raped by her stepfather. The Local Commission for Combating Juvenile Delinquency initiated a preliminary investigation. Later she denied her testimony and explained that she had sex with her stepfather voluntarily. Interpreting the motives in this decision, one can conclude that the reason for placing this girl in SBS was for her own protection. On 20 March 2004, however, she had been caught at Kapitan Andreevo Border Checkpoint with a forged passport trying to cross the border (as evidenced the documents in her file). On 13 April 2004, an inspector of the Child Pedagogical Office in Haskovo found that the child was neither with her mother, nor at the institution. Her mother claimed that she had married in some village. It is difficult to explain what the correctional and educational effect of SBS on this child was. There is a girl placed in SBS – Sofia whose parents are unemployed, as reported in her record file. The father used to exert physical violence on the child. Then the mother placed her in the boarding school. The decision of the local commission dated 29 September 2003 mentioned that the child was "a wanderer," a
victim of abuses of her father who is a heavy drinker" as a motive for her placement in SBS.

6.1.3.3 Placement by the Local Commission for Combating Juvenile Delinquency instigated on the basis of social indications

The unnoticeable boundary between the cases of the children placed in institutions for children deprived of parental care and the children in SBS who are placed there on the basis of social indications is revealed by the motives mentioned in a decision of the local commission about a child placed in SBS – Stolat, namely: "...from an early childhood, she has been placed in Mother and Child Home and then in Home for Children and Adolescents, but after the change to the Regulations of the Home for Children and Adolescents the girl cannot stay at the Home any more. The financial and social hardship of the mother and her way of living provide conditions for asocial behaviour." Such a conclusion can, of course, be drawn for at least half of the children placed in any children's institution in Bulgaria and it is futile to put forward such arguments to justify placements in SBS.

A 13-year-old child with a long history of living in such institutions (Home for Pre-School Children, Home for Children and Adolescents in Yambol, then Home for Children and Adolescents in Ovchi Kladenets by 6 January 2003) was placed in SBS – Straldzha. The Home for Children and Adolescents in Ovchi Kladenets was closed and she could not be admitted in the home for children deprived of parental care in Yambol because she did "not meet the requirements of Art. 5 of the regulations that govern the activities of the institution for children deprived of parental care". According to the documents in the record file, the mother abandoned the child a long time ago and did not show further interest, the grandmother who took care of the child died and the father was unable to take care of the child. The local commission of the district of Tundzha in Yambol had a meeting on 27 January 2003 and decided that due to the unfavourable living conditions and because the child's parents were living separately, there was a valid reason for placement in SBS. The minutes of meeting gave no information whether or not the child and the father had attended the meeting. Only a public defender, who was the social worker of Child Pedagogical Office – Tundzha in Yambol and the inspector of the Child Pedagogical Office for the same area, were present. On 9 September 2003 the child was placed in SBS – Straldzha.

With reference to the many cases of unlawful placements in SBS – Straldzha, the director of the institution reported that the Regional Inspectorate of the Ministry of Education and Science in Yambol regularly visited the boarding school to count the children and inspect the placement documents, but there were many children whose documents evidently had not impressed much the Inspectorate with their placement procedures. It turned out that four, out of 11 audited children's files, had no decision for placement in an institution issued by a Local Commission for Combating Juvenile Delinquency. The decisions in the remaining seven files were motivated with the parents' impossibility to rear the child due to poor household conditions rather than commitment of any anti-social act. Three of the children whose files we examined had been placed in SBS from a home for children deprived of parental care. The file of one of the children whose files we requested could not be found by the director at all.
None of the cases evidenced that there had been any correctional measures other than placement in SBS.

Of course, there are children who have been unlawfully placed in the social educational boarding schools under the old procedure and are treated as status quo. The employees in these institutions do not show any concern in these cases but usually explain the lack of placement documents with the negligent work of the Local Commissions for Combating Juvenile Delinquency. As regards the adherence to the procedures, the minutes of meetings and decisions of the local commissions very curtly and vaguely describe the motives for placement in SBS. Oftentimes, they arouse serious concern, even a dangerous effect, which the correctional measure may provoke. A telling example is the placement of a 15-year-old boy of Plovdiv in SBS – Rezovo in the first half of 2004. He has been placed in a boarding school with the following motives listed in the decision of the local commission of 22 February 2004: "exhibitionism, participations in robberies, playing truant, no effect from the transfer of the pupil to different schools in Plovdiv". A written statement of medical examination enclosed to the boy's file said that he had "improper value system – speaking slightingly of sex with the possibility to be aggressive at times". According to the minutes of the local commission, the hearing was attended by the boy's father, supervisor, jurist of the Child Protection Office, and the boy himself.

A lesser problem is the placement of children in EBS. At all institutions visited by the BHC researchers, the documents of the local commissions and the court as well as information about the juvenile’s acts were available. At EBS – Podem there was a case of a 17-year-old girl with developmental disabilities with suicidal tendency who had been admitted for the 2003/04 school year and was difficult to deal with. She yielded to no education and had no capacity to fit in the social life of the school. The case had been referred for a psychiatrist’s opinion and by decision of the prosecutor the girl had been transferred to a specialized health institution in Lovech.

6.2. Material conditions

6.2.1 Buildings, sanitary facilities, hygiene

Only four of all the social educational boarding schools and correctional boarding schools are located in towns. These are SBS "Prof. P. Mutafchiev" – Sofia, SBS – Straldzha, EBS – Nikola Vaptsarov" – Zavet, SBS "Angel Uzunov" – Rakitovo. The other institutions are situated at small and hard-to-reach settlements. Oftentimes, there is bus transportation once a day and the roads are in very bad condition. The remoteness of the boarding schools from the big cities makes these institutions difficult to be visited both by the children’s parents and by supervising authorities and donors alike. The directors of some of the institutions confided that many of the children did not come back from home leaves or vacations because their parents had no money to pay for the trip back to the boarding school (SBS – Varnentsi, SBS – Pchelarovo, SBS – Nevsha) and the teachers themselves had to go and bring the children. Another common practice for bringing children back to the institutions is to request a nationwide search or the help of the inspectors of the Child Pedagogical Office (SBS – Lik, SBS – Dragodanovo, etc.). SBS – Bogdanitsa has made
arrangements with a private transportation company to carry the children free of charge – against presentation of the leave note only. The remoteness of the boarding schools from the towns makes them unattractive for professionals qualified and motivated to work with children who need special pedagogical and psychological care. This fact questions the quality of education and efficiency of the correctional curricula at such institutions.

The housing facilities of the boarding schools have been developed in different periods of the twentieth century. Part of the buildings where the schools are housed are built in the 1930s (SBS – Medovina, SBS – Ostritsa, SBS – Stolat). A greater number of the buildings of SBS and EBS were built in the 1960s and 1970s as village schools. Most of these facilities are in very a poor condition and need repairs. The most urgent is the situation in SBS – Medovina where the boys are accommodated in seven ramshackle buildings, each measuring 25 sq. m, which have been assembled for temporary use until the new building of the dormitory is erected and this continues for about 20 years. For lack of funds, the building works of the dormitory have been suspended and there are no signs of resuming them. The only one new building is a dormitory erected in 1993 for the needs of the boarding school in Varnentsi. Although it is built relatively recently, the building urgently needs a repair and is uninhabited. It houses the kitchen and the dining room of the institution, the accountant's office, the gym, and the library. In the period 2003–2004, funds dedicated to repair works were granted to the social educational boarding schools in Draganovo (BGN 40,000), Lik (BGN 25,000), Stolat (BGN 36,000 dedicated to a repair of the hearing system installation), Varbitsa (BGN 22,000), Straldzha (BGN 28,000), and Ostritsa (BGN 4,000). Repair works of two floors of the dormitory are undergoing at EBS – Rakitovo, the WC premises at EBS – Kereka have been repaired, and EBS – Podem has submitted an overhaul project amounting to BGN 200,000.

The old housing facilities of the boarding schools require heavy and different repairs: sewerage, power installation, roofing, facade as well as an yearly maintenance. In order to make the routine yearly repairs, the management of the boarding schools relies on extra-budgetary funds, such as donations and manufacturing. At SBS – Draganovo the funds raised from donations helped repair the dormitory building – windows joinery installed, the walls in the dormitory rooms and corridors painted. The beds are replaced with new ones rented from the Involvement Initiative Foundation ("Initiativa Saprichastnost"). Every year the foundation brings foreign volunteers who, together with the boarding school staff, make routine repairs to the buildings. In 2004, a program was launched at SBS – Lik, which required a spatial separation of the groups in the boarding school. The funds that make this repair possible came from the Business and Care Program of FICE Bulgaria. SBS fulfilled an order placed by FICE for making linen and the funds raised are invested in a routine repair. The building of the school and the dining hall in SBS – Dragodanovo need urgent repair because large chunks of wall plaster fall from the facade. The old section of the building of SBS – Nevsha, the whole building of SBS – Medovina (the latest repair made in 1989), the dormitory and the school in SBS – Pchelarovo (which is threatened to be closed because of failure to meet the sanitary and hygienic requirements of the Hygiene and Epidemiology Inspectorate; there are some desks, chairs, and even doors, missing in the classrooms; there are some window glasses
missing in the dormitory), the dormitory premises in SBS – Straldzha, the roofing in SBS – Stoykite, the building and the roofs in SBS – Gabrovtsi, the dormitory premises in EBS – Zavet also need urgent repairs.

Five or six children are usually accommodated in a single room on the basis of their sex, age, family relations, or children's wishes. There is a tendency for the children who wet their beds at night to be accommodated in separate rooms. The most crowded are the dormitory rooms in SBS – Ostritsa where there are 10 children in a single room and in SBS – Bogdanitsa where 8 boys share a single room (which can accommodate 14 children). There are 5–6 children put up in the dormitory rooms of SBS "Prof. P. Mutafchiev" – Sofia, but the beds are much more: 8–12. The most apparent reason for the large number of children put up in a single room is that the rooms in some of these institutions are classrooms turned into dormitory premises (SBS – Sofia, SBS – Bogdanitsa, EBS – Dinevo, SBS – Lik, SBS – Sigmen, etc.). These rooms are large, uncomfortable and hard to heat. In the boarding school in Sigmen, some of the rooms are walk-through, i.e. to come into and out of the room one must go through another room. The children in some of the boarding schools are accommodated in apartments (four people in a room) with independent WC (SBS – Varnentsi, SBS – Beglezh, SBS – Zavet, EBS – Rakitovo). The beds are in a very poor condition, but some of the boarding schools have new wooden beds obtained as donations from NGOs (SBS – Beglezh, SBS – Dragodanovo). Apart from beds, there is no other furniture or, if any, it is unusable. In most of the boarding schools lighting is a problem. The lighting fittings are in a very poor condition and a single room is lighted by a single lamp.

In addition to their dormitory rooms, the children spend most of their time in the classrooms. In most of the boarding houses the educational facilities are dilapidated and obsolete. In some of the schools there is a shortage of desks and chairs (SBS - Pchelarovo, SBS - Ostritz, SBS - Dragodanovo, EBS - Dinevo), and the blackboards in most of them need to be replaced. A significant problem for the facilities is heating in winter. In compliance with the provisions of the SBS and EBS Regulations most of the boarding houses have common rooms, where the children spend most of their free time. These rooms are usually in the boarding house and are equipped with a TV set and chairs. In SBS - Bogdanitza, however, the children watch TV in the corridor, where there is an improvised area isolated for the purpose. The situation is similar in SBS - Nevsha and SBS - Pchelarovo. The common rooms in SBS - Straldzha are also in a lamentable state.

On an initiative of a volunteer who works with the children from the boarding house in SBS - Dragodanovo a guest room was set up, where children can make a cup of tea or coffee for their guests and talk to them in private. The room, however, is usually locked and is shown only to guests. There is a room for games and a tennis table. There is a big conference room, where different cultural events are held. In SBS - Lik each group has its own room for games.

Few of the boarding houses throughout the country have at their disposal consulting rooms adequately equipped. These are usually boarding houses where there is medical staff in-house, or boarding houses, which inherited equipped consulting rooms that
are no longer used or used only when a medical officer visits the boarding house. These rooms are equipped with the aid kit for primary medical assistance and for conducting a regular check-up. Medicines are also kept there.

The BHC team established that the gymnasiums are difficult to maintain and very often due to lack of renovation funds they are desolated or need urgent renovation works (SBS - Beglezh, SBS - Pchelarovo, SBS - Stolat, etc.). In EBS - Podem a hairdresser’s saloon and a PC club were equipped with donors’ money.

Heating in the major part of the building is provided locally using liquid and solid fuel. Heating systems, however, are often in a run-down state and need to be repaired (especially in SBS - Stoikite, SBS - Dragodanovo, EBS - Dinevo). Using run-down heating systems lead to overspending money on heating without improving the quality of heating. There are still some boarding houses (SBS - Ostritza, SBS - Rozovo, the boarding school in Dragodanovo, EBS - Dinevo), which are still heated by stoves using solid fuel. In SBS - Medovina the boys’ dormitories are heated by water heaters, and the girls’ dormitories – by a big air heater which was made by amateurs and uses liquid fuel, and according to the BHC team the appliance is dangerous to use.

In most of the boarding houses the hygiene in the water closets is not maintained at the necessary level. The major problem is broken-down flush cisterns of the "Asian" type. In these cases toilets are flushed with additional aids such as hoses or buckets. Some of the boarding houses do not have running water because the water pressure is not strong enough to pump the water upstairs (EBS - Podem and EBS - Zavet). The restrooms doors usually do not close. They do not lock from inside (with the exception of the restroom renovated in EBS - Podem and EBS - Rakitovo). In some boarding houses the indoor restrooms are locked during the day and the children are compelled to use outdoor restrooms (SBS - Stolat, EBS - Dinevo). They are extremely dirty and stinking. Some of them have no doors (SBS - Stolat). In SBS - Ostritza all 42 children use a single restroom in the boarding house and two others in the boarding school, while in SBS - Ostritza 26 boys use a single restroom.

Some of the boarding houses have only one bathroom, where all children have their shower (SBS - Bogdanitza, SBS - Stolat, EBS - Dinevo, EBS - Zavet). There are only few boarding houses where showers are separated in cubicles. An average of 15 children share one bathroom. Pupils take a shower in the boarding house at least once a week, and there is a schedule prepared in advance. Girls are usually allowed to use the bathroom whenever they want (according to the managements). The boarding houses usually provide soaps and shampoo provided by donations. According to the managements of the boarding houses most of the children do not have an elementary hygienic culture and very often they throw away or leave behind the hygiene materials provided to them. Hot water is provided by electric heaters. The BHC team established a common tendency for heaters to be replaced, which is carried out or funded either by MES or by donors (SBS - Dragodanovo, SBS - Varentzi, SBS - Straldzha, SBS - Bogdanitza, etc.). In EBS - Zavet hot water is provided by the heating system, which means that even in the summer it is necessary to turn the heating system on so that the children can have a shower. According to the management of the boarding house there will be renovation works in the bathroom.
and a new water heater will be installed. The funds provided under the MES budget for sheets and underwear are usually used for clothes for the staff.

6.2.2 Food

Insofar as food is concerned, EBS Regulations and SBS Regulations refer the matter to Ordinance No. 16 of the Ministry of Health of 1994 on the physiological standards of nutrition of the population\(^{151}\). For the largest age group of children in boarding schools, the Ordinance provides for a daily energy intake standard of 2,400 kcal per child. Food in boarding schools is prepared from a cookbook, which should be written in compliance with the provisions of the Ordinance. The daily food allowance in boarding schools varies from BGN 0.90 to BGN 3.50 [0.45 – 1.75 EUR]. In some boarding houses children have 5 meals a day (SBS - Nevsha, SBS - Bogdanitza, EBS - Zavet), in others - four meals a day (SBS - Sofia, SBS - Lik, SBS - Pelatikovo, SBS - Ostritz, SBS - Rozovo), and in the rest - three meals a day (SBS - Bilezh, SBS - Dragodanovo, SBS - Pchelarovo, SBS - Straldza, SBS - Varnentzi). SBS - Nevsha enjoys this privilege after the municipality issued a permission. The management of SBS - Bogdanitza adds to the payment for the children who are in the boarding house because the program covers only the local children. Most often the daily food standard is supplemented by donations or thanks to a lease. In SBS - Varnentzi, where the boarding school owns 1,000 decares of land, granted on lease, the leaseholder provides food products to the boarding school. The management teams of most of the boarding houses claim to coordinate the menu with a medical expert, as required by the EBS Regulations and SBS Regulations. In practice, however, this requirement is complied with only by the boarding houses where there is a medical officer in-house (SBS - Lik, SBS - Bogdanitza, EBS - Podem, EBS - Zavet). Even less is the number of boarding houses where the menu is coordinated with the Hygiene and Epidemiology Inspectorate (HEI).

6.3 Education

*The United Nations Rules for the Protection of Juveniles Deprived of Their Liberty*\(^{152}\) (Art. 38) provide for the fundamental principles of the organisation and functions of the process of education for children placed in detention facilities where juveniles serve a term as a correctional or punitive measure. They focus on the right to education that would meet their individual particular needs and are intended to prepare them for their return to society.

SBS offers conditions for completing primary education\(^{153}\), while CSB offers conditions both for primary and secondary education\(^{154}\). Unlike in SBS, in EBS it is

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\(^{151}\) Promulgated, SG No. 64/9.08.1994.


\(^{153}\) Art. 3, SBS Regulations.

\(^{154}\) Art. 5, EBS Regulations.
possible to organise classes for mildly developmentally disabled boys and girls. After completing eighth grade at SBS children, who are willing to continue their education, have to leave the boarding school and most often they do not continue their education. According to the teachers who work at SBS the reasons for that are that parents are not able to cover the costs for education for their children or because of inappropriate family environment there is no parental control. Students who complete eighth grade would remain at SBS if they could continue their education there. It is only in SBS - Straldzha that there is a ninth grade for vocational training in cooking after completing primary education. The percentage of children who continue their education after completing the primary school level proved to be no more than 10-15%. At some SBS there are reports that pupils who continue their education are a few. An exception to that rule is SBS-Sofia only, where probably due to the higher quality of the education and better social contacts of children, more than half of the pupils who complete primary education continue to study. The children who complete the eighth grade and leave SBS because they come of age or because they had already been there for three years, in most of the cases do not continue their education either. This trend is typical of children who leave EBS before completing their primary or secondary education.

*United Nations Rules for the Protection of Juveniles Deprived of their Liberty* provide for the requirement for the education of children to be offered "through programmes integrated with the education system of the country so that, after release, juveniles may continue their education without difficulty". Education at SBS and EBS pursuant to the Regulations of those institutions is offered through standard curricula, approved by the Minister of Education and Science. These curricula differ from those for the schools of general education only in the part concerning obligatory optional disciplines. The SBS curriculum for the initial grades provides for an additional lesson per week in Bulgarian language and literature given the greater needs of children to be educated in that subject, while the curriculum for the primary school level provide for two additional lessons per week in labour and technical skills to help the vocational training. Therefore after completing their primary education the few pupils who continue their education choose primarily vocational schools. Since in most of the cases the pupils who complete primary education are at the age of 16, 17 or 18, most often choose to attend evening classes. Something unique for the EBS system is the curriculum of the boarding school in the village of Gabrovtsi, which is in agreement with the approved curriculum for rehabilitation schools in Bulgaria. When starting their education there some 50% of the children are illiterate. All of them are diagnosed as "mildly mentally retarded", while few of the children have even more serious psychological diseases (two cases of epilepsy, schizophrenia, etc.). Some 20% of the pupils continue their education at a vocational school for farmers or at a social educational and vocational establishment.

The general assessment of the educational activities at SBS and EBS is that the process of education there is considerably less effective, while the quality of education is at a lower level compared to the level of education in the remaining schools of general education. There are several fundamental reasons for that:
Considerably higher rate of mobility of pupils is typical of SBS and EBS compared to the rate of mobility in the schools of general education. Placements in SBS and EBS are not complied with the start of the school year. At any time during the school year newly placed pupils or runaway pupils, who have not been looked for, are brought in. They join the process of education at the stage where the other pupils are. In addition the rate of mobility of children is raised because of their frequent absences due to the fact they need to attend different court cases. In most of the EBS there are several cases initiated against a single child. According to the reports of the management of EBS - Rakitovo there are 7 to 10 cases with different subject matter against most of the inmates at a time, which entails frequent absences from school because pupils are brought to the trials or for investigative activities. Another explanation for the mobility rate is the fact that SBS and EBS pupils are entitled to a release after they have spent three years there, no matter whether this period is at the beginning or at the end of the school year.

One of the most serious problems for the education system of SBS and EBS stems from the shortage of pupils to form a consistent class. The common trend for the number of SBS and EBS pupils to go down is also typical of the local pupils who attend the local school of the SBS. In SBS-Sigmen all local pupils who had been studying at the boarding school were moved in 2004 to a school of general education in Karnobat pursuant to a decision of Regional Inspectorate in Education with the Ministry of Education and Science. Pursuant to the provisions of Ordinance No 7 of 29 December 2000 on the Number of Pupils to be Enrolled in Different Classes and Groups in Schools, Kindergartens and the Auxiliary Units155 the minimal number of pupils in a class at SBS should be 14. When the number of pupils in the classes is less than that teachers are compelled to unite classes. To the exception of SBS - Bogdanitza, SBS - Medovina, SBS - Sofia and EBS - Kereka, in all of the other institutions there is one or most often several united classes. This is a natural response on the part of SBS and EBS directors to the statutory provisions for a minimal number of pupils in a class. In those cases pursuant to Art. 11, para 2 of Ordinance No 7, when forming a united class out of two others the minimal number of pupils from first to forth grade should be 10, while for pupils from fifth to eighth grade – 12. The Ordinance, however, does not provide for a requirement for the united classes to be consecutive classes, therefore classes of the lowest number of pupils might be united (for example first and fourth). Uniting classes leads to inefficiency of the education process at SBS and EBS.

The process of education at SBS and EBS is conducted at each of the boarding schools individually. This practice established decades ago has an adverse effect on the process of education and breaches Art. 38 of United Nations Rules for the Protection of Juveniles Deprived of their Liberty, where it is said: "Such education should be provided outside the detention facility in community schools, wherever possible". The reverse trend, however, is typical of SBS. Due to unavailability of any other school in a settlement, the school of SBS is attended by the so called "local"

children – children of the same village, who are included in the classes together with the SBS pupils.

The percentage of illiterate pupils at SBS and EBS is considerably higher compared to the percentage of illiterate pupils at the schools of general education. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty provide for the following: “Juveniles who are illiterate or have cognitive or learning difficulties should have the right to special education”. Pursuant to Art. 8 of EBS Regulations “at the correctional boarding schools education courses can be organized to educate and increase the level of literacy of juveniles in agreement with a model curriculum approved by the Minister of Education and Science”. For SBS, however, where the illiteracy issues are of no less importance, the legislative framework does not provide for organising educational courses. In some SBS (for example SBS-Pelatikovo) pupils from rehabilitation schools were placed, and with the current education capacity of SBS these children are destined to remain at the level of education they had at the time of their placement in the boarding school. It is not rare to have children with Roma origin placed in SBS and EBS who are above the age of 14, who have never attended school and are completely illiterate. For such cases the Implementing Regulations for the Public Education Act (IRPEA) provide “for children with special education needs, who do not meet the state education requirements for learning due to objective reasons, the school team develops an individual lesson plan for one or more subjects included in the curriculum of the school."

In addition, IRPEA provides for pupils from first grade who are not assimilating the subjects, not to repeat the grade. For them additional individual classes are planned taught by their teachers during the regular classes or during vacations. The training is organised based on a proposal from their teachers, with the assistance from the respective experts - psychologists, speech therapists, etc., under conditions and provisions identified by the principal of the school in an order. In none of the SBS visited were BHC researchers shown individual lesson plans, no additional training course was conducted and no orders issued by the director were found identifying the provisions for such training. What is more, according to some of the teachers working at SBS no matter what the efforts are, there is no hope for the children to be taught how to read and write and complete successfully at least primary education.

According to the SBS - Beglezh the most significant problem are illiterate children at first grade, who cannot be left to repeat the grade, while in SBS - Sigmen illiterate children even after the first grade are not left to repeat the grade. The provisions of IRPEA not to let children repeat first grade, even when the children are not making any progress, would affect the learning process in the second grade. Eventually, objective assessment of pupils' knowledge, who are having learning difficulties in the second grade, would necessitate for them to repeat the grade anyway. To help pupils

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156 Promulgated SG No 68/30.07.1999, the provision identified is Art. 111, para 8 and is a new one, SG No 99/11.11.2003
157 Art. 112, IRPEA
158 Art. 112, IRPEA
159 Art. 112, IRPEA
learn better some SBS have consultation schedules for some subjects outside regular lessons.

The percentage of pupils in SBS and EBS, whose age corresponds to the grade they are in, is less than 20%. For example, the age of pupils who are in first grade is not 7 years like in schools of general education, but may vary from 7 to 18. The great age difference between pupils and the difference in their psychological development and interests is another obstacle for a normal learning process. Therefore the average examinations grade of pupils in most of the schools varies from 3.80 to 4.40.

Finally, the efficiency of the learning process is directly related to the motivation and payment of the pedagogical staff, which by the common opinion of the teachers interviewed is extremely insufficient for their working conditions.

Rule 26.6 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") stipulates: "Inter-ministerial and inter-departmental co-operation shall be fostered for the purpose of providing adequate academic or, as appropriate, vocational training to institutionalized juveniles, with a view to ensuring that they do no leave the institution at an educational disadvantage."

In agreement with this requirement in all SBS and EBS vocational training is provided to a certain degree. Most often the pupils are trained in carpenter's shops and metal processing workshops, in some boarding schools there are courses in electrical engineering, computers, applied arts, needlework, etc. In 2004, 15 pupils from the upper grades at SBS - Dragodanovo attended the course in masonry, 1st degree, where they were taught by teachers from the vocational school in construction in Sliven. In several boarding schools the children's leisure time is devoted to activities of individual interest: cooking, drawing, music, dancing, herbology, gardening, photography, etc.

Educational facilities are maintained well and are in a relatively good state only in a few EBS (Dinevo, Gabrovtsi), while in most SBS facilities are insufficient and in a wretched state. Most lamentable in that respect is the situation at EBS - Dinevo and SBS - Nevsha, SBS - Pchelarovo, SBS - Sigmen, SBS - Ostritza and SBS - Medovina. The classrooms for pupils from the primary classes as a rule are maintained better than those of the pupils from the secondary classes. In principle classrooms are usually poorly equipped with obsolete blackboards. Temperature in some of the rooms and in the corridors in some SBS and EBS was very low (Berievo, Straldzha, Varbitza, Dinevo). The pupils in classrooms and study rooms had their jackets on.

The degree to which schools have textbooks, notebooks and study aids varies from school to school. Most of them complain regularly of shortage of textbooks, especially for the upper grades. The textbooks available are often in a lamentable state, they are old, shabby and without covers. Notebooks are also insufficient and pupils in several SBS were compelled to use one notebook for all subjects. To most of

the schools no budget funds were provided for purchases of study aids, drawing materials, materials for the creativity and art lessons etc. for the current year. The management of some of the schools contacted sponsors and managed to ensure pens, notebooks, sketch-pads, colour paper pads and other aids.

Pursuant to the SBS Regulations and EBS Regulations schools are places where "both individual and team social-preventive, and educational-correctional activities are conducted to overcome the influence of risk factors on the development of pupils." 161 The broad meaning of these requirements and the lack of a specific methodology to conduct educational and corrective activities deprive the pedagogical staff of the opportunity to work for reforming their pupils at SBS and EBS. Instead in most of the boarding school extracurricular activities are developed - dancing or sport, and hobby clubs are identified.

6.4 Correctional and rehabilitative activities

Pursuant to the JDA the inmates placed in SBS and EBS "remain there for education and training, including for acquiring a professional degree until the age of 16, and, provided they express their will in writing, until the age of 18."

162 Pursuant to the EBS Regulations "correctional-educational and the training process in the boarding schools aim: 1. To assist and motivate pupils in learning human values and culture, to foster positive attitude to labour, to acquire social skills for integration in community; 2. To make pupils aware of laws and to nurture tolerance and respect for others, their rights, their culture, language and religion, encourage love for the native land; 3. To help pupils master fundamental literacy, certain educational degree and professional qualification." 163

Correctional work at the correctional boarding schools is carried out through: 1. Organising different types of extracurricular and out-of-school activities; 2. Involving all pupils in activities different in nature according to their interests and skills; 3. Encouraging pro-activeness; 4. Searching, encouraging and promoting talented pupils. 164 In each boarding school different activities are organised, art clubs are set up, sport and tourist sections, and performers' and hobby clubs are established. 165

In the six EBS visited by us throughout the country according to the staff there are different types of activities depending on the children's interests, which, however, seemed not to catch their interest and did not appear to have a positive effect on them. The boarding schools usually offer fewer, inadequate and uninteresting activities compared to those the children had before that. Therefore when asked whether they like the extracurricular activities carried out in the boarding schools, they replied that there were no such activities, that they were bored and that was why they play truant.

161 Art.4, EBS Regulations, Art. 4, SBS Regulations
162 Art. 30, para 3, JDA
163 Art. 6, EBS Regulations
164 Art. 32, EBS Regulations
165 Art. 33, EBS Regulations
BHC researchers failed to notice availability of appropriate facilities, nor qualified staff in EBS, which would allow development of effective correctional and educational measures. They failed to witness a single activity in that respect during their visits.

The facilities at EBS are in a wretched state, obsolete and poorly maintained (to a few exceptions) to live up to carrying out quality training and a meaningful correctional and educational process. Moreover, it turned out that the concept of the staff for extracurricular activities in EBS does not correspond to the social experience and needs of children placed there. In all EBS there is at least one TV set and a cassette recorder. In all of them there are more or less organised sport activities, although sport appliances everywhere look wretched and even impossible to use. Nonetheless, it is not reasonable to claim that correctional and educational processes are underway given the frequent escapes of children, their relationships with the teachers, deplorable facilities and lack of budget funds for extracurricular activities. Exceptions are boarding schools, where inmates are offered sporadically to attend relaxation camps or trips are organised for the children (EBS - Dinevo, EBS - Podem). In every EBS there is a TV hall, where different games are offered – chess, cards, puzzles, as well as a volleyball, soccer and basketball playgrounds, which as a rule are poorly maintained. Regarding extracurricular activities in EBS - Kereka they organise music classes, applied art activities and sport, in EBS - Dinevo - herbology, gardening and photography clubs, in EBS - Podem - courses in computer literacy, hairdressing, business administration, civil education, there is a choir, visits to theatre performances are organised in Pleven, while in EBS - Zavet literary and art competitions are organised.

Pursuant to the SBS Regulations "correctional activities in the correctional boarding schools are carried out through: 1. Encouraging pro-activeness; 2. Providing miscellaneous extracurricular and out-of-school activities; 3. Involving all pupils in different activities depending on their interests and inclinations; 4. Forming hobby groups; 5. Searching for, encouraging and promoting talented pupils."\(^{166}\) In the social educational boarding school different activities are organised, art clubs are set up, sport and tourist sections, and performers' and hobby clubs are established, along with others involving all pupils.\(^{167}\)

As with the EBS, the correctional and social rehabilitation activities organised in SBS are not particularly diverse, active and efficient. It is worth noting that the organisation and carrying out of those activities depends on the staff and its ability to solicit funds for them. Thus, there are SBS with diversified and efficient correctional activities and SBS, which do not develop any extracurricular activities and no relaxation is provided for the children due to "lack of funds". In each SBS pupils are mainly watching television outside school hours. TV halls are poorly furnished and are not cosy. The different boarding schools established different forms of extracurricular activities depending on their abilities. SBS-Varentzit offers the children to use the library two days a week, to participate in a fight club and In the

\(^{166}\) Art. 27, SBS Regulations.

\(^{167}\) Art. 28, SBS Regulations.
World of the Intimate club. SBS-Varbitza offers one-day trips to Karlovo, Kalofer, Sopot and the zoo in Sofia, as well as folk concerts attendance, which is funded by private firms. In SBS - Dragodanovo the inmates may use the library, or attend different hobby clubs in carpentry, electric engineering, production of ceramics items (made of clay), applied art (jewellery). In SBS - Lik activities related to cooking, needlework, drawing, computer literacy, music, carpentry are offered, as well as the opportunity to participate in municipal competitions in chess, soccer, volleyball. The children often go to the cinema in Vratza, or visit the zoo in the Kailaka area and the Panorama museum in Pleven. In 2004 one of the pupils went to an international camp in Belgium, and another one - to an international camp in Kresna. In SBS - Ostritza and SBS - Bogdanitzta there are no appropriate rooms even to watch television, while in SBS - Nevsha, SBS - Pchelarovo, SBS - Stolat no extracurricular activities are organised. The children in SBS - Nevsha visit the local sights in Shumen, Madara, Pliska, Veliki Preslav, Veliko Tarnovo.

In SBS - Pelatikovo the pupils are usually involved in hobby clubs – computers, drawing, singing in the Centre for Work with Children-Kyustendil. In SBS - Sigmen each school day after 5 p.m. the pupils divide in groups and take up sport or knitwear activities. SBS - Sofia offers hobby clubs in drawing, applied art, traditions and customs, sport, computers. SBS - Straldzha organises extracurricular activities in football, volleyball, carol-singing, dancing.

6.5 Discipline, punishments and physical violence

In addition to the rights and obligations identified by the Implementing Regulations for the Public Education Act, the EBS and SBS inmates enjoy specific rights and obligations, including specific rewards and punishments: 1. Home and town leave; 2. Object prizes; 3. Cultural entertainment; 4. Deletion or cancellation of imposed punishments.168 A pupil, who breaches the order and regime at the boarding school, and with their actions deliberately harms the interests of the other pupils and staff in the boarding school, apart from the punishments provided for in the Implementing Regulations for the Public Education Act shall be further imposed the following punishments: 1. Cancellation of a reward that has not been used; 2. Prohibition to attend official school events.169 However, both regulations expressly prohibit: 1. Any form of physical or mental violence, 2. Deprivation of food and water, 3. Deprivation of sleep, 4. Wearing distinguishing or unsuitable clothes; 5. Restricting contacts with parents, guardians, family and friends; 6. Deprivation of personal correspondence, phone connection and parcels.170 Pupils are not allowed to cross the boundary of the school area. At visits to the cinema, theatre, exhibition, etc., which are outside the area of the school, they are accompanied by a teacher or a supervisor to the exception of the cases when they were awarded with a home or town leave.171

168 Art. 35, EBS Regulations; Art. 30, SBS Regulations.
169 Art. 36, EBS Regulations; Art. 31, SBS Regulations.
170 Art. 37, SBS Regulations; Art. 32, SBS Regulations.
171 Art. 38, EBS Regulations; Art. 33, SBS Regulations.
In the visited SBS and EBS, the BHC researchers established a diverse methodology for imposing punishments. The common opinion of SBS and EBS staff is that the punishments provided for in the Public Education Act, the SBS Regulations and the EBS Regulations do not seem to be effective and therefore are not widely used in practice. In EBS - Gabrovtsi, for example, punishments such as prohibition to leave the boarding house for a specified period of time, cleaning the school, the dining room, washing the toilets, occasional slap on the face. The children at EBS - Gabrovtsi explained that the director slapped them only when they "deserved", for example when they play truant for longer periods of time or when they steal somebody else’s property during their stay at the boarding house. The girls from EBS - Podem complained that one of the boys beat them. In EBS - Kereka in school year 2003/2004 there were four punishments "moving to a different school" imposed to pupils. To do that, a procedure was carried out initiated on a report given by the class teacher, which was considered by the teachers' council attended by representatives of the pupils. The guilty pupil was given the floor and a decision was made subsequently. The accusations were beating other pupils. In EBS - Dinevo and EBS - Podem the punishments provided for in the EBS Regulations are imposed, but according to the children there are additional punishments such as washing the toilet, corridors or the floors in the dormitories. In EBS - Rakitovo the types of punishments imposed on the pupils in practice are listed in detail and displayed in the school's foyer. According to the EBS management there is a system to track down punishments and rewards. For example, some pupils received several rewards, which they can use later within a single leave. Of all the punishments the most effective one is deprivation of home leave. Another effectively used punishment is deprivation of a previous reward, as well as decreasing the number of days awarded for a leave. On the day the BHC team visited EBS - Rakitovo a group of boys were ushered in the director's office. One of them had hit a boy of Roma origin because as he put it "he could not stand him". The victim was obviously very nervous and as it turned out, he was a common target for similar practices. The management of the boarding school made their best to clarify the situation. During their visit (28 March 2005) to SBS - Bogdanitzia the BHC researchers witnessed of a quarrel between young people from the village and a child from the home. During this quarrel one of the young people kicked the inmate in the stomach and threatened to beat his brains out. The inmate bent down and clutched at his stomach while screaming that he wanted to get away from the boarding house. At the time all teachers, supervisors and the director were eating at the dining room. They heard about what was happening in the school yard from the BHC researcher. None of the supervisors intervened, and the village boys freely left the area of school. The regional policeman was informed about the accident hours later probably only because there was a BHC representative to the school. While talking to the pupils it became clear that the quarrel was caused on occasion of a disagreement between the pupil and the younger brother of one of the village boys, who studies at the boarding school and is in the seventh grade. One of the versions was that the village boy was protecting his brother, who had been harassed by the inmate. The inmate's version was that he was a victim of a constant and systematic harassment by the local boys who lurked on him around the village and threatened to beat him to death. According to the director of the boarding school quarrels between local people and inmates are rare. He said that the boys who were involved in the fight described above are former inmates, who study now at vocational schools in
other settlements. BHC, the Ministry of Education and Science, the Regional Police Office in Asenovgrad and the Regional Prosecutor's Office in Asenovgrad were informed about the case. On 5 May 2005 the Regional Prosecutor's Office in Asenovgrad announced that it would not launch preliminary investigation and would terminate the file initiated on the case due to absence of evidence for commitment of a crime of a general type. This is an eloquent example of impunity and the inability of the system to cope with the violence at EBS and SBS.

In SBS - Varrentzi the punishments provided for in the Public Education Act are imposed, but in a conversation the younger children reported that often they were victims of the older ones (who beat them from behind so that the children cannot see the attackers) for food and pin money. They are afraid to report that to their supervisors, because they are threatened to be beaten. They shared their content, however, that their dormitory was isolated in a wing different from that of the boys and they feel more secure in this way. It was again in a private conversation with the children that it became clear that some of the supervisors hit occasionally some of the inmates if they were found guilty of a mischief. According to the director of SBS - Dragodanovo the punishments imposed are provided for in the SBS Regulations. Some of the children shared that washing of toilets is a common correctional measure at the boarding house. According to some of the children there are supervisors who harass the children. Two of the inmates in SBS - Dragodanovo shared that a boy from the boarding house was a victim of sexual harassment. In the presence of two BHC researchers the director of the school expressed her doubt that what the boy said was true. She shared, however, that some of the supervisors had similar doubts about another boy, who was admitted to the boarding house recently. In an interview with the psychologist it was clarified that the same boy is ridiculed by the other inmates on issues related to sex. According to the psychologist the boy claims that there is no truth in those insinuations. After having interviewed the child in private the BHC researcher concluded that the child is vulnerable to sexual harassment. The child was very nervous when he was left with the BHC researcher in private and shared that there was a supervisor who knew about the dirty proposals of the two boys. That supervisor insisted on the boy telling him about them and then beat the boys who made them. There is information about another boy, who "offers sexual services" to his classmates, which, however, is not confirmed by BHC. The children shared that their correspondence is examined by the supervisors, while the phone calls are made in the accountant's office, so no confidentiality at all is ensured. According to the director only the punishments provided for in the SBS Regulations are imposed in SBS - Lik, but according to some of the children there is a teacher who occasionally slaps them. In SBS - Pchelarovo the punishments provided for in the SBS Regulations and the Public Education Act are not used at all, because they are completely inapplicable and inadequate to the local conditions. In accordance with data from the director and the deputy director there is no torture and abuse of children in the boarding house. Often local kids quarrel and fight with the inmates, but the teachers intervene. During the interview of the BHC researcher with the director three children entered the office asking for the director's interference in a fight between the children. The children from SBS - Pelatikovo shared that sometimes they punish them by washing the toilets, but that is occasional. The reason for that punishment is usually playing truant. They considered that punishment fair and did not complain from it.
According to the director in SBS - Rozovo it is mostly the light punishments that are imposed like warning and scolding, while with systematic aggressive behaviour – moving to another SBS. According to the children if they play truant or smoke, they can be punished with washing the toilets. In SBS-Sofia punishments such as "reprimand" and "last warning before expelling" are imposed for aggressive treatment of mates, arbitrary leaving the school, playing truant, breaking windows. According to the teachers in SBS - Stolat the punishments provided for in the Public Education Act and the SBS Regulations are the ones imposed. The children shared that when someone plays truant, all the inmates are punished, and the children have to stand up and eat without spoons. According to them there are frequent fights in the boarding house, usually in the evening, and the supervisors do not even hear about some of them. According to the director in SBS - Straldzha the most serious punishment is moving to another SBS and it is imposed for playing truant from lessons or the institution in general. The children explained that they are punished if they damage the property of the institution by paying for the repair works, and sometimes they are punished to wash the floor or the toilets.

6.6. Inspections

Supervisions over SBS and EBS should be carried out by those of the institutions, which are directly related to the activities of the boarding houses, to education, upbringing, living conditions, maintenance of hygiene, nutrition for pupils, etc. A subject of supervision should be the disciplinary proceedings, the quality of medical services and placement procedures. BHC visits to all SBS and EBS proved that placement procedures are not a subject of inspection by the competent authorities, therefore as far as it was concerned no comments and recommendations were voiced. Effective supervision on SBS and EBS is seriously impeded by their remoteness from bigger settlements and the poor transportation infrastructure. The institutions in charge of supervision over the boarding schools are the Regional Inspectorate of Education under the Ministry of Education (RIE under MES) from the respective regional centre, officers from the Educational and Cultural Integration Division with the Ministry of Education and Science and by the Child Protection Inspectorates, inspectors from HEI, Fire and Emergency Safety, Child Pedagogical Offices from regions, from where inmates are coming, and the National Audit Office. On a less regular basis inspections are carried out by the Labour Inspectorate and representatives of the Local Commissions for Combating Juvenile Delinquency. When prosecutors visit EBS, the purpose of their visits is not ensuring law and order as provided by the Constitution and the Judiciary Act. Those visits are made on the invitations of the director to attend the teachers' council, where release of inmates is decided. The inspections conducted by the Regional Inspectorate of Education with the Ministry of Education and Science (RIE under MES) are mostly devoted to a certain subject, for example the number of pupils in the different classes and groups, keeping track of all the documents or checking the level of education and upbringing provided to the pupils. One of the key conclusions of the RIE under MES inspectors concerning SBS is the considerable discrepancy between the number of children filed in the registers and the real number of pupils placed in the boarding houses. This entailed drastic lay-offs of the staff in those SBS. Most effective and most common
are HEI inspections of SBS and EBS. In some boarding houses the recommendations of the inspectors concern the need of major renovation works in the facilities, which were the reasons to prohibit the start of the school year. Those recommendations, however, are not taken into account and the classes continue (SBS - Stoikite, EBS - Gabrovtsi).
7. Summary, conclusions and recommendations

7.1. Ministry of Justice facilities

The institutions for deprivation of liberty under the Bulgarian Ministry of Justice need a serious reform in order to comply with international standards. The most urgent need at present is to deal with the overcrowding in most prisons and in some of the remand centers. At the same time the government ought to launch a program for reform that envisages more diverse forms of custody, including individual placement. Urgent steps should be taken to improve the material conditions in the cells, especially those for life-sentenced prisoners and disciplinary cells. All underground remand centers should be closed down. The staff and the authorities of the prisons should make use of all means at their disposal to prevent inter-prisoner violence and intimidation. The authorities must ensure assistance to the victims, and conduct prompt and impartial investigations. Medical services in the institutions of the Ministry of Justice are not integrated with the national health care system. In the future doctors and other medical staff should be given independent status and supervised only by medical authorities to allow the fulfilment of their duties as medical professionals. Detainees at both the prisons and the remand centers should be offered more opportunities for activities and rehabilitation. The Bulgarian system should envisage and arrange for long-term and spousal visits to the inmates and should provide for appropriate establishments for this.

All prisoners, including foreigners and prisoners from ethnic minorities should be treated equally and without discrimination. More due process guarantees should be introduced in imposing disciplinary measures in order to avoid arbitrariness. The practice to regularly check the correspondence of sentenced prisoners is in a clear violation of a number of international standards and should be repealed.

7.2. Ministry of Interior facilities

The practice of torture and prohibited ill treatment in police establishments, which was widespread in the past, decreased somewhat but still takes place. A lot of these are practiced with impunity. Not all cases of police detention are duly recorded. The Prosecutor’s Office and the Ministry of Interior should take further measures to investigate these cases ant to bring perpetrators to justice. A special crime of torture should be adopted in the Penal Code. Independent human rights defenders should be allowed to regularly monitor places of police detention.

Material conditions in some police stations are very bad and need to be improved. Unlawful practices of physical restraint while in police custody still take place. Access to legal aid from the moment of detention should be made effective through further strengthening of the legal framework and practice.

7.3. Ministry of Health facilities

Despite serious efforts to reform the legislation regulating the commitment of patients to psychiatric institutions for active treatment a lot remains to be done to respect the
law and to allow the inmates of these institutions to benefit from it. Forms of
treatment in the hospital should be diversified and should include occupational, art,
sports and group therapy, in which all patients should be involved. Treatment should
make use of the modern anti-psychotic drugs, which should be made available and
accessible to the patients. A clear and precise complaints procedure should be made
available to all patients. Patients in the closed wards should be allowed to spend
sufficient time for outdoor exercise. The staff should make sure that patients are not
subject to physical abuse from other patients or from orderlies. All signs of physical
abuse by officials should be reported to the relevant authorities, investigated and
prosecuted.

7.4. Ministry of Labour and Social Policy facilities

Despite some progress the material conditions in many social care homes for persons
with mental disabilities in Bulgaria need to be substantially improved. The
government should consider developing a programme of deinstitutionalisation of
social care for mentally disabled adults through programmes that discourages
placement of children in social care institutions and through establishing facilities and
types of care that are akin to family environment. At the same time the quality of care
in institutions should be substantially improved. A meaningful programme of
activities should be organized in all social care institutions for all residents on the
basis of a careful assessment of their individual needs.

A court procedure should be put in place for placement in social care institutions for
people under guardianship, as at present the procedure allows for arbitrary placements
and does not respect the international standards for treatment of persons deprived of
their liberty. Personal security is a serious problem in the social care institutions of
Bulgaria. Measures need to be taken to eradicate any physical abuse of residents by
the staff or by other residents. Staff in the social care institutions should be trained to
understand and to attend the specific needs of the residents.

7.5. Ministry of Education and Science facilities

The schools for delinquent children in Bulgaria in their present form deprive the
students from a family environment and hardly serve any educational and
rehabilitative purposes. There future therefore should be seriously reconsidered. The
procedure for placement in the schools for delinquent children should be further
reformed and brought in line with international juvenile justice standards. Material
conditions in some of the schools are bad and need to be improved. The situation with
personal security in these institutions should also be improved. Measures should be
taken to prevent any form of violence. Meaningful educational and rehabilitative
activities should be envisaged.